

Council for Trade in Services

REPORT OF THE MEETING HELD ON 18 OCTOBER 1999

Note by the Secretariat

1. The Council for Trade in Services held a meeting on 18 October 1999. The agenda for the meeting is contained in document WTO/AIR/1196.

2. Under Other Business, the Chairman added a statement about requests for observer status in the Council. Two other statements were made, by the representative of the Dominican Republic on the paper tabled by his delegation and the delegations of El Salvador and Honduras concerning tourism services, circulated as document S/C/W/127, and by the representative of Venezuela on the paper submitted by her delegation to the General Council as document WT/GC/W/281, concerning the next round of services negotiations.

3. The Chairman proposed that the Council adopt the agenda as circulated, with the addition of the three items raised under Other Business.

4. The Council so agreed.

A. ASSESSMENT OF TRADE IN SERVICES

5. The Chairman recalled that, at its last meeting, the Council had had a very useful discussion on the assessment of trade under Article XIX of the GATS. The paper presented by the UNCTAD Secretariat entitled "Assessment of Trade in Services of Developing Countries: Possible Contribution by UNCTAD" had been examined in detail. During the discussion, some delegations had said that they would comment further at future meetings, while others had announced their intention of submitting papers to the Council on the subject; an informal document had been received from the delegation of Norway, titled "Liberalization of Trade in Producer Services – The Impact on Developing Countries". The Chairman invited the delegation of Norway to present the paper.

6. The representative of Norway explained that the paper was the output of an independent research programme by the University of Cape Town and the Chr. Michelsen Institute in Norway, and bore the signature of two researchers from these institutes. It analyzed the impact of liberalization of trade in services, focusing on producer services such as financial, telecommunications and transport services, and illustrated the experience of South Africa, Namibia and Tanzania as case studies. One finding was that access to better producer services improved productivity in all sectors of the economy, with the magnitude of the gains depending on the presence of a transparent and sound regulatory regime.

7. The representative of South Africa welcomed the contribution of the paper towards Members' assessment of trade in services. The case studies were particularly welcome, given the paucity of contributions focusing on developing countries' experiences. He explained that his government had started the research programme in 1997, and had received support from UNCTAD on capacity building through the CAPAS programme. Research papers assessing services trade for the Southern

African economy had mainly been conducted on an overall basis or had focused on telecommunications, financial, transport and tourism services: such studies were useful for the formulation of strategies to develop the services sector, which accounted for 65% of South Africa's GDP. In view of these considerations, negotiations had to be conducted within the existing GATS architecture, with development objectives in mind, for which formulas might not be appropriate. In his view, the key challenge of the next round was the full integration of developing countries into the system. He said that the negotiations had to facilitate the structural adjustment in the economies of the North, thereby encouraging a reallocation of resources in labour and resource-intensive sectors where developing countries had a comparative advantage. The magnitude of the gains depended on developing countries' ability to participate in the supply chain, on the quality and availability of infrastructure and capacity to improve and enforce regulation. Gains from liberalization stemmed not only from export opportunities in the services sectors subject to liberalization, but also from improved productivity and from the ability to exploit existing comparative advantage.

8. The Chairman noted that an increasing amount of information was available on the assessment of trade in services; he wondered whether the Council had taken the exercise as far as possible at that stage and could agree to revert to it during the course of the negotiations.

9. The representative of India suggested that the assessment should be kept on the agenda of the Council. The representatives of the Dominican Republic, Cuba and Morocco agreed.

10. The representative of Switzerland favoured the Chairman's suggestion, also in view of the limited number of interventions made by Members at this meeting. He noted that the assessment was linked to the negotiating guidelines, as stated in Article XIX; given the state of work on the guidelines, it was reasonable to drop this item from the agenda. He suggested that it could be reintroduced whenever substantial contributions were brought to the discussion.

11. The representative of Argentina shared India's position. He said that Article XIX was clear in mandating that the Council assess trade in services; making the assessment a standing item on the agenda would allow the review of any additional information. In addition, the paper tabled by the delegation of Norway had not been sufficiently discussed and hence the assessment had to remain on the agenda, at the very least, of the following Council meeting. The representatives of Indonesia, speaking also on behalf of Thailand, the Philippines, Malaysia and Brunei, and of Hong Kong, China agreed with India's suggestion and shared Argentina's reasoning. The representative of India added that, in his introduction, the Chairman had noted that some delegations were still reflecting on the contribution by UNCTAD. The representative of Pakistan said that he thought it had been agreed that the assessment would be an on-going exercise, given its importance for developing countries and that it would be a permanent item on the Council agenda. The representative of Venezuela proposed that the documents circulated at the recent WTO/World Bank seminar on developing countries be made available to the Council for Trade in Services.

12. The Chairman said that he had no intention of drawing matters to a premature, albeit temporary, close. Contributions still remained to be discussed, such as the paper tabled by the delegation of Norway, and interest had been expressed in continuing the debate. He therefore concluded that the assessment of services trade would remain on the Council agenda.

