

Schultz, Siegfried

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Trade in Services: its Treatment in International Forums and the Problems Ahead

by Siegfried Schultz, Berlin*

When the General Agreement on Tariffs and Trade (GATT) was concluded in the late 1940s, there was hardly any mention of international transactions in services. At that time, the issue of international trade in services was of minor importance. In addition, attention was initially focused on measures hampering trade at the border. With the principal output of the majority of the sub-sectors of the service industry being "non-tangible", trade impediments relevant for the international exchange of services are of a more subtle nature. These impediments gained importance as the volume of international transactions in this sector increased considerably during the last decade – a development paralleled by the mushrooming of non-tariff barriers in the field of merchandise trade.

As in the field of internationally traded goods, there are plenty of trade barriers affecting transactions in services. Service industries participate in the international economy via either trade or investment activities. A number of service industries, such as banking or insurance, can often "export" their services only by establishing offices or branches abroad through which they gain access to the foreign markets. In cases such as these, restrictions on the foreign companies' freedom of establishment in a country become restraints of trade.

Results of the Tokyo Round

Barriers affecting trade in services attracted much less attention than barriers against merchandise trade in the various multilateral trade negotiations of the past. Although earlier GATT rounds of negotiation dealt with some aspects relating to services, it was not until the Tokyo Round that certain provisions and agreements were explicitly tackled.¹ This interest in services can predominantly be ascribed to initiatives taken by the US delegation, which raised the question of various restrictions under pressure from American exporting interests.² Supporting fire was provided by the EC on some issues. Apart from the question of patents, the complaints related primarily to certain practices in the

fields of transport (the insistence of Eastern European countries on using their own ships, flag discrimination by Argentina and Brazil, cabotage rules) and insurance (regulations in a number of countries requiring policies to be concluded exclusively or predominantly with national agencies). However, discussion of these problems did not produce any notable results.

Some of the agreements reached in the Tokyo Round do, however, contain elements that affect trade in services. This is true of

- the agreement on government procurement, which mentions services, although they must play only a minor part in government purchases of goods. The committee on public procurement established under the agreement is supposed to examine the extension of the agreement to pure service contracts;
- the agreement on subsidies and countervailing duties, in that a separate list of export subsidies

¹ For an in-depth discussion of the GATT negotiations, in particular with regard to transport insurance, see R. J. Krommacker: Trade-related services and GATT, in: *Journal of World Trade Law*, Vol. 13, No. 6, Nov./Dec. 1979, pp. 510-522.

² Cf. Hans J. Petersen, Fritz Franzmeyer, Peter Hrubesch, Siegfried Schultz, Dieter Schumacher, Herbert Wilkens: *Der internationale Handel mit Dienstleistungen aus der Sicht der Bundesrepublik Deutschland; Entwicklung, Handel, Politik*, DIW (German Institute of Economic Research), Beiträge zur Strukturforchung, Vol. 78, Berlin, Munich 1984, p. 187 f., cited as "DIW".

* Deutsches Institut für Wirtschaftsforschung (DIW).

expressly refers to service industries, though here too only insofar as services are included in exports of goods;

□ the sectoral agreement on trade in civil aircraft (the abolition of all customs duties and other charges on civil aircraft and aircraft parts as from 1st January 1980).

International services were discussed at the ministerial meeting held in Geneva in November 1982.³ The Americans were pressing for concrete measures, but they failed in their attempt to have the GATT Secretariat clearly mandated to catalogue the impediments to international service transactions and to examine the applicability of the GATT articles and codes of conduct to trade in services. The GATT principles that are of particular interest in this connection include the most-favoured-nation clause and the principle of the equality of treatment of residents; GATT also provides a very useful conciliation procedure and the Agreement allows developing countries to receive special treatment.

Opposition to the United States' proposals came mainly from the developing countries. Many of these countries feel a particularly strong need for protection in the services field, so that a powerful group of developing countries maintained that GATT had no mandate for the services sector and therefore blocked acceptance of the work programme sought by the USA. A number of Western European countries were also not prepared to support the United States. Many of them consider that they are not yet sufficiently competitive with American suppliers and are therefore reluctant to commit themselves to the GATT procedure that will ultimately lead to free trade and open markets.

