

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MDF/W/54

30 September 1985

Special Distribution

SERVICES

DRAFT MINUTES OF THE MEETING HELD ON 18 SEPTEMBER 1985

Chairman: Ambassador F. Jaramillo

1. The Chairman said that the purpose of this meeting, as indicated in the airgram (GATT/AIR/2186) and as mentioned at the end of the previous meeting, was to continue the exchange of information, on the basis of national examinations and of the documentation prepared by the secretariat and to appraise the work carried out so far and its follow-up. Before the next meeting, he would submit to delegations a draft summary of issues raised in the exchange of information which would form the basis of his report to the CONTRACTING PARTIES, taking into account comments which delegations might wish to make on that draft. The discussion which would take place during this meeting would be reflected in the summary of issues. Two new documents had been placed before this meeting, namely the Australian national study circulated on 2 September 1985 and Appendix IV of the United States' national study, which contained an illustrative list of selected problems encountered by the United States service industries in foreign markets. Documents had been circulated by the secretariat on 16 September 1985, namely the first revision of the Analytical Summary of Information exchanged among contracting parties (MDF/7/Rev.1), the Summary of Information Made Available by Relevant International Organizations (MDF/17 and Addendum 1) which summarized information made available by twelve organizations. A second addendum to this latter document would be circulated incorporating information made available by the International Labour Organization. The Chairman also mentioned that it had been expected that the Belgian national study could be discussed at this meeting. However, he understood from the Belgian delegation that the Belgian expert was still unavailable for such discussions. Although the discussion of this study would be held at a later stage, delegations were free to comment on it if they so wished.

2. In introducing his country's examination, the representative of Australia said that he would take note of any questions and would submit them to his national authorities in Canberra. Answers would be given at the next meeting.

3. The representative of the United States, in welcoming the Australian study, referred to paragraphs 45 to 47 of the study, which mentioned the February 1985 action by the Australian government to allow sixteen foreign banks to establish operations in Australia. These developments were encouraging and he invited Australia to consider the future opening of more opportunities for foreign merchant banking. The representative of the European Community also welcomed the Australian study, which contained a great amount of valuable information about the rôle of services in the Australian economy.

4. The representative of Canada said that he found the Australian study enlightening and added that he would welcome similar studies from other contracting parties. Referring to paragraph 7, on page 3 and to Table B on page 33, he asked whether more detailed statistics could be given to distinguish the public and private services sectors, in particular in terms of their contribution to employment and to gross domestic production. He asked for further information about the standards of the Australian Broadcasting Tribunal on imported advertising material as well as the content of broadcasting programmes (page 9, paragraph 34). He wondered whether there were any controls or restrictions on the sixteen foreign banks which did not apply to Australian banks (page 11, paragraphs 45-47). He asked for some clarification as to whether foreign owned vessels might be licensed for coastal shipping (page 13, paragraph 54). Finally, he asked for further information concerning reasons for restrictions on the ownership of pharmacies (page 23, paragraph 112).

5. The representative of Japan joined the welcoming of the Australian contribution to the exchange of information on services. This study would add another important element to the present efforts at increasing comparability in services.

6. In introducing Appendix IV to the United States' national study, which contained an illustrative list of selected problems encountered by United States service industries in foreign markets, the representative of the United States said that it had been thought useful to provide a sector-by-sector, country-by-country, inventory of problems. The document provided a specific idea of current problems in the light of the reflections about possible disciplines and rules in the services sector. The source of the information was the United States service industries themselves and represented the consequence of several years of work. The information had been checked by United States' embassies abroad prior to its submission. A similar set of problems had been notified to the Organization for Economic Co-operation and Development in 1981. This new list, which was quite different and more refined, contained about 480 notifications covering 14 services sectors. The information was relatively brief in order not to make the document very long. The United States would welcome any comments, notably as to whether further elaboration or corrections were necessary.

7. The Chairman said that the next meeting should return to this item. The representative of India reserved the right to comment on the United States document at a later stage.

8. The representative of France said that the French national study had just been concluded and that it was his authorities' intention to have it circulated through GATT very soon.

