

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Services

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The Uruguay Round and Trade in Services

The attached communication is circulated at the request of the delegation of Jamaica to the members of the Group of Negotiations on Services.

Introduction

The Tokyo Round of multilateral negotiations concluded in 1979 with an Agreement on Government Procurement. This provided for coverage of services, but "only to the extent that they were incidental to the supply of products and cost less than the products themselves". Discussions on the possibilities of expanding the Agreement to cover service contracts are continuing.

During the closing stages of the Tokyo Round negotiations, Jamaica proposed the adoption of a Code on Structural Adjustment, and in May 1979 proposed that Trade in Services and Restrictive Business Practices be the subject of an exchange of views. These proposals were made in the Consultative Group of 18 of the GATT. In suggesting a discussion in GATT on Trade in Services, the representative of Jamaica specifically drew attention to those services which were important for the movement of goods and consulting engineering.

The GATT Secretariat responded by preparing a Note - International Trade in Services (CG.18/W/45, 10 October 1980). It provided some data and outlined work in progress in other fora. The Secretariat followed up with a Background Paper - Trade in Services and the GATT (CG.18/W/49, 6 March 1981), which dealt, inter alia, with the main linkages between services and goods, and set out a tentative classification of services by nature of association with trade in goods.

Between 1979 and 1982 a wide variety of views were expressed. At the outset there was almost universal scepticism that the GATT should be a forum for any discussion of the subject. The dividing line was certainly not developed (North) and developing (South). Some members, in indicating the complexity of the subject, felt that the OECD should continue its analysis before any work was undertaken in the GATT; some felt that a prior study of problems encountered in services trade was necessary prior to any GATT consideration;

some doubted the wisdom of involving GATT in a field so wide and disparate, governed by objectives and criteria of great variety, many of which were quite unrelated to free trade; and some felt that GATT had no competence. The debate continued in the Group of 18 during 1984 and 1985. In 1985 both Japan and the United States submitted written proposals for the inclusion of services in a new Round of Multilateral Trade Negotiations. Japan proposed that a Code be negotiated, while the United States proposed a "framework of trade principles", pertaining "only to the trade aspects of Services". This proposal identified "sectors such as banking, insurance, telecommunications, and data processing, shipping, aviation, and construction and engineering" as examples.

The United States and Japan were supported by developed and a number of less developed contracting parties. A large number of less developed contracting parties and other developing countries applying the GATT on a de facto basis were opposed. Between 1982 and 1984, Contracting Parties at Ministerial level decided "to invite contracting parties to exchange information", and initiated a process of exchange of information. National studies of seventeen (17) developed contracting parties were discussed in a technical group in 1985 and 1986.

Trade in Services was included in the Uruguay Round of Multilateral Trade Negotiations after protracted negotiations, several less developed contracting parties being opposed to its inclusion. It was finally agreed as Part II of the Ministerial Declaration, that is, it was not a decision of CONTRACTING PARTIES.

The following section of this paper is a preliminary stock-taking of some issues raised during the "initial phase" (1987) in the Group of Negotiations on Services.

I. - Background

The Group of Negotiations on Services (GNS) agreed that at the end of the "initial phase" of negotiations (end 1987) there would be a stock-taking in order to determine how to carry forward a negotiating programme. It will be noted that for the initial phase of negotiations a number of elements have been identified. This list of elements was "non-exhaustive"; further, "that no particular significance attaches to the way in which the items are formulated". When the elements were adopted the Chairman pointed out that "it was the understanding of all participants that the objectives of growth and development mentioned in Part II of the Ministerial Declaration would permeate through all the elements to be addressed".

2. This stock-taking reflects the discussions to date and the Ministerial Declaration on the Uruguay Round, inter alia, that:

- Part II - Negotiations on Trade in Services is an integral part of the Multilateral Trade Negotiations;
- "GATT procedures and practices shall apply to these negotiations";
- "The Group of Negotiations on Services shall report to the Trade Negotiations Committee";
- "when the results of the Multilateral Trade Negotiations in all areas have been established Ministers meeting also on the occasion of a Special Session of Contracting Parties shall decide regarding the international implementation of the respective results" (emphasis added).

