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TRADE IN SERVICES AND DOHA DEVELOPMENT AGENDA

Report presented by Mr. Kimmo Kiljunen (Finland)

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Background for new negotiations

1. The General Agreement on Trade in Services (GATS) was an essential part of the establishment of the WTO and its agreements system after the Uruguay Round at the ministerial meeting of Marrakech (Morocco) in April 1994. The agreement entered into force in January 1995. The GATS is a product of the new vision of the world trade system, implying a paradigm shift from the previous cross-border trade-in-goods oriented approach to a more comprehensive trade rules system, which also – at least in principle – covers national policy making and to a certain extent influences governmental options and practices.

2. The present GATS negotiations were initiated in January 2000 under Article XIX of the GATS. The Negotiation Guidelines and Procedures were adopted in March 2001. The Doha Ministerial Declaration from 14 November 2001 merely recognised this fact and set some deadlines, most of which were subsequently missed.

3. The present GATS round incorporates a development agenda. The development aspect is built into the GATS, in both its preambles and its articles. We must take this seriously.

4. According to the third preamble, the negotiations aim at "promoting the interests of all participants on a mutually advantageous basis and at securing an overall balance of right and obligations, while giving due respect to national policy objectives". The fourth preamble recognises especially the developing countries' interests to exercise the right to regulate and to introduce new regulations on the supply of services within their territories. In the fifth preamble, the members express their desire "to facilitate the increasing participation of developing countries in trade in services and the expansion of their services exports (...)".

5. Article IV of the Agreement, especially its paragraph 1, gives more meaning to the good intentions expressed in the preambles. Among other measures, it stipulates that developing countries' participation in

world trade shall be facilitated "through negotiated specific commitments relating to the liberalisation of market access in sectors and modes of supply of export interest to them". The same commitments and the principle of special treatment are also included in Article XIX of the GATS, which is formally the legal base of this negotiation round.

State of play and Cancún

6. The services negotiations, which were included in the Doha Ministerial Declaration, are also an integral part of the Doha Development Agenda (DDA). They will be a part of the eventual new set of agreements, to be adopted by consensus, according to the principle of single undertaking. The fact that they are part of the DDA emphasises the development aspect of the new GATS negotiation round.

7. Even though the negotiations are proceeding, the level of participation and engagement has been very limited. The deadline laid down in Doha for submitting initial offers for specific commitments by 31 March 2003 was met by five WTO Members. By mid-July 2003, only 30 offers had been submitted. Even though one of the offers submitted includes the 15 EU Member States, the number is far too low for an organisation of 140 members. Moreover, half of the offers, 15, came from developing countries.

8. In his report on 11 July 2003 to the Trade Negotiations Committee, the Chairman of the Council for Trade in Services, Ambassador Alejandro Jara, highlights the future work necessary for the negotiations to succeed by January 2005. One of the outstanding issues is modalities for special treatment for Least Developed Countries (LDCs). The lack of an agreement on these modalities does not facilitate the participation of the LDCs in the negotiations.

9. In the above-mentioned report, the Chair deplores not only the limited number of the offers but also the quality of some of them. They "leave much to be desired in respect of coverage of sectors and modes of supply as well as the depth of commitments". These careful words naturally mean different things for different WTO Members. An example is the offer of the EU concerning mode 4 (supply of services by movement of natural persons). It is considered quite far-reaching by the EU Member States but criticised – according to *Bridges Weekly* - as "more than disappointing" by many developing countries.

10. This being said, the Cancún Ministerial Conference is important for the new GATS round in several respects, even though no substantive breakthrough is foreseen. At the meeting or rather even before it, the modalities for the special treatment of LDCs could and should be solved. The meeting could give political impetus and new deadlines for the forthcoming negotiations. And finally, by solving other issues, such as modalities for agriculture negotiations and the problem of TRIPS and pharmaceuticals, the Cancún Ministerial Conference might be able to break the deadlock threatening the multilateral trading system.

Significance of trade in services

11. There is no special need to emphasise the importance of trade in services in this discussion paper. Trade in goods and trade in services are more and more intertwined, and the development of world trade is dependent on both of them. The volume of trade in services is at present about one fourth of the total world trade, and growing.

12. "Trade in services" as a term covers a multitude of things. Although the political debate around the GATS has concentrated on basic public services, like health care and education, or public utilities, like water and energy, we must not forget other dimensions. Trade in services covers sectors which are worldwide and supplied according to market mechanisms and for profit, such as accounting, financial services, construction and tourism. Some of the new services sectors, which might be considered as public utilities, like IT services, have in practice been liberalised since the beginning. The area we are talking about is full of variety. Therefore our debate has to be nuanced accordingly.