9. The Chairman said that the French national study would be discussed at the next meeting and he noted that a total of 16 national studies had now been received.

10. Referring to the documentation presented by the secretariat, the Chairman said that the revised analytical summary circulated in document MDF/7/Rev.1 contained additional information and corrections made available by 15 August 1985 and did not, therefore, reflect the information contained

in the Australian and French studies nor the United States Appendix. This information would be contained in a further revision of MDF/7. Regarding MDF/17, it was the first time it was formally submitted to delegations and it contained more information than had been included in the draft dated 8 July 1985.

11. The representative of Canada said that his authorities were impressed by the amount of work done in international organizations on the subject of services. He reserved his comments on document MDF/17 which had been substantially revised since the draft had been circulated in July 1985 and which had been circulated only the day before the meeting. The representative of the European Community said that he found the draft document very illuminating on the nature of the work done on services in international organizations. He also reserved his comments for the next meeting. The representative of Norway, speaking for the Nordic countries, also reserved his comments.

12. Referring to document MDF/7/Rev.1 which did not include information on the Australian and French studies nor the United States Appendix, the representative of India sought a clarification as to whether a revised version including these documents would be circulated before the next meeting. He said that unless there had been an opportunity to discuss in particular the French national study and the United States Appendix, it might be appropriate for the secretariat to wait until it was able to include possible corrections and amendments to these texts. Regarding document MDF/17, he also reserved his comments in the light of the changes introduced in the text since the draft had been circulated. On the other hand, he felt that the exchange of information would not be complete without an in-depth discussion of the information contained therein. It might therefore be necessary to hold additional meetings to deal with this matter, before the Chairman submitted his report to the CONTRACTING PARTIES. A related aspect was the question of the participation of international organizations, especially UNCTAD, in the exchange of information. He felt that reserving judgement on the summary of information received from international organizations was not the same thing as reserving judgement on the participation of UNCTAD. The meeting had not yet come to grips with this question. Any discussion of paragraph 4 of the November 1984 Agreed Conclusions should take the comments of international organizations, particularly UNCTAD, into account, and these should also be reflected in the Chairman's report to the CONTRACTING PARTIES.

13. The representative of the United States said that the summary of information received from international organizations provided a great deal of technical information that was beyond what had been originally suspected, though this did not mean that more information could not be provided by some of these organizations. It was important that the participants to this meeting benefited fully from the work being performed by such organizations. Regarding the presentation of the Chairman's report to the CONTRACTING PARTIES, his delegation preferred to follow the procedure suggested by the Chairman, which was in line with what had been agreed before the summer recess. He recognized that the exchange of information was not complete, but there was a deadline to meet. If a more meaningful process of work on services could be developed, appropriate procedures could probably be devised to meet the concerns of the representative of India as well as those of other

delegations. However, he reiterated his delegation's firm position that as long as the GATT secretariat was not allowed to provide any analytical work in this area, his authorities could not agree to oral presentations being made by any other international organization.

14. The representatives of Canada, the European Community, Japan and Sweden also favoured keeping to the original schedule set up for this autumn, but were flexible as regards possible further meetings, provided there was sufficient time to discuss the draft of the Chairman's report.

15. The Chairman recalled that the exchange of information was an on-going process, that more national examinations might be forthcoming and more information might be supplied by international organizations on the subject. If delegations wished to express views about the extent of the work done so far, this would be reflected in his report to the CONTRACTING PARTIES. On the other hand, given the deadline facing the meeting, he proposed to circulate a draft of his report on 25 September, and that discussions of points raised in the documents recently received, including MDF/7/Rev.1 and MDF/17, be pursued in parallel, leaving open the possibility of holding additional informal or formal meetings for that purpose. It was so agreed. He then invited delegations to comment on the work done so far.

