

# GENERAL AGREEMENT ON TARIFFS AND TRADE

---

## SERVICES

### MINUTES OF THE MEETING HELD ON 12-13 MAY 1986

Chairman: Ambassador F. Jaramillo

1. The Chairman recalled that, as agreed at the last meeting (MDF/W/63, paragraph 76 and GATT/AIR/2275) the meeting would first discuss "general characteristics of services". It could then take up the question of transborder data flows and the rôle of transnational corporations in this area. He reported on informal consultations held since the last meeting on the proposals to invite representatives of the United Nations Centre on Transnational Corporations (UNCTC) and the International Telecommunication Union (ITU) to make presentations to this meeting. There had been no agreement on this in the informal consultations. He asked delegations to reflect further on the matter and proposed to hold further consultations on these proposals.
2. The representative of India noted that his delegation had supported the idea of inviting UNCTC and ITU in the informal consultations, since both organizations' work was closely related to the issues of services and transborder data flows. They could provide very useful information. He said that the meeting could, if desired, request the organizations in question to come and speak to very specific mandates.
3. On this issue, the representative of India was supported by those of Egypt, Yugoslavia and Brazil. The representative of Chile said that his delegation was not opposed to inviting other bodies to address the meeting, as long as this did not lead to an indefinite extension of the meeting's analytical work and delay its findings. The representative of the United States stressed the need to allow good time for the remaining phases of the work programme, in considering the desirability for further presentations by international organizations. The representative of the European Community also emphasized the need to ensure continuation of fruitful discussions and to reach conclusions in a reasonable period of time. The Community could agree to presentations by the other international organizations mentioned, if a firm agenda for the next meetings and a clear mandate for these interventions could be drawn up.
4. On the order of the agenda for this meeting, the representative of India requested that the question of transnational corporations in services be taken up before that of transborder data flows, in order to permit wider concerns to be reflected in the more specific area. It was agreed that the order of discussion would be: general characteristics of services; transnational corporations in services; transborder data flows.
5. On the question of general characteristics of services, the representative of India recalled that the exchange of information on services

was intended to clarify, to the extent possible, common characteristics of services. Several national examinations had, however, noted the heterogeneous nature of services and the difficulty of comprehending the overall meaning of "services". The French national study in particular had stated that "it is not very easy to grasp what is actually meant by the heterogeneous aggregate of disparate activities that is covered by the term 'services' for the sake of convenience rather than because of their common economic characteristics". His authorities tended to agree with this assessment. The summaries given in MDF/7/Rev.2 did not offer much guidance to participants, and the definitions given in paragraph 1 of that document did not appear very convincing. It seemed hardly possible to speak of one "services" sector. Participants should therefore avoid attempting to oversimplify a complex and dynamic situation by fitting it within a preconceived framework of analysis which increasing research showed to be largely inappropriate. While the flow of goods was regulated in a precise manner under GATT provisions, the theory of trade on which GATT was based did not apply to services and it did not therefore seem possible to draw up general principles for trade in services on that analogy. His authorities also supported the French study's view that there was not one international services market but various heterogeneous markets subject to different regulations.

6. The representative of Chile said that a definition of "services" might be reached in various ways: by trying to define the essence of the sector - a very difficult undertaking; by listing what might be counted as "services" or perhaps by, as in Roman law, defining "services" in terms of obligations to perform certain acts. He suggested that this third approach might lead to a useful operational concept.

7. The representative of Argentina noted that the only common feature of services was their heterogeneity. The only way to reach a common definition would therefore be to sum up all individual definitions. Although a clear distinction was made between goods and services, there was no agreement on what was meant by "services", as against goods where everyone knew what was meant.

8. The representative of the United States pointed out that goods were equally heterogeneous: yet common characteristics of trade in goods could be identified (such as the treatment of goods at the border). In the same way, some identifiable common characteristics of services could be that their trade was, in general, heavily regulated; that regulations on services frequently treated foreigners differently from domestic producers; or that many internationally-traded services were closely related to information flows. Tasks of GATT in the field might be, for example, to determine how regulations applied to services trade caused problems, to establish principles for national treatment in the services area, or to review the ways in which the attitudes of different Governments to State trading affected differing service sectors. He suggested that the definition of "services" to be covered by any agreement would itself be a subject for negotiation, and could therefore be finally established only at the end of the negotiating process.

9. The representative of the European Community remarked that human beings, goods, and services each had differing and similar characteristics. It was

futile to discuss whether common elements or differences were more important. The point was to try to define common rules which could be relevant to trade in services. Common features of services might include their invisibility, the fact that they are often subject to regulation, that production and consumption often take place simultaneously, and that there is often need for personal contact.

