

## MULTILATERAL NEGOTIATIONS ON TRADE IN SERVICES: CONCEPTS, GOALS, ISSUES

*Bernard Ascher\**

### INTRODUCTION

Two-and-a-half years ago at Punta del Este, Uruguay, trade ministers representing GATT member countries reached an eleventh-hour compromise to include services in the next round of multilateral trade negotiations. In the opening phases of the so-called Uruguay Round, the GATT Negotiating Group on Services (GNS) met every six or seven weeks, and at the end of the second year, a Mid-Term Review was conducted at the ministerial level. What is the current status of negotiations? What issues are involved? What is the likelihood of agreement? These important questions are on the minds of many engaged in international commerce as well as those engaged in trade negotiations.

This paper discusses the status of services negotiations, U.S. negotiating objectives, and some of the key issues involved. It opens with a brief description of the U.S. concept of trade in services, which is essential for an understanding of the U.S. position in these negotiations. The next section presents the historical setting, explaining why services are a high priority for the United States and how the subject was brought into the context of a multilateral negotiation. The third section describes the current status of services negotiations and U.S. objectives; and the final section identifies and addresses some key issues involved in the negotiations.

### I. TRADE IN SERVICES: THE U.S. CONCEPT

Obviously, the definition of trade in services is of fundamental importance in determining the scope of negotiations. Within the current Uruguay Round discussions, the definition itself is subject to negotiation.

Services generally are regarded as activities other than farming, mining, and manufacturing. The U.S. Trade and Tariff Act of 1984 defines the term "services" as "economic activities whose outputs are other than tangible goods". The scope of coverage is broad,

---

\* Director, Service Industry Affairs, Office of the United States Trade Representative.

encompassing transportation, communication, tourism, banking, insurance, professional and business services, and even construction, whose ultimate products are tangible goods or structures.

In some respects, the concept of trade in services is similar to that of merchandise trade. Like goods, some services (such as transportation and communication) can move across international boundaries. Also, goods and services are alike because both can encounter barriers that interfere with trade.

The concept of trade in services, however, differs from trade in merchandise in that it includes a far greater variety of international transactions. In addition to cross-border trade, where services are produced in one country and consumed in another, trade in services encompasses transactions in which production and consumption occur in the same country. These include services consumed by travelers outside their home country (tourists, students, and medical patients). They also include services performed by those visiting clients in other countries (business consultants, architects, engineers, and other professionals).

Another type of international transaction included in the concept is the sale of rights to use patents, trademarks, copyrights, franchises, and other intangible property. In this case, nothing moves across the border, except the legal contract and/or the legal rights.

More important to some countries are the sales of services through affiliates located in the consuming country. These transactions are included in the concept because of the nature of certain services which require a local presence in order to effectively reach the consumer (for example, accounting, advertising, banking and insurance). For the United States, sales through affiliates are a most important channel of international service transactions.

## II. BACKGROUND AND HISTORICAL SETTING

For the past four decades, the United States has engaged in multilateral negotiations to reduce barriers to international commerce. That effort has been successful in cutting tariffs substantially on a worldwide basis. During this period, economic expansion and real per capita income growth were accompanied by a tremendous increase in world trade. This expansion stands in sharp contrast to the pre-war period, which was characterized by stagnation in the domestic economies of major nations, compounded by a spread of import barriers, export subsidies, trade wars, and a general emphasis on closing domestic markets to foreign competition.

### *GATT Negotiations*

Prior to the Uruguay Round, seven major rounds of negotiations were held under auspices of the GATT—the General Agreement on Tariffs and Trade—since its establishment about forty years ago. These negotiations were confined almost exclusively to merchandise trade. The last major round—the Tokyo Round—was completed in 1979, after more than five years of bargaining. While the early rounds focused primarily on reducing tariff barriers, the Tokyo Round involved both tariff and non-tariff barriers to trade.

### *Trade in Services*

In the 1970s, the growth of the service sector became more pronounced. In the United States, the sector accounted for a larger portion of gross national product and for most of the new jobs created (sixty-seven percent of GNP in 1988 and seventy-five percent of employment). Moreover, the potential for wider distribution of services internationally through new technologies gained greater recognition.

