

# The case of the United States of America

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## INTRODUCTION

I appreciate the opportunity to discuss health care services in light of the forthcoming World Trade Organization (WTO) negotiations. The Office of the United States Trade Representative is an executive branch agency, created in 1962. Organizationally, it is located in the Executive Office of the President. The head of the agency, Charlene Barshefsky, has the rank of Ambassador and is a member of the President's cabinet. The role of the organization is to help formulate and coordinate the Administration's trade policy and to represent the USA in trade negotiations.

In this year's state-of-the-union message, President Clinton called for a new round of multilateral trade negotiations for the year 2000. To launch those negotiations, the USA will host a Ministerial-level meeting of the World Trade Organization (WTO) in

Seattle from November 30 to December 3, 1999.<sup>2</sup> Trade ministers from more than 135 countries are expected to attend.

Services will be included in the negotiations. The WTO General Agreement on Trade in Services (GATS) requires successive rounds of negotiations to achieve progressively higher levels of liberalization, beginning five years from the effective date of the original agreement. Therefore, services are to be included in the round that begins in the year 2000.

I will try to give you the USA perspective on health services for these forthcoming negotiations. This can only be done in a general way, because we are in the midst of compiling the views of interested parties on the negotiations and it is too early to get into specifics at this point. Federal Register notices have been issued,

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<sup>2</sup> *Editor's note:* The following developments took place after this conference: (1) the WTO Ministerial meeting in Seattle in December 1999 failed to launch a comprehensive round of trade negotiations; (2) services trade negotiations began in January 2000, in accordance with Article XIX of the WTO Agreement; and (3) the WTO Ministerial in Doha, Qatar, in November 2001 succeeded in launching a new comprehensive round of negotiations to be completed by January 1, 2005.

inviting comments from the public. There have been public hearings in five USA cities (Washington, Chicago, Dallas, Los Angeles, and Atlanta). Preparations for the negotiations also include meetings with private sector advisory committees. The advice will be used to develop USA negotiating strategy, to set objectives, and to establish priorities.

The last round of trade negotiations—the Uruguay Round—established the World Trade Organization, which became effective January 1, 1995, succeeding the General Agreement on Tariffs and Trade (GATT). The Uruguay Round was the most comprehensive multilateral trade negotiation ever; and for the first time, the agreement covered services as well as goods.

Services, therefore, are relatively new to trade agreements, whereas goods have been subject to trade rules for 50 years. Over those five decades, the GATT was successful in reducing tariffs for goods by about 75 %. This resulted in a fifteenfold growth of trade and was accompanied by phenomenal world economic expansion over that period. We are hoping that reduction of barriers to trade in services will make a similar contribution to the world economy.

### **THE WORLD TRADE ORGANIZATION AND THE GENERAL AGREEMENT ON TRADE IN SERVICES**

The WTO is not a supernational government. Neither is it an international government that will impose its will on the USA and other countries. It is a membership organization and the members determine what is to be done. The WTO provides a permanent forum

for Member governments to address issues affecting multilateral trade relations and it supervises the implementation of trade agreements. It operates in the same manner as its predecessor organization—the GATT—on a consensus basis.

The agreement on trade in services, or GATS, is designed to reduce or eliminate government measures that prevent services from being provided across national borders or that discriminate against foreign-owned service providers in their market. It provides a legal framework for addressing barriers to trade and investment in services, including specific commitments negotiated in trade agreements. To ensure that those commitments are implemented, the GATS contains a dispute settlement mechanism. Also, the WTO is a forum for further negotiations to open services markets around the world.

The GATS is a three-part agreement, consisting of

- principles and general obligations;
- annexes dealing with specific sectors; and
- specific commitments by individual countries to keep their markets open to, and not to discriminate against, foreign services and service providers.

The principles include:

- *Most favored nation (MFN) treatment.* This means treating trading partners equally. It is required, even if a country has made no specific commitments, although countries may take exemptions, which are to be reviewed in five years and terminated in ten.

- *Market access.* Types of measures not to be taken unless otherwise specified in a country's schedules. These are basically quantitative restrictions consisting of quotas on the number of service suppliers or amount of services provided, economic needs tests, and equity limitations. Market access must be negotiated and countries may take exceptions in their schedules.
- *National treatment.* Foreign services and service suppliers are to be treated the same as domestic services and service suppliers. This is similar to market access; national treatment must be negotiated and countries may take exceptions in their schedules.
- *Transparency.* Countries must publish all relevant laws and regulations and set up inquiry points within their bureaucracies to provide information on regulations in any services sector. Changes in regulations subject to specific commitments must be notified to the WTO.
- *Regulation.* Domestic regulations are to be administered in a reasonable, objective and impartial manner.
- *International payments and transfers.* Once a government makes a commitment to open a service sector to foreign competition, it must not normally restrict money being transferred out of the country as payment for services supplies in that sector. The only exception is when there are balance-of-payments difficulties and, even then, the restrictions must be temporary and subject to other limits and conditions.

