

WORLD TRADE ORGANIZATION

RESTRICTED

S/C/W/71

24 November 1998

(98-4734)

Council for Trade in Services

Original: English

COMMUNICATION FROM THE UNITED STATES

Transportation Services

The attached paper has been received from the delegation of the United States with the request that it be circulated to the Members of the Council for Trade in Services to assist in the discussion on Education Services in the context of the information exchange programme.

A. GROWTH OUTLOOK AND BENEFITS OF LIBERALIZATION

The demand for transportation services is derived from the growth in world trade. One of the most basic benefits of liberalization of trade in transport services is that it increases the variety and amount of transport services available to WTO Members. The sector also is labour and capital intensive, contributing to employment gains.

Transportation services also support the development of a strong infrastructure and thereby provide important benefits beyond the sector itself. A modern transportation network - in which various modes of transportation (air, land, water) function together - supports the smooth flow of imports, exports and transit of goods. This leads to economic growth and increased trade in both goods and services. Conversely, antiquated transportation networks can unfairly undercut the ability of WTO Members to compete on the basis of quality and price of traded goods and services. The emerging economies stand to benefit especially from allowing commercial presence and cross-border activity in transportation services sectors to help lessen the financial burden of needed infrastructure improvements.

With respect to international air transport, substantial liberalization has taken place since the conclusion of the Uruguay Round. The U.S. has concluded open skies agreements with 32 nations around the globe. Some of these countries have in turn made similar agreements with one another. In addition, major air transport liberalization was achieved in agreements between the United States and Canada, Japan and France. These 35 bilateral air transport markets account for a large percentage of the world's international passenger and freight traffic.

Official U.S. trade data for transportation services include passenger revenues, freight transportation revenues, and revenues for port services and other transportation services. The U.S. collects data for both cross-border and majority-owned affiliate transactions. The relative importance of the two categories varies by type of transportation service and geographic location of countries involved, including regulatory barriers on cross-border trade.

According to official U.S. trade data, U.S. transportation services cross-border exports for 1997 totaled US\$ 47.8 billion. Cross-border imports for 1997 totaled US\$ 47.2 billion. Sales by foreign-based affiliates of U.S. firms for 1996 (latest year for which data is available) totaled

US\$ 10.6 billion. Purchases from U.S.-based affiliates of foreign firms for 1996 totaled US\$ 9.7 billion.

B. POSSIBLE AREAS FOR FUTURE DISCUSSION AND WORK

- Increased privatization, competition within and deregulation of transportation services sectors provides a good foundation for improved market access and national treatment commitments from WTO Members, including for Mode 3 - establishment of commercial presence, Mode 1 - cross-border and Mode 2 - consumption abroad. Effective market access in this sector also must include access to and use of ancillary services and multimodal transport services.
- The experience of WTO Members who have undertaken deregulation of the transportation sector would be useful as we take a look at remaining regulations and their relationship to the requirements of GATS Article VI.
- It would be useful to review the current classification in transportation sectors to make sure that it covers all important services. Contrary to the assertion in one of the Secretariat's papers, we do not believe as a general matter that aggregation is a deterrent to progressive liberalization, as long as all relevant commercial activities are captured in the classification. Reliance should be placed on definitions using terms well-understood among transport institutions and businesses. The multimodal nature of modern transportation must also be kept in mind as we develop meaningful classifications. A major task, as mentioned in the Secretariat paper, will be the identification of maritime transport-related activities, particularly door-to-door operations involving connecting transportation elements.
- Issues raised during earlier GATS Council discussions of the postal and courier sector also could be relevant for discussion of the transportation sector.
- The Annex on Air Transport Services contains a requirement that the Council for Trade in Services shall review periodically, and at least every five years, developments in the air transport sector and operation of this Annex with a view to considering possible further application of the Agreement in this sector. The U.S. is undertaking review of commercial activities in the air transport sector to be able to participate constructively in the exercise. The U.S. urges other countries to begin this same preparatory process.