At that time, major companies in the service sector—insurance and other financial institutions, travel and tourism organizations, and information-based businesses—began seeking treatment in international trade equal to goods-producing companies. To some extent, these companies were interested in obtaining export promotion and financial assistance. Many were concerned about restrictions and discriminatory practices in foreign countries which denied them the opportunity of international sales.

In the Trade Act of 1974, which provided authority for the Tokyo Round negotiations, international trade was clearly defined to include services as well as goods. The Trade and Tariff Act of 1984 established negotiations on services as an objective of U.S. trade policy. One of the stated purposes of the Act is to encourage the expansion of U.S. service industries in foreign commerce, as well as the expansion of international trade in services, through the negotiation of agreements (both bilateral and multilateral) that reduce or eliminate barriers. The Act also requires annual reports by the U.S. Trade Representative on barriers to U.S. services trade and investment.

Thus, because of the growing importance of services and the lack of internationally accepted rules and principles to deal with restrictive practices of governments, the United States gave high priority to inclusion of services in international discussions.

Around 1980, the United States started a drive, spearheaded by the U.S. Trade Representative (“USTR”), to liberalize trade in serv-

ices by expanding coverage of services in general trade forums. First, it persuaded the Trade Committee of the OECD to undertake studies of trade in services. The findings, that participant countries had a significant stake in services trade and that such trade was restrained by recurring obstacles, helped to build consensus for the follow-on effort to expand coverage of services under the General Agreement on Tariffs and Trade (GATT). In 1982, a work program was begun by GATT member countries based on the preparation and examination of individual country experiences in services trade. Between 1984 and 1986, seventeen national studies were submitted by developed countries. Finally, in September 1986, the trade ministers of most of the ninety-seven member countries met in Punta del Este, Uruguay and agreed to launch a new round of negotiations, including talks on trade in services, to be completed in four years.

### *Services Trade Problems*

The impediments to selling services abroad are largely regulatory. While Government regulations generally are intended to meet legitimate objectives, such as national security, financial stability, public health and safety, and consumer protection, they often have the effect of limiting foreign competition. Sometimes, because of subtleties in laws and regulations, it is difficult to identify measures that unnecessarily restrict competition.

In September 1985, the United States submitted to the GATT an illustrative list of roughly 500 problems in 59 countries, involving fourteen service sectors. The list was submitted as part of an exchange of information on national studies of services trade.

As examples, in some countries, the number of foreign banks that may enter the market is tightly restricted; the types of business they can conduct and the amounts and kinds of assets they can own also may be limited. Insurance companies may not offer certain policies for sale unless the Government determines that these services cannot be provided by local insurance companies. Accounting firms may not perform audits, unless they are supervised by local accounting firms. In building and construction, contracts may not be open to non-national firms, local firms may benefit from subsidies or preferences, foreign engineers and architects may be unable to obtain certification and may be taxed at higher rates than local professionals.

### *Negotiating Experience*

On a bilateral basis, the United States has entered into services negotiations with two countries: Israel and Canada. These are land-

mark negotiations, generally dealing with all services as an integral unit. The free trade agreement with Israel contains a Services Declaration, which specifies general rules and principles to be applied to services. Both sides agreed to review individual service sectors to arrive at legally binding annotations to the agreement, covering those sectors. Three sectors are currently under consideration in this context: travel and tourism, insurance, and telecommunications. In the case of Canada, the recently ratified free trade agreement includes a wide range of services. It ensures non-discriminatory treatment of those service providers under future U.S. and Canadian laws and regulations. These bilateral negotiations helped us learn about dealing with services issues, experience that is proving to be quite useful in a multilateral setting.

### III. STATUS OF MULTILATERAL NEGOTIATIONS

Despite the current impasse in GATT negotiations on agriculture, intellectual property rights, textiles, and safeguards, technical work is continuing on services on a very informal basis. Some participants met informally in February to consider the work plan agreed to in Montreal in December and to discuss ways of arriving at a suitable framework agreement. This section reviews developments on services in the Uruguay Round and explains U.S. objectives.