10. The representative of Australia felt that it was a dead-end to try to define services. The concepts of tradeability and non-tradeability could be used to focus attention on certain types of services. Within the category of tradeable services, such aspects as end-uses of services, links to the exchange of goods, the need for movement of factors of production to be associated with trade, the structure of enterprises and of competition, or marketing structures, including links with questions of investment and establishment, could be examined.

11. The representative of India expressed his dissatisfaction with the debate so far. He felt that nothing said yet had satisfactorily established common characteristics of services as distinct from other sectors of the economy. It was not yet appropriate to talk of what forms of multilateral actions might be feasible for trade in services, while the nature of services themselves was not defined.

12. The representative of Israel questioned why it was necessary to establish common characteristics for services. GATT had not found it necessary to define such common features for goods, and if anything, goods were much more varied in nature than services. The only common characteristic of goods for GATT was that they were tradeable: the same principle should apply to services.

13. The representative of Japan noted that his government as well as Japanese industries were now examining possibilities for freer exchange of services across-the-board. The meeting should continue to pursue a horizontal, non-sectoral approach to the question. He noted that sectors such as banking and insurance, previously highly segmented, had taken on new dimensions with the advent of sophisticated telecommunications networks, thus outgrowing earlier sectoral concepts.

14. The representative of Argentina agreed with the representative of India that no clear characteristics of services had yet been brought out. One might equally say that protectionism was a characteristic of goods. Many areas of services were not, or insufficiently regulated.

15. The representative of Yugoslavia agreed with Argentina. The lack of regulation of services areas in developing countries could lead to harmful effects on the economy through, for example, the unregulated practices of transnational corporations.

16. The representative of the European Community denied that it was impossible to consider multilateral action on services unless a set of common features could be drawn up. It was quite possible to envisage a multilateral agreement covering elements common to all services and elements specific to particular services. In the present discussions, tradeable services were the focus. Tradeable services could have many common characteristics: for

example, they are bought and sold internationally, they are generally invisible; by definition there are generally no tariffs on services, hence trade barriers are all non-tariff measures; production and consumption must in most cases be simultaneous; most services are not storeable; the purchaser can only evaluate a service when it is purchased; and most services require a vehicle for their trade. While this might help understanding of the nature of tradeable services, it would be necessary to look further to establish how general principles such as the most-favoured-nation concept, transparency, or protection of domestic production could be applied to services. It would be necessary to continue to seek both common rules and characteristics and specific rules for individual situations.

17. The representative of Brazil noted that while certain characteristics could apply to trade in all goods, this was not the case for services. For example, it was possible to identify clearly at what point a good crossed a border or when change in ownership took place. For services, while this might be feasible in some cases (such as construction), it was not so for the majority. Services were intrinsically different from one another.

18. The representative of Switzerland agreed with the representative of the European Community that common features could be identified in the services sector: moreover, some characteristics could be common to both goods and services, such as their tradeability. He agreed that a definition of "services" would essentially be a subject for negotiation.

19. The representative of India regretted that the debate had not advanced. The question was not one of trying to apply a single rule to the services sector, but of the appropriateness and desirability of trying to elaborate a set of rules which could be applied in common to trade in services or to tradeable services. The European Community had linked this with a set of sector-specific multilateral agreements but it was not clear whether these would apply only to trade in services. He emphasized that he was not talking about the coverage of agreements in the field of services; this was quite different from the question of identifying common characteristics of services. The exchange of information undertaken by the group was not about appropriate multilateral action to deal with services regulations, but about the appropriateness of multilateral action to deal with services as a whole. He had hoped for a discussion of services as an economic activity with a profound impact on domestic and global economies. Because of the close links with the domestic economy, governments had an obligation to ensure an adequate and efficient services network within their resources. There was no obligation on governments either to import or export services. In terms of multilateral economic relations, some services could also serve as a vehicle for trade and some services were traded; but this did not mean that they needed to be looked at in the same way as goods. The GATT determined the basis for regulation of trade in goods. Trade in services could not be regulated in the same ways as trade in tangible goods. Governments were trying to understand the implications of the global services economy for their own services economies, including through the specific exchange of views pursued in the GATT. The kinds of multilateral action which might be envisaged on services should be discussed without prejudging the issue of where such multilateral action might take place. The implications of the global service economy went far beyond trade questions alone; reflecting those concerns, national regulations in the service sectors therefore went

beyond trading considerations which might be subject to GATT rules such as transparency or national treatment. Discussion of specific sectors could help bring out problems which could occur in dealing with areas of trade in invisibles as a whole. At this stage, however, it would be prejudicial to determine what issues would be settled at the end of the negotiations. He had previously made the point that regulations on services reflected sector-specific concerns: to talk about harmonizing regulations in specific sectors was therefore quite a different thing from harmonizing regulations across-the-board. Moreover, the scope for application of multilateral action to all services would depend on the common characteristics of the services covered: for example, the degree of tradeability. He wondered whether these discussions were to be related only to traded services or tradeable services. Multilateral action on services as a whole or on regulations applying to services could not be envisaged without taking into account the question of tradeability. The approach followed in the OECD would not be appropriate.