II. - Negotiating Objectives

3. The negotiations - "shall aim to establish a multilateral framework of principles and rules for Trade in Services....."

- "including elaboration of possible disciplines for individual
- "shall respect the policy objectives of national sectors
laws and regulations applying to Services";
- "shall take into account the work of relevant
international organizations";

The multilateral framework for Trade in Services
"shall respect the policy objectives of national
laws and regulations applying to Services". It
should be noted that this is not limited to
Trade in Services.

4. Any multilateral framework which is established in the
context of the Uruguay Round incorporating principles, rules and
possible disciplines for Trade in Services will be expected to
achieve:

- a) "the expansion of trade under conditions of
transparency and progressive liberalization";

and serve as:

- b) "a means of promoting growth of all trading
partners and the development of developing countries".

5. The multilateral framework may or may not be legally binding.
If legally binding the rules and disciplines may be more strictly
defined with the procedures, practices and mechanisms set out as
integral parts of that framework. Using GATT terms this framework
would entail both "rights and obligations" with procedures for
dispute settlement. The principles may be drawn from the experience
in GATT of trade in goods and those aspects of services already
incorporated within the GATT framework, or it may extend beyond
GATT to take fully into account the principles, rules and disciplines
which are to be found in existing international (including bilateral

and regional) arrangements, as well as those enshrined in national laws and regulations applying to Services.

6. "Expansion of Trade in Services under conditions of transparency and progressive liberalization". The multilateral framework established should create an environment favourable to the production of and trade in Services. The experience gained from GATT negotiations will be helpful in the examination of the principles, rules and disciplines which would facilitate the expansion of Trade in Services. However they may not provide all the answers.

7. "Transparency" entails notifications and multilateral surveillance. It also entails the opportunity for all participants to be party to or to be fully informed of proposed regulatory changes in such a way that any negative impact on international trade of such proposed changes could, through consultation, be minimized while still achieving their domestic regulatory objectives. Without such full transparency some participants would merely be passive receivers of information and consequently would not be in a position to influence the outcome of the measures under consideration.

8. "Progressive liberalization" in GATT has been achieved through the "binding" of tariff concessions on individual products, and through rules which prohibit or curtail the use of non-tariff measures. Techniques and modalities have been developed which allow for the exchange of concessions and for the codification of the results of such negotiations either through Schedules, or as in the case of non-tariff measures in the Tokyo Round, through Agreements and Arrangements limited in membership, and conditional in their application. Services, however, being difficult to identify, classify and standardize, no hard and fast conclusions can yet be drawn as to whether the GATT approaches are applicable, or whether the approaches and the experiences of other international arrangements provide the appropriate modalities.

"Promoting economic growth of all trading partners and the development of developing countries"

9. The framework established should be so designed as either to facilitate or be the means of promoting economic growth and the

development of developing countries. How to measure or evaluate whether, and how, such a framework promotes economic growth is a challenge to empirical analysis and the reliability of the data. There is also the question of how to assess the value of trade in services in national output if the data is neither disaggregated nor reliable. The analysis and data needed to assess the contribution to economic growth may not be sufficient in assessing the contribution to development as this implies more than increments in output. Can it be assumed that increased trade in Services even if output is increased leads to development ? Unless each developing country benefits by increasing productivity and capital formation, and the creation of interlinkages among the different sectors of the economy its development could be retarded even though output as conventionally measured increased.

10. GATT experience may be helpful, for instance in respect of "special and differential treatment" and in respect of the provisions in a number of Articles of the General Agreement relating to economic development of economies at early stages of development. UNCTAD's work, especially as it relates to the contribution of Services to development, and the national studies in progress in a number of developing countries will provide useful insights.

"Such multilateral framework shall respect the policy objectives of national laws and regulations applying to Services"

11. The multilateral framework to be established must therefore take as given the policy objectives of national laws and regulations applying to Services. Services in this context will include both services provided within the domestic economy including production services, retail services etc. as also factor and non-factor services traded internationally.

