

GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

MDF/28

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SERVICES

MINUTES OF THE MEETING HELD ON 6-7 FEBRUARY 1986

Chairman: Ambassador Felipe Jaramillo

1. The Chairman noted that this was the first meeting taking place following the November 1985 decision of the CONTRACTING PARTIES (L/5924), which referred to the continuation of the exchange of information and the preparation of recommendations to be considered by the CONTRACTING PARTIES at their next session. He suggested that these two elements should be carried forward hand-in-hand and recalled, in this connection, that as reflected in his report as Chairman of the CONTRACTING PARTIES to the CONTRACTING PARTIES at their Forty-First Session (L/5911), there was no degree of finality in the views expressed thus far on various issues. Since time was short, the meeting could try and establish an indicative work programme to carry out its mandate. Discussions could take place on the basis of available written material, which included sixteen national examinations, minutes from last year's meetings, his report as Chairman of the CONTRACTING PARTIES in 1985, and several secretariat papers summarizing the information made available thus far. Any new information that might be circulated by delegations in the coming months would of course also be taken into account. He also drew attention to paragraph 15 of his report to the CONTRACTING PARTIES (L/5911) which had outlined four general categories of issues presented in the national examinations, namely: (1) general characteristics of services; (2) conceptual framework, statistics and methodologies; (3) national and international regulations governing individual services sectors, and problems identified in relation to international transactions in services; and (4) issues raised in connection with possible multilateral action on services. These four categories seemed to provide an adequate basis on which to conduct discussions. For the immediate future, he suggested the following three ways of approaching the subject, which could be followed in parallel: (1) to continue the exchange of information based on existing material while focussing on the identification of problems; (2) to ask the secretariat to further elaborate on item (3) in paragraph 15 of his report in the light of the 1985 discussions and keeping in mind the need for the meeting to formulate recommendations; and (3) to further consider the information provided by other relevant international organizations; to this end, the meeting could consider inviting representatives from some of these organizations on an ad hoc basis, starting perhaps with UNCTAD.

2. The ideas outlined by the Chairman were considered as providing a useful and comprehensive approach. Several delegations also stressed that there was limited time available and hoped the meeting would not repeat work already done but would move forward. The representative of Japan said the time had come to consider concrete problems, rather than engage in conceptual discussions. While supporting the ideas outlined by the Chairman, the representative of Canada also agreed with the representative of Japan and

added that the meeting should not be overambitious in its aims, given the short time available. Concerning material available, the representative of the European Community emphasized that when new material became available it should be included in the work programme. The representative of Argentina added that the work programme could be adapted in the light of different materials which might be made available: on-going discussions would bring out what priorities should be accorded to the different elements outlined by the Chairman.

3. The representative of India said his government placed great importance on assessing the work of other relevant international organizations. In the absence of a national examination from any developing country he agreed that it would be useful, as a first step, to invite a representative from UNCTAD to explain that organization's work. This suggestion was supported by the representatives of Brazil, Argentina and Yugoslavia. The point was also made that although the possibility should be kept open to invite representatives of other international organizations, the developmental aspect of UNCTAD's work would be particularly important for future discussions. Invitations to other international organizations could be considered on an ad hoc basis. In this context the representative of Japan, supported by the representatives of Canada, Sweden (on behalf of the Nordic countries), Australia, the European Community and the United States agreed that UNCTAD could be invited to the next meeting to make a specific presentation of their study contained in TD/B/i008/Rev.1. However, it was important that the GATT secretariat be able to undertake some analytical work.

4. The representative of the European Community stressed that UNCTAD's presentation should be limited to document TD/B/1008/Rev.1 entitled "Services and the Development Process", and that this document could usefully be circulated to contracting parties prior to the next meeting. This was agreed. The representative of Brazil noted that the secretariat's summary of material submitted by UNCTAD (contained in MDF/17) pointed to future work to be undertaken by UNCTAD, and he felt it might also be useful to discuss this question during UNCTAD's presentation. He also suggested that the Organization for Economic Cooperation and Development (OECD) could be invited to send a representative to explain the two Codes discussed in MDF/17/Add.4. It would also be particularly useful if other delegations could submit lists of what they perceived as obstacles to trade in services, similar to Annex IV of the US national study. The representative of India noted that MDF/17 and addenda omitted the work done by the Intergovernmental Bureau for Informatics (IBI) and asked that the GATT secretariat include this at some future date. It was so agreed.

5. Concerning the nature of UNCTAD's role at the next meeting, the representative of the United States said that GATT secretariat analysis, in the form of raising questions rather than drawing conclusions, was necessary to help consider the documents prepared by UNCTAD. He added that in the absence of any indication that additional national examinations would be submitted, the meeting would have to rely on what had been circulated so far. The work of the GATT secretariat would therefore be crucial with respect to analyzing that material. He thus proposed that at its next session the meeting should also consider a GATT secretariat paper analyzing obstacles to market access for services along the lines of the specific examples listed in Annex IV of the United States' national examination, how they could be addressed and, also what the secretariat viewed as possible outcomes in this

area. This paper could raise a number of questions concerning, inter alia, the legitimacy of the regulations, the relationship between investment and trade, and basic coverage. This proposal was supported by the representative of Australia who added that the GATT secretariat needed to be given an open mandate to enable it to do some useful work.