20. The representative of Sweden said that the international tradeability of services and the fact that most internationally traded services were exposed to some kind of restriction were the two common characteristics that convinced his delegation of the desirability of multilateral action.

21. The representative of the European Community gave several examples to disprove the allegation by the representative of Brazil that certain common characteristics such as the movements across borders, payments, or change in ownership applied to trade in goods in a constant manner. Regarding trade in services, he enumerated the following characteristics that usually applied to most services sectors: the importance of trade, the existence of obstacles to trade and the absence of international rules governing trade in most services sectors. These characteristics were the motives for his delegation's proposal for multilateral action leading to an agreement on international trade in services.

22. The representative of Australia considered that, in determining the common characteristics of services, it would be worthwhile to review the legal aspects of the transfer of title to ownership by means of a contract between the supplier and the receiver of a service.

23. The representative of the United States, in response to the concerns of some delegations not to prejudge the notion of future negotiations in the exchange of information, said that in terms of the Ministerial Decision, the objective of the information exchange was to examine all aspects of the services issue so as to provide the Ministerial meeting in September with a basis to determine whether to conduct negotiations in the area of services in the GATT context. With regard to the relevance of GATT principles in determining common characteristics of trade in services, he said that those principles could serve as useful tools in considering the establishment of new disciplines in this area. He added that the group should leave the discussion on the common characteristics of services and attempt to establish the sectors and the relevant activities that could possibly be covered by a set of common rules.

24. The representative of India disagreed that the Ministerial mandate required certain recommendations on the nature of the negotiations on services to be submitted to the Ministerial meeting in September 1986. The

objective of the exchange of information was to enable the CONTRACTING PARTIES to reach a comprehensive understanding on the appropriateness and desirability of a multilateral action in services. It was not for this meeting to prepare recommendations for possible negotiations to be considered by the Ministerial meeting in September. He further said that the common characteristics that would be taken into account in considering the issues in the services sector would have a direct impact on the nature of the multilateral action. The characteristics formulated so far by certain delegations focussed arbitrarily on certain aspects of trade in services and prejudged a definite approach to negotiations. On the other hand, the exchange of information had established that services played a vital rôle in national economies, quite unrelated to their international tradeability. In fact services were a vital and integral part of the infrastructure itself. There were wide differences between the levels of regulations in various services sectors, and it had been noted that in fact in some sectors there were no regulations. This appeared to disprove the view that heavy regulation of services was a common characteristic of all services. The fact that several international agreements already existed to deal with specific services sectors also disproved the theory of a "legal vacuum" across-the-board in services. Therefore it was necessary not to over-simplify or generalize the debate on common characteristics. His authorities were in favour of an approach which would examine the issues related to services in the light of a clearly defined set of common characteristics defined in economic terms.

25. The representative of Brazil said that there were certain exceptions even to the general characteristics of trade in goods. Therefore, the intrinsically different nature of various services activities and relevant regulations did not allow common characteristics in respect of all sectors to be drawn up.

26. The representative of India said that the question of the scope of multilateral action should in no way be linked to the question of determining the nature of such action. The group was not in a position to reach conclusions on the scope of multilateral action on the basis of some indicative and non-exhaustive ideas that had been put forward on the common characteristics of services. There was no uniformity in the international services market and the relevant regulations differed from sector to sector. He therefore reiterated the view of his delegation that it would not be appropriate to deal with the issue of trade in services in an overall manner.

27. Turning to the rôle of transnational corporations, the representative of India noted that the Canadian national study mentioned the following problems with respect to transnational corporations (TNCs): First, TNCs were a prime example of carrying out a services transaction through establishment abroad rather than through trade. The study had made a distinction between trade in services, taking place from the home country, and transactions through establishment, just as had been made by several delegations in the discussions on conceptual issues. Secondly, statistics on the internal activities of TNCs were not be available as for arms length trade or for investment transactions. Third, a TNC was able to allocate its expenditures to its operations in one country on the basis of its own best financial and economic interests, which might not correspond to the location of the activity itself. Fourth, TNCs provided many services from the head office to