Agreement was finally reached on a recommendation to interested countries to carry out national studies on the subject and to exchange information among themselves. So far, studies have been produced by Canada, the USA, the United Kingdom, the Netherlands and Sweden. The EC has recently also prepared a study on the economic role of services, their share in external trade and the relevant legislation. It was originally intended that the outcome of these investigations should be discussed in the autumn of 1984 at a further conference of the contracting parties, but the actual progress of consultations so far has made the previous timetable obsolete.

³ On the following point cf. chiefly K. P. Sauvart. Grenzüberschreitender Datenverkehr: Bedeutung, Auswirkungen, Handlungsmöglichkeiten, in: Vierteljahresberichte, No. 97, September 1984, p. 280 f.

The GATT Ministerial Declaration of November 1982 on Services:

The Contracting Parties decide:

1. To recommend to each contracting party with an interest in services of different types to undertake, as far as it is able, national examination of the issues in this sector.
2. To invite contracting parties to exchange information on such matters among themselves, *inter alia* through international organizations such as GATT. The compilation and distribution of such information should be based on as uniform a format as possible.
3. To review the results of these examinations, along with the information and comments provided by relevant international organizations, at their 1984 Session and to consider whether any multilateral action in these matters is appropriate and desirable.

Source: GATT, Activities in 1982, Geneva, April 1983, p. 23 f.

Treatment in Other International Forums

One of the other important forums dealing with the question of trade in services is the OECD. Earlier efforts at liberalisation among member countries (cf. the Codes of Liberalisation of Capital Movements and of Current Invisible Operations) has given the OECD detailed experience in the sector, and this has now been used to advantage in the debate on trade barriers in the services field.

A pilot study on construction/engineering and consultancy services was first carried out, but other service branches have now been examined in detail. After producing a series of internal documents and holding intensive discussions among member countries, the OECD published part of the voluminous material in 1983-84 (insurance, tourism, banking).⁴ Other subsector studies (maritime transport, telecommunications and computer services, as well as the film industry) are currently under way in the respective committees.

The attempt to establish analogies with merchandise trade and to discover any features common to the entire services sector runs like a thread through all the

⁴ For a brief description of these approaches see OECD Observer, Nos. 126 and 128, January and May 1984, respectively.

discussions at the OECD level aimed at identifying obstacles to international trade in services.⁵ This goes hand in hand with the endeavour to exploit the specialist expertise in individual subsectors, such as its experience with particular OECD codes and existing committees, and hence to deal with the issues on a branch-specific basis. As far as general problems are concerned, certain similarities with "visible" trade emerged, mainly in the field of construction and engineering (export subsidies, state intervention with regard to market shares, distortions of competition by tying purchases to a particular supplier). However, this industry also displays a number of specific features (such as the practices of international consultants, outbidding in the financing of preparatory project studies, problems with the temporary importation of equipment) which prohibit a uniform treatment of trade barriers across the whole spectrum of subsectors.

Like GATT, however, the OECD lacks universality.⁶ The principle of universality is advocated by the developing countries in particular, which propose United Nations agencies to achieve that aim. Apart from special organisations such as the ITU, UNESCO or the Commission on Transnational Corporations, this means primarily UNCTAD. Most developing countries tend to make their trade policy demands within the framework of UNCTAD, because they do not feel that their interests are fully represented in GATT. The UNCTAD Secretariat has therefore drawn up a programme of work on trade in services, and in fact UNCTAD does have some experience in the services sector, such as in shipping and insurance. In any case, most developing countries view UNCTAD as the forum par excellence for discussions on trade in this field. But, as the recent

session of the Trade and Development Board has shown, the approaches taken by the industrialised and the developing countries are presently too controversial to provide a common platform for progress.

International Service Transactions on a Worldwide Scale

Over the years, international service transactions have attracted growing attention, both because of their balance of payments implications and from the point of view of structural change in the world economy.⁷ The increasing importance of the services sector indicates not only the further development of highly industrialised economies but also the need for adjustment in their international economic relations.

