

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

CG.18/W/63

15 October 1981

Special Distribution

Consultative Group of Eighteen

ACTIVITIES OF OTHER ORGANIZATIONS IN THE FIELD OF SERVICES

Note by the Secretariat

1. This note has been prepared as a follow-up to the discussion on international trade in services held in the Consultative Group of Eighteen at its meeting of 25-27 March 1981. A preliminary account of the work of other organizations in this area was given in document CG.18/W/45, circulated at the Group's meeting of 30-31 October 1980. This report updates, so far as possible, the information contained in that document. It summarizes the main relevant aspects of activities as well as the issues under consideration in such work. It covers some organizations not dealt with earlier, including non-governmental organizations, to the extent that their activities have special relevance to the subject at hand. It does not claim to be exhaustive, however: activities related to the services sector are gaining momentum in many different fora, and information is not available on all of these at the present stage.

2. For ease of reference, organizations are classified as "A. Governmental" and "B. Non-Governmental" and are listed in alphabetical order under each of these headings.

A. Governmental

Council of Europe

3. In January 1981, the member States of the Council of Europe adopted a Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. Its purpose is to secure the right of privacy of individuals with regard to automatic processing of personal data relating to them ("data protection"), both in the public and private sectors. The Convention contains a chapter on transborder data flows which provides that, except where equivalent protection is not available in the country of destination or, if this country is not a signatory where the transfer would result in circumventing the legislation of the originating country, "a party shall not, for the sole purpose of the protection of privacy, prohibit or subject to special authorization, transborder flows of personal data going to the territory of another Party.". The Council may invite non-member States to accede to the Convention.

4. The Council has undertaken detailed studies of developments in civil aviation in 1973 and 1976, with special emphasis on relative pricing of scheduled and charter services.

Intergovernmental Bureau for Informatics (IBI)

5. The Intergovernmental Bureau for Informatics, which has evolved out of the International Computing Centre set up by the United Nations Economic and Social Council (ECOSOC), became an autonomous body in 1974. In 1978, it convened the first Intergovernmental Conference on Strategies and Policies for Informatics (SPIN I) which was held in Torremolinos, Spain. A second intergovernmental conference on the same theme will be held in Havana, Cuba, in June 1983 (SPIN II). The ECOSOC adopted at its second regular session of 1981 a resolution (E/RES/1981/52) in which it recommends that member States "collaborate in the preparatory activities and the achievement of the objectives" of this conference.

6. A number of regional conferences are being held in 1981-1982, followed by a world conference in October 1982, in preparation for SPIN II. They will deal with various aspects of informatics, i.e. in education, in industry, teleinformatics, etc. SPIN II is expected to devote particular attention to the impact of transborder data flows on the international division of labour and technological concentration. In this context it is expected to deal with various aspects of international cooperation in fields such as the development of technological capacities and infrastructures, the content and use of information, access to information and the protection of individual privacy.

International Civil Aviation Organization (ICAO)

7. The 1944 Chicago Convention establishing ICAO provided certain rights for non-scheduled air services covering overland flight and landing (the so-called "first and second freedoms" of the air) and, subject to the conditions imposed by the contracting party concerned, the taking on and discharging of passengers, cargo or mail ("third and fourth freedoms"). The Convention establishes the principle of non-discrimination for the freedoms granted as well as for any right to operate inland services ("cabotage") which a country may grant foreign aircraft. In addition, it provides for the application of national treatment in respect of the use of all air navigation facilities and of charges for such facilities and for the use of airports. Other relevant provisions of the Convention are as follows:

- (1) No fees, dues or other charges may be imposed solely in respect of the right of transit over or entry into or exit from a contracting State's territory:

- (2) No customs duty may be charged on aircraft in transit or on spare parts and equipment imported for incorporation into such aircraft;
- (3) Aircraft in transit and parts thereof are also exempted from seizure on patent claims;
- (4) To the extent possible, each State must provide air navigation and communications facilities in accordance with the standards and practices recommended or established pursuant to the Convention;
- (5) Mutual recognition of certificates of airworthiness and certificates of competency and licences for personnel which conform to minimum standards established pursuant to the Convention;
- (6) International Standards and Recommended Practices, in addition to the above, are adopted by ICAO in respect of other aspects of air navigation. Departures from such standards are to be notified to ICAO.

