

HD  
9980.5  
.T3

UNCTAD and trade in services

March 1987

**UNCTAD AND  
TRADE IN SERVICES**

by

**Douglas Taylor \***

**DEPARTMENT OF REGIONAL  
INDUSTRIAL EXPANSION  
LIBRARY**

APR 19 1988

**BIBLIOTHEQUE  
MINISTERE DE L'EXPANSION  
INDUSTRIELLE REGIONALE**

March 1987

This paper is one of a series of discussion papers on trade in services. Research in this series is supported by a grant from the Department of Regional Industrial Expansion (DRIE), Government of Canada. Views expressed in the paper are those of the author alone, and are not necessarily those of the Institute or DRIE.

---

\* Private Consultant

## ABSTRACT

Conventional economic theory suggests that the development of national economies proceeds in an orderly three-phase fashion: the pre-industrial phase in which the driving force in the economy comes from agricultural and extractive activities; the industrial phase wherein the manufacture of goods dominates economic activity; and the post-industrial phase in which services perform as the economic generator.<sup>1</sup>

The developed world has entered the third phase of this development. In Canada and the United States, for example, some 70% of gross domestic product (GDP) is generated by service activity and it has been estimated that approximately 80% of new jobs created in the two countries over the past five years have originated in service industries.

Conventional economic theory proposes that the developing world is still in the pre-industrial/extractive phase. Data on service sector activity in the developing nations appears to contradict this. According to information provided by the United Nations Conference on Trade and Development (UNCTAD), service sector economic activity accounted for roughly 40% of GDP in developing countries in 1979.<sup>2</sup> It is likely that the level of service activity in developing nations has increased during the past half decade.

Since its creation in 1965 UNCTAD has understood the importance of services in the development process and has been active in studying the role service sector activity plays in the development process.

UNCTAD has largely rejected the three step development process. It argues that the process of development requires that all economic activity, extractive, manufacturing and service, be integrated and co-ordinated and that in fact, the phases are interlinked. In short, UNCTAD argues that service sector activity goes hand in hand with the development process.

UNCTAD has produced a number of reports studying service activity in developing economies and has prepared a variety of multilateral agreements dealing with services and development.

This exploratory paper reviews some of the most prominent multilateral agreements originated by UNCTAD.<sup>3</sup> These include The United Nations Conventions on:

- The Code of Conduct for Liner Conferences
- The International Multimodal Transport of Goods
- Restrictive Business Practices Code

UNCTAD's Trade and Development Board Conference Recommendation A.IV.23 and Resolution 42 (111).

The agreements will be reviewed to ascertain the following:

- the extent to which the UNCTAD agreements deal with the sectors on an international basis
- the relevance of the agreements' institutional process for other trade in services agreements
- the extent of their focus on third world concerns
- the extent to which the agreements facilitate or restrict trade in their particular sector and
- the relevance, if any, of these agreements to the GATT.

UNCTAD, as noted above, has produced a number of studies dealing with the issue of services in the developing process. This paper will review the most recent of these: Services and the Development Process.

## INTRODUCTION

In 1974 the United Nations General Assembly passed the consensus declarations on the Establishment and Programme of Action of a New International Economic Order (U.N. General Assembly Resolutions No. 3201 (S-VI) and 3202 (S-VI) respectively). Also, during that year the United Nations General Assembly passed Resolution No. 3281 (XXIX) establishing the Charter of Economic Rights and Duties of States. In the annals of declaratory statements on international development these resolutions are milestones and have been called blueprints for the future.<sup>4</sup> The resolutions did not purport to be rules of international law but they did set down basic principals and concepts for nations to follow in attempting to achieve a more equitable world economic system.

The NIEO resolutions dealt with the main concerns of international development: trade, finance, industrialization, technology transfer, access to technology, regional co-operation et al. Resolution No. 3281 (XXIX) went further and set out specific principles regarding the rights, duties and obligations of states. These include, inter-alia, the sovereign right of every nation to choose its own economic, political, social and cultural system, the right of every nation to benefit from the advances of technology, and the duty of nations to co-operate in expanding world trade. Since the passage of these resolutions, all UNCTAD conference recommendations and resolutions have referred to the NIEO and Charter as the basis for their validity and purpose.