13. It was so agreed.

B. SYSTEMIC ISSUES ARISING FROM ARTICLE V OF THE GATS

14. The Chairman recalled that, at the last Council meeting, the delegation of the European Communities had submitted a paper entitled "Article V of the GATS: Systemic Issues", contained in document S/C/W/124, which had also been tabled to the Committee on Regional Trade Agreements

as document WT/REG/W/35. Since the paper had been submitted only a day before that meeting, delegations had not been in a position to make detailed comments; the Council had therefore agreed to revert to the matter.

15. The representative of Japan said that discussions in the Council for Trade in Services were useful to debates in the General Council on this matter. He favoured the step-by-step approach to the discussion proposed in the European Communities paper, and agreed that it was appropriate to start with Article V:1. With respect to Article V:1(a), he stressed that the three criteria in the footnote should all be given equal weight when assessing substantial sectoral coverage. He felt that too much emphasis had been placed by the European Communities on the volume of trade affected; the criterion relating to number of sectors, for example, should be given appropriate consideration, and in this respect infrastructural services should be included. With respect to Article V:1(b), he noted that the paper supported the Japanese position, including the reference to a reasonable time-frame to eliminate discrimination.

16. Taking a broader perspective on the topic, the representative of Argentina said that the debate was taking place at a premature time and could turn into a philosophical and academic exercise. He reiterated that, up to that moment, the experience with implementation of Article V did not warrant any review of this Article, which, in addition, had been a delicate compromise. Out of 102 notified agreements, only 10 concerned Article V, and only 6 of those were being reviewed or were undergoing consultation under the auspices of the Committee on Regional Trade Agreements (CRTA). The problems which were being experienced concerned GATT Article XXIV, and hence Article V did not need to be reviewed. Commenting on the European Communities paper, he doubted that economic integration in the presence of other regulations on matters such as mutual recognition or harmonization of legislation was potentially more powerful; these elements were in themselves not sufficient to make economic integration more powerful, and Article V:2 did not need to be clarified along those lines.

17. The representative of Brazil agreed with Argentina that the debate was premature and that its implications were not clear. He was not convinced of the need for the Council for Trade in Services to discuss this issue, considering that the CRTA was already looking into such matters. The representative of Mexico concurred with Argentina. The representative of Canada said that his delegations would be looking at the papers submitted in order to form a position for the next round of negotiations.

18. The representative of Hungary referred to the general comments he had made at the previous Council meeting, and in particular to the need to clarify Article V without reopening a finely balanced text, and without retroactively applying the results of such a clarification. As concerned Article V:1(a), he agreed with the European Communities' interpretation: he stressed the requirement that no mode of supply should be excluded and the importance of defining the volume of trade affected, without, however, pursuing the idea of using percentages of sectors or trade excluded because of the insufficiency of services statistics. On Article V:1(B), he found paragraph 8 of the paper interesting. He said that separating sectors where a standstill would be sufficient to eliminate substantially all discrimination from those where a roll-back was needed was problematic, and was an additional argument for not retroactively applying the results of the clarification exercise. A reasonable time-frame for the elimination of discrimination was appropriate also in the case of services; however, more time should be allowed than for goods in view of the greater complexity of services liberalization. He said that more thought was necessary on the suggestion in paragraph 11 of the paper that "regulatory integration" be given a clearer profile through Article V:2.

19. The representative of Switzerland said that the wording of Article V was meant to leave an open margin of interpretation, and Members should keep with this original intent. He said he could agree with the European Communities' paper intellectually, and would give further thought to the

suggestion in paragraph 11, which seemed to depart from what the GATS prescribed, but was unclear about where their proposal led in terms of process.

20. The representative of Hong Kong, China said that the clarification of Article V was critical and that his delegation had submitted two papers on this subject, raising questions to which it had no answers. The fact that the CRTA had not concluded any reviews up to then was another indication that clarification was necessary. He appreciated that many economic integration agreements were being considered in the CRTA and could understand the wish for no retroactive application of any clarification, but noted that provisions should be clarified all the same and that the treatment of existing agreements had to be built into the discussion.

21. Responding to some of the questions raised by delegations, the representative of the European Communities said that the timing of the discussion was appropriate, given that Article V was invoked frequently and hence greater clarity was important. He thanked the representative of Hong Kong, China for having started the debate and found Members' contributions to the discussion useful. He stressed that his delegation did not seek any re-definition of the text of Article V, but only greater clarity of its interpretation. As concerned Japan's point on the volume of trade, he recognized that the three items in the footnote to Article V:1(a) all bore equal weight; his delegation's paper had emphasised the volume of trade because very little indication was provided on this criterion. He agreed that financial and telecommunication services were important in defining substantial sectoral coverage. The reference to "regulatory integration" in paragraph 11 of the paper stemmed from the European Communities' experience with Central and Eastern European countries with respect to mutual recognition agreements and the approximation of legislation. The suggestion was that "regulatory integration" be given a clearer profile under Article V, but not be made into an additional criterion.