8. The International Air Services Transit Agreement signed at Chicago in December 1944 provides for the mutual granting among signatories of first and second freedoms for scheduled services, the exercise of these privileges to be in accordance with the Chicago Convention.

9. At its first and second Transport Conferences held in 1977 and 1980, ICAO recognized the need to re-evaluate regulatory policies in air transportation in the light of developments since the establishment of the Chicago Convention. Panels of experts have been established to study the adequacy of the Convention's provisions relating to non-scheduled services, capacity and airline tariffs in present-day traffic conditions. It is expected that reports of panels of experts will be transmitted through the ICAO Council to the third ICAO Transport Conference to be held in 1983. Airport and en route facilities have also been discussed in a special ICAO conference on this subject held in the spring of 1981.

Inter-Governmental Maritime Consultative Organization (IMCO)

10. The main concern leading to the creation of the Inter-Governmental Maritime Consultative Organization was a desire to improve safety at sea. IMCO has developed a number of International Conventions on this subject, including two International Conventions on the Safety of Life at Sea. The second of these, which entered into force on 25 May 1980, has been amended by a Protocol which entered into force in May 1981. IMCO has also been active in the prevention

of marine pollution. The Oil Pollution Convention was adopted as far back as 1954, but IMCO has produced a whole series of Conventions on this subject following the Torrey Canyon disaster of 1967. It has also dealt with questions of legal liability which arise if incidents occur at sea, relevant agreements including the International Convention on Civil Liability for Oil Pollution Damage. Of more direct relevance to trade in services is IMCO's work on facilitation, which led to the adoption of the Convention on Facilitation of International Maritime Traffic in 1973. IMCO has also adopted numerous Resolutions, mainly on technical subjects, and has technical assistance programs (financed by UNDP) in the areas of safety administration, pollution, harbour administration and the development of maritime administration and legislation.

International Monetary Fund (IMF)

11. The provisions of the Articles of Agreement of the IMF relating to restrictions on payments for current transactions apply equally to payments for goods and for services. Limitations on the use of the Fund's resources for capital transfers (Article VI) do not apply to "capital transactions of reasonable amount required ... in the ordinary course of trade, banking, or other business".

12. Since August 1979, Fund members' receipts from travel and workers' remittances will be included at the option of a member in the calculation of export shortfalls for purposes of the Fund's compensatory financing facility if, in the opinion of the Fund, adequate data are available.

International Telecommunication Union (ITU)

13. The on-going activities of the ITU in developing worldwide electromagnetic equipment compatibility and conventional establishment of international telecommunication services where this would be impeded by protracted competition over standard characteristics. On-going technical work on the allocation of radio frequencies and of frequencies for sound and television satellite broadcasting, as well as on the development of radio, telegraph and telephone communication also aims to provide the technical base for increasing the efficiency and usefulness of telecommunications services and "making them, so far as possible, generally available to the public", which is one of the purposes of ITU.

Organization for Economic Cooperation and Development (OECD)

14. At its meeting at Ministerial level on 16-17 June 1981, the Council of the OECD "welcomed the increased attention given within the Organization to the service sector in view of the important role

played by services in Member countries' national economies and international trade. They recalled that the principles and objectives concerning the liberalization of international transactions continued in the OECD Convention and referred to in the Declaration on Trade Policy of 4 June 1980 covered the exchange of services as well as of goods. Ministers expressed the wish that the on-going OECD activities in the field of services be carried forward expeditiously. They agreed that, in the light of the results of these activities, efforts should be undertaken to examine ways and means for reducing or eliminating the identified problems and to improve international cooperation in this area".

15. The work undertaken by various OECD Committees in the field of services combines the examination of problems common to a number of service industries and more specific approaches to problems particular to individual service industries.

