

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/SCS/M/4
23 November 1994

(94-2508)

SUB-COMMITTEE ON SERVICES

REPORT OF THE MEETING HELD ON 2 NOVEMBER 1994

Note by the Secretariat

1. The fourth meeting of the Sub-Committee on Services was chaired by Ambassador Manhusen of Sweden. The discussion followed the agenda contained in Airgram PC/AIR/31.

Progress Report on the Work of the Negotiating Groups

2. The Chairman called upon Ambassador Kenyon of Australia to report on progress in the Negotiating Group on Maritime Transport Services which held its third meeting on 17 October 1994. The number of participants in the negotiations had reached 37 and Ecuador and Chinese Taipei had become observers, bringing the number of observer governments to 13. The World Bank and the OECD were also granted observer status, bringing the number of observer organizations to 3. No decisions had been reached regarding requests from two non-governmental organizations, the Council of European and Japanese National Shipowners' Association (CENSA) and the American Institute of Merchant Shipping (AIMS). A discussion of the draft schedule on maritime transport services had confirmed the general view that it constituted a very useful way of approaching the scheduling of commitments in this sector. It was agreed that amendments to the draft schedule, if any were necessary, should be kept to a minimum. Those interested were invited to submit written comments, including drafting suggestions, to the Secretariat. A final version of the questionnaire on maritime transport services was approved by the Group. The date of 15 January 1995 was agreed as the deadline for the submission of responses. The next meeting of the Group was scheduled for 9 February 1995.

3. Ambassador Bautista of the Philippines reported that the Negotiating Group on Movement of Natural Persons held its second meeting on 22 September. The Group had granted observer status to Ecuador and Chinese Taipei, as well as the World Bank and UNCTAD. No decision was reached regarding the outstanding request from the International Organization for Migration. The Secretariat had prepared for the meeting a short analysis of the horizontal commitments on the fourth mode of supply. Broadly speaking the paper categorized the commitments in terms of (a) market access limitations on the total number of natural persons supplying services and (b) a binding of measures affecting certain categories of defined persons. It was pointed out that since the Marrakesh meeting no bilateral negotiations had taken place and that further negotiations were necessary to achieve an improved level of commitment. To this end, several delegations had expressed their intention to hold a round of bilateral negotiations before the end of October in order to be in a position to report on progress at the next meeting on 4 November 1994.

4. The Chairman reported that the Interim Group on Financial Services held its first meeting on 12 October under the Chairmanship of Mr Frank Swedlove (Canada). It was recalled that the Group was established in order to monitor the progress of further negotiations on financial services pending the creation of the Committee on Trade in Financial Services. The Group approved requests for observer

status from Chinese Taipei, Ecuador, Panama and Saudi Arabia and also from the World Bank, IMF and UNCTAD. Many participants stressed that the objective of the continuing negotiations remained a multilateral, MFN-based agreement, covering financial services. A number of delegations gave their assessment of the current situation and expressed their interest in holding bilateral negotiations both in capitals and in Geneva. It was agreed that interested delegations would envisage bilaterals in Geneva during the period 28-30 November followed by a second meeting of the Interim Group on 1 December 1994. The Secretariat was requested to circulate a compilation of the financial services commitments made at the end of the Uruguay Round for the information of all participants.

5. The Chairman also reported that the Negotiating Group on Basic Telecommunications held its third meeting from 24 to 26 October under the Chairmanship of Mr. Neil McMillan (United Kingdom). The number of governments participating in the negotiations had reached 25 and the number of observer governments had reached 29. The Group has also granted observer status to the OECD, the World Bank, the Asia-Pacific Telecommunity, UNCTAD and the ITU. The Group discussed responses by participants to the Questionnaire that had been previously circulated on regulatory issues and market structure. Nineteen responses to the Questionnaire had been received from governments participating in the negotiations, 12 of which were reviewed during this meeting. The Group also discussed outstanding technical and conceptual issues on the basis of a document prepared by the Secretariat. The Group agreed to meet again on 12-13 December 1994, at which time work would continue on the review of questionnaire responses and consideration of substantive issues. The Chairman of the Group noted that there had been interest expressed in the derestriction of the questionnaire and the responses to it, as well as other formal documents of the Group. He invited any delegations with objection to this proposal to so inform the Secretariat within three weeks. Finally, the Chairman urged participants to consider putting forward initial offers by March or April of 1995.