Since the passing of the resolutions and proclamations UNCTAD has developed multilateral agreements in the areas of shipping, insurance and business practices.

In shipping, UNCTAD negotiations have produced the conventions noted; for multinational enterprises, the restrictive business practices code and; in insurance UNCTAD's work is guided by Conference<sup>5</sup> Recommendations A.IV.23 and Conference Resolution 42 (111).

This paper is separated into three sections. The first section reviews the UNCTAD report Services and the Development Process. The second reviews the agreements listed. The third provides a brief conclusion.



"SERVICES AND THE DEVELOPMENT PROCESS "

UNCTAD, in Article 77 of its Final Act, recommended certain measures to improve the invisible trade of developing countries. Among the measures recommended were the continuing study of the process of development and the role of services in that development.

The ongoing international trade debate has recently been focused on services in a global context with a view to establishing a multilateral framework for liberalizing regulations affecting international trade in services. The General Agreement on Tariffs and Trade (GATT) 1982 Ministerial Declaration requested that contracting parties consider whether multilateral action on trade in services was appropriate and desirable. At the recent GATT meeting in Uruguay, the need for multilateral negotiations on services was discussed and agreed to by many of the contracting parties, over the objections of some of the developing nations.

In its twenty-plus year history, UNCTAD has undertaken numerous studies on services on both a macro and micro level. The most recent of these studies, on a macro level, is the report Services and the Development Process produced in 1985.

This report is comprehensive in scope and detail. It is more encompassing than the GATT survey report<sup>6</sup> produced in the same year and, in fact, requests that GATT continues its work in this area.<sup>7</sup>



The report's objective is to begin the development of the ground work to consider the role services play within a framework that is both interdisciplinary and development-oriented. The need for this work is predicated on two essential factors:

(1) Developments in technology have produced entirely new services and led to the integration of services and goods. These technological developments and the use of new service industries will have a profound effect on manufacturing and will result in altered patterns of development.

(2) Although much work has been done on the growth of services in the world economy, the recent debate on services has not addressed the role services play in the development process.<sup>8</sup>

The report deals with two main themes: (1) the role of services in the growth and development of the domestic economy (2) issues relating to services in the international context which may be relevant to the development process.<sup>9</sup>

A. Identifying the Issue and Problems

As the basis for its report UNCTAD recognizes, that owing to the special nature of their production processes, most services have to be produced and consumed domestically which accounts for their low level of tradeability. Moreover, services play a more important role in development than is indicated by their direct contribution to gross domestic product due to interlinkages with goods producing activity. For this reason, gaining a better understanding of their role in development is necessary. Also, technological changes are rapidly transforming non-tradeable services into tradeable services and these changes will not only affect trade flows but also provide new opportunities in developing service related enterprises, thus improving development.

On the domestic side UNCTAD calls for further study on the following issues:

- UNCTAD questions the validity of conventional economic theory relating to the process of development and argues that services are an important input into the productive process. It further argues that this interlinked process is not understood in terms of its impact on national economies.
- UNCTAD states that the service sector plays a different role in developing than in developed economies, and that as services play a multifaceted role in the economic

development of countries, with complex interlinkages, a more complete understanding of the real impact of service industries in the overall efficiency of the economy is required. Also the ability of countries to meet important social and cultural objectives, is a necessary condition for the formulation of a coherent policy geared to improving their contribution to growth and development.<sup>10</sup>

From an international trade perspective, UNCTAD questions the assumption that conventional trade theories apply equally to trade in goods and services and suggests that further work needs to be done in this area, particularly in the analysis of international markets for services. Such analysis is normally based on balance of payments statistics -- which is wholly inadequate, UNCTAD argues, because they are based on an IMF definition which identifies nonfactor services (e.g. shipment, travel) as constituting tradeable services but denies factor services (e.g. direct investment) as being tradeable.

The UNCTAD report also calls for a greater understanding of the role of certain key services in domestic economies as well as a clear idea of the difficulties to be overcome in obtaining access to international markets for services.

B. Services in the Development Process

UNCTAD argues that the conventional theory of development which suggests that services sector growth results from advances in the development process is no longer valid. Moreover UNCTAD suggests that the implications of this theory, (i.e. growth in services occur automatically, there is no need for a services policy, and a logical international division of labour would emerge) are also no longer valid.

