

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/SCS/M/3
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(94-2130)

SUB-COMMITTEE ON SERVICES

REPORT OF THE MEETING HELD ON 21 SEPTEMBER 1994

Note by the Secretariat

1. The Sub-Committee on Services held its third meeting on 21 September 1994. The agenda for the meeting is contained in document PC/AIR/22. In addition, the Chairman indicated that there would be two statements under "Other Business": on the question relating to Article IV of the GATS (Increasing Participation of Developing Countries) raised by the Japanese delegation at the previous meeting of the Sub-Committee; and on contacts of the Secretariat with specialized international bodies in Professional Services.

Item A: Issues relating to the scope of the GATS

2. The Chairman recalled that at the second meeting of the Sub-Committee work had been concluded on two of the five types of measures referred to in the Note by the Secretariat (MTN.GNS/W/177/Rev.1), namely measures relating to judicial and administrative assistance and measures relating to entry and stay of natural persons. On the other three types of measures, he indicated that further informal consultations had taken place.

3. On measures relating to social security, the Chairman said that discussions had focused on how such measures may relate to Article II of the GATS (Most-Favoured-Nation Treatment) and Article XVII (National Treatment). With respect to MFN the main problem seemed to be with bilateral social security agreements which constitute the basis for extending more favourable treatment to nationals of countries with which such agreements exist than that extended to nationals of other countries. Most delegations had maintained that because bilateral social security agreements require a degree of compatibility between the social security systems of the countries concerned, and the specific terms of each agreement reflect the circumstances of the participating countries, multilateralization of such agreements is not feasible. If social security measures were held to be subject to the MFN obligation, since the terms of such agreements are tailored to the circumstances of the participants, it could in any case be extremely difficult to determine which was the most favourable treatment among them. On these grounds it was argued that measures relating to social security should be exempt from the MFN obligation. Other participants argued that the problem is not the denial of social security benefits *per se* to service suppliers of a certain Member but rather the distortion of conditions of competition between service suppliers. They maintained that in cases where there is discrimination and where it affects conditions of competition between service suppliers, the discrimination should be eliminated. That would not necessarily require the multilateralization of social security benefits but rather the equalization of conditions of competition. Those participants also made the point that efforts should be made to promote the conclusion of more bilateral social security agreements between Members of the GATS, as with mutual recognition agreements under Article VII. They concluded that the exclusion of measures relating to social security from the scope of the GATS is not an acceptable option.

4. In so far as National Treatment is concerned, most participants were of the view that the extension of social security benefits to the nationals of all other Members on a national treatment basis is not a viable option. They stressed the point that social security systems are based on the assumption that they apply to permanent residents and therefore could not reasonably be extended to persons who are temporarily residing in a territory for the purpose of supplying a service. The point was also made that a permanent resident and a temporary resident would not be considered like suppliers and that, therefore, the National Treatment provision would not apply. Other participants were of the view that the problem with the National Treatment provision is, also, not about the extension of the same social security benefits on a national treatment basis, but about equalizing conditions of competition. This could be achieved, for example, by exempting foreign service suppliers not entitled to benefits under the system from social security contributions.

5. The Chairman said that it was generally felt that progress had been made towards a better understanding of the complex issues involved, but that further discussion was needed before any practical solutions could be addressed. He would carry out further consultations on this matter and would report to the Sub-Committee at its next meeting.

6. The Sub-Committee took note.

7. On measures relating to settlement of disputes pursuant to bilateral investment protection agreements, the Chairman indicated that some progress had been made towards a better assessment of the potential effect that such measures may have on trade in services. It seemed to him that most participants felt that this type of measure was not likely to give rise to any significant problem in relation to the supply of services. He added, however, that the debate had not yet reached a stage where a specific decision could be made. He hoped to be in a position to report a conclusion to the Sub-Committee's next meeting.

8. The Sub-Committee took note.

9. On measures relating to the entry and temporary stay of natural persons pursuant to certain bilateral agreements, such as seasonal agricultural workers, working holidays and young workers' programmes and other programmes such as those concerning the exchange of university professors and school teachers, the Chairman indicated that most participants had expressed the view that with the possible exception of seasonal agricultural workers, none of those is likely to give rise to discrimination affecting the supply of commercial services. Some progress had thus been achieved. However, some delegations felt the need to reflect further before making any decisions. The Chairman hoped that at the next meeting he would be in a position to report a specific conclusion.

10. The Sub-Committee took note.

Item B: Subsidies and taxes at sub-federal level

11. The Chairman recalled that at the previous meeting of the Sub-Committee a number of participants had expressed interest in having multilateral consultations on the subject matter of the Communication from the United States dated 30 June 1994 (PC/SCS/W/4) concerning the scheduling of measures relating to subsidies and taxes at the sub-federal level. The Chairman had indicated that he would organize such consultations after the summer break. His intention had been to do so prior to the present meeting of the Sub-Committee so as to provide an opportunity to report on the consultations. Unfortunately, that had not been possible, but consultations would nevertheless take place shortly. He would report on them to the Sub-Committee at its next meeting. The delegation of the United States introduced the communication and indicated its readiness to participate in the consultations with a view to providing any clarifications sought by other participants.