22. Summing up the discussion, the Chairman said that the Services Council had had an interesting debate on this item. The General Council was considering proposals to clarify and reinforce WTO rules on regional and integration agreements in the context of the next round of negotiations. He suggested that the Council for Trade in Services await for direction by the General Council on this item and revert to it at an appropriate time in that light.

C. REVIEW OF THE ANNEX ON AIR TRANSPORT SERVICES UNDER PARAGRAPH 5 OF THE ANNEX

23. The Chairman recalled that, at its last meeting, the Council had agreed that the Secretariat would prepare a note containing information on the work carried out by other organizations, as suggested in the paper submitted by the delegations of New Zealand, Chile and Singapore (S/C/W/113). Accordingly, a paper had been prepared by the Secretariat, titled "Recent Trade-Related Activities of International Intergovernmental Organizations in the Field of Air Transport", and circulated as document S/C/W/129. The Chairman invited a representative of the Secretariat to introduce the paper.

24. A representative of the Secretariat explained that the note had been intended as a resource paper for the review. It was based on a previous Secretariat paper on air transport, document S/C/W/59. It was confined to the activities of inter-governmental bodies and to trade issues, even though it had proven difficult at times to draw a clear separation; for example, competition issues were generally not referred to, except for the outline of airline alliances, even though they might influence trade.

25. The representative of Canada commented in general on the two mandated reviews, the one of the Annex of Air Transport and the one of MFN exemptions, to voice his delegation's concern that they might not take place. He stressed that they had to be conducted, and suggested that they take

place during the first six months of 2000, on the basis of a timetable to be decided after informal consultations by the Chairman. His delegation's only concern was that they should not begin before the Seattle Ministerial, but he wanted to be given certainty that they would take place afterwards.

26. The representative of New Zealand said that he would revert to the Secretariat note at the next meeting. On a preliminary basis, he echoed the comment that the note was a very useful resource paper going into the review, as well as a helpful means of developing the matrix suggested in paragraph 14 of the paper submitted by his delegation and the delegations of Chile and Singapore, which was intended as a Member-driven activity. Responding to Canada's comment, he was of the view that background work of the kind produced by the Secretariat in document S/C/W/129 was needed before engaging in the review substantively.

27. The representative of Australia concurred that the Secretariat note was useful and shared Canada's view that a concrete time-frame for the review was necessary to dispel Members' concerns. The representative of Hong Kong, China noted that the Secretariat paper seemed to contain a wealth of information. On Canada's comment, he stressed the importance of including a reference to the mandated reviews, and other Council matters, in the Ministerial Declaration, and added that Members were not already in a position to decide on their time-frames. The representative of India reserved his delegation's position on Canada's suggestion.

28. The representative of the European Communities said that his initial thinking about how to conduct the reviews of air transport and of MFN exemptions was that the two reviews were similar in terms of procedure and were part of the negotiations. During the course of the negotiations, MFN exemptions would have to be considered both bilaterally and multilaterally. He did not have a definitive view on Canada's proposal, but felt that, given that the review was part of the negotiating process, it would probably follow its timing. From a legal standpoint, the review was to start, at least on a *pro forma* basis, in 1999, but its substantial part would be addressed only after the Seattle Ministerial.

29. The representative of Japan said that the paper produced by the Secretariat was useful, and would be studied further. As concerned the contents of the matrix proposed by New Zealand, Chile and Singapore, he said that elements of bilateral agreements, as well as competition policy-related elements should be included. On Canada's suggestion on timing, he agreed that informal consultations by the Chairman would be appropriate.

30. The representative of Argentina said that he would comment on the Secretariat note at the next meeting. Responding to delegations' comments, he said that the air transport and the MFN exemptions reviews were separate and distinct from the negotiations. He acknowledged that the Services Council was mandated to conduct both reviews, but added that beyond these mandates the two reviews were different in nature and scope. On Canada's suggestion, his initial reaction was that a time span of six months could work well for the MFN exemptions review; he was also in favour of having deadlines, so that work would not be unduly delayed.

31. The representative of Venezuela said that she was *a priori* not opposed to including the review in the negotiations, so long as work on GATS rules and on Article VI:4 disciplines was also included. To ensure consistency in the negotiations, the review should be started and pending tasks be concluded before addressing other issues.

32. By way of preliminary comments, the representative of Singapore said that the Secretariat note was a useful resource paper. He concurred with Argentina that the reviews were separate and distinct from the negotiations; Members were obligated to begin these reviews, which would then feed into the negotiations. On their time-frame, he agreed that they should start before the end of the current year and that setting deadlines would be useful; he was quite open about the suggested six

months period. He stressed the importance of referring to the reviews in the negotiating guidelines, to reaffirm the Uruguay Round mandate.

33. The representative of Cuba said that she would revert to the Secretariat note at a later meeting, but noted the reference, in paragraph 12, to the UNCTAD Expert Meeting on air transport held in June 1999. She reserved her delegation's right to come back on Canada's suggestion.

