

## TRADE IN SERVICES AND THE URUGUAY ROUND

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## I. INTRODUCTION

Meeting in Punta del Este, Uruguay, in September 1986, Ministers from around the world launched the Uruguay Round of multilateral trade negotiations, the eighth—and most ambitious—round to be initiated during GATT's forty years of existence. In particular, it placed liberalization of trade in services on the multilateral negotiating agenda for the first time.

Prior to the Uruguay Round, services tended not to feature prominently in discussions of world trade, partly because they are so disparate and have usually been considered domestic economic activities only partially amenable to export. While the share of services in international trade is smaller than in domestic production, services have in recent years become more internationally tradeable, due in particular to rapid technological advances, the growing importance of multinational business activities, and the worldwide trend towards deregulation. In fact, the growth of international service transactions exceeded that of world merchandise trade during the last decade. According to IMF figures, fully a third of world trade in 1987 was in services, amounting to a value of some U.S. \$960 billion. Ten years earlier this trade represented, at U.S. \$282 billion, less than a quarter (23 percent) of world trade.

In the Uruguay Round, the intention to liberalize trade in services reflects the view of some countries that the potential for a larger role for services in world trade is restricted by the absence of multilaterally agreed rules governing their trade. Negotiations aimed at establishing a multilateral framework of rules for this dynamic category of international transactions can be seen as one way of maintaining the forward momentum of the liberalization process achieved for goods in the post-World War II era. The impetus to provide a general framework for international rules in services trade was due mainly to the initiative of the United States which, since the end of the Tokyo Round, had been urging the inclusion of services in the new round of trade talks. These demands were largely met in the

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compromise worked out at the Punta del Este Conference in September 1986 which launched the new round.

## II. THE PUNTA DEL ESTE MANDATE

As GATT Contracting Parties, the Ministers adopted Part I of the Declaration regarding trade in goods. Part II deals with services. It provides the terms of reference for the negotiations to liberalize trade in services, and it was adopted by Ministers in their capacity as representatives of governments. Under this procedure, it was agreed that the negotiations on services would be on a "separate track" from those on goods and would not necessarily be placed within the legal framework of GATT, although GATT procedures and practices nevertheless were to apply to the negotiations on services. Despite the formal distinction between goods and services, the Uruguay Round negotiations as a whole are considered as a single political undertaking, and the negotiations on goods and services are being conducted within the same time-frame, namely four years. An "umbrella" Trade Negotiations Committee was established to carry out the negotiations, as well as two separate negotiating groups which report to the Trade Negotiations Committee: one on goods and one on services.

In the Punta del Este mandate, governments aim to establish a multilateral framework of principles and rules for trade in services to fulfil the following objectives: to expand trade under the conditions of transparency and the progressive liberalization of trade; to promote the economic growth of all countries; and to promote the development of developing countries. This is important to many developing countries, who consider that in order to promote development, the negotiations should go beyond the creation of a framework for trade liberalization per se and provide for measures more directly supportive of the process of strengthening a domestic services capacity.

In the course of the debate over the inclusion of services, some countries were concerned that a GATT framework agreement on trade in services could undermine the achievement of national policy objectives. The Declaration deals with these concerns by stating that "such a framework shall respect the policy objectives of national laws and regulations applying to services." This basically means that any trade agreements on services will have to leave countries enough flexibility to pursue domestic policy objectives.

The Punta del Este Declaration, in dealing with the interface between negotiations on goods and services, represented a compromise between the different concerns of many countries. There were, for

example, those countries which considered that services activities were becoming increasingly linked to goods trade, and that a decision to negotiate a multilateral framework of rules and disciplines on services was an indispensable element in any new process of negotiations aimed at improving and strengthening the trading system as a whole. Other countries, including those developing countries that questioned the legal authority of GATT to deal trade in services, were of the opinion that regulations of services activities could go beyond those normally affecting trade in goods, and that there could be no assumption that GATT rules and principles should apply to trade in services in the same manner as they apply to trade in goods.

Regarding the proposed structure for negotiations, the Declaration stipulates at the outset that "negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors." By agreeing to concentrate first on the development of a multilateral framework of principles and rules, negotiators hope to provide the common ground rules that will be needed to fulfil the liberalization objective of the negotiations. At the same time, it is recognized that sectoral differences—in market structures, or in the nature and scope of regulations—could be significant enough to warrant the elaboration of sector-specific arrangements.