16. The work programme framed in the OECD Trade Committee aims in its first phase at identifying and analysing existing obstacles in construction-engineering and consultancy services, banking, insurance and maritime transport. A general evaluation of this work is due to take place in the autumn of 1981. This Committee has also encouraged OECD member countries to contribute to a general inventory of trade barriers in services. Furthermore, it envisages the development of a set of general objectives which could provide overall guidance for OECD work in the area of services, including objectives for possible future international negotiations.

17. Preliminary results of a survey of obstacles and problems conducted in respect of trade in construction-engineering and services shows that one problem classified by respondents as "important" in both OECD and developing country markets is that of subsidies; other problems ranked "important" in developing country markets are taxation, market access, government procurement and personnel regulation. Further work is proceeding on the analysis of responses to the OECD survey.

18. The issue of liberalization of international service operations is also being looked at in relation to the OECD Code of Liberalization of Current Invisible Transactions, both in general terms, in the context of an on-going revision of the code, and in specific terms, with regard to different service sectors. Initially, attention is being given to maritime transport and insurance (a Working Group on the Liberalization of Insurance has been established). Problems of establishment and market entry in the service sector are being examined in the context of work related to the OECD Code of Liberalization of Capital Movements.

19. Future work is envisaged on country exceptions to national treatment in the context of the application of the OECD Guidelines for Multinational Enterprises, adopted in 1976, with particular reference to the service industries.

20. Regulations affecting international banking operations are under constant review in the Financial Markets Committee, whose findings concerning eight OECD Member countries were published early in 1981 under the title "Regulations affecting international banking operations of banks and non-banks". The Committee has asked a Group of Experts of the Business and Industry Advisory Committee (BIAC) to prepare a report on obstacles to international banking operations.

21. A study of "Competitive policy in regulated sectors", with special reference to banking, shipping and energy was completed in 1979 by the Committee of Experts on Restrictive Business Practices. On this basis, the OECD Council adopted a Recommendation to OECD Member Governments on Competition Policy and Exempted or Regulated Sectors, calling on governments to review their regimes to see whether the same objectives could not be reached with less regulation or with a more extensive application of competition policies and competition laws.

22. Transborder data flows have received particular attention in the Committee for Scientific and Technological Policy, which has established a Working Party on Information, Computer and Communications Policy dealing with the effects of regulation on international telecommunications services, with legal aspects of flows of non-personal data and with ways of reconciling the protection of individual privacy with the need to avoid creating barriers to international data exchange. A High-level conference on Information, Computer and Communications Policies (ICCP) was held in Paris in October 1980 to discuss proposals for a research programme on non-personal data flows. Also in October 1980, the OECD Council adopted a Recommendation to Governments containing Guidelines Governing the Protection of Privacy and Transborder flows of Personal Data which provides, inter alia, that Member countries should avoid developing laws and regulations which would create obstacles to transborder flows exceeding the requirements for protection of privacy. At its September 1981 meeting, the ICCP discussed a proposal to organize a workshop on "Changing Market Structures in International Telecommunications Services: The Impact of New Technologies and of Service Liberalization", which might be held in 1982.

23. The Tourism Committee at its July 1981 meeting decided to undertake a survey of obstacles to tourism in the OECD area.

24. Other activities envisaged in various OECD Committees would aim at improving the functioning of national markets for services, notably by furthering structural adjustment policies appropriate for this sector.

United Nations Conference on Trade and Development (UNCTAD)

25. The Convention on a Code of Conduct for Liner Conferences drawn up by the UNCTAD Committee on Shipping and opened for signature from 1 July 1974 to 30 June 1975 had been accepted by 51 countries, representing 21 per cent of world tonnage, as of 1 September 1981. The Convention will enter into force six months after the date on which not less than 24 States with a combined tonnage amounting to at least 25 per cent of world tonnage have become contracting parties to it. One group of States have announced that in their case ratification of the Convention would be subject to the non-application of its Articles 2 (Participation in Trade), 3 (Decision-Making Procedures) and 14(9) (minimum period of time between general freight-rate increases) among themselves and, on the basis of reciprocity, vis-a-vis other OECD countries. However, the Convention would be applied in its entirety in relations with non-OECD countries.