34. The representative of the United States said that he would come back to the Secretariat paper at a later meeting. He stressed that there was no question that the reviews of the air transport Annex and of MFN exemptions would take place and that they were distinct and separate from the negotiations. On their timing, he had no definitive position, but suggested that the two reviews be considered on different merits and not necessarily on the basis of the same time-frame.

35. Commenting on the two reviews, the representative of Norway said that it was important to go by the letter of the mandate in the GATS and start them in 1999, as the Council was already doing in practice in discussing the relevant agenda items. In his view, the reviews were separate from, but would feed into, the negotiations. As concerned their timing, she agreed that the Chairman should consult informally and that setting deadlines was important.

36. The representative of Japan said that the relationship between the negotiations and the review was important. The Annex on Air Transport Services was clear in tasking the Council for Trade in Services with the review of developments in the sector and the operation of the Annex.

37. The representative of Ecuador asked that the Secretariat note be made available rapidly also in Spanish. He agreed that the review was mandated and was distinct from the negotiations. He felt its timing could not be determined as yet, as it was linked to the time-frame of the negotiations and on whether the negotiations would conclude with a single undertaking. On the proposal that the Chairman of the Services Council hold informal consultations on the timing of the review, he felt that this was rather a matter for the General Council.

38. The representative of Canada said that there was a legal obligation to begin the review, which was a distinct process from the negotiations. He had suggested setting deadlines in view of transparency considerations, and felt that the Council could agree that the review start in 2000 and that the Chairman hold informal consultations to decide on their precise time-frame.

39. The representative of Guatemala said that the Secretariat note was a useful summary for discussion, and concurred that it should be made available in Spanish quickly. She said that the reviews were distinct from the negotiations, and was in favour of setting out a work-plan to prepare the review transparently.

40. The representative of New Zealand noted that paragraph 5 of the Annex on Air Transport Services prescribed that the review start before 2000, and that his delegation would have problems if it did not. He agreed with the representative of Norway that the review had in practice already started; the Council had been discussing the Annex on Air Transport Services for the previous two meetings and the Secretariat note S/C/W/129 was also available as a resource document.

41. The representative of the European Communities was unsure that the review had already started; he was in favour of the Chairman having informal consultations on the process.

42. Summing up the discussion, the Chairman noted that the Secretariat paper had generated a lot of interest; many delegations had requested more time to study it further and that the Council should revert to it at its next meeting. He also thought that Members had agreed that the review process was separate from the negotiations. He noted that the review of the Annex on Air Transport Services had

been on the Council agenda for a couple of meetings, that a paper on the issue had been submitted by the delegations of New Zealand, Chile and Singapore and that a note had been prepared by the Secretariat; it seemed reasonable to conclude that the review had started, at least on the planning and organizational side. He therefore suggested that Members agree that the review of the Annex on Air Transport Services, having started, be continued up early next year and that he consult informally with delegations, after the Seattle Ministerial Conference, on its time-table and modalities.

43. The representative of Japan fully supported the Chairman's conclusions. The representative of Ecuador said that he could agree that the preparatory process for the review had started, but that its substance would be taken up only after informal consultations by the Chairman. The representative of Hong Kong, China concurred; he added that a close link existed between the review and the negotiations, as the results of the former could feed into the latter. The representative of Argentina agreed with the Chairman's suggestion, and also noted that a majority of Members had said that the review was a distinct process from the negotiations. The representative of the European Communities agreed with the Chairman's suggestion, but with the understanding that this carried no obligation on the European Communities' part until the end of the year.

44. The Chairman concluded that the Council would take note of the statements made and proceed as he had outlined.

45. It was so agreed.

D. REVIEW OF ARTICLE II (MFN) EXEMPTIONS

46. The Chairman recalled that, at its last meeting, the Council had held a discussion of this item. It had been suggested that the Secretariat prepare an updated compilation of all MFN exemptions, those resulting from the Uruguay Round as well as from subsequent negotiations on financial services and telecommunications. The Secretariat had accordingly produced a note containing that compilation (Job No. 6116, dated 14 October). It had been prepared as background material for the review of MFN exemptions as required by paragraph 6 of the Annex.

47. The representative of Canada suggested that the understanding reached for the review of the Annex on Air Transport Services be adapted, *mutatis mutandis*, to the review of MFN exemptions.

48. The representative of Japan reiterated that the review of MFN exemptions was a separate process from, but would nonetheless contribute to, the negotiations. He said that the Annex on Article II exemptions stated that the review was to start within five years from the entry into force of the WTO Agreement; given this mandate, and the importance of the exercise, the review should start as soon as possible. His delegation would be pragmatic and agree that the substantive part of the review would start at the next Council meeting. He said that the compilation prepared by the Secretariat was valuable; an initial examination had shown that the sectors for which exemptions had been frequently taken included, for example, transport and financial services. He suggested that it would be useful to conduct the review sector-by-sector, but had no specific idea about possible modalities; he was in favour of the Chairman holding informal consultations on how to proceed with the review.

