

**MULTILATERAL TRADE
NEGOTIATIONS
THE URUGUAY ROUND**

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Group of Negotiations on Services

DEFINITIONS

Note by the Secretariat

At its meeting on 22-25 March 1988, the Group of Negotiations on Services requested the Secretariat to prepare a background note on the element of definitions. In response to this request the attached document is circulated.

DEFINITIONS

Points emerging from the discussion in the GNS on the element of definitions

I. Views concerning the need for a definition

1. There are differing opinions on the extent to which it is necessary to have an agreed definition of trade in services for work to progress in the GNS. Some participants have stated that as long as there was no agreement on the definition of trade in services, it was not possible to begin to negotiate a multilateral framework of principles and rules. It was also important to agree on such a definition in order to determine the exact scope of the rules to be agreed. Furthermore, in their view it was necessary to arrive at a commonly accepted definition in order to have an idea about the possible overall balance of advantages that would emerge from the expansion of trade in services.

2. Other participants were of the opinion that the issue of definitions did not have to be decided on for the negotiations to proceed. In their view it would be useful to set out various options for definitions and then to assess the implications for an illustrative list of sectors. Definitions could be dealt with in parallel with the ongoing negotiating process.

3. It was also said that the problem of definitions had to be dealt with because of its implication for coverage. This was, however, not to suggest that there needed to be clear agreement on the definitional question before work could proceed in other areas.

II. Approaches advanced on definitions

4. Mainly two approaches have been advanced so far in the GNS discussions; one a generic approach which tries to identify the essential attributes of a services transaction in order that it might be considered to constitute trade in services; the other would be based on an understanding as to which are the services sectors and transactions to be covered.

5. Under the generic approach various positions have been stated, e.g. (a) that trade in services should include only services transactions involving cross-border sales and (b) that trade in services should include services transactions that involve also movement across borders of factors of production or of consumers to the place of consumption.

6. As regards option (a), certain participants have suggested that the definition be limited to cross-border trade, i.e. only the direct sale of services by enterprises or individuals residing in one country to

enterprises or individuals residing in another country should be included. According to this view, services transactions between enterprises or individuals residing or established in the same country would be considered domestic transactions and not qualify for inclusion under trade in services. Participants holding this view maintain that Part II of the Punta del Este Declaration allows only this limited interpretation of the negotiating mandate. Anything going beyond, in their opinion, confuses trade in services with other issues, such as production, distribution, marketing and investment related to services activities within national borders. Such matters as foreign direct investment and right of establishment could not be negotiated in a definition of trade in services.

7. Other participants support option (b) and maintain that most service transactions cannot be carried out and services cannot be produced and sold, without some degree of presence, in the country of the consumer. It has also been pointed out that in some instances a local presence is needed to ensure more efficient delivery of a service that could be provided across a border. In some other instances, the same service could be provided across the border or through a local presence. In terms of this approach, trade in services should also include the production and sale of services by non-residents in the country of the consumer even if no cross-border transaction is involved. In the view of these participants a definition of trade in services has to be sufficiently broad (such as for instance to include establishment and investment where this is necessary for market access) otherwise it would be difficult to fulfil the overall objectives of Part II of the Punta del Este Declaration which are expansion of trade in services as a means of promoting economic growth and development of developing countries.

8. This option would involve consideration of establishment and investment related issues, e.g. the extent to which the movement of factors of production (i.e. labour and capital), which types of labour flows (form and duration of possible relocation of labour), and which types of capital flows could be included (e.g. nature and duration of capital movement). In this connection, the questions that have been touched upon include the extent to which the mere fact of payment between a resident and non-resident is sufficient to determine whether a transaction involving trade in services has taken place, whether it is necessary that such payment be tied to the performance of specific services activities and whether the movement has to be of a temporary character in order to retain the status of a service transaction between residents and non-residents.

9. It is clear that there is a difference between these two possible interpretations of what shall constitute trade in services as concerns the scope and the outcome of the negotiations. This raises the question of whether it is possible to arrive at an agreed definition of trade in services which is sufficiently flexible to accommodate the interests of those countries favouring option (b) without compromising the concerns of the participants favouring option (a).

10. An alternative approach suggested by some participants is to treat definition as a matter of agreeing on the coverage of sectors and transactions to which multilateral rules and disciplines would apply. This is seen as meeting the difficulties perceived in finding conclusive answers to the foregoing questions. In this connection, a number of specific sectors have been mentioned in the discussion.

11. The decision on what may be or may not be included under trade in services, if this latter approach were to be accepted, may be influenced by the balance of specific interests of the participants in the negotiations and by the consideration in the Punta del Este Declaration that expansion of trade in services should contribute to the objectives of economic growth and development of developing countries. Thus, a number of participants among those supporting option (a) have also indicated that in any balancing of sectoral coverage, transactions which involve temporary relocation of labour should be included.