There is no internationally recognised standard classification of the services sector. The macro-economic division into agriculture, industry and services is undisputed, but this definition is inadequate as the basis for in-depth international discussions. Nevertheless, two generally accepted conclusions can be drawn from sectoral statistics prepared on this basis. First, in most industrialised countries and some Third World countries the services sector contributes more than half of national value added. Secondly, in the last few decades its size within the three-sector model has tended to increase almost everywhere at the expense of agriculture and industry.

The principal source of internationally comparable country data on trade in services is the International Monetary Fund's balance of payments statistics. Basically, from these statistics the size of the world market for services and the identification of the main suppliers to it can be derived. While there are some inadequacies involved in measuring fully the volume of world service industry trade transactions or their sectoral breakdown, the balance of payments data can reasonably be used to measure broad trends in services trade aggregates.

Table 1 presents rough growth trends for the period 1970 to 1980. As recorded in the balances of payments, services exports grew at an annual average rate of almost 19 percent and were moderately outpaced by merchandise export growth and growth in foreign investment earnings.⁸ All foreign earnings – services,

Table 1
World Comparisons¹

	Average Annual Compound Growth Rate 1970-1980 (%)	Value in 1980 (\$ US billion) ²
Services Exports ³	18.7	350
Merchandise Exports	20.4	1,650
Foreign Investment Income ⁴	22.4	225
Gross Domestic Product	14.2	9,389

¹ World is defined as IMF member countries reporting data for both 1970 and 1980. ² Converted from SDRs and nominal values in national currencies at current exchange rates to US dollar. ³ Services exports exclude official transactions and investment earnings. ⁴ Foreign investment income includes private direct investment and portfolio income, but excludes foreign official income.

Source: U.S. National Study on Trade in Services (submitted by the U.S. Government to the GATT in Dec. 1983) on the basis of IMF, Balance of Payments Statistics, International Financial Statistics, various issues

⁵ Cf. DIW, op. cit. p. 163 f.

⁶ S a u v a n t, op. cit. p. 282.

⁷ DIW, op. cit. p. 92.

⁸ U. S. National Study on Trade in Services, submitted by the U. S. Government to the GATT in Dec. 1983 (prepared under the direction of the Office of the U. S. Trade Representative), Appendix I.

INTERNATIONAL TRADE

Table 2
The 20 Largest Services Exporters in 1980: International Comparisons
 (billions of dollars, except where noted)

Country	Value of Services Exports	Value of Foreign Investment Income	Value of Merchandise Exports	Services Balance	Services Exports to GDP Ratio (%)	Services Exports to Merchandise Exports Ratio (%)
United States	34.9	70.2	224.3	6.0	1.4	15.6
United Kingdom	34.2	17.1	110.9	9.8	6.5	30.9
France	33.0	18.4	107.6	5.5	5.1	30.7
Germany	31.9	8.5	185.5	-17.9	3.9	17.2
Italy	22.4	5.3	76.8	6.2	5.7	0.2
Japan	18.9	7.2	126.8	-13.4	1.8	14.9
Netherlands	17.7	10.0	67.5	0.2	10.5	26.2
Belgium	14.5	17.6	55.2	0.5	12.1	26.3
Spain	11.7	0.2	20.5	6.3	5.6	56.9
Austria	10.8	2.5	17.2	5.1	14.0	62.6
Switzerland	8.4	n.a.	29.3	1.9	8.3	28.9
Sweden	7.5	0.8	30.7	0	6.0	24.3
Mexico	7.4	1.0	16.2	0.2	4.0	45.8
Norway	7.3	0.5	18.7	0.3	12.7	39.2
Canada	7.0	2.9	67.6	-2.5	2.7	10.3
Singapore	5.9	n.a.	18.2	3.1	54.1	32.7
Korea	4.5	0.3	17.2	0.6	7.7	26.1
Yugoslavia	4.5	0.2	9.0	-0.7	7.1	49.9
Greece	4.0	*	4.1	2.6	9.9	97.2
Saudi Arabia	3.7	n.a.	100.7	-8.0	3.2	3.7

* Less than \$ 50 million.
 For footnotes and source, see Table 1.

merchandise trade and investment – grew substantially faster, however, than the nominal rate for world production (14 percent). This is an indication that the world economy became increasingly internationalised in the 1970s.