their affiliates, or through related transactions, thus in some sense "distorting" the picture. Hence the study noted that much more intensive analysis was required to improve knowledge and certainly with regard to TNCs. The French National Study also noted the distortive effect of transnational trade in services between associated firms, and of potential billings at artificial prices, on any evaluation of real flows of services. TDF were the clearest example of this, where 80 per cent of trade took place between associated firms. The representative of India further quoted extensively from a number of studies to illustrate the growth of TNCs as a major global economic force, their rôle in services and the manner of interlinkages between various service sectors that they established. One study<sup>1</sup> described such integral and mutually reinforcing linkages between TNC operations worldwide and network of financial services. United States financial services corporations had not only followed the expansion of TNCs in the 1960s and 1970s as a major economic force overseas but had also paved the way for such TNCs by providing information on business opportunities in foreign markets. The multinational financial institutions took advantage of differing tax regulations in individual countries to reduce their global exposure to taxation. They also had the ability to operate at low levels of profitability in particular markets by cross-subsidizing their local operations in different countries through the head establishment. The study admitted that for these reasons governments concerned with financial sovereignty view such TNCs with suspicion. A second study<sup>2</sup> on the information industry and the related telecommunications sector maintained that there was a high degree of concentration in the field of informatics and that the global information industry was comprized of only two major United States companies, three Japanese companies and a few European companies. But even the Japanese and European companies found it difficult to survive without co-operative agreements with either of the two giant United States corporations. The representative of India pointed out that this situation obviously placed developing countries at a tremendous disadvantage in this vital services sector, and this had serious implications for their participation in this sector. Another study<sup>3</sup> pointed to the recent emergence of what it defined as transnational services conglomerates of complementary lines and transnational integral conglomerates of different sectors of goods and services. The relevant corporate merger movements had been facilitated by the growing deregulation in the services economy and the easing off in anti-trust policies. A 1972 study<sup>4</sup> on multinational corporations stated that even at that date 80 per cent of United States foreign direct investment in developing countries was in the form of TNC

---

<sup>1</sup>"Barriers to Trade in Banking and Financial Services" by Ingo Walter: Trade Policy Research Centre Monograph.

<sup>2</sup>"The Changing World Information Industry" by Satoshi Kuwahara: Paris 1985.

<sup>3</sup>"Transnational Corporations and Services, the Final Frontier" by F. Clairmonte and J. Cavanagh: UNCTAD Review, 1984.

<sup>4</sup>The Economic and Political Consequences of Multinational Enterprise by Raymond Vernon: Harvard, 1972.

subsidiaries and affiliates. Since there had been a lack of differentiation between establishment issues in trade in services and investment so far, developing countries were doubly concerned over the scope for TNCs to abuse their preponderant positions in host developing countries through the device of gaining access to those markets. Therefore, the meeting must examine in depth the rôle of the TNCs in the global services economy. The representative of Canada noted that the section of the Canadian national study cited by the Indian representative called attention to problems of collection of data on the activities of TNCs rather than to those activities themselves.

28. The representative of Brazil recalled the recent tendency of the TNCs to provide services either through direct exports or through investment abroad in areas other than those that were traditional, such as shipping and insurance. Maximum use of worldwide information networks and comprehensive financing facilities had set off the process of transnationalization of services operations. Issues such as access to information technology and networks and restrictive business practices had to be examined in order to identify the problems related to the dominant position of TNCs in the services sector.

29. The representative of Argentina said that the concentration of operations among a small number of TNCs appeared to be one of the characteristics of the services sector. He doubted the appropriateness of facilitating access to TNCs in those services sectors that were important to the development of the national economy.

30. The representative of the European Community said that within the Community the situation of TNCs was as follows: the monopoly of the national postal administrations in most countries did not allow any supremacy to TNCs in the telecommunications sector. Furthermore, the operation of the TNCs in Community countries were subject to national and Community rules and regulations, which, if revealed inadequate, could be supplemented by relevant international rules. He acknowledged that, insofar as most services activities required some form of commercial presence abroad, the rôle of TNCs was among the common characteristics of the services sector. However, the notion of TNCs had to be distinguished from the general notion of direct investment. Any problems raised in connection with the activities of the TNCs were additional reasons for addressing the issue of services in a multilateral context.

31. The representative of the United States said that in contrast to the disadvantages regarding the dominant rôle of the TNCs perceived by the developing countries, the very structure of TNCs enabled the production of economically efficient services with best technology at the lowest cost and on a wider scale than ever. TNCs had enabled the transfer of technology and had set higher standards for domestically produced services. They were able to maintain their dominant position in developing as well as in developed countries mainly by offering competitive services in an area that required important financial and human resources. He noted that deregulation in the United States had strengthened the economy, in particular in the telecommunications and aviation sectors. He suggested that the adequacy of the current rules in individual countries for ensuring competitiveness should be reviewed.

32. The representative of Yugoslavia said that the activities of TNCs were associated with restrictive business practices. The meeting should identify the rôle of TNCs in each services sector in order to determine the possible implications of granting national treatment in domestic economies.

33. The representative of Sweden said that in their preliminary assessment of the situation, the Nordic countries considered that the rôle of TNCs in the services sector should be addressed in a multilateral context.

34. The representative of Switzerland said that, as opposed to the impression given by the representative of India that a few TNCs were predominant in the services sector, a number of services activities, such as insurance and banking, were also conducted by medium- or small-sized firms which provided specialized services and maintained their competitive position with sometimes only one or two foreign branches. He felt that the problem of restrictive business practices raised by the representative of Yugoslavia might be more significant in protected than in open markets.