Annexes to the GATS apply to some specific service sectors (financial

services, telecommunications, air transportation services, and movement of natural persons). They take into account the special features of individual sectors.

## SCHEDULE OF COMMITMENTS

Schedules of commitments on services are analogous to tariff schedules on goods. Rather than rates of duty, however, the commitments on services are scheduled to indicate the conditions for market access and national treatment according to four modes of delivery.

- *Mode 1: Cross-border services.* The service itself crosses the border.  
[Example: x-rays are transmitted electronically to a doctor in another country for diagnosis.]
- *Mode 2: Consumption abroad.* The consumer of the service crosses the border.  
[Example: a patient travels to a hospital outside his home country for treatment.]
- *Mode 3: Local presence.* Services are supplied through a facility in another country.  
[Example: a health care organization establishes a facility in another country.]
- *Mode 4: Movement of persons.* The service provider crosses the border.  
[Example: doctors and other personnel travel abroad to provide their services.]

## URUGUAY ROUND COMMITMENTS ON HEALTH CARE SERVICES

In most cases, the specific commitments made in the Uruguay Round were codifications of existing laws and regulations, the status quo. Many of

these commitments were vague and ambiguous, and there were few sweeping commitments to remove barriers. For health care services, 49 countries made commitments on medical and dental services; 39 countries made commitments on hospital services.

It must be emphasized that the present remarks are limited to health care services and not to medical equipment and medicines, which are goods, not services. Of course, effective health care services cannot be dispensed without proper medical equipment and medicines.

### WTO EXERCISES TO PREPARE FOR NEGOTIATIONS

- (1) *Information exchange.* The WTO Secretariat has prepared papers on 15 subjects including health and social services, issues, benefits; how few or how many commitments, and regulatory issues (barriers). This forms a common base of information.
- (2) *Assessment of commitments.* There is consideration of how commitments help developing countries, consumers, manufacturers, and businesses.
- (3) *Development of negotiating guidelines and procedures.* This involves producing ideas, setting targets or benchmarks for liberalization using sectoral or cross-sectoral approaches, defining sectors, binding market access by mode of delivery; binding national treatment for Mode 3, and determining regulatory issues to be addressed and measures that undermine the value of a commitment.

### GENERAL OBJECTIVES FOR SERVICES

In general, US Government objectives for services in the new round of negotiations include the following:

- Expand country coverage. Get more countries to make commitments in specific sectors.
- Improve the quality of commitments. Get countries to liberalize beyond the status quo.
- Clarify the content and cover all commercially important activities (through appropriate classification).
- Promote regulatory transparency and assure that regulations in themselves and implementation of the regulations do not necessarily restrict trade (elaborate on GATS' Article VI).
- Try to look five years ahead so that commitments are not obsolete when the agreement is signed.

To put it simply, the USA objective in services negotiations is to create an environment with new opportunities for service providers in markets outside their home country.

### LAUNCHING THE NEGOTIATIONS

The WTO Ministerial Meeting in Seattle will issue a declaration that will set out the general parameters for the negotiations. In January, a committee structure is likely to be set up—as in the Uruguay Round, probably a Trade-Negotiating Committee, which will oversee other committees, including one for goods and one for services.

Some specific decisions will need to be made during the course of negotiations. For example, if a separate group is created to negotiate health care services, decisions will have to be

made on the composition of the sector. Is medical education to be included as health care services or should it be included with the education services? Should the licensing of physicians, and other health care providers be treated in the health care sector or in the professional services sector? Should health insurance be included in the health care sector or in the insurance sector?