13. In the developed countries, the growth potential in services is still high, above all as far as the export of services is concerned. In Finland the services sector represents about 67 per cent of employment and about 57 per cent of GDP. But the value of exports of services is only 5 per cent of GDP and only 13 per cent of the value of trade in goods.

14. In the developing countries, the stakes are also high. Among other issues, they have a special interest in mode 4, supply of services by natural persons. At the WTO Public Symposium held in Geneva in June, one keynote speaker estimated that "an increase in developed country quotas for skilled and unskilled temporary labour to 3 just per cent of their labour forces would create an increase in global economic welfare which would be 1.5 times greater than gains from liberalisation of all remaining trade restrictions".

Structure of the GATS and unfounded fundamental criticism

15. The GATS is an agreement which in principle covers all sectors of services, except those supplied in the exercise of government authority, meaning any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers. As a general principle, each member opening its services markets shall accord Most-Favoured-Nation (MFN) Treatment to services and service suppliers of any other Member, meaning non-discrimination and equal opportunities of trading partners.

16. This in principle very comprehensive scope and in principle very strict obligation of non-discrimination in market access and national treatment has led to very strong and fundamental criticism of the whole existence of the GATS. The arguments are very variable: the GATS will force governments to open all their services to foreign competition; the GATS prevents public funding and subsidies to schools and hospitals; foreign investors will take over the public utilities, like water services, and turn them into profit-based companies; services sectors will be deregulated and all public control will be lost; and public services will be privatised.

17. Even though the criticism is based on legitimate political concerns and even though it has been somewhat useful by injecting the issue of public services into political debate, most of it is unfounded.

18. The GATS is based on general principles, but these do not become applicable in practice unless the Members either open their markets up to some trading partners (in which case the MFN-principle applies) or unilaterally commit their services on so-called "schedules of specific commitments". The agreement includes a multi-layer safety net for national authorities to maintain control and regulation of services. In fact they may completely exclude their whole service sector, or parts of it, from the world trade system.

19. Members choose those sectors they want to open up to foreign suppliers. Commitments may be accompanied by limitations or conditions. Limitations may *inter alia* deny market access completely for some sub-sectors, limit the principle of national treatment (thus allowing discrimination), or restrict the modes of supply. Also, the agreement clearly recognises the Members' right to regulate their services. In other words: you are not obliged to open up your markets. You always have the right to regulate. But when you open your markets up, you must open up and regulate in a non-discriminatory way, unless you put specific terms, conditions or limitations on your commitments.

Real concerns linked to liberalisation of trade in services

20. It must be recognised that the economic philosophy behind the GATS is different from the way the industrialised countries have developed their services sectors in the form of non-competing governmental services or as public or private monopolies. Not only their welfare services, but many other service sectors now operating clearly in competition have developed and grown under generous protectionism. Forcefully importing a present, more liberal approach to countries which are at different levels of development would be unfair. The ladder which was used by industrialised countries should be available to developing countries, if they wish to use it. However, it must also be recognised that the question is not always "public services or (foreign) private services" but sometimes also "private services or no services". Opening up services markets to foreign suppliers may help to improve the situation where public funding is clearly missing.

21. While it is true that the GATS and its subsequent modifications do not directly and automatically lead to any privatisation of public services or to less stringent regulations on them, it is equally true that when markets are opened up and foreign services suppliers are encouraged to invest in the country concerned, economic and political considerations may require more liberal and business-friendly national legislation. If public or semi-public "traditional service providers" compete with foreign companies, they may need to use a more business-oriented approach in their operations, and this may lead to proposals of (at least partial) privatisation. This might then lead to the fact that services are provided according to the logic of profit maximisation, not according to national policy objectives emphasising human needs. Trade liberalisation is not always, in all sec-

tors, to the benefit of all. A balanced and cautious approach to market liberalisation is necessary for these reasons.

22. Although the definition of services produced "under government authority" is vague and lacks clear interpretation, this has not caused a major problems, at least so far. Given the structure of the GATS, Members may choose the services they wish to open up to foreign service suppliers and can regard all services they wish as non-committed public services. This is possible even if these services are nationally produced according to a mixed system, where private service provides complete public services in competition, but according to national regulation and control, in some cases also with public funding. If a services sector is opened up, the situation changes. It is up to the Member concerned to make appropriate limitations to its commitments and to keep its regulation efficient but non-discriminatory. In cases of a dispute with another Member, the Member concerned might be forced to prove that its regulatory or subsidising measures are not trade-restrictive, or that the service concerned is produced under government authority.