35. The representative of Brazil said that restrictive business practices had been identified as a possible obstacle to access for newcomers into the national services markets. Over the past twenty years, they had increased in proportion to the market dominance of a few enterprises.

36. The representative of Australia noted that restrictive business practices were not confined to TNCs only. Open economies had always been regulated by laws regarding competition.

37. The representative of India stated that international transactions in services, by definition, involved operations of TNCs in the importing markets and reiterated his concern about distortions of trade due to the pervasive influence of TNCs in many sectors. Given the high degree of concentration of TNCs in the information sector the proposed deregulation in that sector would give the TNCs a free hand and would block the possibilities for developing countries to develop their own domestic data services and informatics industry in accordance with their national policy objectives. It had been noted that in the financial services sector, the mobility of the TNCs in a whole range of markets enabled them to evade national regulations and to operate at low rates of profitability in selected markets. Lack of data on their activities limited the scope for monitoring their trade flows. It would be more appropriate to address trade distortions due to the activities of TNCs and their restrictive business practices than to speak of "distortions" arising from national regulations. While certain issues pertaining to TNCs might have global implications, his delegation did not agree that a multilateral approach to services would necessarily address these specific problems. The participation of TNCs in the national economy was a question of governmental objectives. In the same vein, he did not believe that opening the markets in developing countries would in any way avoid the pernicious effects of restrictive business practices. The exchange of information should not only take into account the approach of the suppliers of services who viewed national regulations as obstacles but also of importing countries which had sound motives to maintain such regulations.

38. On the question of transborder data flows (TDF), the representative of India enquired why the United States had stated in its communication on trade

in services (page 3 of document L/5838) that priority should be given to an understanding on international information flows and how this issue related to the present exchange of information on services. The representative of the United States explained that the thrust of the proposal was to encourage an analysis of the rôle of TDF in trade in services in the context of a negotiation process. His delegation viewed TDF as an important element of trade in services that deserved priority in sectoral negotiations, but in no way proposed an understanding on TDF before reaching a general understanding on trade in services. The representative of the European Community said that any economic analysis of trade in services had to take into account the particular rôle of TDF. However, no priority should be given to an understanding on TDF before an understanding on services was concluded as a package. The representative of Canada noted that TDF represented a significant economic activity which had also become a common element in virtually all sectors of international transactions. Liberalization of TDF through a multilateral approach, together with greater transparency in national policies and regulations, would be a desirable objective. While Canada had not established firm priorities on this or other questions in the services field, his delegation saw it as an important issue.

39. The representative of Brazil stated that TDF involved marketing of information resources through telecommunication networks. In his view a country's policy on TDF should take into account both favourable and adverse impacts of the TDF on the attainment of national objectives as regards its economy, sovereignty, capacity of data bases, cultural development and scientific and technological progress. His country's policy with respect to TDF was aimed at locating the maximum amount of information resources within the national territory, mastering decisions and technologies of information treatment, enabling access to worldwide information resources and promoting the process of informatization. The management of TDF in Brazil led to the analysis of international links exclusively based on technical, strategic and economic criteria and not on the monitoring of the content of the messages. As a matter of principle the government defended the preservation of the confidentiality of communications. With respect to commercial access to international data bases, he said that Brazilian institutions were required to distribute the data within the country while maintaining local copies of the data bases whenever this was economically feasible. In cases where such copies were not made available, the information flows were subjected to the State monopoly on telecommunications services.

40. The representative of India stated that TDF provided a clear illustration of a services sector which had ramifications for the national and international economies, and not related to trade alone. He referred to MDF/17/Add.6 compiled by the secretariat on the activities of the Intergovernmental Bureau for Informatics. The document however contained no reference to the Intergovernmental Conference on Strategies and Policies for Informatics held in Spain in 1978, in conjunction with UNESCO, which had recognized, inter alia, the threat of erosion of national laws posed by TDF, the present disequilibria in the direction of these flows, and the political, economic, social and legal dimensions of the problem of data flows, without seeking to reduce them in a single international instrument to only one of such aspects. IBI had also participated in the deliberations of regional groupings of developing countries such as the Latin American countries and OAU on the rôle of TDF. The Third Conference of Latin American informatics