16. The representative of the European Community said that enough information had been collected to reach at least some preliminary conclusions. Depending on the precise definition used, world trade in services had reached a level equivalent to 20-25 per cent of trade in goods. This enormous volume of trade was carried out very largely in an environment in which governments were free to restrict trade as and when they saw fit. Quite apart from the impact of the large number of regulatory obstacles to trade, this absence of agreed international rules itself might inhibit the development of trade by increasing the uncertainty attached to its pursuit. At the same time it had become clear that in many economies it was the services sectors which were the most dynamic elements, generating the growth and the employment opportunities which were so desperately needed. By extension, the stimulation of trade in services was seen as one possibility of relaunching growth in the world economy in the years to come. It was for this reason that the European Community believed that the subject of trade in services needed to be integrated into multilateral trade policy and, by extension, that negotiations on services should take place in the framework of the GATT. The aim would be to develop a set of international rules designed to expand the opportunities for trade while preserving the attainment of national regulatory goals in service sectors, thus creating an economic climate from which all trading partners could benefit, directly or indirectly. In his view, the General Agreement as it stands could not simply be extended to the area of services. The objective should be to develop specific rules for trade in services, drawing on the General Agreement on Tariffs and Trade principles only where they were relevant and important.

17. The representative of the United States pointed to the significance of services in the international economy and in many national economies in particular. In his country, two out of every three jobs were now in the services sector. He noted that by academic standards the participants had had only a cursory examination of the five main elements identified in the

analytical summary, and a great deal of time had been spent examining the national studies. No final conclusions had been reached, but it should be kept in mind that the main purpose of the exchange of information was to better equip the participating countries to identify issues. Referring specifically to the fifth element in the analytical summary dealing with approaches as to disciplines or rules which might be devised to deal with services if it were agreed to do so, he noted that this had not really been discussed. The United States national study had presented several options as to how one might develop an understanding relating to the trade in services. The fourth option that was laid down, namely a multilateral set of rules governing all service sectors, was the one which met the preference of his authorities. It was also their view that multilateral action should be carried out in GATT because the most important aspect of any arrangement would be its contractual character. He agreed, however, that GATT rules could not be simply extended to services, though some GATT principles could quite conceivably be found applicable. With regard to possible negotiations, he recalled the United States statement to the Consultative Group of Eighteen and asked that this statement be annexed to the United States national study. He then highlighted items which could be taken into account in the final discussion process, in particular three rules which could be made applicable to all services sectors, namely transparency, national treatment, and consultations and dispute settlement. Transparency would be a credible first step, on the basis of which it would be possible to negotiate practices identified as barriers with a view to their reduction or to their adjustment to make them more open to foreign competition. National treatment should cover at least the main conceptual elements relating to the treatment of foreign firms, namely that these should be treated no differently from national firms. The United States had also proposed rules governing monopolies, particularly public monopolies, where there existed the challenging question of dealing with the sovereign right of the public monopoly to engage in specific services as a matter of public policy, while recognizing that they also engaged in commercially competitive activities where a degree of access should be taken into account. In addition to the general principles, there were also United States proposals for rules applying to specific sectors. These could be negotiated in parallel, consistently with the principles agreed upon in the general framework. The particular problems of the individual sectors should be addressed in individual understandings which would possibly be part of an entire document. Finally, his authorities had proposed the conclusion of agreements along functional lines, as in the GATT non-tariff measures agreements. Several of these might be extended to services, notably those relating to standards, government procurement and subsidies. In each of these areas, some services sectors experienced problems that would perhaps make the principles of those agreements useful in rendering the service economy as open and as competitive as one could. He noted that a number of elements still needed to be clarified notably the question of definition and coverage of services, as had been pointed out by the representative of the European Community. His governments' position was very flexible as to possible forms of multilateral action that might be pursued, and they were prepared to continuously re-examine their proposals in the framework of a more in-depth process of determining what kind of disciplines might be appropriate in this area.