12. The objective does not require that the rules and the disciplines of the multilateral framework shall be consistent with national laws and regulations. Rather, the multilateral framework shall respect (emphasis added) the "policy objectives" of national laws and regulations. Rigid application of this principle could result in a situation where new rules may not be considered to be applicable by

countries which have well developed regulatory arrangements for their service sectors. On the other hand, developing countries which have not as yet been able to develop regulations may find that they are required to accept a greater degree of obligations.

13. Regulation is the central mechanism in ensuring that the provision of Services conforms to certain general and specific rules of conduct for the benefit of the economy as a whole and for certain sectors. The regulation may be administered by the government (including federal, provincial or municipal) or on its behalf by industries or providers of services. The rules may be drafted by the industries or professional groups or by governments. Where there is self-regulation, the settlement of disputes or complaints relating to standards or conduct may be done with or without an eye to respecting policy objectives of governments.

14. "Policy objectives" may be defined in its most general terms for example, national security which is the exclusive prerogative of governments. They may set broad policy objectives in the national interest, and define them in terms of their social, economic or regional content. In most countries governments reserve for nationals (including registered companies), or give priority to, a number of social and economic activities which they believe to be essential for the welfare of their people. Governments even reserve a number of these activities for themselves, i.e. they are administered publicly. For some countries industrialization is a major policy objective, or more precisely an objective, and the policy which is designed to achieve this may be temporary protection for "infant industries". Also, agriculture is a sector largely protected for a number of social, and regional as well as economic (including environmental) reasons. Subsidies, import barriers and other measures have been used in fulfilment of the broad policy objectives.

15. One of the issues that will have to be examined is how far and to what extent GATT experience is useful. In this context it needs to be recognised that while the GATT rules are framed on the basic assumption that protection for domestic industry should be given through measures like tariffs which influence prices, protection for the service sector is given by adopting regulations.

It would be also necessary to guard against a situation where countries with established service industries seek to avoid the basic obligations by invoking "grand father clauses" or by requesting "waivers".

16. Moreover, the GATT as an institution does not review trade policies of contracting parties. However over time the decisions taken by CONTRACTING PARTIES in GATT have had an influence on the policies which directly or indirectly restrict or distort trade. In the negotiating group on the Functioning of the GATT System, some contracting parties have made proposals for the establishment of machinery to review periodically the trade policies of all contracting parties. The proposals have been received with a certain degree of scepticism by a number of countries, particularly by some of the less developed countries, which consider that while the views expressed and the recommendations made may have little or no effect on trade policies of major developed countries, this would not necessarily be the case for the developing countries.

"Such multilateral framework shall take into account the work of relevant international organizations"

17. This is not clear. The work of relevant international organizations may be narrowly defined to cover the activities which are undertaken by, in, or through those international organizations. It is assumed however that what is important in looking at other international organizations is to see what principles, rules and disciplines are applied in regulating services activities. The GATT Secretariat and other international organizations have provided useful information in this regard. The key elements and the experience will be useful in the further consideration of the scope and coverage of the multilateral framework. It will not be enough merely to take note of the work. The effect that the rules and disciplines applied by these organizations have on trade, economic growth and development will have to be examined.

III. - Elements

18. Five elements were identified and discussions focussed on them in the initial phase. It was a valuable and useful process in

that it allowed participants within a multilateral setting, to begin to identify issues which could be included in a multilateral framework. This initial phase might be described as issue identification, an important stage in the negotiating process. The five elements are reviewed in the context of the "negotiating objectives" and in light of the discussions during the course of 1987.

1) "Definitional and statistical issues"

19. Theory and empirical analysis are both inadequate. Much more work is required to gain a better theoretical and empirical understanding of the role of services in national economies, and in the international economy. There is no commonly accepted set of definitions. Quantitative data for measurement and comparison are either unreliable or unavailable. The traditional distinctions between services and goods and the identification of "new" services posed problems. These will have to be made good if progress is to be made in the negotiations, especially where empirical analysis, international comparisons, and the measurement of trade flows are concerned. It is beyond the capacity of the Group to fill these gaps. Participants will have to rely on providers and users of services, statisticians and academics to provide these inputs. The Group may therefore wish to request appropriate international secretariats to assist it, in developing some typologies to assist each participant in assessing costs and benefits from applying a multilateral framework or even specific sector agreements. The Group can not rely exclusively on the statistics already collected or those easily and readily available, nor should it accept the void as unavoidable and continue in ignorance.