authorities held in 1979 had underlined the importance of retaining in the country of origin automated data resources affecting national sovereignty, cultural identity and technological progress, of introducing data protection laws in individual countries, of establishing regulations on TDF by international and national authorities and avoiding technological dependence for transfer and communication of data. The Conference on African Informatics Integration also held in 1979 had reiterated the concerns of developing countries as regards the misuse of TDF for national sovereignty, cultural identity and security of national information systems, had indicated the inadequacy of TDF as a means of transfer of technology and had suggested the need for access to equipment at a lower cost and free circulation of information as a basis for a new international economic order. The Summer 1980 issue of the Stanford Journal of International Law was devoted to TDF issues, and defined TDF as electronic movement of data between countries. The Journal recognized clearly the pervasive and far reaching implications of TDF, impinging upon a spectrum of concerns ranging from personal privacy to cultural identity, from national economic development strategies to questions of national sovereignty and political freedom. The Journal drew attention to the need for a response to the growth of information resources taking account of these implications by establishing new rules for channelling information flows. The long-term implications for TDF of the dominance of foreign TNCs in the computer and data processing industries and dependency on data resources stored abroad had been studied by Canada and France in the late 1970s. The present Brazilian policy on TDF was a logical extension of the concerns expressed by these governments. The representative of India then referred to another aspect of the informatics industry, viz. the nature of international competitiveness in this sector. The Competitive Assessment of the United States Data Processing Services Industry prepared by the United States Department of Commerce showed the clear interlinkages between this industry and government, both as a consumer of the product and as provider of funds for research and development. The United States Government for example, was reported to have a six-year programme to spend \$30 billion to purchase, operate and maintain 1,500 new computer and telecommunications systems. Kuwahara had noted that competitiveness and technological progress in information technology were mainly the outcome of research promoted by governments mainly for military purposes. In fact he ascribed the competitive edge and technological head start of the United States data processing industry in large measure to a comprehensive research and development programme supported mainly by the United States Department of Defence and the Space Programme. The representative of India stated that in such circumstances, it was practically impossible to determine commercial competitiveness or the nature of the hidden costs in the development of such technology. How would one apply the principle of transparency in reckoning such costs. It was clearly not possible to apply the principle of national treatment to foreign firms when awarding government contracts and providing grants for research and development. Nor could it be determined multilaterally, that certain forms of government finding were appropriate and desirable, while others, which might have an identical application, were not. The representative of India also referred to certain concerns with regard to the rôle of TNCs in TDF in the light of questions on extra-territorial jurisdiction, anti-trust regulations and export controls. A recent SELA document<sup>1</sup> on the subject of data services referred to the so-called

---

<sup>1</sup>Trade and Foreign Direct Investment in Data Services: SELA Document SP/CL/XI.0/Di No. 17.

"Dresser" case involving the application of extra-territoriality by United States authorities through the foreign subsidiaries of a United States TNC. This document concluded that the case had challenged the validity of assertions on free flow of trade and direct investment in data processing services and the concept of national treatment for foreign affiliates. It also underlined the increased vulnerability of corporate systems to the interruption of data resources and suggested that in the absence of relevant international rules governments should control the degree of dependency of local communication systems on central data processing resources. According to the same SELA document, it appeared that in anti-trust actions in the United States, the courts might assert jurisdiction with regard to the data of foreign corporations stored in the United States as well as on the data of United States corporations stored abroad. Another aspect which needed to be examined in detail related to the pricing of services. The United States Department of Commerce study on the Competitiveness of the United States Data Processing Services Industry noted that this was one of the most difficult industries about which to draw conclusions on pricing structure. Prices were based on individually designed formulas which were closely guarded secrets, and depended upon a number of subjective factors. Further, since most data processing jobs were unique in some way, it was almost impossible to draw comparisons among prices charged by different firms for comparable jobs. The representative of India pointed out that this had implications not only for TDF but for the entire range of tradeable services. In conclusion he said that the exchange of information should discuss approaches designed to meet the concerns that he had raised on services transactions and address the following issues: (a) were the concerns trade-related; did they impinge upon issues of national sovereignty; could they be addressed satisfactorily in a trade context; were these concerns GATT issues; did GATT have any special competence in addressing these questions and questions of restrictive business practices of TNCs, or in dealing with TNCs as a whole, or in TDF in particular; (b) would discussion of these issues benefit from a multi-disciplinary approach involving all relevant international institutions; (c) were these issues specific to TDF or were they generic issues which impinged upon many other sectors of services.

41. The representative of the United States observed that TDF had benefited from research and technology which had allowed the development of new systems of communications. He said that TDF had a major rôle in the ability of users, whether TNCs or small enterprises, to produce and trade in traditional or high-technology goods in a more efficient and less costly way. Obstacles to the use of TDF did not solely occur between developed and developing countries but principally between those countries that had deregulated and others which maintained what they perceived as legitimate regulations, in order to preserve in most cases, a State monopoly in this sector. Liberalization of TDF would reinforce the growth and competitiveness of the services sector in the overall economy and would provide a favourable environment for further advance of technology in this sector. In the United States the Services Policy Advisory Committee had set out the following specific policy objectives: non-discrimination and transparency in access to and use of telecommunications services by national and foreign citizens except in cases of official communications by governments for non-commercial purposes; competitive opportunities for foreign and national entities in providing value-added services, with reasonable precautions against unfair

practices; ability to lease channels of communication which extend the possibilities of users beyond the monopoly provided data networks and enable the use of specific services through those channels; preventing national actions that require duplication or local storage of information resources; harmonization of standards and simplified and non-discriminatory procedures for type approval of interconnect equipment with the goal of international or improved recognition of equipment approval.