26. The UNCTAD Committee on Shipping, at its Third Special Session held from 27 May to 6 June 1981, adopted by majority vote (49 for, 18 against and 3 abstentions) Resolution 43 (S-III) on Open-registry fleets, calling for the gradual and progressive transformation of the present regime of open registries ("flags of convenience") into one of normal registries of ships in the country of ownership. The Resolution also recommends the convening in 1982 of a preparatory group to propose a set of basic principles concerning the conditions upon which vessels should be accepted on national shipping registers, with a view to establishing an international agreement on this subject. The absence of unanimity in adopting the Resolution was due to differences of views concerning the desirability of concluding an international legally-binding instrument to determine the economic elements of a "genuine link" between a vessel and the flag state in which it is registered, as well as the adequacy of imposing such an economic link requirement to solve the problems of open registry.

27. With regard to merchant fleet development in developing countries, Resolution 42(IX) adopted by the Committee on Shipping at its ninth session in September 1980, notes in a preambular paragraph the aim of developing countries to acquire a minimum of 20 per cent of the world deadweight tonnage by the end of the 1980's. It provides, inter alia, for the convening of a group of experts to study the problems faced by developing countries in the carriage of bulk cargoes. The group is to report in the second half of 1981 on whether, in the light of responses to a questionnaire, the operations

of major importers and exporters of iron ore, phosphate rock and bauxite/alumina place any barriers to the ability of the shipping lines of any developing country to compete freely and fairly in these dry bulk markets. A similar examination may be carried out later in relation to hydrocarbons.

28. At its ninth session, in September 1980, the Committee on Shipping also adopted (with one abstention) Decision 37(IX) on port congestion surcharges which aims at rationalization of such surcharges through consultations between shipping lines and shippers' organizations.

29. The Convention on International Multimodal Transport adopted in May 1980 will enter into force 12 months after 30 States have become contracting parties to it by definitive signature, ratification or accession. At the present time only six States have signed the Convention.

30. Questions relating to marine insurance are under consideration in the Committee on Shipping's Working Group on International Shipping Legislation, which holds its eighth session on 12-30 October 1981. The Working Group is mainly concerned with developing standard marine insurance clauses as non-mandatory international models.

31. Other aspects of UNCTAD work on insurance have been handled by the Committee on Invisibles and Financing related to Trade (CIFT), which held its ninth session in September-October 1980. The objectives of this work, as defined by the UNCTAD secretariat (see Report of CIFT on the ninth session, TB/B/833, paragraph 3), are (a) to assist developing countries to establish or strengthen their national insurance markets; (b) to promote regional cooperation among developing countries and (c) to improve the terms and conditions of those insurance and reinsurance services that still have to be purchased internationally. The main aspects of insurance examined by the Committee are loss prevention in fire and marine cargo insurance, crop insurance and reinsurance for developing countries and regional and national insurance goods.

32. The Committee on Invisibles and Financing related to Trade (CIFT) also initiated, with the assistance of an intergovernmental group of experts, a study of the possible operational features of a proposed international Export Credit Guarantee Facility. The main objective of the facility would be to provide a medium for discounting export credit paper issued by developing countries, which presently face refinancing difficulties on international capital markets.

United Nations Center on Transnational Corporations (UNCTC)

33. The Centre on Transnational Corporations has given consideration to the socio-political and economic aspects of transborder data flows.

United Nations Economic Commission for Europe (ECE)

34. The Economic Commission for Europe, through its Working Party on Facilitation of International Trade Procedures, has devoted attention to regulations restricting automatic transmission of trade documentation and is trying to develop a standard for automatic trade data exchange. The ECE's Inland Transport Committee studies on a continuous basis the problems of rail, road, water and multimodal transport, as well as more specific transport problems (dangerous goods, perishable foodstuffs, containers) from the standpoints of technical coordination, standardization and trade facilitation. Work on the latter subject is primarily concerned with the alignment of trade documents and systems for automatic trade data interchange.