49. Commenting on the compilation of exemptions, the representative of Hong Kong, China said that the document being over 200 pages long was in itself an indication of the importance of the process. He also supported the views expressed by the representatives of Canada and Japan. He wondered whether the information on which the compilation was based was organized in such a way as to allow for different kinds of analysis, such as sector-by-sector or by rate of prevalence in particular areas. A representative of the WTO Secretariat explained that it was possible to examine the exemptions following different kinds of approaches, and that the Secretariat was ready to conduct any analysis that Members agreed to request.

50. The representative of Australia shared Canada's view that the review continue early in 2000 and that the Chairman consult informally with delegations after the Seattle Ministerial on its modalities and time-frame. The representative of the European Communities was in favour of adopting, *mutatis mutandis*, the understanding reached on the review of the air transport Annex. The representative of Argentina concurred, but was opposed to the idea that additional tasks be given to the Secretariat, as these would go beyond the purpose of the review.

51. The representative of the United States was in favour of Canada's suggestion; he raised a procedural question of whether the circulation of the compilation of MFN exemptions produced by the Secretariat had been premature. The Chairman replied that, at the previous Council meeting, it had been acknowledged that the compilation would be based on information which was already in the public domain and that it represented simply an update of a document which the Secretariat had produced in 1994. He stressed that no agreement had been reached about requesting any analysis of the information by the Secretariat.

52. The representative of the Philippines agreed with Canada's suggestion, but said that the air transport Annex and MFN exemptions reviews might be different. In the case of air transport, Members were called upon to review developments in the sector and the operation of the Annex, whereas in the case of MFN exemptions they had to decide whether the conditions, which had created the need for the exemptions, still prevailed.

53. In summing up the discussion on this agenda item, the Chairman said that the Council would adopt the same approach as for the review of the Annex on Air Transport. The compilation produced by the Secretariat had generated interest; many delegations had requested more time to analyse it further and that the Council should revert to it at its next meeting. He also thought that Members had agreed that the review process was separate from the negotiations. He noted that the review of MFN exemptions had been on the Council agenda for a couple of meetings and that the Secretariat had produced a compilation of all exemptions; it seemed reasonable to conclude that the review had started, at least on the planning and organizational side. He therefore concluded that the review of Article II exemptions had started and would be continued early next year; he would consult informally with delegations, after the Seattle Ministerial Conference, on its time-table and modalities. On Japan's comment about dealing with the substance of the review at the next Council meeting, he noted that the next meeting might be further away in the future than normally.

E. ELECTRONIC COMMERCE – CLARIFICATION OF THE RELATIONSHIP BETWEEN EXISTING SERVICES COMMITMENTS AND THE INTERNET

54. The Chairman drew Members' attention to document S/C/W/130, which contained a communication from the United States entitled "Clarification of the Relationship between Existing Services Commitments and Internet". He invited the delegation of the United States to present the paper.

55. The representative of the United States explained that his delegation had been talking with other delegations about this issue since Spring. The rationale behind the paper was the fact that the Internet was the main platform for electronic commerce and the need was felt to clarify its relationship with existing services commitments. Paragraphs 4 and 5 explained what was meant by the term "Internet", namely a network of networks founded on the use of the same protocol to link different networks. Paragraphs 6 and 7 related this to the provisions of the Annex on Telecommunications negotiated in the Uruguay Round. Paragraph 5(b)(iii) of that Annex prescribed that Members permit the use of operating protocols of service suppliers' choice in the supply of any service, thereby underscoring the relationship between the Internet and existing GATS commitments. His delegation and others were of the view that the Internet was important to electronic commerce; hence S/C/W/130 suggested, in paragraph 2, that the Seattle Ministerial Declaration take note of this

relationship. The United States communication had been tabled in the Council for Trade in Services because its points related to the GATS, but his delegation would introduce the idea and the paper, possibly in a shorter version, also to the General Council.

56. The representative of Switzerland said that, whilst further reflection was needed, he agreed with the notion that the Telecom Annex applied to all telecommunications services, including Internet services; it provided for obligations on public telecom services, so that Internet-related and Internet access services were governed by the Annex to the extent that they were publicly offered. He wondered whether the connection with public availability was present in the United States paper. As concerned the proposal about the Ministerial Declaration, his initial thinking was that the issue was linked to the standstill on customs duties, and would have to be viewed in that context.

57. The representative of Panama said that electronic commerce had acquired and continued to acquire importance for trade. The United States submission illustrated some of the confusion still surrounding the issue. For example, he noted that paragraph 4 of the United States submission was tautological; the Internet was being defined by explaining what it was. Defining the Internet as a global network of networks implied that the different types of networks, what connected them, and any other existing network which was in turn connected would be included. The reference to the links existing between networks being part of a global platform was unclear; he felt that more work was needed in terms of definitions before any recommendation could be agreed. He said that in paragraph 5 there was a confusion about the use of protocols and the supply of services in the use of these protocols. It was not clear that a service supplied electronically was not in itself a new form of supply and what the implications on the relationship between modes 1 and 2 was; he suggested that this paragraph added to the confusion. A recommendation on electronic commerce might be a desirable end but the confusion which still existed on this subject demonstrated that further work was needed before any such recommendation could be made.