#### *Services in the GATT*

The GATT negotiations provide an opportunity for a systematic approach toward the resolution of problems in providing services internationally. Part II of the Ministerial Declaration of the Uruguay Round sets forth the objectives of the negotiations on trade in services. In a series of meetings over the past two years, the Negotiating Group on Services (GNS), established in the Ministerial Declaration, has addressed these problems in the light of the objectives and is examining how to develop a multilateral agreement to deal with them.

#### *GNS Discussions*

In the initial phase of negotiations, the GNS identified five elements to be addressed in conformity with the negotiating objectives:

- (1) how best to define trade in services for the purpose of negotiations and how to deal with statistical issues;
- (2) how to determine the broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors, might be based;

- (3) how to agree to a sectoral coverage of the multilateral framework for trade in services which represents a balance of interests for the participating countries;
- (4) how to deal with existing international disciplines and arrangements that are concerned with services activities on a sectoral basis; and
- (5) how to identify and deal with 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.

At the end of 1987, the Group reviewed its progress and encouraged the contribution of papers, proposals, and statements to advance the negotiating process. As a result, during the second year, some thirty-five proposals were submitted on the contents of a framework agreement, and discussions were generally substantive and constructive.

### *U.S. Objectives*

Consistent with the objectives of the Ministerial Declaration of Punta del Este, the U.S. aim is to develop a set of general rules and principles that in many instances are similar to those applicable to trade in merchandise, with a view toward liberalization of trade. Following the drafting of this framework agreement, the participants would then seek to examine services on a sector-by-sector basis to determine the necessity for provisions that are peculiar to individual sectors. These provisions could be annexes to the framework or they could be incorporated into separate legal instruments. During the course of the negotiations, the participants should examine practices that may be inconsistent with those rules and devise ways of bringing about conformity with the rules, in effect, removing or reducing the impediments to trade in services.

Basic principles for services would focus on fair and non-discriminatory treatment of foreign suppliers of services in selling to the market from abroad or through local facilities. One such principle could establish the right of foreign suppliers to sell their services in the national market under no less favorable conditions than those services sold by national suppliers (“national treatment”), thus affording clear access to the market and non-discriminatory treatment vis-à-vis domestic firms. Countries also could assure transparency of regulations affecting foreign suppliers of services, to give due notice of pending changes in regulations and provide an opportunity for interested parties to comment on the proposed regulations. Among

countries, procedures could be established for identification and notification of discriminatory or unfair practices and "protectionist" measures, along with means of formal consultation and settlement of disputes.

In addition to transparency, non-discrimination, national treatment, consultation, and dispute settlement, other specific concepts proposed by the United States for inclusion in a framework agreement are discipline on state-sanctioned monopolies, discipline on subsidies, and non-discriminatory accreditation procedures. (Some of these concepts, particularly transparency, non-discrimination, and national treatment, have now been accepted by all parties.)

### *Procedures*

In May 1988, the United States introduced a proposal in the GNS to set out an orderly sequence in which negotiations on services should proceed. Under this proposal, the process would consist of three phases: (1) drafting the rules; (2) determining sector coverage; and (3) liberalization.

The first phase would include agreement on the elements of a framework agreement. The second phase would determine to which service sectors the rules would apply. The U.S. proposed that, to focus discussion, the Secretariat prepare a consolidated list of sectors based on consultations with delegations. This indicative list would then be used as the starting point for deliberations. Subsequently, delegations would table lists of sectors that they would be willing to cover in the framework agreement, depending on the willingness of other countries to agree to such coverage.

During the second phase, the framework rules would be checked against specific sectors. Where rules might be unreasonable or inappropriate for a given sector, those rules could be adjusted to make them more relevant. Also during this phase, sectors that did not conform to the rules in each country would be identified. Following completion of the agreement, member countries would be required to bring their laws and regulations into conformity with the rules. Countries that recognize their inability to enact conforming legislation would be permitted to notify their reservations. The agreement would have a non-application clause for countries whose commitments are insufficient to achieve a balance of obligations.

In the third phase, actual liberalization would take place with countries modifying their regulations to conform with the rules of the agreement.