C. U.S. SCHEDULE AND REGIME

Regarding air transport services, in its Uruguay Round schedule, the U.S. has made full market access and national treatment commitments for aircraft repair services in Mode 2 - consumption abroad and Mode 3 - commercial presence. Mode 1 - cross border is unbound for reasons of technical feasibility. Mode 4 - movement of persons is bound by the horizontal provisions of the schedule. The U.S. maintains an MFN exemption for measures which pertain to selling and marketing of air transport services and to operation and regulation of CRS services. The measure applies to all partners with which the U.S. has active aviation relations covered by bilateral or other air services agreements and comity and reciprocity regimes. As noted above in the section on benefits

of liberalization, the U.S. also has undertaken substantial liberalization of the air transport sector since the conclusion of the Uruguay Round.

As a general matter, the U.S. has historically welcomed foreign investment and services commercial presence for road transport. Several U.S. railroads are under foreign ownership. In addition, surface transportation in the U.S. has, for the most part, been deregulated.

Regarding rail transport services, in its Uruguay Round schedule, the U.S. has made full market access and national treatment commitments for passenger transportation (excluding high speed rail), freight transportation, and maintenance and repair of rail transport equipment for Mode 1 and Mode 2. Mode 3 is also fully bound for market access and national treatment except, in the case of passenger and freight transportation, for a reservation specific to direct or indirect ownership of the stock of a railroad company incorporated in Vermont. Mode 4 is bound by the horizontal provisions of the schedule.

Regarding road transport services, in its Uruguay Round schedule, the U.S. has made full market access and national treatment commitments for passenger transport: interurban regular transport for Modes 1 and 2. Mode 3 market access and national treatment is unbound until January 1, 2001, at which time no limitations will apply. For freight transport (cargo that has either an origin or a destination outside the U.S.), the U.S. has made full market access and national treatment commitments for Modes 2 and 3. Mode 1 market access and national treatment is fully bound for transport to or from California, Arizona, New Mexico and Texas through different ports of entry. As of January 1, 2000, this mode of supply will be fully bound. For maintenance and repair of road transport equipment, the U.S. provides full market access and national treatment for Modes 2 and 3. Mode 1 is unbound for reasons of technical feasibility. Mode 4 for the road transport services inscribed in the schedule is bound by the horizontal provisions of the schedule. The U.S. maintains an MFN exemption allowing it discretion to limit the issuance of trucking licenses to persons from contiguous countries on the basis of reciprocity. The measure applies to Mexico and Canada.

The U.S. also has made commitments in its Uruguay Round schedule for “other supporting and auxiliary transport services: customs house brokers.” The U.S. provides for full market access and national treatment for Mode 2 and full national treatment for Mode 3. The Mode 3 market access commitment requires services to be supplied by a corporation, association or partnership; one officer of a corporation or association or one of the members of a partnership must hold a valid customs’ brokers license in order for the entity to engage in such business; and a customs brokers’ license may only be obtained by a U.S. citizen. Mode 1 market access and national treatment is unbound for reasons of technical feasibility. Mode 4 is bound by the horizontal provisions of the schedule.

The United States regime does not limit the number of maritime transport service suppliers in the form of numerical quotas, monopolies, exclusive service suppliers. The U.S. does not limit the total value or quantity of maritime transport service transactions or operations. Only a small portion of U.S. oceanborne trade is reserved to U.S.-flag vessels, mainly the transport of U.S. Government cargoes.

The United States maintains only two measures that limit the total number of foreign natural persons that may be employed in the maritime transport service sector - one that applies to vessels operating in the U.S. domestic trades or receiving certain forms of U.S. government benefits, and a second requiring that not more than 25 percent of the total seamen on a vessel be legal aliens and that licensed crew be U.S. citizens.

With the limited exception of cabotage requirements, there are no restrictions on the ability of shipping lines to provide multimodal services. Except for customs brokerage services, there are no measures limiting the provision of maritime transport auxiliary services. All port services are freely

available on a non-discriminatory basis to the user at U.S. ports. The U.S. does not grant preferential treatment to any countries with respect to the use of port and harbor facilities, except for limited restrictions applied to vessels of certain countries for national security purposes. The U.S. maintains an MFN exemption covering restrictions on performance of longshore work when making U.S. port calls by crews of foreign vessels owned and flagged in countries that similarly restrict U.S. crews on U.S. -flag vessels from longshore work. The measure applies to countries that prohibit longshore work by crew members aboard U.S. vessels.