UNCTAD's rejection of this theory stems from recent studies that indicate growth in services production is led not so much by increases in consumer income but rather by changes in organizational structures of production industries, the demand for professional, technical, clerical and other specialized service occupations by producers, and the growth of producers' services. To support this view UNCTAD refers to a recent U.S. study<sup>11</sup> which suggested that the services economy cannot be reduced to the idea of a service or a post-industrial economy, observing that productivity has become a less adequate means of measuring the efficiency of an economy. This efficiency depends upon the interlinkages which are established among the different productive activities and not on the productive conditions in the activities themselves.<sup>12</sup>

Having rejected the conventional economic theory, UNCTAD identifies the main conceptual issue relating to the need for a comprehensive service policy strategy to enhance the

process of economic development, the interlinkages between services and the rest of the economy.

As the report states:

Services such as transportation, telecommunications and radio and utilities are a key part to the general infrastructure of a country.

Other services which can be provided in-house play a key role in the vertical integration of corporate activities. Similarly, horizontal and conglomerate expansion of corporate activities is also facilitated by certain services.

Although a great deal of empirical work still remains to be done, the new theories, with respect to the link between services and growth, provide a point of departure with regard to development strategies recognizing that the importance of services goes beyond that which can be captured by measures of labour productivity. In many cases the development of tertiary production may not be the result of growth, it may be one of its preconditions.<sup>13</sup>

C. Public Interest Considerations

UNCTAD recognizes that service sector activity and its value to the economy not only provides a direct input into a variety of economic activities but also to the value of services. For example, education, health, and housing and the way in which they add an indirect value to productivity by raising the general standard of living are often underestimated in terms of their importance to overall economic development.

The problem is many services are publicly-funded and, as such, there is a need to establish priorities among those services that are aimed at achieving economic, social or cultural objectives. Given the need of prioritization, amid conflicting objectives, most nations feel the need to regulate important service industries.

UNCTAD argues that there are two major reasons for regulating key service industries. The first is that the advantages of competition often outweigh public welfare considerations, and that if service activities directed at public welfare are allowed to be provided by the exigencies of the market, an uneven supply of these services may be provided.

The second argument is that imperfect information is available to purchasers of services, and, thus, less open to scrutiny and comparison by the consumer. Therefore, where basic information is required in services the information is

not only supplied by the government, but the minimum standard by which suppliers of services may enter the market directed at public welfare, is also regulated.

Public interest regulation in the international context is also discussed in the UNCTAD report. UNCTAD suggests that on one hand there is no real case for domestic governments to discriminate between domestic and international suppliers of services. The argument being that if consumers need protection, they require it regardless of the origin of the supplier. On the other hand, UNCTAD recognizes that it is difficult for governments to regulate service activities in ways that do not discriminate against foreign suppliers given the need to; protect the domestic consumer, protect a level of sovereignty, assist infant industries, and discourage collusion and dominance of services required for the public welfare.

The admission by UNCTAD that domestic regulations discriminate against foreign suppliers is notable. The developing nations have historically argued they have a legitimate right to protect their service industries from foreign dominance through discriminatory regulation. Yet this report appears to suggest that discriminatory regulation is valid for all nations, both developing and developed. As the report states:



"Trade in services may often be affected by regulations which are primarily addressed to the domestic, social and economic situations...

As a consequence, it is difficult to discuss regulations in international forums by using concepts derived from trade relations...

Pressures for international negotiations on services are likely to intensify as countries adopt different approaches to the regulation of service industries."<sup>14</sup>

D. Services in the International Context

UNCTAD provides an overview of the level of international trade in services and their importance to the developing world. The report notes for example, that developed market economies were the largest producers and consumers of trade in services, accounting for 84.3% of the credits and 73.6% of the debits in 1980, and that the balance in trade for developed nations changed from a deficit of \$1.5 billion in 1970 to a surplus of \$15 billion in 1980.<sup>15</sup> It further states that during this same period the deficit in trade in services by developing nations went from \$3.9 billion to almost \$50 billion.<sup>16</sup>

Continuing its general theme that conventional economic theories relating to the development process and international trade do not necessarily apply to services, the report warns against relying on these traditional theories when debating international trade in services.