6. The representative of Brazil said his delegation was ready to look into areas in which the secretariat could assist the meeting's work, but he felt more discussion was needed before conclusions could be reached in this respect. Concerning the participation of other international organizations, and more specifically UNCTAD, he proposed instead that delegations might agree among themselves regarding what questions to ask these organizations. In this regard, he noted that MDF/17/Add.5 relating to the work of ICAO had not yet been discussed. Rather than rely on a secretariat paper, he believed that delegations should submit lists of obstacles to trade in services as they perceived them, similar to Annex IV of the United States' national examination. This would facilitate a discussion of specific and generic regulations as well as of criteria by which governments determine what constitutes an obstacle to trade.

7. The representative of the European Community observed that the question of obstacles was inextricably linked to the question of national regulations: what one country perceived as an obstacle was considered by another to be a legitimate national regulation. These two issues had been addressed separately in the secretariat's analytical summary (MDF/7): he felt that the secretariat could now analyze the interlinkages between these two topics rather than focus on a list of illustrative examples as contained in Annex IV to the United States national examination.

8. The representative of India noted that the secretariat's analytical summary contained a 30 page section entitled "national and international regulations governing individual services sectors" and observed that previous discussions of MDF/7 and revisions had not focussed on the trade-inhibiting aspects of restrictions in the services sectors. Some of the areas suggested by the United States concerning, for example, the grounds for legitimacy or reasonableness of regulations would push the GATT secretariat into "grey areas" as these terms had not yet been defined. He suggested therefore that the secretariat could perhaps select some issues, raise some questions and draw attention to some problems. The issue of the tradeability of services would, for example, be a relevant one. The purpose of the paper should be to stimulate a broad and more in-depth discussion rather than to arrive at any definite conclusions.

9. The representative of Japan pointed to the need for the GATT secretariat to prepare an objective economic analysis concerning the magnitude of the economic impact of regulations on international trade. While recognizing that this type of analysis could be useful, several delegations pointed to a number of inherent problems, including the absence of adequate data with which to assess the economic impact, and the difficulties involved in asking the secretariat to arrive at certain definitions, e.g. what constituted trade in services.

10. The representative of Chile felt that a secretariat paper should consider the impact of problems and the implications (short, medium and long-term) of multilateral action in the area of services for developing

countries. He also warned against applying the concept of "legitimacy" to regulations with respect to services. In the absence of multilateral rules in this area, all national regulations were ipso facto legitimate. However, the concept of legitimacy could apply to a discussion of barriers that services might create for trade in goods, which did come under the purview of GATT.

11. The representative of Argentina preferred not to speak of legitimacy or barriers but of regulations, laws or systems that were in place. He agreed with the suggestion made by the Indian representative that a secretariat paper should be in the form of questions aimed to stimulate the group's discussions. In this context he suggested that the secretariat might prepare a paper raising questions as to why certain sectors or sub-sectors of services were subject to a number of regulations (within and between countries) while others were not. These discussions might clarify the notion of development or help illuminate some of the reasons or motivations behind certain regulations. They might also point to the need for further work by the secretariat, and in what areas.

12. In summing up, the Chairman noted that a consensus had been reached to (1) discuss at the next meeting the role of services in the development process and invite an official from UNCTAD to present and answer questions on TD/B/1008/Rev.1; (2) ask the GATT secretariat to prepare a text concerning item 3 of paragraph 15 of L/5911, i.e. "national and international regulations governing individual services sectors, and problems identified in relation to international transactions in services". It remained for the meeting to decide how to organize future discussions concerning points 1,2 and 4 of paragraph 15 of L/5911. Referring to that report, he signalled a number of issues which could be taken up.

13. The representative of the European Community suggested that each meeting could set the agenda for the following two meetings, which would give enough flexibility to adapt the work programme as various issues emerged from the discussions. The representative of India supported this suggestion, and proposed that a fifth element mentioned in paragraph 15 of L/5911, namely "taking into account the work done in other relevant international organizations", be added to the four points already outlined.

14. The meeting then discussed terms of reference for the secretariat in drafting the paper requested of it, and agreed to the following:

"- to prepare a note analyzing issues and concepts related to national and international regulations affecting international transactions in services, with specific reference to their tradeability, drawing on the information available to the meeting and the discussions that have taken place so far; and,

- to formulate questions regarding these issues and concepts."

15. In concluding the meeting, the meeting agreed to the following proposals by the Chairman concerning the programme of work: two further meetings would be scheduled, on 24-26 March and 17-18 April 1986. The March meeting would

consider services and the development process on the basis of document TD/B/1008/Rev.1 and of a presentation to be made by a representative of UNCTAD, as well as the points emerging from the GATT secretariat paper on national and international regulations affecting international transactions in services. The April meeting would consider point (2) of paragraph 15 of L/5911, namely "conceptual framework, statistical problems and methodologies" as well as any other agreed points which could emerge from the March discussions. The Chairman added that if any delegations made their ideas and opinions available in writing, this would also facilitate the work of future meetings.