42. The representative of Canada affirmed that sovereignty, cultural identity and privacy of information had always been regarded as important issues in Canada. However, there should be ways of reinforcing national legislations without unduly inhibiting the free flow of information. From his point of view, there was an overlap between the economic and trade aspects of trade in services.

43. The representative of the European Community emphasized the interdependence of international and domestic issues in the services economy and said that in so far as domestic regulations acted as obstacles to trade in services every country would have to strike a balance between the goals of its domestic services economy and the international angle of its interests in this sector. Any agreement on liberalization of trade in services which could be negotiated in an appropriate multilateral context, would be subject to the constraints of legitimate domestic policy objectives. TDF were essential to most services sectors; their beneficial impact to the world economy could increase if they operated in a more liberal framework. At the same time, certain constraints of domestic policy such as preservation of countries' cultural identity and privacy of information would have to be observed. It would also be important to balance the concept of a liberal framework for TDF with the guarantee of access to information resources and use of data bases abroad in an uninterrupted manner. He added that one way of removing obstacles to TDF would be to harmonize the relevant legislation applied in different countries. Certain steps had been taken in this respect within the Council of Europe and the OECD with regard to privacy legislation.

44. The representative of India said that while TDF had far reaching implications particularly for developing countries, because of the imbalance in this sector vis-à-vis developed countries, it was a fact that a number of developed countries had also expressed concerns about the impact of TDF on their national sovereignty and economic interests. He noted that the problem of extra-territorial jurisdiction had specifically involved developed countries. With regard to guarantee of access to information, he said that a balance had to be found between the guarantee to the parent company for right of access to information located elsewhere and the guarantee that information stored on behalf of other countries would not be obstructed by the country which stored the information resources. However, there was no question of guarantee of access to information resources in respect of information pertaining to the national economy, sovereignty and national security.

45. The representative of Brazil said that his country's policy on informatics was primarily based on acquiring suitable technology, maximizing information resources located domestically, broadening public access to information and developing indigenous creativity. This policy was pursued in conformity with GATT rules and principles and the imports of related products

had been increasing over the past five years. As to a general policy on TDF, he stated that considerations concerning public welfare, national sovereignty and development of domestic technologies, in his view, outweighed advantages of free competition and deregulation. He believed that whenever developing countries acquired the capacity to compete in any field, they were faced with a series of regulations. Developed countries' views on regulation and deregulation followed their current interests. By way of example, he mentioned the fact that developed countries had, in the past, established regulations to exploit industrial patents or trademarks for their technological development needs. The same countries denied now the ability of national authorities in developing countries to establish the same kind of regulation on the basis that these regulations are contrary to the intellectual property laws as developed countries interpret them. The same trend existed in respect of counterfeit goods, the United States and other developed countries had pressed in the past for acceptance of the principle that the countries of the Paris Union were not bound to legislate for seizure of articles bearing the infringing mark. Now it seemed that they had a different position on the subject.

46. The representative of Chile said that developing countries did not view the issue of services from a common perspective. Multilateralism could usefully serve in devising international disciplines regarding services transactions so long as due account was taken of the special position of developing countries.

47. The representative of Japan said that the subject of TDF should be addressed without losing a sense of balance in identifying its principal benefits for economic development and some detrimental aspects as exceptions. His delegation dissociated itself from the views that governments were infallible in regulating business activities like TDF. Apart from trade, research and development co-operation in this field were beneficial both to developed and developing countries. However data bases should not be controlled by any single developed country.

48. The representative of the United States, referring to the comments made by the representative of Brazil on its informatics law, particularly with regard to counterfeit and copyright, said that these comments reinforced the need for the subjects to be taken up in the new round of negotiations. In addition, he suggested that a more open policy might contribute more to the objectives of sovereignty, public welfare and development mentioned by Brazil. The technology of informatics and TDF constantly outpaced governments' ability to regulate it.