Issues Relating to the Scope of the GATS

6. The Chairman recalled that he had circulated to all Members a progress report, dated 21 October produced on his own responsibility, on the consultations he had been holding on this subject. The report sought to reflect points emerging from the discussions and to identify common ground where possible. On some issues common ground had been identified but there were still considerable divergences among participants on other issues - particularly on social security measures. Since that progress report was circulated, he had held further consultations, which focused mainly on the social security issue. A number of useful points were made about ways in which the presentation of the issues could be improved, but major differences emerged on the report's discussion of possible options for future action. There was criticism of the absence of any reference to the possibility of taking no action to provide legal cover for social security measures and also of the absence of any reference to the option of excluding social security measures, or some categories of them, from the scope of the GATS. Further consultations would be needed and the report would be revised in the light of them.

7. With respect to social security measures, one delegation said that the Chairman's report was far from constituting a basis for reaching a common understanding of the way in which the measures under discussion could affect trade in services. It was necessary to analyze this question further, in particular with respect to the national treatment obligation. The essential issue was the provision of legal certainty regarding the scope of the agreement; this was the thrust of the statement of the Chairman of the GNS on which the current consultations were based, and as a result of which many delegations had withheld national treatment limitations and MFN exemptions which they would otherwise have taken. If legal certainty could not be attained by 15 December, it would be necessary for governments which had not entered MFN exemptions for bilateral social security agreements and national treatment reservations to do so; the right to do so, without offering compensation, was fully reserved. Several other delegations, who favoured the exclusion of social security measures from the scope of the GATS,

expressed the intention to follow a similar course of action if the necessary legal certainty could not be achieved. Nevertheless it was stressed by several delegations that all participants should do their utmost to reach a common understanding in the time remaining for consultations.

8. Another delegation warned that the proposal to take MFN exemptions and national treatment reservations at this stage posed a threat to the Agreement which would not be in the interests of any participant. It had never been agreed that participants should be free to disclaim any responsibility in this area. His country would participate in further consultations as constructively as possible: but it had to be said that there was a fundamental lack of balance in the Chairman's progress report in that it did not take into account the view that it was unnecessary to take any action to provide legal cover for social security measures, and that it should be left to participants to assume their responsibilities, the nature of which would need to be discussed in the further consultations which were planned. Furthermore, interpretation of the Agreement should be avoided.

9. With regard to dispute settlement procedures under bilateral investment treaties, one delegation noted that it had explained to others why it considered that such procedures could possibly result in less favourable treatment and why it had therefore taken an MFN exemption for such provisions; another delegation also favoured the option of taking appropriate MFN exemptions. Other delegations, however, argued that it would be preferable to reach a common solution based on an understanding that such measures were outside the scope of the GATS and therefore did not require an MFN exemption; however, if a common understanding could not be reached, the unbalance created by exemptions taken by one or two delegations would make it necessary to create the possibility for other countries to take such exemptions. With reference to the category of seasonal agricultural workers some delegations stated that these should be regarded as a factor of production and therefore as being outside the scope of the Agreement.

10. In conclusion, the Chairman noted that notwithstanding the divergence of opinion between participants in particular in respect of social security measures, there was widespread willingness to continue consultations with a view to reaching a common understanding on the scope issue.