Some observers of the trends in international service trade tend to interpret the slower rate of growth for services than for merchandise (or investment income) in the 1970s as partly reflecting the retarding effects of substantial national barriers to services trade. This assessment cannot be tested empirically. In addition, it is in contrast with the higher growth rate for internationally traded services at the end of the 1970s. On the other hand, the considerable increase in the price of oil had a substantial impact on the nominal growth of world merchandise exports.

Table 2 lists the top 20 services exporters in descending order for 1980. On a value basis, the United States was the largest exporter in 1980 (\$ 35 billion), followed closely by the United Kingdom, France and West Germany. The United Kingdom also had the largest services trade surplus (\$ 10 billion) while the Federal Republic had the largest deficit (\$ 18 billion).⁹ A number of developing countries likewise appear among the top 20 services exporters.

The overall balance of the services trade of the main exporters and importers of major service categories in 1981 can be found in Table 3. These data – which do not comprise investment income – point quite clearly to the substantial surplus of services imports in individual cases. Besides Germany this applies to the non-European OECD members, South Africa, and some Third World countries. The data also show the size of the residual category, which in fact is quite heterogeneous.

The above gives an indication of the aggregate importance of services. There are many signs that services will be of greater importance in the future.¹⁰ However, services trends in the aggregate only give a very rough indication. Data limitations make the task of interpreting what international services are really all about a tenuous proposition.¹¹ A sound interpretation requires a totally restructured data-gathering base which definitely will take time.

With this kind of methodological and statistical improvement it may ultimately be possible to curb the

⁹ Ibid.

¹⁰ R. K. Shelp, *Beyond industrialization. Ascendancy of the global service economy*, New York 1981, p. 59.

wide discrepancies in the balance of payments on a world-wide level. There is substantial cause to believe that current methods of data collection on service industries trade may regularly underestimate total transaction value. A downward bias probably exists in the statistical estimations of most countries. In fact, international concern over the growing statistical discrepancy in the world balance of payments (about \$ 120 billion in 1982) has focused increasingly on the potential under-reporting of service industry and other "invisible" transactions.¹²

What of the Future?

As mentioned above, the final paragraph of the communiqué issued at the close of the GATT ministerial meeting in November 1982 relates to services. This was a visible indication of the lack of consensus among the contracting parties. The treatment of the services issue in all international bodies is typified by an insufficient understanding of the specific conditions in the various branches of the services sector; moreover, most countries still have no clear idea whether economic policy initiatives should be worked out at the international level and, if so, whether they deserve support, which areas should be involved, what form they should take and what the institutional arrangements should be.

In the run-up to serious negotiations it will be comparatively easy to agree on more systematic data-gathering; in other words inventories relating specifically to services would have to be established. Subsequent action to improve the empirical basis will depend strongly on where the greatest preparatory work on data-gathering was carried out. At the national level this has been the USA, at the international level the OECD.

Fortunately, it is now widely agreed that those problems that cannot be ascribed to government activities or measures over which the government has

no influence do not count as negotiable constraints and are thus not a subject of multilateral debate. However, one of the main problems with empirical analysis is that the scale of effective hindrance cannot be ascertained, so that an accurate assessment of restrictive behaviour in the various service industries and a comparison between individual countries or country groups cannot be made.