58. The representative of Norway shared the United States' clarification of the relationship between existing commitments and the Internet, and suggested that the Council take note of the proposals contained in paragraph 2 of the paper and revert to them in the appropriate forum.

59. The representative of the Dominican Republic said that the suggestion in paragraph 2 of the United States paper was linked to the Work Programme on electronic commerce organized by the General Council, including the need to consider the impact of the standstill on customs duties on Members' revenues. He said that the United States contribution dealt with a relevant issue, for which there was no consensus and which merited consideration. He was unsure of the need to re-consider the Telecom Annex, its impact on electronic commerce, and in this respect sought clarification on whether the reference to "relevant elements" in the United States paper implied that only some of the Annex provisions would apply.

60. The representative of the European Communities said that the United States paper was useful and should be taken into account in the run up to the Seattle Ministerial. He felt that the same reasoning explaining the relationship between existing commitments and the Internet could be extended to commitments and electronic commerce in general. He stressed that the technological means of supply should not affect, in any way, Members' commitments. He reserved the right to come back with further comments.

61. The representative of India said that he would revert to the United States paper at the next Council meeting. He stated that the Work Programme on electronic commerce was under discussion in the General Council, and hence discussion of this issue should be taken up by the Council for Trade in Services only after receiving directions from the General Council. On a preliminary basis, he shared Panama's view that the Work Programme on electronic commerce had not been completed and that it was not appropriate, at the present juncture, to include this issue in the Seattle Declaration.

62. Referring to paragraph 5(b)(iii) of the Telecom Annex, the representative of Japan said that the term "operating protocols" was not meant to exclude any protocol a priori, and hence he had no difficulty in agreeing that the Internet Protocol and the Transport Control Protocol were included. However, on the proposal for a recommendation to the Seattle Ministerial, he said that such questions had to be discussed in the General Council, to achieve an overall balance of recommendations taking into account the different interests.

63. The representative of Australia sought clarification on three aspects. First, she wondered if the Internet might be handled as a single bundling of services of unlimited range, accessed through a common transport system; second, whether it was a value-added rather than a basic telecommunications service; and third, if it might constitute a private network, with some doubt about the application of all current obligations.

64. The representative of Colombia said that he did not have detailed instructions as yet, and therefore could not endorse the recommendation in paragraph 2 of the United States submission. He felt that this was an important issue, which merited further consideration.

65. The representative of Canada offered general support for the elements suggested in paragraph 2 of the United States paper, which he thought was practical and helpful.

66. The representative of Venezuela said that the United States paper was a useful document, reflecting progress made in the Work Programme. She supported the proposed recommendation for the Seattle Ministerial, but asked clarification about the meaning of point 2 of paragraph 2. She agreed with Panama that confusion existed in relation to definition and noted the need to clarify it.

67. In a preliminary manner, the representative of Hong Kong, China agreed with the underlying thrust of the United States paper, and supported the line taken by the delegation of Switzerland, but sought clarification on whether individual telecommunications transport services were indeed required, explicitly or in effect, to be provided to the public generally, as this question remained unexplained.

68. The representative of Indonesia said that more detailed analysis of the United States paper was needed and that he would provide further comments at a later stage. He needed to consult his authorities in particular on the proposal in paragraph 2, as this was part of an issue which the General Council might want to include as an element for further work in the area of electronic commerce. He also sought clarification on whether the Telecom Annex could be applied to committed services other than telecommunications; this needed to be clarified before any text could be proposed for inclusion in the Ministerial Declaration.

69. The representative of the Philippines said that the United States proposal was linked to the discussions on technological neutrality. If technological neutrality was the common understanding, then there was no need to reaffirm it in the Ministerial Declaration; if it was not, then the implications needed to be analysed concretely before making any recommendation with respect to the Declaration.

70. On a preliminary basis, the representative of Iceland said his delegation supported the proposal in paragraph 2 of the United States paper.

71. The representative of Guatemala reserved her delegation's position, but by way of preliminary comment supported the views expressed by the representative of Panama and noted that the Council for Trade in Services was no longer the competent body on the issue, as the Work Programme on Electronic Commerce was being discussed in the General Council.

72. The representative of the United States thanked delegations for their comments and said that his delegation would modify its paper on the basis of some of these before submitting it to the General Council. Responding to the question by the representative of Indonesia about the nature of the Telecom Annex and how it related to commitments on basic telecommunications, he noted that the Annex applied to all scheduled services, as was implied in paragraphs 1 and 5(a). On the Dominican Republic's comment about the implications of the moratorium on the imposition of customs duties, he noted that a study of the issue had been carried out, and a copy could be obtained from the WTO website. In the summary, it was stated that trade in potentially digitizable media goods, which currently faced a tariff in some countries, represented less than one percent of total world trade, and that the revenue collected on these products amounted to less than one percent of total tariff revenue in most countries. Responding to the question about the application of the Telecom Annex, he stressed that this applied in all its parts.

