

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

RESTRICTED
PC/SCS/M/2
2 August 1994

(94-1564)

Sub-Committee on Services

REPORT OF THE MEETING HELD ON 15 JULY 1994

Note by the Secretariat

1. The Sub-Committee on Services held its second meeting on 15 July 1994. The agenda for the meeting is contained in document PC/AIR/11. The purpose of the meeting was to review progress of work in areas of activity under the Sub-Committee.

Progress report on informal discussions on issues relating to the scope of the GATS

2. The Chairman informed the Sub-Committee that he had held informal consultations on the issues relating to the scope of the GATS which are raised in the Note prepared by the Secretariat dated 4 November 1993 (MTN.GNS/W/177/Rev.1). On measures relating to social security, the Chairman said that some delegations were of the view that although such measures may affect conditions of competition in certain situations, such effects are likely to be insignificant. Since subjecting these measures to the disciplines of the Agreement would also raise many practical problems, those participants were of the view that such measures should be excluded from the scope of the Agreement on the ground that their effect on trade in services is minimal. Other participants held the view that it would not be possible to exclude *a priori* any categories of measures since it would not be possible to determine in advance what their effect on trade in services might be. The Chairman stated that it seemed to him at that stage that the majority view was that measures relating to social security should be excluded from the scope of the Agreement. On the other hand, some delegations did not accept any *a priori* exclusions. Therefore, no specific conclusion could be drawn so far; more detailed examination of the issues was necessary. He indicated that discussions would continue after the summer break with a focus on specific types of social security measures, such as medical care, employment injury benefits, unemployment benefits and pensions, with a view to arriving at a better understanding of how such measures may affect trade in services.

3. The Sub-Committee took note.

4. On measures relating to judicial and administrative assistance, the Chairman recalled that there is already an agreement by participants in the GNS, reflected in the Chairman's Statement dated 6 December 1993 (MTN.GNS/W/177/Rev.1/Add.1) that such measures will not be subject to the MFN obligation of the GATS. The remaining question was whether the same logic by which such measures were excluded from the application of Article II (MFN) of the GATS could be extended to apply to the whole Agreement. The Chairman said that his consultations led him to believe that this would be an acceptable conclusion and suggested that such a conclusion could be formalized by a means of a decision by the future Council for Trade in Services based on a recommendation from the Sub-Committee.

5. The Sub-Committee so agreed.

6. With respect to measures relating to the settlement of disputes pursuant to bilateral investment protection agreements, the Chairman said that some delegations were of the view that the effects of such measures on trade in services would be insignificant and that on this ground they should be excluded from the scope of the GATS. Some participants also felt that the treatment provided for under bilateral investment treaties cannot be extended to all other GATS Members with whom no such bilateral treaties exist. Therefore those participants would like to secure a legal coverage for their bilateral agreements. Others were of the view that such measures, where they provide an alternative forum for settling disputes, could result in discrimination against service supplier to whom the alternative is not available. They were therefore unable to go along with any decision to exclude such measures from the scope of the GATS, since they might have effects on trade in services. It seemed clear to the Chairman that further discussions are needed before any conclusions can be drawn.

7. The Sub-Committee took note.

8. On measures relating to entry and stay of natural persons, the Chairman recalled that the main question to address in that respect was: on what basis would a distinction be made between "temporary" and "permanent" residency and employment. This issue was raised during the Uruguay Round negotiations in an attempt to clarify commitments by participants in the area of movement of natural persons. A more general question raised at that time was whether such clarifications should emerge from a common interpretation of those terms as they appear in paragraph 2 of the Annex on Movement of Natural Persons, or whether it is sufficient that each participant state clearly in its schedule of commitments criteria for permanent and temporary residence. The Chairman stated that his consultations revealed a general view that what appears in schedules is sufficiently clear and that, at least for the present, there is no need for further multilateral work on this issue.

9. The Sub-Committee so agreed.

10. The Chairman indicated that he also had preliminary discussions on measures relating to entry and temporary stay of natural persons pursuant to certain bilateral agreements relating to seasonal agricultural workers, working holidays and young workers' programmes as well as other programmes for the exchange of university professors and teachers. The discussions had not led to any agreed conclusions and work would have to continue on those issues.

11. The Sub-Committee took note.

The establishment of an Interim Group on Financial Services

12. The Chairman recalled that in the first meeting of the Sub-Committee held on 19 May he had indicated that he would be consulting on the question of the establishment of a negotiating group on financial services. Following consultations he now proposed that an Interim Group on Financial Services should be established with the following terms of reference:

"An Interim Group on Financial Services is established to monitor the progress of the negotiations under paragraph 1 of the Decision on Financial Services, until the entry into force of the WTO Agreement and the creation of the Committee on Trade in Financial Services. The Group shall hold its first meeting no later than 15 October 1994."

