

Appendix F

WORKING DRAFT OF A FRAMEWORK FOR A GATT CODE ON TRADE IN SERVICES;*

Preamble:

Signatories to the Agreement on Trade in Services, hereinafter referred to as the "agreement";

Noting that Ministers meeting at Punta del Este in September 1986 agreed that Trade in Services should be covered by a multilateral framework; and meeting in Montreal in December 1988 reaffirmed the Punta del Este objectives and agreed that negotiations should proceed expeditiously;

Desiring to achieve maximum freedom for trade in services and afford producers of such services fair competitive opportunities of access to markets worldwide so as to encourage the growth and development of the economy and standard of living world wide, while being particularly mindful of the interests of poorest developing countries;

Being mindful that there is great disparity in the form of ownership of service industries, some being private and some the exclusive domain of governments;

Recognizing that up to 25% of all international trade is trade in services, which is currently outside the purview of the General Agreement on Tariffs and Trade, hereinafter called the "GATT", and is completely open to the imposition of trade barriers and trade discrimination;

Recognizing that although regulation of a service industry to protect legitimate health, safety and security needs of citizens is a national matter, national, regional and local regulation can be used for trade discrimination purposes;

Seeking to eliminate all such trade in services barriers, discrimination and trade distorting regulation, and recognizing existing rights and obligations under the GATT and other multilateral agreements;

* This document summarizes views developed by industry practitioners. It was drafted by Barrie Austen of Boeing Computer Insurance Council as a guideline discussion document and checklist monitoring the Uruguay Round trade in services discussions. While cast in the manner of a trade agreement, the document is not intended to be a text. The points noted, if incorporated in an agreement, would require more precise presentation.

Desiring to promote the continued growth of trade in Services;
Agree as follows:

Article []: Concessions

Signatories agree:

1. To reduce and eliminate trade barriers, and discriminatory treatment of trade in services as set out in a schedule of concessions annexed to their accession to this agreement.
2. To refrain from imposing new or additional barriers to trade in services.

Article []: Coverage

1. This agreement will cover all traded services including those set out in Annex I unless: (a) Specifically excluded in the reservations appended as Annex II to this agreement or (b) Covered by an existing international agreement set out in Annex III or (c) The subject of a more comprehensive international agreement as defined in Annex IV.

Article []: Transparency:

Signatories shall:

1. Notify and advise other signatories of laws, regulations, administrative guidelines, taxation policies, or other methods of allocating, subsidizing, or regulating the supply and provisioning of services whether by governments or professional organizations and proposed changes thereto.
2. Assure non-domestic suppliers of services have access to regulatory authorities and appeal against adverse decisions.

Article []: Market Access

Signatories will assure non-domestic suppliers have maximum freedom to market and provide trade in services domestically and afford such producers fair competitive opportunities to access worldwide markets.

Article []: Non-discrimination

Market access under the agreement shall be on an MFN/Non-discriminatory basis without regard to the method of delivery of the service.

Article []: National Treatment

Foreign suppliers of services shall be afforded rights, privileges and protections no less favorable than are granted to domestic concerns. These would include, but are not limited to:

- (a) Impartial resolution of trade, business or regulatory disputes (i.e. in courts, before regulatory authorities, etc.)

- (b) Access to, and use of, distribution/delivery systems particularly when state owned
- (c) Access to local or foreign service providers
- (d) Use and protection of brand names, service marks, trademarks etc.
- (e) Access to licenses, permits and other authorizations to operate
- (f) Taxation and access to fiscal incentives.

Article []: Commercial Establishment

Signatories will grant foregoing suppliers of services the right to establishment, and specifically the right to:

1. Form branch, subsidiary, joint venture, partnership or other forms of commercial presence to effectively sell, produce, distribute and collect for its services.
2. Have identical rights of establishment when commercial establishment is not necessary (e.g. for some network service suppliers).

Article []: Regulation

1. Signatories shall administer all laws and regulations in a uniform, impartial and reasonable manner.
2. In regulated domestic services, governments and self-regulating professional bodies empowered to establish and enforce accreditation/professional standards, should use criteria base on competence and ability to supply the services and avoid restrictions based on perceived "need" or other potential barriers to entry or performance.
3. When new domestic regulations are deemed necessary, regulatory authorities should consider the potential trade implications of alternate proposals and seek to minimize potential trade distortion.
4. Signatories commit to provide a mechanism to achieve mutual recognition of professional certification and licensing.
5. Signatories shall on request review the operation of its laws and regulations in light of the provisions of this article.

Article []: State Enterprise

1. All state enterprises shall be covered by this agreement.
2. Where there is competition between government owned enterprises and foreign enterprises, government owned enterprises shall have no more rights or privileges than private counterparts. Specifically government will avoid:
 - (a) Cross subsidies
 - (b) Export subsidies
 - (c) Directed procurement, mandatory offsets or other inducements that only governments can provide.

3. A state enterprise shall not have regulatory authority over an industry in which it also competes. Article []: Government Procurement

Signatories agree to:

1. A mechanism to open procurement of services by government agencies, state enterprises and mixed enterprises to international providers
2. A framework to establish institutional scope, threshold values, *et al.*

Article []: Subsidies

Signatories agree to:

1. A mechanism to establish, reduce and eliminate trade distorting subsidies
2. A framework of subsidies that are: permitted; prohibited; and prohibited is adverse trade impact can be established.

Article []: Transborder Flows of Information and Service Professionals

Signatories agree to:

1. Eliminate and avoid restrictions on the transfer of data within and between countries other than those restrictions absolutely necessary for the protectionism of privacy, safety and national security
2. Facilitate the entry and exit of service professionals at border crossings.

Article []: Regional and Local Governments

In addition to their obligations under this agreement, signatories shall assure that provincial, regional and local governments, governmental agencies and non-governmental agencies having control over service sectors, adopt provisions consistent with this agreement.

Article []: Surveillance, Review, Consultation and Dispute Settlement

Signatories agree to:

1. Establish a Committee of Signatories with specific responsibilities that will meet regularly
2. Establish the GATT Secretariat as administrator of the agreement and charge it with monitoring compliance
3. Establish a regular review cycle and provisions for code modification/amendment
4. Establish mechanisms for notification, code dispute settlement, enforcement, nullification and impairment.

Article []: Final Provisions

1. Acceptance and Accession provisions shall permit signatory governments and the EEC to sign.

2. Upon Acceptance and Accession, signatories shall provide a Schedule of Concessions, and where appropriate, a Schedule of Reservations. Reservations identified may not be entered in respect of any provision without the consent of other signatories.
3. Entry into force will be January 1992 (or whatever makes sense!) or a month following acceptance or accession to the agreement.
4. National Legislation will be introduced to bring laws and regulations into conformity as per the signatories schedule of concessions.
5. Amendments shall come into force for a member only after he has accepted those amendments.
6. Withdrawal shall be 12 months after serving written notice.
7. The annexes shall be an integral part of the agreement.

Annex I

Technical Notes Clarifying Application to Specific Sectors

Annex II

Excluded Services

Annex III

International Service Agreements in Effect

Annex IV

Sectoral Agreements Going Beyond the General Principles