D. REMARKS ON SECRETARIAT PAPERS/QUESTIONS FOR DISCUSSION

All papers: While we appreciate the work of the Secretariat to summarize the existence or importance of barriers in each mode of supply, and to provide suggestions on classification issues, we emphasize that this is for the background use of WTO Members and WTO Members will have to conduct their own review of the situation.

Road: We support international work to reduce border-crossing difficulties as a means to support enhanced access under Mode 1 or emanating from Mode 3 access. The current WTO work on trade facilitation may prove helpful in this regard.

Road: The U.S. will have to further consider the issue raised in para. 12 regarding maintenance activities carried out via electronic means.

Road/Rail: The Secretariat references earlier work carried out on classification issues under the GATS Committee on Specific Commitments. These documents were for the background use of the Committee members and may or may not be relevant for current work on classification issues.

1. Air:

General: The Secretariat paper begins with a discussion of paras. 2 and 3 of the Air Transport Annex and factors bearing on the inclusion or exclusion of certain services from the coverage of the GATS. Para. 2 states that the GATS Agreement shall not apply to traffic rights or services directly related to the exercise of traffic rights, except as provided for under para. 3 which states that the Agreement shall apply to measures affecting aircraft repair and maintenance services; the selling and marketing of air transport services; and computer reservation (CRS) services. Countries negotiate air traffic rights through separate bilateral or other types of agreements.

So for example, if a bilateral air traffic agreement is in effect for a particular commercial air route, we would consider fuelling (a ground handling service) performed for an air carrier to be directly related to the exercise of traffic rights and thus it currently would not be subject to the GATS. This analysis can usefully be applied to many of the activities treated in the Secretariat paper.

Para. 14: The factors influencing the delivery of aircraft repair and maintenance services by Modes 2 and 3 can best be understood by recognizing that under the Chicago Convention, responsibility for overseeing the safety of the work goes to the country in which the aircraft is registered - not where the work happens to be performed. Repair stations within a country are under continuous surveillance by its aviation authorities; this is not practical for repair stations abroad, so countries with large registries conduct periodic inspection of foreign repair stations.

Paras. 61 and 69: Most non-transport air activities are performed by small aircraft with limited range, making international trade in these services relatively insignificant in comparison with domestic operations. That said, it is clearly an area for consideration as we prepare for review of the Air Annex.

Para. 65: This paragraph treats rental and leasing of aircraft with/without crews as a single type of service. However, leasing with crew is universally regarded as providing an air transportation service. Leasing of the airframe to an operator is essentially a leasing service not regulated as air transportation.

Para. 124: There are only four U.S. airports for which landing slots are established; the other 12,000 or more are without slot limitations for domestic or international flights.

2. Maritime:

Para. 21: Reflagging of vessels to so-called second registries and flags-of-convenience is about taxation of shipping as well as labour costs.

Para. 23: The discussion of maritime alliances does not reflect current arrangements.

Para. 24: The Ocean Reform Act was signed into law in October and will amend the Shipping Act of 1984 effective 1 May 1999. Under the Act, the Federal Maritime Commission has retained its independent regulatory authority. The Federal Maritime Commission is preparing implementing regulations for public comment.

Same Para: The statement that TIACA (actually TACA - Trans Atlantic Conference Agreement) members were recently fined heavily for illegal fixing of landleg tariffs by the Competition Directorate of the EU is not true.

Para. 30: The discussion of shipping safety and environmental protection overlooks the leading role of the International Maritime Organization (IMO). Port state control activities are carried out until the terms of multilateral conventions drafted by the IMO. The U.N. Convention on the Law of the Sea sets out the responsibilities of flag states, coastal states and port states.

Same Para: The subject of "port state control" is not relevant to the WTO or the Secretariat paper.

Para. 61: The U.S. does not limit international freight and passenger services using internal waterways (the St. Lawrence and Mississippi).

Classification (paras. 43-68): The Secretariat paper correctly notes the discrepancies between the so-called "draft model schedule," W/120 and the CPC. We agree that the area of classification and scheduling of commitments will require further work. This section also introduces the issue of multimodal transport. We believe that a more thorough review of this important activity should be addressed in other parts of the Secretariat paper and in discussions among WTO Members. The discussion of inland waterways and coastal shipping may raise questions of cabotage practices. It should be recalled that cabotage was excluded from extended maritime negotiations following the Uruguay Round.