13. The Sub-Committee so agreed.

Progress report on negotiations on basic telecommunications

14. In the absence of the Chairman of the Negotiating Group on Basic Telecommunications, the Chairman of the Sub-Committee stated that the Negotiating Group on Basic Telecommunications had held two meetings on 6 May and 11 July. So far 22 delegations had announced their intention to participate in the negotiations and 17 delegations had participated as observers. The Group had also approved requests for observership by the ITU and UNCTAD. A decision is yet to be taken by the Group on a request for observer status by the Asia-Pacific Telecommunity. In its meeting on 11 July the Group finalized a Questionnaire on competition and regulatory issues. It was agreed that the Questionnaire will be distributed to participants and that the deadline for replies would be mid-September. It was also agreed that replies from governments with observer status in the Group would be welcomed. On future work, the Group agreed that its next meeting will begin on 24 October and continue for two or possibly three days, as needed. At that meeting the Group intends to conduct an exchange of information, wherein participants will have the opportunity to review and seek clarifications of responses to the Questionnaire. Participants will also begin to discuss outstanding technical and conceptual issues.

15. The Sub-Committee took note.

Progress report on negotiations on maritime transport services

16. The Chairman of the Negotiating Group on Maritime Transport Services stated that the Group held its second meeting on 13 July 1994. So far, 34 delegations had announced their intention to participate in the negotiations and 16 delegations had participated as observers. The Group had also approved a request for observer status by UNCTAD. In its meeting on 13 July the Group considered the draft model schedule which had been recirculated on 10 June, and agreed that participants would submit written comments on the draft to the Secretariat, with the intention that these comments would be discussed at its next meeting, which will take place in the week beginning 17 October 1994. It was also agreed that the Secretariat will prepare a Questionnaire on market structures and regulatory regimes in the maritime transport sector. It is hoped that this will be circulated to participants by the end of July and that responses will be received from all participants in time for consideration at the October meeting. It was also agreed that observers should be invited to answer the Questionnaire. The Group also agreed that the Secretariat prepare a compilation of offers made in the maritime transport sector, in addition to the compilation already circulated of commitments appearing in schedules. The new compilation would comprise offers tabled before the conclusion of the negotiations in December but not maintained in the final schedules. It will be based essentially on offers formally tabled, but will also cover, with the agreement of the delegations concerned, some offers which at that stage were tabled informally.

17. The Sub-Committee took note.

Dates for future meetings

18. The Chairman recalled that it was previously agreed that the Sub-Committee might hold three formal meetings during the period September-December 1994. He proposed the following dates for such meetings: 21 September, week of 17 October and week of 28 November.

19. The Sub-Committee so agreed.

Other business

20. A number of delegations referred to the communication by the United States dated 30 June 1994 relating to the scheduling of sub-federal taxes and subsidies (PC/SCS/W/4) and made the point that there is a need for multilateral consultations on the subject matter of that communication. Some expressed concern in relation to the 30-day period. The Chairman of the Sub-Committee clarified that the 30-day time-frame is for the initiation of consultations and not for their conclusion. Therefore, it would be sufficient for delegations to initiate the consultations at this stage. The Chairman indicated that in accordance with the interest expressed by a number of delegations he would be organizing consultations on the communication from the United States after the summer break.

21. The representative of Japan raised a question in relation to Article IV of the GATS (Increasing Participation of Developing Countries) and its compatibility with Article II (Most-Favoured-Nation Treatment). He stated that Article IV establishes obligations on the part of developed countries to extend certain benefits to developing countries only. Therefore, he suggested that the Sub-Committee should consider whether a recommendation should be made to the Council for Trade in Services to adopt a decision analogous in nature to the Enabling Clause of the GATT, or whether the Sub-Committee itself might conclude formally that Article IV would in this respect override the MFN obligation. Other delegations expressed the view that this is an issue that would need further examination. One delegation made the point that before any further work is done on this issue, more clarity is needed on what the problem is. The Chairman said that he would consult informally on this matter.

22. The representative of Canada made the point that there is a need to consider the organization of work in the Sub-Committee and in the Council for Trade in Services over the next twelve to eighteen months. He suggested that in the September meeting the Sub-Committee might consider assigning an order of priority to different tasks which need to be carried out. Some delegations were of the view that such a discussion had already taken place during the first meeting of the Sub-Committee and that by the September meeting there would be very little to add in that respect. It was also pointed out that the Note prepared by the Secretariat dated 11 May 1994 (PC/SCS/W/1) contains a list of functions of the Sub-Committee on which some priorities were decided; it was suggested that it would be useful to have, as a standing item on the agenda of the Sub-Committee, a review of progress on each of them. The Chairman said that this could be a standing item on the agenda.

23. The representative of the European Communities raised the issue of participation of observers in Negotiating Groups, requesting further information on the participation of observers during the Uruguay Round negotiations, as well as on the participation of non-governmental and regional organizations. One representative suggested that while the participation of observers in Negotiating Groups is to be decided upon on a case-by-case basis, it would nevertheless be useful to agree on certain criteria on the basis of which those decisions can be made, such as the membership of the requesting organization and its technical expertise. The Chairman indicated that he would be consulting further on this issue on the basis of background information to be provided by the Secretariat.

24. The Sub-Committee took note.