Table 3
Service Balance, 1981

(millions of US dollar)

	Transport	Travel & Tourism	Other	Total Service Balance
United States	-948	706	7414	7172
United Kingdom	678	-561	8019	8136
Belg./Lux.	379	-1098	1002	283
Denmark	438	-35	827	1230
France	-1341	1496	3700	3855
Greece	133	1547	745	2425
Italy	-1293	5831	669	5207
Netherlands	2521	-2053	586	1054
West Germany	-1797	-11432	-8259	-21488
Total EEC ¹	-282	-6305	7289	702
Austria	-234	2761	1008	3535
Finland	-231	100	255	124
Norway	2546	-820	-230	1496
Portugal	-165	783	13	631
Spain	591	5763	-266	6088
Sweden	495	-1266	1031	260
Switzerland	-284	1313	3053	4082
Other Europe	2718	8634	4864	16216
Australia	-38	-671	-1968	-2677
Canada	-71	-886	-1456	-2413
Japan	-3164	-3888	-7443	-14495
Total OECD ²	-1785	-2410	8700	4505
Mexico	-1887	67	719	-1101
Singapore	1605	1367	2013	4985
Rep. of Korea	-79	6	2532	2459
Yugoslavia	-141	1806	47	1712
Israel	-178	347	-98	71
Brazil	-1692	-174	-591	-2457
India	-1281	980	335	34
South Africa	-1065	-143	-875	-2083
Saudi Arabia	-5499	-1188	-3177	-9864
Egypt	479	242	-561	160
Other Countries	-9738	3310	344	-6084
Rest of World	-19080	-1223	-3855	-24158
WORLD	-30603	-323	5189	-25737

¹ Except Ireland.

² Except Iceland, Ireland, New Zealand, and Turkey.

Source: World Invisible Trade, Committee on Invisible Exports, London 1983.

¹¹ "Statistics about services are bad for different reasons and in different ways; there are problems both in measurement and concept. The same service is likely to be recorded differently if it is carried on within a manufacturing firm or contracted for outside. Moreover, the boundaries are shifting. While some manufacturing firms have been abandoning in-house service operations in favor of contracts with independent suppliers, others have diversified by buying outside service firms that are expected to contribute to their cash flow and help to offset fluctuations in their earnings from manufacturing. Hence, although the total supply of services may not have changed, the way they are recorded complicates the measurement problem." W. Diebold, Jr., H. Staisson: Negotiating Issues in International Services Transactions, in: W. R. Cline (ed.): Trade Policy in the 1980s, Institute for International Economics, Washington D. C., 1983, p. 582.

¹² Cf. U. S. National Study. . . , op. cit.; and Neue Zürcher Zeitung of June 21, 1984.

The discussions within GATT will probably continue, partly because this organisation has its attractions as a forum for the countries at present most affected by trade barriers in the services sector, namely the industrial countries. These countries are the predominant influence within GATT. Another point in GATT's favour is that it already provides an institutional framework placing binding contractual obligations on signatories.

To this extent GATT might also be a suitable forum for international trade in services, although in its present form it is still inadequate on two counts:

- it is constituted essentially as a customs agreement – with contractual provisions on non-tariff measures on a scale regarded as necessary in 1947 to complement customs concessions – rather than as a comprehensive treaty to regulate the type of non-tariff practices that have become a central element in present-day trade policy;
- GATT's mandate up to now has related only to international merchandise trade, not services or investment-related issues. Nonetheless, as mentioned above, some of the codes approved in the Tokyo Round already touch briefly on aspects affecting the services sector.

In addition, some countries do not necessarily welcome a binding code of conduct, as it might tend to preserve a status quo that places them at a disadvantage.¹³ Quite apart from that, a GATT solution would stand a chance only if the Europeans first agreed a common policy in this domain and if the dominant position of the USA in certain areas such as telecommunications, information technology and transborder data flow were reduced.

National Interests

Within the EC the Commission advocates some degree of liberalisation, but several countries seem to be interested only in ensuring that no new barriers to trade in services are constructed.¹⁴ This also applies to the United Kingdom, which in public always supports the USA in arguing for a reduction in restrictions but which in internal EC discussions (together with Denmark) is stressing that its exports of services to third countries would not really be harmed by trade restrictions. The reason for this ambivalent stance might be that the British want to protect their competitive advantage. It is said that, unlike other EC countries, they have put a lot of energy into successfully circumventing existing barriers. Understandably, they do not wish to give up this competitive lead. Up to now, France has been reluctant to endorse the plan to reduce trade restraints.