Subsidies and Taxes at the Sub-federal Level

11. Regarding the scheduling of measures relating to subsidies and taxes at the sub-federal level, the Chairman recalled that consultations had taken place on 23 September on the basis of the communication received from the United States (document PC/SCS/W/4, dated 30 June). Reporting on these discussions, a representative of the Secretariat said that the consultations had been intended to clarify the content of the submission and were without prejudice to positions on the substance of the matter. The representatives of the United States had explained that the proposed addendum to the US Schedule which had been submitted on 30 June was the outcome of extensive consultations with State tax authorities, during which the list of proposed additions to the Schedule had been substantially reduced in length. In relation to taxes, there had been a concern that since the discussion in 1993 which led to the formulation of footnote 6 to GATS Article XIV had essentially concerned direct taxes, whereas most taxes imposed by the States are indirect, State taxes might not be covered by the footnote. Another major concern was uncertainty regarding the likely interpretation of the national treatment obligation in Article XVII of the GATS by future panels. This uncertainty derived especially from the report of the "Second beer panel" (DS23/R), though it was not clear that the same analysis would apply to services. The US representative had explained that only two of the types of tax measures cited involved *de jure* differential treatment of foreign taxpayers; the others involved possible *de facto* discrimination. Both the tax and the subsidy measures cited were mostly minor and were unlikely to have significant impact on services trade.

12. Other delegations had expressed three main concerns about the US submission. The first was that the specification of the measures covered was imprecise, indicating broad categories of possible measures, which might include future measures, rather than specific laws or regulations and their field of application. The second was that most of the cases cited involved no denial of national treatment. This not only made it unnecessary to schedule them; it would also create a serious imbalance for other countries which also had differential tax rates in different local tax jurisdictions but did not believe it necessary or proper to schedule these. The third concern was with the implicit interpretation by the US of the national treatment obligation and of the implications of the second beer panel, which appeared to be based on an erroneous analogy between like products and like suppliers.

13. The representative of the United States said that technical experts were working on the questions that had been raised. Following this work the US would be glad to engage in further discussions, though it was most unlikely that this would be possible before December. Another delegation suggested that it would be helpful to have the clarifications of the measures concerned in writing in order to prepare for the next meeting. Some of the measures under discussion might possibly affect the balance of rights and obligations, and were being carefully evaluated in terms of their impact on the scheduled commitments.

Guidelines for Notifications

14. The Chairman recalled that a revised version of the note on Guidelines for Notifications was circulated on 19 October. He pointed out that regarding the notification of measures taken for balance-of-payments reasons, the mandate of the WTO Balance-of-Payments Committee, which had been agreed by the Sub-Committee on Institutional Matters, covered services, (that is, measures taken under Article XII of the GATS) as well as goods. Due note was taken of the detailed suggestions made by a number of delegations for improving the content of the Guidelines as well as the format as contained in the 19 October document. The revised document would be submitted to delegations ahead of the next meeting of the Sub-Committee.

Other Business

15. The Chairman also suggested that it would be useful to ask the Secretariat to prepare, for the first meeting of the Council for Trade on Services next year, a short paper listing the work which the Council would have to undertake. It would in effect be an annotated agenda intended to assist the Council to organize its work. The paper could update the references in the earlier note (PC/SCS/W/1 of 11 May) to the work which would be undertaken after the entry into force of the GATS. These concerned *inter alia* the programme of future negotiations, the institution of the working party on professional services, terms of reference for the Council and subsidiary bodies and the examination of schedules.

16. With regard to the examination of schedules, he recalled that the Preparatory Committee had circulated the Schedules of Commitments in Services submitted by St Kitts and Nevis, the United Arab Emirates and Mali, all contracting parties whose schedules were submitted pursuant to paragraph 8(b)(i) of the Ministerial Decision of the Establishment of the Preparatory Committee. The approval of the schedules was a matter for the Preparatory Committee, but it would be for the Sub-Committee to verify the technical accuracy and legal consistency of the schedules, as had been done earlier this year for all existing schedules.

17. The Chairman announced that the date for the next meeting of the Sub-Committee would be 29 November 1994. This could in principle be the last meeting of the Sub-Committee this year, but bearing in mind that the deadline for the completion of work on the scope of the GATS was 15 December, a further meeting in mid-December might need to be envisaged.