49. Responding to the views expressed by the representative of Japan on the fallibility of governments, the representative of India stated that every government exercised its sovereign right to establish its own policies and would never accept any abrogation of that right. Replying to a point made by the representative of Chile, he asked whether Chile would disagree with the concerns reflected in the documents of SELA or of the work done by the Intergovernmental Bureau on Informatics, of which Chile was a member. Referring to a study made by UNCTC on Brazil in 1983, he noted that Brazil had recognized the contributions made by TDF to economic and social development, and had stressed that countries in a position to benefit from

the associated technology must have the opportunity to do so, to prevent the widening of existing imbalances and the creation of new imbalances between developing and developed countries. These were all laudable objectives. Brazil's policy had been based on the principle that a country had a right to regulate TDF because of their impact on socio-economic development: the objectives were to locate the maximum of information resources in its own territory, to acquire and maintain national control over decisions and technologies relating to Brazilian industries, to enable Brazilian society to have universal access to information and to enhance Brazil's political structure and cultural resources. The increase in use of local inputs, development of local technology, improvement of exports for balance-of-payments purposes, increase in the level and quality of employment, and the maintenance of a degree of operational autonomy from TNCs and foreign sources, were all features of Brazil's policy which he felt were unimpeachable. UNCTC documents suggested that TNCs used TDF to move data, information resources, managerial skills and technology internationally: TDF thus facilitated the concentration of information services in developed countries and tended to put developing countries on the periphery of corporate structures. Human and electronics-based data processing resources could be compared to scarce raw material resources. A clearly defined telematics policy could, according to UNCTC, favour the emergence of national telecommunications and informatics. Such a policy could also help develop local technological capabilities and increase national control over decision making in key sectors of the economy. UNCTC suggested that action should be taken to ensure that in the long term, information should be examined within national territories. TDF were like a valve through which information resources could flow. Thus it was clear that TDF had wide-ranging implications.

50. The representative of Yugoslavia thanked the Indian representative for his intervention. The questions raised in it were particularly serious and useful for developing countries and would merit a point-by-point discussion in these meetings. The question of TDF had not been sufficiently covered in the national studies: some delegations had promised supplementary information in this area and it would be interesting to receive this information. Experience with transnational corporations varied considerably. She hoped that in future there could be discussion of particular sectors, with participation of experts in the areas in question, and that a less formal approach could be taken.

51. The representative of Argentina said that his delegation would welcome a full assessment of economic, social and political factors with reference to services before taking any decisions on future negotiations. He referred to the notion of "access guarantees" raised by the Community representative. He related this to the situation of dependence faced by developing countries in the area of TDF and to restrictive business practices pursued by transnationals. The notion of guarantees of access went far beyond the area of trade.

52. The representative of Brazil said that for his authorities, considerations of national sovereignty, development, public welfare, employment and acquisition of technology outweighed those related to liberalization of trade. Brazil had questioned the extent to which at the domestic level, liberalization of trade in informatics would be of benefit to Brazil, and its conclusions, reflected in its law, reflected its perceived

need to develop indigenous creativity and apply suitable technology to attain its development objectives. This was not new: Brazil had learned from history: developed countries had, in the past, taken similar views.

53. The representative of India noted that a number of questions which he had raised earlier had not been addressed. These included the questions of extra-territoriality, the implications of anti-trust regulations and of export controls, and problems of comparing prices for similar services. Such questions required a detailed examination in this meeting. He also supported the view expressed by Yugoslavia that there should be a point-by-point discussion and an examination of individual service sectors.

54. The meeting reverted to the possibility of presentations being made by UNCTC and ITU in the context of the programme of work for the meetings scheduled on 2-4 June and 27 and 30 June. It was agreed that on 3 and 4 June, the meeting would discuss point 4 of paragraph 15 of L/5911, "Issues raised in connection with possible multilateral action on services". On 27 June, the discussion of point 4 of paragraph 15 of L/5911 would be continued if necessary. Delegations would thereafter be invited to conduct a stock-taking of the work carried out so far under the Decision of the CONTRACTING PARTIES at their 41st Session (L/5924). Also on 27 June, the Chairman would present some ideas on the follow-up to the work carried out, for discussion on 30 June. Representatives of UNCTC and ITU would be invited to make presentations. No other organizations would be invited before the summer recess. The presentations would be made on 2 June, p.m. beginning with ITU. If necessary, discussion with the UNCTC would continue on 3 June, a.m. UNCTC would be invited to make a presentation on, and to answer questions on specific aspects of, (a) "Transnational Corporations and Transborder Data Flows: Background and Overview" (cited in MDF/17/Add.1); and (b) the chapter relating to foreign direct investment and TNCs in services of "Trends and Issues in Foreign Direct Investment and Related Flows", (ST/CTC/59). ITU would be invited to make a presentation on, and to answer questions on specific aspects of, "The Missing Link" (cited in MDF/17, page 85).

55. The representative of Japan said that while his delegation did not wish to block the consensus to invite UNCTC and ITU to address the meeting, they wished to place their reservations on record. They believed it was necessary to maintain a "horizontal" approach to the discussion of services in these meetings, and they therefore felt that an invitation to a sectoral organization such as ITU was premature. As far as UNCTC was concerned, his delegation believed that the Centre took an unbalanced stand on the question of transnational corporations and that it was not helpful to invite UNCTC to address the meeting.