### III. GNS WORK PROGRAMME AND MAIN ISSUES

Following the adoption of the Punta del Este Ministerial Declaration, the Group of Negotiations on Services, or GNS, consisting of representatives of 103 countries, was formed, and the GNS agreed in February 1987 to a work programme for the initial phase of talks, which consisted of five main issues:

- how best to define trade in services for the purposes of the negotiations and how to deal with statistical issues (in particular, the inadequacy of existing statistics on international service trade);
- how to determine the broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based;
- how to agree to a sectoral coverage (i.e. a negotiable universe of service sectors and/or transactions) that represents a balance of interests among participating countries;
- how to build upon and complement existing international disciplines and arrangements that are concerned with services activities on a sectoral basis; and

- how to identify and deal with measures and practices contributing to or limiting the expansion of trade in services.

While the range of issues confronting governments is both broad and complex, it is fair to say that considerable progress has been achieved during the first two years of discussions. Governments have stated their positions with respect to their national interests and have identified possible negotiating approaches. During this period, the GNS has held twenty-one meetings in which governments, the GATT secretariat, and relevant international organizations (including ICAO, ITU, UNCTAD, IMF, and the World Bank) have produced some fifty written submissions. Some have addressed quite specific issues (for example, how to define such concepts as national treatment, transparency, non-discrimination, and others for the purposes of the multilateral arrangement); others have been more far-reaching proposals, which suggest a possible structure for the framework agreement on trade in services.

The proceedings in the GNS have clarified a number of issues, including in particular the following:

- Due to the very different nature of goods and services, familiar GATT concepts related to goods cannot be simply applied to trade in services in their "pure" form. Among the broad concepts advanced in the negotiations are national treatment, transparency, and non-discrimination. In examining the appropriateness of these concepts for trade in services, differences have become apparent between their applications to trade in goods and to trade in services, and these differences will have to be taken into account.
- It has also become clear that there exist important linkages between the different elements of the agenda. One such link relates to definition and coverage. If, for example, the definition of trade in services includes only those services that actually cross the frontier, a number of sectors (for example, construction) would, for all practical purposes, be excluded. Thus, what sectors are covered by the framework depends to some extent on how trade in services is defined.
- Multilateral discussions of international services are certainly not new. Other discussions have, for example, led to the creation of inter-governmental sectoral arrangements to maintain and develop the technical, legal and economic environment for international civil aviation (International Civil Aviation Organization), maritime transport (UNCTAD Liner Code) and telecommunications (International Telecommunication Union). In examining the relevance of these arrangements for the work of the GNS, one conclusion that has emerged is that such arrangements are considerably technical in

nature and have not had as their primary objective the establishment of a multilateral framework to expand *trade* in services and to promote economic growth and development.

- Another issue to have emerged is the need for an understanding as to how expansion of trade in services can promote economic development. There appears to be wide agreement that development should constitute an integral part of the agreement and not simply be reflected in a series of waivers, exceptions, and derogations, although it is not very clear what an alternative "integral" approach would comprise. While some participants believe that liberalization of trade in services facilitates access to competitive services and the more efficient allocation of resources in the country itself, many developing countries are looking for more direct contributions from any agreement, such as provisions to permit them to secure access to distribution channels and information networks.

- The question which aspects of domestic regulatory systems are to be considered as barriers to trade is yet to be settled by governments. To take one illustration from the GNS debate, the European Community has proposed that it will be necessary to balance progressive liberalization of market access with respect for policy objectives, and has put forward a concept of appropriate regulation which recognizes that some regulations are necessary to achieve national policy objectives. One possible task for the GNS will be to distinguish between regulations that can be regarded as non-negotiable and those that should be regarded as negotiable and therefore subject to eventual elimination or amendment. For some participants, the whole notion of appropriate and inappropriate is questionable, and for them, more discussion would be required on the feasibility of establishing a basis for such a distinction.

#### IV. MONTREAL MID-TERM REVIEW

The Montreal meeting was convened at Ministerial level to review the progress achieved at the Uruguay Round's half-way mark. In the services area, the main result was that participants decided that the GNS should endeavour to assemble agreed views on principles and rules into a draft framework before the end of the current year, and also to provide a list of service sectors that will be covered by international rules. Although the impasse over agriculture and other issues in the Uruguay Round means that the services negotiations are currently "on hold" at the formal negotiating level, the text accepted on a preliminary basis by Ministers at Montreal does represent a significant step forward when one recalls the initial reservations of

some countries regarding negotiations and the fact that the talks have been underway for only two years.