23. The question of the definition of services of the GATS, the interpretation of the limitations and conditions listed in the schedules of commitments and the interpretation of national regulatory and subsidising measures becomes more accurate when the trade in services (and in goods) is further liberalised. Trade in goods needs more and more supporting services. And the services linked to the sales of goods might need another type of services, like training services or medical services for expatriate workers, in their support. Situations become more complex. This might lead to more complicated dispute settlement issues in the future, bringing questions that have been in the national domain to the WTO bodies.

24. During my visit to Geneva in November of last year, when discussing the possible problems related to the GATS, one WTO official said: "Some countries may not have their regulation right". This is the core of the problem.

25. Liberalisation of trade in services, especially when those services are essential to basic human rights and needs, should be conditional on (a) explicit and democratically formulated national policy objectives; (b) detailed analysis of the consequences of the commitment to be made, accompanied by necessary limitations to the commitment; and (c) national regulation and measures guaranteeing the accomplishment of the policy objectives desired, including necessary legal control and remedies. In other words, all agreements, also in the field of services, require an appropriate assessment of their economic, social and environmental sustainability. These principles apply to all WTO Members, both developed and developing.

Special concerns of developing countries

26. In the case of developing countries, we must ask whether the legal system, including appropriate legislation and rule of law, and administrative structures are at the level where forceful demands by industrialised countries for opening up the services markets can be justified. This is important especially taking into account the development aspect of the GATS. Caution and prudence in demands is required. The principle of single undertaking of WTO negotiations should not lead to a situation where some Members are under pressure to open their sensitive services sectors in exchange for concessions concerning vital export interests, without the above-mentioned conditions being met.

27. Furthermore, in the case of many developing countries, enhanced technical assistance is required in order to allow them to participate meaningfully in the negotiation process - departing from their own policy objectives. Analysis and conditioning of the commitments they are planning or asked to make and proper regulatory and control frameworks demand both trained manpower and economic and legal know-how.

28. The GATS is structurally imbalanced insofar as it undermines one relevant aspect vital for developing countries, notably the movement of natural persons in connection to trade in services. The Annex on Movement of Natural Persons Supplying Services introduces a restrictive approach to the development of mode 4, supply of labour-intensive services. Thus, it constitutes a bias in favour of technology- and capital-intensive services. Needless to say, this bias works in favour of industrial developed countries.

29. On the other hand, this restrictive approach is understandable for various socio-economic and political reasons. Human beings are neither goods nor services to be consumed. Many developed countries, especially in the EU, struggle with unemployment and political problems relating to migration. The restrictive approach

to mode 4 is clearly protectionism, but protectionism in favour of your own labour force. However, freer movement of goods, services and capital should and will be followed by freer movement of people, step by step. The first steps in this direction should be taken already on the current negotiation round.

30. Special and Differentiated Treatment (SDT) is one of the major disputes area in the current negotiation round. As mentioned before, the GATS includes its own mandate for Special Treatment for Least Developed Countries (Articles IV and XIX). Both the general SDT-problem and the particular "GATS-SDT-problem" remain to be solved. The political will to achieve this can be generated, *inter alia*, via parliamentary involvement in developed countries.

Conclusions

31. For the purposes of the debate at our Conference, some initial recommendations for the ongoing and forthcoming negotiations on progressive liberalisation of trade in services could in the opinion of your rapporteur be summarised as follows:

- The GATS is an integral part of the Doha Development Agenda, and further has its own in-built development commitments. These commitments, and the fact that the GATS is explicitly linked to the respect of national policy objectives, must be taken seriously.
- Progressive but prudent opening up of trade in services is of vital interest to both developing and developed countries. Progress is needed, especially in sectors where services are already produced according to market mechanisms. Prudence is required in sensitive sectors, in terms of both degree and coverage of liberalisation. More efforts are needed in order to find a balanced solution. The Fifth Ministerial Conference of WTO in Cancún could provide a political boost for this process.
- Trade liberalisation is not necessarily the good thing for everybody. However, superficial and scare-story-based criticism of the GATS is unnecessary and counter-productive. Attention should be focused on questions like the proper ways of producing services in different countries, democratic setting and attainment of policy objectives, analysis and appropriate limits of commitments, and appropriate regulation of liberalised services.
- Industrialised and developed countries must take a cautious approach with regard to the opening up of the services markets, especially as far as services relating to basic human rights and needs are concerned. They must be prudent with their own public services, but a highly responsible attitude is also required when they approach developing countries in pursuit of their own interests. An assessment of the economic, social and environmental sustainability of the commitments must be carried out.
- Solutions must also be found to questions of special concern and the interests of developing countries, like the balancing of the system as regards the movement of natural persons and specialised treatment. Enhanced technical assistance to developing countries is necessary in their effort to participate in the process.