### *The Course of Negotiations*

In general, most other developed—and some developing—countries agree with the U.S. approach in concept. They share a commitment to negotiating a broadly based services agreement. These countries generally agree on the kinds of principles on which such an agreement would be based, although some differences do exist regarding the best procedures for negotiating the agreement.

Some developing nations, however, continue to question the value of liberalizing trade in services. They seek to narrow the scope of the negotiations and are pushing their own agendas which include preferential market access, restrictive business practices regulations, transfer of technology rules, and priority sectors. This reflects the view that developing an indigenous services industry, critical to economic development, should be accomplished through traditional infant industry models rather than through foreign presence.

### *Mid-Term Review*

The Montreal Mid-Term Review, held December 5-9, 1988, marked the midpoint of the four-year Uruguay Round negotiating process. Its purpose was to assess progress made to that date and to outline the objectives for each of the fifteen negotiating groups for the remaining two years of the round.

Important agreements were achieved in eleven of the fifteen negotiating groups, including the group on services. That agreement will accelerate the negotiations to provide meaningful rules governing international trade in services. The Ministerial Declaration on services establishes a work program and timetable that should lead to rapid progress in 1989. The Declaration breaks a procedural logjam on the issue how to begin negotiating sectoral coverage of a framework agreement. It elaborates on key issues to be covered by the framework, including national treatment, transparency, non-discrimination/most-favored-nation, and market access. The principles affirm the right to supply services according to a supplier's preferred mode of delivery, which would include establishment.

The Declaration contains no provisions that expressly authorize sectoral reciprocity. A country's position is fully protected with respect to future efforts on the part of any other participant to initiate sectoral reciprocity undertakings as part of the final understanding. In addition, the text provides language that will encourage wide participation in a services agreement by developing countries without establishing a right to special and differential treatment.

### *Outlook*

Going into the Montreal meeting, participants sought political direction from Ministers to give momentum to the negotiations. At the outset, due to lack of agreement on a Chairman's report, agreement on a services work program appeared doubtful. Agreement was reached, however, and the United States is encouraged by the progress made in this negotiating group.

It is a considerable achievement that member countries for the first time are seriously discussing the possible application of GATT rules and principles to international trade in services.

As we enter the third year of the Uruguay Round, progress is being made toward reaching common understanding of the concepts and composition of services trade and the problems faced by governments in reconciling their differing objectives while fulfilling the mandate of the Declaration of Punta del Este.

U.S. negotiators realize, of course, that the evolution of an agreement on services depends upon the interests of all of the various participants and their perceptions of the consequences. The negotiating process will bring about better understanding of the impediments to trade in services and the mutuality of benefits possible through establishment of multilaterally agreed rules and principles to guide the trade. In keeping with the Declaration of Punta del Este, any resulting agreement should promote economic growth of all trading partners and the development of developing countries; respect the policy objectives of national laws and regulations applicable to services; and take into account the work of relevant international organizations.

The spirit of the negotiations is much improved over earlier days. Difficult and sensitive issues lie ahead, and the outlook for agreement is less than certain, but the United States is generally optimistic on the prospects for further progress.

## IV. THE ISSUES

### *Key Issues*

The issues involved in service negotiations are complex and inter-related. Discussed here are some of the key issues dealing with government regulation, factor flows (capital and labor), and economic development. The way these issues are treated will affect to some extent the sector coverage and conditions of any agreement reached on trade in services.

### *Discriminatory Regulation*

Attaining agreement on international rules and principles requires that signatories obligate themselves to abide by those rules. Obviously, sovereign governments—seeking to tailor laws and regulations to meet their own political, economic, cultural, and social objectives—are extremely reluctant to enter into agreements that could curtail their flexibility and subject their actions to international scrutiny.

To a large extent, GATT members have undertaken such commitments in accepting rules for merchandise trade and in seeking to reduce tariff and non-tariff barriers to such trade. The benefits of these rules and tariff reductions are more clearly seen and understood for goods than for services. Governments have gained years of experience in dealing with trade problems for goods, whereas the concept of trade in services is relatively new.