Regarding sectors, the meeting gave greater specificity to the practical means by which the sectoral coverage of the multilateral framework will be determined. Ministers instructed the GATT secretariat to draw up a reference list of service sectors that could help to delineate the universe of commercially-traded sectors to which a framework agreement might apply. Ministers similarly invited participating countries to submit so-called "indicative lists" of sectors of interest to them, and it was agreed that no service would be excluded on an *a priori* basis.

Progress was also made in the process of establishing a framework agreement. Prior to Montreal, no consensus had emerged among GNS members on the issue of how to define trade in services for the purposes of the negotiations. At the Mid-Term Review, Ministers noted that work on definition should proceed on the basis that the framework may include services involving the cross-border movement of services, of consumers and—significantly—of factors of production (such as labour and capital) where the latter movement is deemed "essential" to suppliers of services. By adopting this approach, Ministers ensured that the framework agreement can, potentially at least, apply to a wide range of services transactions, some of which involve a foreign presence. However, this should be examined further in the light of certain definitional criteria, including specificity of purpose, discreteness of transactions, and limits of duration.

A related feature of the text concerns the conditions that could govern market access. In accordance with the eventual definition of trade in services, Ministers considered it relevant that "foreign services may be supplied according to the preferred mode of delivery", i.e. either through the sale of services in cross-border fashion or through their provision via a local presence.

Ministers in Montreal also noted the relevance of certain concepts, principles, and rules to the elaboration of a multilateral framework for trade in services, although further work is needed on all such matters mentioned in the Montreal text. In some cases (for example, most-favored-nation status/non-discrimination, safeguards and exceptions) Ministers considered it relevant that such provisions will have to be included in the framework and will require elaboration. In other cases, the language indicates the basic meaning and thrust that future provisions of the multilateral framework may contain (for example, transparency, progressive liberalization, national treatment,

market access, increasing participation of developing countries, regulatory situation).

The following are illustrations of the concepts considered relevant for the elaboration of a multilateral framework:

- Transparency provisions to ensure that information be made available pertaining to national laws, regulations and administrative guidelines, as well as to international agreements relating to services trade to which signatories are parties;
- Rules providing for progressive liberalization which aim, both during and after the Uruguay Round, to achieve progressively higher levels of liberalization of trade in services, taking due account of the level of development of individual signatories; and
- Provisions for the increasing participation of developing countries in world services trade and for the expansion of their services exports through, *inter alia*, improved access to distribution channels and information networks.

#### V. THE POST-MONTREAL PERIOD

In terms of the negotiating process, it is important to recall that it was only in September 1986 that agreement was reached by governments to start the process of negotiations to liberalize trade in services. Since that time, a considerable amount of work has been done, with negotiators stating their national positions and their views relating to the general process of liberalization of trade in services. This has been an important foundation-building stage.

As the negotiating phase of the process of drawing up the multilateral framework gets underway, it is clear even from this brief analysis that there are a number of issues to be resolved. The Montreal text gives clear guidance as to how the negotiations are to proceed, and the timetable that is to be respected. The following main steps are provided for:

- By the target date of May 1989, participants are invited to submit indicative lists of sectors of interest to them. Much in this regard will depend on how the negotiating process continues after April. At this point, what the May list should contain by way of "sectors of interest" is not yet clear.
- The text provides for a process of examining the implications and applicability of concepts, principles and rules for particular sectors and specific transactions. It is still to be decided in what precise ways the sectoral testing phase can be made operational.
- Ministers have called for the collection of more detailed information

on relevant international arrangements and disciplines and for assessment of the implications for the GNS negotiating process; and for continued work on statistics to provide participants with as wide a data basis as possible for negotiating purposes.

- Finally, Ministers have noted that the elements for a draft framework should be assembled by the end of 1989 which would allow negotiations to take place for the completion of all parts of the multilateral framework and its entry into force by the end of the Uruguay Round.

Assuming negotiations resume this spring, this certainly amounts to a full and demanding timetable. Yet the time factor is only one, albeit important, practical consideration. How much substance will be agreed upon by the end of the round will depend on the extent to which countries agree that the main principles and concepts that will form the basis of the future multilateral framework have been adequately dealt with, and to the extent to which countries can identify a satisfactory outcome from their national perspectives.