World Intellectual Property Organization (WIPO)

35. On-going activities of WIPO relating to the protection of industrial property include, in addition to promoting acceptance of existing international treaties, the examination of the feasibility of an international treaty on the protection of computer software and of better contractual arrangements for the protection of inventions made by joint enterprises. Also being pursued are the improvement of patent information and classification and the development of registration and classification of trademarks for goods and services and of industrial designs.

36. The second session of the Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property is being held in Nairobi, Kenya, from 28 September to 24 October 1981. One of the objectives of the revision is to change certain provisions to meet better the needs of developing countries as regards access to patented knowledge.

37. In the field of copyrights, WIPO has devoted attention to the relationship between copyrights and computers, to remedies against various forms of piracy of intellectual property and to improving the protection of works of folklore against abusive exploitation.

38. Concerning the acquisition of technology and access to works protected by copyright, especially for developing countries, WIPO has edited a Licensing Guide for Developing Countries which serves as a basis for workshops and seminars on the subject. It is also planned

to establish a joint UNESCO-WIPO service for facilitating developing countries' access to works protected by copyright.

World Bank Group

39. Project financing by World Bank and its affiliate the International Development Association (IDA) in services industries involves the provision of technical assistance for management of the facilities and infrastructure established with Bank/IDA lending and for improvement of the institutional framework for the industries concerned. For instance, in the field of international shipping Bank staff advise recipient countries on such items as lease and charter contracts, ships registration, and safety inspection procedures. Port projects also involve advice on the setting of port charges and assistance in the understanding of the pricing mechanism by which port authorities can recover their costs and encourage efficient use of their facilities.

40. The International Finance Corporation (IFC), another affiliate of the World Bank, invests in the services sector from time to time. Most such investments have been in the tourism sector, where the IFC has participated in hotel projects. The IFC has also been active in providing assistance to develop capital markets in developing countries. This involves the establishment of the legislative and regulatory environment and the identification of needed institutions.

41. On a more general plane, the World Bank has an on-going programme of work on international trade in services and on developing countries' involvement in this area, as well as sector studies, which contain statistical and technical information on the operation of the markets concerned.

World Tourism Organization (WTO)

42. The WTO studies on a continuing basis developments and problems in the tourism sector from the standpoints of market trends, transportation, travel plant and services and tourism product marketing. Among the problems under consideration are air transportation services and fare structures, measures to facilitate tourism traffic, and tourism protectionist policies tending to reserve a share of total tourist expenditures to the host country. The problems of developing exporting countries, in particular with regard to air transportation and product distribution (activities of tour operators) are receiving particular attention.

B. Non-Governmental

International Air Transport Association (IATA)

43. Since 1978 IATA, the world organization of the scheduled airlines, divides its activities into Trade Association activities concerned with technical and legal aspects of air transport, and Tariff coordination activities which include the coordination of fares, rates and charges and levels of commission on sales. The latter are established in Traffic Conferences in which participation is optional.

44. The central issue confronting IATA in recent years has been the challenge by some governments to the approach to tariff coordination traditionally pursued in IATA traffic conferences. Other issues with which IATA has been concerned include fuel pricing practices and taxation, and government charges for the use of air navigation and ground facilities.

45. The high-level IATA/International Chamber of Commerce Contact Committee established in 1978 has held several discussions on international aviation regulation and commercial issues. Recently, talks have focussed on the potential application to air transport of multilateral concepts such as those embodied in GATT. The Committee has agreed to establish a working party to identify problems that might be amenable to multilateral solutions as well as possible mechanisms for the implementation of multilateral agreements to deal with them.

International Chamber of Commerce (ICC)

46. The ICC held a Round Table on liberalization of services in June 1981, to which participated representatives from a number of intergovernmental organizations, including GATT. While welcoming the work presently being carried out in certain sectors or within certain regional organizations, participants recognized that when the negotiating stage had been reached, the most appropriate forum for comprehensive liberalization of services trade would be the GATT.

47. In October 1981, the ICC is issuing a Statement on Liberalization of Trade in Services which recommends the extension of GATT to include trade in services, and urges governments to begin preparations towards multilateral negotiations to reduce impediments to such trade.