73. He said that existing commitments were related to the use of Internet protocols over public telecommunications transport networks and service (PTTNS) by service suppliers. If a Member had no services commitments, no other Member would have a right to supply a service in the territory of that particular Member using the Internet. As to the question concerning value-added versus basic telecom services, his delegation had talked to several others about their domestic regulatory systems and had received differing views; therefore, he was not suggesting that Members take a unified approach in this regard.

74. He agreed that the electronic supply of a service was not a new form of supply, as referred to in paragraph 5(a) of the Annex. However, he did not agree that Members should arrive at a new definition of PTTNS or of the Internet before making recommendations about the relationship between existing commitments and the Internet in the Ministerial Declaration. The question had been decided by the definition in paragraph 3(b) of the Telecom Annex: it was up to every Member to decide what networks should and which should not be regulated as PTTNS. In the United States paper, the Internet was defined as a unique combination of public and private telecom transport networks. However, the United States was not taking any position in this regard, as it was up to Members to define which telecom transport networks were public, and regulated as such, and which ones were private. He also noted that the Internet had been successful because it had been left as a private network and had remained largely unregulated.

75. On the point relating to technological neutrality raised by the representative of the Philippines, he explained that the United States paper was not implicitly endorsing technological neutrality; it addressed existing commitments and how the use of Internet Protocols over public telecommunication transport network was permitted under such commitments. As concerned doubts that the discussion on the relationship between existing commitments and the Internet would go beyond what was in Members' commitments, he specified that the United States paper only referred to the relationship between existing commitments and the Telecom Annex obligations and was not suggesting that there was a need to come up with new commitments. He said that noting in the work programme that confusion existed was important, but existing commitments already offered the means of dispelling such confusion.

76. The representative of the Dominican Republic said that the point about definition raised by the United States delegation was interesting and merited further thought. He acknowledged that a study on the effects of electronic commerce had been carried out and was available on the WTO website, but noted that the paper was not an official WTO Secretariat document and represented solely the opinions of the author. This had to be taken into account in the debate, together with other issues, such as discussions taking place in the General Council.

77. The representative of Argentina noted that point 2 in paragraph 2 of the United States paper referred to "any service" listed in a Member's schedule. He therefore sought clarification on whether,

if it was agreed that the Internet was covered by the Telecom Annex, services supplied through the Internet would have to be permitted regardless of Members' commitments, for example, where no commitments had been undertaken with respect to modes 1 and 2 for a particular service sector.

78. The representative of Panama observed that the Internet was not a platform, as stated in paragraph 2 of the United States paper, but rather a network of networks dialoguing through different platforms. He also doubted that, even if it were a platform, the Internet would be "the main emerging global platform for electronic commerce", as the volume of electronic commerce taking place over the Internet was still small with respect to the one taking place over intra-firm networks.

79. The representative of the United States said that the paper analysing the potential revenue effects of the moratorium on the application of customs duties to electronic transmissions had not been mandated by the 1998 Declaration on Global Electronic Commerce, but had been discussed in meetings and that the report which was now available was what Members had been expecting. As concerned Argentina's question, he replied that if a Member had acceded to the WTO with no commitments, then that Member would have no obligation to allow the supply of any service on the Internet. Responding to Panama's comments, he agreed that the volume of transactions on private networks was much higher than on the Internet. In the Telecom Annex, the right to designate PTTNS was reserved to each Member; the United States delegation was not suggesting changing the definition of PTTNS. He also agreed that that the term "global platform" in paragraph 2 of his delegation's paper could be changed to "publicly accessible global platform".

80. Summing up the discussion of this item, the Chairman noted that the Council for Trade in Services had reported to the General Council on the Work Programme on Electronic Commerce and was waiting for directions in preparation for the Seattle Ministerial. He also recalled that the United States delegation would follow up the issues raised in their submission in the General Council.

F. ACCEPTANCE OF THE FIFTH PROTOCOL

81. The Chairman said that this item had been placed on the agenda at the request of the delegation of the United States. He drew Members' attention to an updated list prepared by the Secretariat, dated 30 September, of Members who had accepted the Fifth Protocol. He invited the delegation of the United States to take the floor.

82. The representative of the United States expressed concern and disappointment about the status of acceptances of the Fifth Protocol. His delegation was pleased by Costa Rica and Nicaragua's acceptance. However, ten Members were yet to accept: Bolivia, Brazil, Dominican Republic, Ghana, Jamaica, Kenya, Nigeria, Philippines, Poland and Uruguay. He stressed full and immediate implementation of WTO obligations was important; the acceptance of the Fifth and Fourth Protocols was one of the issues requiring attention. His delegation would welcome an update from the ten Members on whether they had not accepted because of procedural reasons, and from the Chairman of the Committee on Trade in Financial Services about his efforts to encourage acceptance.