For a variety of reasons, service industries are highly regulated in most countries. For banking and financial services, governments need to maintain the stability and integrity of the monetary system. For insurance, consumers need assurance that companies are financially responsible and will pay claims as well as collect premiums. Transportation and communications are vital to national security. Construction sites and resulting structures must meet public safety requirements. For certain professions (medicine, law, accounting, engineering), certification is necessary to assure competent service.

From the standpoint of trade in services, it is important that regulations be designed to safeguard legitimate public interests without disadvantaging non-national suppliers of services. Too often, rules and regulations deliberately or inadvertently have the effect of keeping out foreign competition. The regulations that need to be dealt with in trade negotiations are those that unnecessarily protect local industries to the detriment of foreign suppliers and domestic consumers.

The task of the negotiators will be to design provisions that define as clearly as possible what constitutes regulations that are unnecessarily protective, to prescribe rules for alleviating unnecessary or discriminatory protection, and to establish procedures for settling disputes on these matters. At the same time, ways must be found to respect the sovereignty of individual countries and their national policy objectives.

### *Establishment*

To serve the market effectively, providers of services generally need to establish a commercial presence within the country. Proximity to

the consumer builds confidence of the consumer and helps the producer understand the market better. Indeed, many countries require by law that companies establish facilities in the country in order to engage in certain service businesses. Banking and insurance are prime examples. Setting up an establishment of this kind requires a capital investment.

Rules and regulations that have the effect of denying or discouraging such establishments in order to reserve the home market entirely for locally owned service providers are the types of barriers that need to be addressed.

Some delegates have also raised the question of whether a services agreement should liberalize the movement of labor. Immigration in most countries, of course, is a highly sensitive political and social issue—let alone an economic issue. Realistically, it is difficult to foresee any country subordinating its immigration laws to its trade laws. Nevertheless, it may be desirable to examine the problems associated with border-crossings by people to the extent necessary to support trade in services. Foreign services professionals may have special expertise not available locally—to set up data processing systems, to audit financial records, to train and supervise other workers, or to perform similar duties. In some cases, companies are unable to obtain foreign personnel for temporary entry because of restrictive work permit requirements, required percentages of local nationals to be employed, hiring restrictions or quotas, and discriminatory accreditation procedures for professionals.

The United States does not believe that it would be useful or appropriate to negotiate immigration problems in a trade forum such as the GATT, nor does it believe that immigration rules should be subordinated to trade rules. However, because such restrictions could have a profound effect on individual service operations, it is suggested that efforts to deal with disputes over the legitimacy of the rules governing the movement of labor should be dealt with under existing consular mechanisms.

### *Economic Development*

The Ministerial Declaration of Punta del Este specifically calls for “promoting the growth of all trading partners and the development of developing countries.” Removal or reduction of barriers to trade in services will benefit all countries and contribute to the development of lesser developed as well as developed countries. When service providers establish a presence in another country, they bring in capital and modern technology and business methods. They create jobs, make

use of local labor, and provide training for employees. Industries that use services in lessor developed countries—farms, factories, and other businesses—will become more efficient and competitive through improvement in the kinds and qualities of services made available to them.

The U.S. proposal recognizes that some countries may need more time to bring their laws and regulations into conformity with the rules of an agreement. Extended phase-in time can be provided to lesser developed countries through the reservation mechanism in the U.S. proposal. Basically, however, the United States does not favor old-fashioned “special and differential treatment” for the simple reason that history has shown that permanent protection hinders development. As many countries are beginning to discover, open policies that attract international business stimulate vigor and growth of the national economy.

#### V. CONCLUSION

The issues enumerated above are some of the key issues involved in the GATT services negotiations. They are not the only issues. As previously stated, the purpose of this paper is to identify key issues for purposes of discussion and study. It is not intended to provide definitive solutions. These are very difficult matters that must be worked out by negotiators after thorough exploration and discussion.

A host of difficult issues must be addressed in the negotiations. Solutions to the problems will require patience and understanding, imagination and creativity. Agreement is possible if the participants recognize their mutuality of interests and conclude that overriding benefits will result from the commitments they undertake collectively.