In West Germany opinions are still being formed. At present there is some division of labour between the government and the trade associations. The Ministry for Economic Affairs provides a status report on trade restrictions applying in the Federal Republic; the Association of German Chambers of Industry and Commerce catalogues all requests for liberalisation made to the trading partners. The list of subsectors they would like to see liberalised includes the following: banking, construction, office and information technology, consultancy, tourism, transportation (by land, sea and air) and insurance. The majority of these German industries would support an opening of markets, thereby revealing their positive assessment of their own market position. As in international merchandise trade in the last few decades, liberalisation is expected to bring about economic welfare effects, particularly in banking, construction and consultancy. According to the assessment made by the interested business circles, Germany has great potential in trade in services because of its highly trained workforce.

Given the differences of opinion among the Ten, one does not need second sight to recognise even now that a Community stance will be defensive in character and ultimately designed only to preserve the status quo. If it does anything at all, the EC will probably at most agree to negotiations on trade liberalisation in the narrow sense. The American demand to include foreign investment as well will almost certainly be turned down.

From the tactical point of view, serious negotiations at world level to dismantle protectionist barriers to trade in services will first have to bring about a standstill in the existing measures, as occurred in the case of merchandise trade. As a next step, the measures themselves and the factors that caused them would have to be discussed before the stage of substantive negotiations on removing or minimising barriers could finally begin. Whereas on the one hand the desire to regulate certain service industries might be respected, on the other the conviction might grow that the removal of superfluous controls would provide greater opportunities for a growth in trade. If this gained international consensus, an attempt to formulate a set of international rules for the services sector within the framework of a new round of international negotiations would stand a chance of success.

If a durable, worldwide solution to the problems of trade in services is to be found, it is imperative that the

¹³ Sauviant, *op. cit.*

¹⁴ Neue Zürcher Zeitung of November 15, 1983.

interests of the Third World countries also be taken into account. Consideration would have to be given to their development opportunities, while ensuring that production factors are used efficiently and a range of competitively priced services offered – a delicate balancing act for the negotiations to perform. The following factors would have to be taken into account to come as close as possible to this aim:¹⁵

□ The “enabling clause”¹⁶ of the GATT offers the possibility of deviating from the basic principles of non-discrimination and reciprocity in the case of merchandise trade with developing countries. The same would have to apply to the services sector.

□ The trade policy complement to this consists in the demand that the “normal” rights and duties of a trade partner must be assumed as a country’s level of development rises and its trade position improves (“graduation”). Though challenged by developing countries, this axiom would have to be accepted if the protection demanded for fledgeling industries (the

“infant industry” argument) is not to be simply a pretext for permanent protectionism.

□ The developing countries’ reservations about the achievements of the Tokyo Round can only be overcome if the opening of markets for services from the “North” is balanced by increased export opportunities for the Third World.

Realistically, however, it must be conceded that the concern now felt in most industrial countries about economic activity and employment means that these ideas for global negotiations are beyond the bounds of what is currently feasible. All the indications are that the opening of concrete discussions will only be partial, in two respects. First, the talks will concentrate on individual service industries, and secondly mutual offers of liberalisation are most likely to reach fruition in the nucleus of OECD countries.¹⁷ Routine contacts will continue, such as those being held during the autumn meeting of the GATT signatory countries, but until a new round of substantive negotiations commences within the framework of multilateral trade talks, we can only expect progress in the long term.

¹⁵ A. S a p i r: Trade in services: policy issues for the eighties, in: Columbia Journal of World Business, Fall 1982, p. 82.

¹⁶ As a result of the Tokyo Round, part IV of the GATT treaty (introduced in 1966) was confirmed and extended by this clause. This provided the legal basis for preferential treatment.

¹⁷ H. P e t e r G r a y: A negotiating strategy for trade in services, in: Journal of World Trade Law, Vol. 17, No. 5, Sept./Oct. 1983, p. 385.

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