83. The representative of Switzerland thanked the United States delegation for raising the issue, and joined in urging outstanding Members to accept the Protocol, if possible before the start of the new round. The representative of Canada concurred.

84. Mr Jean Le Cocguic, Chairman of the Committee on Trade in Financial Services, thanked the United States delegation for its intervention. He noted that the Annual Report on the activities of the Committee reflected that the issue had been discussed in 1999 and would be discussed in the future meetings. In May, a letter requesting information on the status of the ratification process had been sent to Members who had not, up to that point, accepted the Protocol. Since then, Costa Rica and Nicaragua had accepted, and other Members had indicated that the problems they were facing were

procedural in nature, but had not indicated a specific date for acceptance. The second paragraph of the letter read: "It is of course understood that domestic procedures for the ratification and acceptance of international agreements are often time-consuming and can be unpredictable, but I am sure you would also agree that it would be very unfortunate if procedural delays were to call in question the commitment of governments to carry through these important undertakings or to weaken the powerful message of support for the multilateral system which the success of the negotiations represented." He said that the issue would be a matter of priority on the agenda for the next Committee meeting.

85. The Chairman said that the Council for Trade in Services would take note of the statements made and hoped for progress in due course.

G. ANNUAL REPORT TO THE GENERAL COUNCIL

86. The Chairman drew Members' attention to the draft annual report to the General Council on the activities of the Council for Trade in Services in 1999. He said that the symbol of this document, originally S/C/W/126, had been changed to S/C/W/128. The report was factual and self-explanatory; some reference would be added on the two mandated reviews, of MFN exemptions and of the Annex on Air Transport Services, and on the two decisions taken by the Council, on Article XXI procedures and on the extension of the deadline of negotiations on emergency safeguard measures. The last section on the activities of subsidiary bodies would be completed once the Council received the reports of those bodies, which would then be annexed.

87. A number of Members commented on the draft text. The essence of Members' remarks is reflected in the revised text of the report, contained in document S/C/W/128/Rev.1. The Chairman suggested that Friday, 22 October be set as the deadline for any further comments by delegations on the revised text; provided that these were not substantial, but only editorial in nature, the Secretariat would work them in the text, which would then be agreed as circulated and submitted to the General Council.

88. The Council so agreed.

H. OTHER BUSINESS

89. The Chairman drew delegations' attention to three informal notes concerning three requests for observer status in the Council for Trade in Services, from the World Health Organization, the Islamic Development Bank and the League of Arab States. Since the requests had been raised under Other Business, he did not suggest that a decision be taken at the present time, but proposed that the Council take note and revert to the matter at its next meeting.

90. It was so agreed.

91. He then offered the floor to the representative of the Dominican Republic to present the paper on tourism services tabled by his delegation and the delegations of El Salvador and Honduras, circulated as document S/C/W/127 and as document WT/GC/W/372 in the General Council, and to the representative of Venezuela, who had asked for an opportunity to present the paper by her delegation on the new round of negotiations, circulated to the General Council as document WT/GC/W/281.

92. The representative of the Dominican Republic gave a brief introduction of the paper by his delegation and the delegations of El Salvador and Honduras, hoping that more discussion could take place at the next meeting. The document, which had been prepared at the request of several members of the World Tourism Organization, consisted of two papers, circulated together as one text; the first one dealt with the background and rationale for a specific treatment of tourism services, and the

second one contained a draft Annex on Tourism. It did not contain any definitive proposals and did not intend to pre-empt other proposals. He suggested that the issue be placed on the agenda for the next Council meeting for a more substantial discussion.

93. It was so agreed.

94. The representative of Venezuela presented the paper by her delegation. The first part summed up the unfinished business and unresolved issues from the Uruguay Round, arguing that these should be taken up during the next round of negotiations as an independent process from the general negotiating exercise and as a pre-requisite for wider opening up of services trade; it then outlined the imbalance in levels of commitments on the part of developing and developed countries, as shown by the results of the extended negotiations on telecommunications and financial services, where developing countries commitments had been greater than those of some of their more economically advanced trading partners. Such issues needed to be resolved before moving on with further liberalization. The second part of the paper dealt with the guidelines and procedures for the next round of negotiations. It stressed that the existing GATS architecture and positive listing system should be maintained, all sectors and modes should be included, the integration of developing countries in the international trading system should be facilitated through the full application of Article IV of the GATS. Amongst new issues to be dealt with were the development of multilateral competition rules and the development of suitable mechanisms to make Article IV effective and operational. On the logistics side, the proliferation of meetings and working groups, as well as parallel meetings, should be avoided, to enable smaller delegations to participate fully in the negotiations.

95. The Chairman thanked delegations for their attention. As concerned the date for the next Council meeting, he said that this was still unclear due to the preparatory process for the Seattle Ministerial Conference. He suggested that the Council entrust him with the task of calling the next meeting as and when necessary and in view of delegations' other commitments, bearing in mind the need not to delay it too long.

96. It was so agreed.