20. Among the issues to be clarified are: (i) a better theoretical understanding of the role of services in economies, and at different stages of development; (ii) the necessity to treat services not as a residual item but as an important component; (iii) the need to disaggregate the statistics collected in the field of individual services activities (the disaggregation of services from goods, e.g. in the construction industry); (iv) the need to distinguish between sectors, sub-sectors and discrete products, and

to seek to define them more precisely perhaps based on an improved International Standard Industrial Classification; (v) to break-down the data on total trade flows along geographical lines; (vi) to establish the inter-linkages between the services sectors and the other sectors (by an improved input-output matrix?); (vii) to identify services both as an input and output of the production cycle.

2) "Broad concepts on which principles and rules for trade in Services, including possible disciplines for individual sectors, might be based"

21. Such broad concepts at the social and economic level include inter alia:

- (i) specialization based on comparative advantage (inter alia factor endowments);
- (ii) efficiency of the allocation of national and global resources;
- (iii) equity (sharing of gains from trade liberalization and expansion);
- (iv) competition and restraint of monopolistic or oligopolistic practices which may inhibit the functioning of "markets";
- (v) economies of scale (and potential benefits from trade liberalization).

22. It is assumed that these broad concepts if applied, rationally would promote economic growth and the development of developing countries by maximizing global welfare. These broad concepts can not be limited to trade in services, but to the effect their application to trade in services will have on national economies.

23. Other broad "non-economic" concepts on which principles and rules and possible disciplines might be based are:

- (i) standards (health, safety, morals, etc);
- (ii) national security;
- (iii) employment creation;
- (iv) distributional objectives;
- (v) cultural industries.

24. As the multilateral framework shall respect the policy objectives of national laws and regulations applying to services, it will be necessary at another level, to identify as well those broad concepts on which regulatory measures and disciplines have been formulated.

25. The definition and ordering of these broad concepts at both levels applying both to services in general and in particular to trade in services might bring some coherence to the negotiations and allow for a more systematic discussion of the principles, rules and disciplines which may form part of a multilateral framework.

26. Some principles more frequently proposed are inter alia:

- (i) most-favoured-nation treatment (implying non-discrimination among participants, and non-discrimination as between services produced and traded domestically and those traded internationally);
- (ii) right of establishment; right of commercial presence;
- (iii) national treatment;
- (iv) reciprocity (and "relative" reciprocity in the case of less developed service sectors or less developed participants);
- (v) transparency
- (vi) exceptions;
- (vii) dispute settlement.

27. The specific rules and disciplines would follow from agreement on the principles. The principles, rules and disciplines as applied through the multilateral framework and/or sector agreements would have therefore the effect of creating the conditions for the expansion of trade and the promotion of growth and development of developing countries under conditions of transparency and progressive liberalization.

3) "Coverage of the Multilateral Framework
for Trade in Services"

28. The trade in services to be covered by the multilateral framework are assumed to be those services products or sectors which will both promote growth and development of individual countries. What are the criteria to be used in selecting the services products or sectors? Share in international trade, importance for facilitating trade in goods, degree of governmental regulation or straight forward offers and requests? Should they be at a minimum, important in the production process, contribute to increasing employment and contribute to capital formation and transformation of the economies of developing countries? Is it to be assumed also that services on the consumption side are to be covered (Is the distinction between production and consumption of services useful?).

29. The multilateral framework for trade in services will of course need to be consistent with any multilaterally agreed principles, rules and disciplines in the area of trade related investment measures and trade related intellectual property rights. Some of these linkages have been identified e.g. the concept of right of establishment; and access to intellectual property in the field of services. The coverage will need to take account of existing multilaterally agreed arrangements.