12. The Sub-Committee took note.

Item C: Guidelines for notifications under the GATS

13. The Chairman recalled that at the first meeting of the Sub-Committee, on 19 May 1994, Members asked the Secretariat to produce a note to be used as a basis for discussion on guidelines for notification. In response to that request, the Secretariat had produced an informal note dated 13 September 1994 entitled "Guidelines for Notifications". This note identified the Articles of the GATS that contain notification requirements and the possible content of such notifications. Attached to the note was a draft common format that could be used to notify relevant measures. The Chairman invited any comments which might assist in revising the note.

14. A number of delegations said that the format attached to the note needed to be expanded to provide more details. Duplication of information should be avoided. They also thought that more attention in the discussion of the Guidelines should be given to notifications pursuant to Article III (Transparency) in order to ensure that they will contain information at a sufficient level of detail. One delegation suggested that the legal basis of the notified measure should be one of the elements of information provided for in the format. Some delegations were of the view that it might not be desirable or feasible to have one single format for all notifications under the GATS. However, it was not suggested that the revision of the note would contain more than one format. In relation to notifications pursuant to Articles V (Economic Integration) and VII (Recognition), some delegations expressed doubt about whether it would be necessary to notify the full text of an economic integration or recognition agreement, suggesting that it would suffice to notify the fact that such an agreement existed. It was also suggested that notifications pursuant to Article XII (Restrictions to Safeguard the Balance of Payments) should be addressed to the General Council of the WTO and need not be discussed in the Sub-Committee. The Chairman indicated that the Secretariat would revise the note on the basis of the discussion and circulate the revised version for discussion at the next meeting of the Sub-Committee.

15. The Sub-Committee took note.

Item D: Participation of observers

16. The Chairman recalled that at the previous meeting of the Sub-Committee the question of participation of observers in the Negotiating Groups had been raised and the Secretariat had been asked to provide background information on the participation of observers during the Uruguay Round negotiations, as well as on the participation of non-governmental and regional organizations. Accordingly, the Secretariat had prepared the Note dated 15 September 1994 (PC/SCS/W/5), which in addition to the information requested by the Sub-Committee provided information on the current situation in the Sub-Committee and the Negotiating Groups in so far as participation of observers is concerned.

17. One delegation drew the attention of the Sub-Committee to the discussions taking place in the Sub-Committee on Institutional, Procedural and Legal Matters on the question of participation of observers. Since those discussions aimed at setting criteria for the participation of observers other than governments, it might be appropriate for the Sub-Committee to postpone discussion of this question until general principles had been laid down by the Sub-Committee on Institutional, Procedural and Legal Matters. Another delegation was of the view that it would still be appropriate for the Sub-Committee on Services to address questions of particular relevance to services, such as the criteria for the participation of international organizations in negotiating groups. One such criterion was that the competence of the observer organization should be directly related to the subject-matter of the negotiating group. It was understood that in addition to any general criteria, requests for observership would still have to be considered on a case-by-case basis. A number of delegations expressed the view

that observership status should continue to be extended only to inter-governmental and not to non-governmental organizations.

18. Before concluding consideration of this item of the agenda, the Chairman drew attention to the communication by the International Chamber of Commerce expressing interest in being associated with the work of the Sub-Committee. He noted that the communication was not at this stage a request for observership but rather an expression of interest. The Chairman suggested that, at this stage, the Sub-Committee should take note of the communication.

19. The Sub-Committee took note.

Other business

20. The Chairman recalled that at the previous meeting of the Sub-Committee the delegation of Japan had raised a question in relation to Article IV of the GATS (Increasing Participation of Developing Countries) and its compatibility with Article II (Most-Favoured Nation). Article IV established obligations on the part of developed countries to extend certain benefits to developing countries only, and thereby departed from the rule of non-discrimination in Article II. The question raised was whether such inconsistency would require any action either in the form of a decision by the Council for Trade in Services (analogous to the Enabling Clause of the GATT), or a formal decision by the Sub-Committee to the effect that Article IV, in this instance, would override Article II. The Chairman said that he had consulted with the Secretariat and reached the following conclusion: Article II of the GATS (Most-Favoured-Nation Treatment) is a general provision which sets a principle of general application. At the same time the GATS, like many other international agreements, contains also specific provisions which are applicable in certain circumstances and may contain exceptions from the general principles. For example, Article V (Economic Integration), Article XIV (General Exceptions) and notably Article IV (Increasing Participation of Developing Countries) provide for exceptions or departures from the general principle of MFN. This, however, would not represent any legal problem. As a general rule, where an international agreement contains a general provision and at the same time other specific provisions containing departures or exceptions from the general provision, the specific provision would always override the general wherever it may be applicable. Therefore, the provisions of Article IV, where applicable, would override those of Article II. He suggested that on the basis of that conclusion no further action was needed.

21. The Sub-Committee so agreed.

22. With respect to contacts of the Secretariat with specialized international bodies in the area of professional services, the Chairman invited the representative of the Secretariat to give a progress report. The Secretariat said that during the summer there had been contacts with the International Federation of Accountants in connection with a questionnaire which the Federation had since addressed to all of its member countries. The information derived from the questionnaire would, he understood, be made available to GATS Members as an input to the forthcoming work programme on multilateral disciplines on market access in the accountancy sector.

23. The Sub-Committee took note.