18. The representative of Japan said that although the current exercise of exchange of information had not yet been completed, very good progress had in fact been achieved. His delegation had drawn some preliminary conclusions

from the exercise, but he naturally viewed his right to provide some further reflections as the process evolved. The importance of the service economy in the global economic activities had been recognized. His authorities believed that a lack of a universally agreed definition of services should not be a factor hindering progress in the examination of services issues, including the possibility of multilateral action in this sector. There had been a growing understanding that efforts could usefully be focused on internationally-traded services. With regard to statistics, the need had been reaffirmed for developing certain common statistical formats to improve comparability among countries. He agreed that it would be useful to look into various aspects and special situations of individual sectors, but stressed that excessive compartmentalization should be avoided; thus, it would be preferable as a first step to seek certain commonalities among sectors. Sectoral rules could be tackled at a later stage if necessary. There was also a need to develop a pragmatic categorization to achieve maximum comparability among sectors in view of future negotiations, although this would not exclude specific categorizations within sectors, for example transborder data flows in the telecommunications sector. With regard to possible multilateral action, while agreeing that there was a need for further study of issues, he said that the question of how liberalization should be handled in GATT, was also important. In this regard, attention should be paid to how existing GATT principles could be adapted to services, and whether new principles or possible modifications of existing principles should be elaborated. On the question of legitimate national policy objectives, he said that one should consider the extent to which these could be deemed consistent with existing rules in goods trade. His country had a preference for multilateral action. Services by definition required global markets, not compartmentalized or regionalized ones. He cautioned, however, that in view of the day-by-day evolution of services, future arrangements should leave room to accommodate dynamic changes in services activities. One should avoid seeking out unrealistic, over-ambitious goals for the negotiations; his authorities envisaged a step-by-step, pragmatic approach. Japan was also aware of the necessity to accommodate the special needs of development.

19. The representative of Finland said that the growing economic importance of services had been highlighted in the national studies, which gave a preliminary survey of what constituted trade in services and especially international trade, even though there had not been a detailed examination of the trade flows and the rôle of individual firms in this context. Preliminary discussions had been held on problems encountered in international trade in services, but they did not deal with how those problems could be handled multilaterally or how market access could be secured for new entrants. There was therefore a need for further analysis. As a starting point, developed and developing countries alike could examine which principles of the General Agreement could be made applicable to services.

20. The representative of Canada said that the exchange of information had permitted the building-up of a substantive body of knowledge and had brought out the importance of services in national economies and in international trade. A broader picture had been acquired of the various regulations applied by governments and the barriers that they perceived other governments to be maintaining with respect to trade in services. It was clear that

further work would be needed to elaborate a multilateral framework. In this regard, he recalled Canada's submission to the Consultative Group of Eighteen in July 1985, where his authorities had set out their views on the need for such a framework and had stated that there would be considerable merit in examining how concepts such as non-discrimination, national treatment and transparency could apply to services. Canada did not, however, have a fixed view as to what kind of framework should be set up. In particular, Canada remained open as to whether it should be a comprehensive agreement, agreements particular to specific sectors or a combination of both, provided the framework was established within GATT. Canada was prepared to explore these issues further in GATT.

21. The representative of Brazil said that he could agree with some of the comments expressed by the previous speakers concerning this first stock-taking which was being made of the whole exercise. He would certainly agree that one should not jump to final conclusions at this stage, and he cautioned that services were still a largely unknown area notwithstanding the thorough exercise on exchange of information that had taken place. There was need for much more analysis. Difficulties had been identified, for example, with respect to definitions and statistics, and some important elements included in the Ministerial Decision had been left out, notably as regards the information and comments through which other international organizations might be expected to make a more detailed contribution. This gap may have been partly filled by document MDF/17 but this still had to be discussed at the next meeting. Brazil's concerns about the establishment of multilateral rules and disciplines in the area of services had not been dispelled as a result of the exchange of information, and his authorities were still worried that the development of such rules might lead to a situation where developing countries would be kept in the rôle of more or less permanent importers of services from developed countries.

22. The representative of Argentina said that the way in which some delegations had reached rapid conclusions surprised him after having heard participants saying, practically in concert, that the information available had been rather insufficient, for example on statistical methodologies. In addition, a great deal of information had yet to be analysed. In view of these difficulties, it was rather difficult to draw conclusions. The national studies so far discussed had revealed very different approaches on many aspects of the subject. Moreover, the studies available were only from developed countries which enjoy a high degree of development. It might be useful to remember that, in the case of Argentina, the services sector was also large, but its structure and content was different from those of the countries which had submitted their national examination. The information provided for by the international organizations, in particular UNCTAD, showed interesting approaches to services which took more into account the situation of developing countries. As had been pointed out by India, this type of information should not be omitted from any conclusions that might be drawn from the exchange of information.