### HOW SERVICES NEGOTIATIONS WILL BE CONDUCTED

With regard to decisions on how the negotiations will be conducted, at a recent hearing by the Senate Finance Subcommittee on Trade, Ambassador Susan Esserman, Deputy US Trade Representative, testified on USA goals for services trade in the new round. In that testimony, she indicated that the USA is seeking “flexibility to pursue a variety of negotiating approaches to achieve the greatest liberalization possible.” This includes:

- *Liberalizing substantially a broad range of service sectors.* This should include deeper commitments in finance and telecommunications, together with fundamental improvements in the commitments of existing WTO Members on distribution, audiovisuals, construction, travel and tourism, the professions, education and training, health, express delivery, energy and environmental services. (Liberalization of distribution services is also a critical aspect of liberalizing trade in goods, as it helps ensure that agricultural goods and manufactured products reach markets as rapidly as possible.) This would include several different types of approaches, capable of achieving

substantial liberalization in many industries, as follows:

- *Sectoral agreements.* These are developed through creation of “model” sets of GATS commitments for key sectors of interest to the USA. These model schedules, or “templates,” would be equivalent to the zero-for-zero tariff elimination we have already done for goods. The model schedules would, in essence, create significant movement toward free trade in a services sector through removal of as many restrictions in that sector as possible.
- *Examining cross-sectoral or “horizontal” methods of service liberalization.* This entails improving regulatory policies across industries, for example, for all countries to provide transparency and good-government practices. This could also include across-the-board commitments to services liberalization, such as agreeing to common levels of ownership across sectors. Also, to ensure effective market access, the USA has proposed to work on guaranteeing the transparency of domestic regulations and ensuring that they do not undermine the value of our trading partners’ commitments.
- *“Request-offer” talks.* In those under the Uruguay Round, top priorities were selected for liberalization of services in the economies of particular trading partners.
- *Increasing participation in the Basic Telecommunications and Financial Services Agreements.* Expanding country participation is a goal in several of our regional initiatives, notably in Africa, and will also be a focus in the round of negotiations.

- *Ensuring that services rules anticipate the development of new technologies.* Examples of the potential of new telecommunications, information technologies, and the Internet to support trade in services are obvious in almost every field, from colleges which can teach, hold examinations, and grant degrees via the Internet; to home entertainment products delivered by satellite; long-distance environmental monitoring of air and water quality; and advanced health care delivered directly to the home or to rural clinics via telemedicine. Service providers in years to come will find many opportunities to use new technologies to deliver their products overseas, and should not encounter discrimination based on choice of technology.
- *Preventing discrimination against particular modes of delivering services,* such as electronic commerce or rights of establishment.

## TIMING

The Uruguay Round was scheduled to be completed in five years, but lasted about eight years. Member countries want a shorter round this time. A consensus seems to be developing for a three-year deadline for these negotiations, with a review of progress at the midpoint (around the summer of 2001).

## LICENSING OF PROFESSIONALS

Since one of the concerns in the delivery of health services is the licensing of physicians, nurses, and other health-care providers, the work that has been done in the WTO Working Party on Professional Services

should be mentioned. It deals with the accountancy sector, which could have implications for the health care sector.

The Working Party developed *guidelines* for the negotiation of mutual recognition agreements in accountancy; and *disciplines* for regulation in the accountancy sector. The guidelines are a checklist of elements for possible inclusion in a mutual recognition agreement. They are designed to make it easier for Members to negotiate such agreements, using a common approach so that the agreements can be expanded to include additional countries.

The disciplines are rules for regulating accountancy in a way that prevents unnecessary trade restrictions. A key principle is that regulations should be based on the need to meet legitimate objectives, such as consumer protection. The rules stress the need for transparency, including advance notification of new regulations and the opportunity for interested parties to comment on them with the expectation that those comments will be taken into account when the final regulations are issued. The rules also provide for fairness in administration of the regulations.

Even though this work is limited to accounting, it is relevant to other professional service sectors and could be used as a model. In fact, as part of the current work program, Member countries will be consulting with their professions to determine the feasibility of applying those rules to other sectors.

## BENEFITS OF LIBERALIZATION

New opportunities resulting from liberalization will bring benefits to both industrialized and developing countries. First, new and additional

high-quality services and treatments can be made available for the general well-being of the population. Examples might include remote diagnostics and setting up specialized facilities for care of aging populations, and specialized clinics for the treatment of AIDS and drug and alcohol abuse. Second, new and more efficient methods can help reduce the cost of health care. One such example is telemedicine hookups between rural clinics or schools and central medical centers. Computer capabilities can help to minimize

administrative costs and record-handling burdens. Third, advanced methods of medical education, through teleconferencing, can help develop the skills of local doctors and medical assistants. Fourth, as the sector expands in the consuming country, additional jobs will be generated there, as well as in the supplying country.

The USA will strive for the negotiations to achieve meaningful and substantial benefits for all participants.

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