30. An approach in seeking agreement as to the coverage may be as follows - the services products or sectors which participants consider of interest may be put on a "positive" or "negative" list, e.g. transportation might be put on a "positive" list, and "financial services" on a "negative" list. This approach would allow for the gradual build-up of the products and sectors which participants feel ought or ought not to be covered by the multilateral framework. Consideration may also be given to the sectors covered by regulations at the national level, in bilateral, regional and international arrangements. As an example, the synopsis of a US/Canada Free Trade Agreement identifies trade in services to include transportation, telecommunications and computer services, tourism and architecture. It also covers principles of national treatment, right of commercial presence and right of establishment for each others' providers of services. Also included is a section on financial services including "the grandfathering of existing privileges", improved access and

competition "consistent with prudential and regulatory requirements". It would appear that a multilateral framework would be expected to respect not only the policy objectives of national laws and regulations, but also respect the obligations entered into under the Free Trade Agreement. (Does this assume "rights and obligations" similar to those provided for in Article XXIV of the GATT?).

31. The negotiating objectives allow for the "elaboration of possible disciplines for individual sectors". This implies that it may not be possible to elaborate disciplines or even rules across the board similar to principles. A start should therefore be made in consolidating or drawing up an inventory of the disciplines in existing international arrangements. These should include those designed to regulate international "markets" even if those regulations are implemented at the national or regional level. Trade in many services is conducted in highly specialized and discrete markets of varying sizes and complexity. For some "new" financial services, the market is described as global. It may be that the service product is defined or classified differently depending on the market e.g. in the field of telecommunications where the levels of technology for trade transactions vary considerably. (Is there a need to develop an agreed international standard for services classification?).

4) "Existing International Disciplines and Arrangements"

32. This is related to the element of coverage. It would be useful to make an evaluation of the extent to which existing international disciplines and arrangements contribute to the creation of an environment favourable for the promotion of economic growth and the development of developing countries. The principles, rules and disciplines in the existing international arrangements should be examined also in light of the broad concepts on which principles and rules for the multilateral framework might be based.

33. The development of "new" services will require that the evaluation not be limited only to existing international arrangements but include the examination of whether new principles, rules or

disciplines are necessary for these "new " services. On the other hand, emphasis on the "new" services, particularly those produced by high technology, and insufficient attention to the traditional services products and sectors would lead a number of developing countries to the conclusion that their interests were being ignored.

- 5) "Measures and Practices contributing to or limiting the expansion of trade in services, including specifically any barriers perceived by individual participants, to which the conditions of transparency and progressive liberalization might be applicable"

34. This is related also to the element of coverage. The measures may be those put in place by governments and the practices may be those of private operators. This element does not refer to "the development of developing countries" but refers only to "the expansion of trade in services". This element might be pursued when sufficient progress had been made in the other areas of the negotiations. The inventories being developed may be useful however as starting points in identifying the services products traded and hence assist in the classification and coverage. It will be necessary also to have agreement on what constitutes "barriers". GATT experience in trade in goods may provide some answers, but not necessarily all. Deregulation should provide also some insights e.g. civil aviation and telecommunications.

Further Work

35. At this stage, it may be useful to consider the following:

- (i) At the outset and before there is general agreement on what constitutes trade in services i.e. no definition, no standard classification, no acceptable statistics, the establishment of a multilateral framework of principles and rules are called for. The Group will have to find some practical way to deal with this in considering "barriers".
- (ii) the central assumption on which GATT negotiations are based, is the proposition that general welfare

is maximized when the use of resources are optimized and hence trade in the products is "free". While this has never been attained and contracting parties, by daily protectionist practices deny the validity of the assumption, "progressive liberalization" is called for. It can not be assumed that in a world where rich countries still maintain controls over the movement of some factor services, i.e. capital and technology, and where transnational corporations practise transfer pricing and are dominant providers and users of traded services, that developing countries will not wish to proceed with the utmost caution. In many instances the cost of services are already incorporated in the goods exported by developed countries e.g. turn-key plants. The "right" to sell additional related services imposes further costs through liberalization

- (iii) in respect of disputes arising from commercial transactions between importers and exporters developing countries may also require greater clarity in respect of applicable international law to cover such disputes arising from say, ownership.

36. It would be an unbalanced, inequitable and unworkable multilateral agreement if it covered only access issues for providers and did not include exit issues for users, especially in those new services sectors including telecommunications and others revolutionising the production process.