23. The representative of India noted that there was still no agreed definition of services and that this question had not been properly addressed. The exchange of information so far had shown that the services sector covered a variety of activities. It was difficult to establish what different services had in common except in the very broadest sense that they

were invisibles, and no attempt had been made to address other common characteristics. Some national studies had pointed out that some services were more directly related to trade in goods than others, but this was not seriously discussed. His delegation felt that general conclusions could not be based on nebulous concepts, especially when dealing with what was presented as the single largest factor contributing to the growth of national economies. Further, he noted that no attempt had been made to identify specific features of services which might make certain categories more amenable to multilateral approach than others, and in what form. While it had been recognized that international agreements already existed in a number of service sectors, it had not been made clear how these would articulate with any multilateral approach. Nor had there been any discussion of how the work of other international organizations was to be incorporated in the so-called stock-taking exercise. No views had been expressed, however, to the effect that these organizations had been inadequate or need to be supplemented or strengthened. Regarding proposals for a framework, he noted that the available national studies signaled the right of establishment as of some importance to a number of service sectors, whereas in other cases access was the main concern. This made the meaning of the proposed approaches rather unclear. For example, the right of establishment in sectors such as banking and civil aviation had been traditionally granted on the basis of reciprocity. How would the right of establishment be treated then, given that bilateral reciprocity was not a GATT principle? The representative of India further recalled that the national study of Finland had called for recognition of the special situation of small countries which could not afford to accept a multiplicity of foreign service firms participating directly in their economy. This important issue had not yet been addressed in the meetings. He also stressed that only the tradeable portion of services activities was relevant to these meetings, and that in the last ten years trade in services had grown less rapidly than trade in goods. This called for some reflection as to the finality of the exercise. Several studies had referred to the sovereign national interest involved in certain services sectors. He asked who was to judge whether such motivations were more important in some sectors than others. No discussions had yet been held on the rôle of development in services and no developing countries had submitted a national study, which reflected the fact that they were still in the process of trying to understand these issues. These meetings could therefore only be considered to have conducted a tentative exploration of the services issues. There were still substantive areas which needed appropriate reflections and discussions. He could therefore not agree with the representative of Brazil or others who had spoken of a thorough examination of issues having taken place. In his view, the oral report made by the Chairman to the GATT Council in July 1985 should be taken as the basis for further work, and there was no need at this stage for any summary of discussions to be prepared by the secretariat.

24. The representative of the United States presented the recent understanding between the United States and Israel with regard to services, which he would soon make available. This Declaration to all contracting parties contained provisions which were intended as models for a possible multilateral understanding, as distinguished from a bilateral understanding which would aim to restrict trade benefits to the two countries concerned. Further discussions between both countries in the coming twelve to eighteen months would determine whether this political understanding could be

made legally binding and refined on a sector-by-sector basis. He suggested that a detailed discussion of the understanding could be held at the next meeting.

25. The representative of Israel associated his delegation with the statement made by the representative of the United States. He asked that this submission be also recorded as having been made and the document distributed in the name of Israel. The Declaration had been negotiated in the framework of the negotiations of a United States-Israel free trade area. He recalled that Israel had already a free-trade area with the European Community and other arrangements with third countries. He did not wish that this became only a bilateral exercise. From the beginning, his authorities had supported and encouraged the building of a multilateral framework for negotiations of services and they saw GATT as specifically the appropriate venue for such a negotiation. A number of GATT principles had already been mentioned which could be used in the service sector. However, the important principle of differential and more favourable treatment in favour of developing countries should also be mentioned. This principle could appropriately be accepted and used in any framework for services. Its importance had been stressed since the beginning as one of the principles which might encourage other developing countries to have a positive approach towards any such exercise within the framework of GATT.

26. In closing the meeting, the Chairman recalled that the next meeting had been scheduled for 17 October 1985, subject to the procedural arrangements that had been agreed earlier (paragraph 15 above).