UNCTAD raises the question, as others have,<sup>17</sup> of what determines trade in services, given that the determinants of trade flows and substantiated data on trade in services have been lacking in previous studies. The report advises that it is time to readdress these issues to determine what changes would be needed to apply conventional trade theory to trade in services.<sup>18</sup> This suggestion is supported by a discussion on the changing nature of international trade in services due to technology, telecommunications and the growth of

transnational corporations.

The report argues that the changing nature of services adds a dimension to international trade in services for which neither the international legal system nor policy makers are prepared.<sup>19</sup> Thus before a services development policy can be adopted to enhance the input of services or foreign investment in services to the development process, a much more defined analysis needs to be undertaken.

Supporting this view are: reviews of existing bilateral and multilateral frameworks for negotiating trade in services, current proposals for negotiating future trade in services agreements, the debate in international forums and existing national studies on service sector activity in the U.S., Canada and the U.K.-- all of which UNCTAD suggests ignored the following issues:

- the impact of the various services on the economies of developing countries;
- the possibilities developing countries might have of increasing their share of the world market for services;
- the obstacles to trade the developing countries may be facing.<sup>20</sup>

UNCTAD concludes its report with a request for further work on a national basis to assist each nation in developing

policies regarding supply and demand conditions in the context of both the domestic economy and international transactions.

In requesting these studies, the report reiterates its contention that because there is a scarcity of high quality data on services, only tentative conclusions on developing services oriented policies can be generated. Moreover, as the role and nature of services, both domestically and internationally are rapidly changing, a close watch on these activities is essential. National studies need to take account of developments and policy in other countries which necessitates a continuous monitoring and reassessment of policies governing services.

RECOMMENDATION A.IV.23

The first United Nations Conference on Trade and Development was held in Geneva in 1964. It met as a result of pressures by an alliance of developing countries, the Soviet Union and East European centrally planned economies acting within the General Assembly of the United Nations.

The main aim of the conference was to develop an organization that could deal with trade and aid issues involved with promoting economic development in the third world.

The results of the first conference were disappointing, largely because the developed nations participating in the conference abstained or voted against many of the sixty major resolutions passed in the final act of the conference. These votes were disappointing because many of the resolutions requested funding for implementation by the developed nations.

The first conference did, however, accomplish two major objectives. First, it became a permanent organ of the United Nations open to all members of the U.N. and U.N. specialized agencies. This gave it some degree of credibility and provided the developing countries with an international voice. Second, a permanent executive committee was formed to review the progress on the implementation of conference resolutions, initiate research studies on issues of concern to UNCTAD, and undertake the preparatory work for future UNCTAD conferences. Under this committee, called The Trade and Development Board, are four

specialized committees responsible for commodities, manufacturers, shipping and invisibles (services).

Among the many recommendations and resolutions of the Conference's Final Act, Section IV<sup>21</sup> Article 77 considered and recommended measures on insurance. The considerations and recommendations regarding insurance are described in Annex A.IV.23 to the final act which states in part:

- insurance and reinsurance activities require operations on an international basis.
- a sound national insurance and reinsurance market is an essential characteristic of economic growth.
- the developed countries should co-operate and provide support to developing nations to encourage and strengthen their national insurance and reinsurance markets.
- the developed nations should expand technical and training assistance to facilitate this effort.
- reserves and deposits of insurance and reinsurance deposits should be invested in a country where the premium income arises.
- developed countries should incur such investment by removing obstacles to this aim.

- developed countries which provide aid should not impose preconditions which limit the right of developing countries to require that insurance be placed in the national market.
  
- international organizations should examine the question of uniform clauses for certain types of insurance and the development of uniform criteria for the compilation of insurance and reinsurance activities.

This recommendation provides the basis for UNCTAD's work on developing countries' implementation of national insurance and reinsurance industries.

Recommendation A.IV.23 focuses on a specific third world concern however, it does provide a normative grounding for further UNCTAD and international deliberations.



RESOLUTION 42 (111)

Following the recommendations on insurance and reinsurance in Annex A.IV.23 to the final act adopted by the conference at its first session, (as well as the recommendation of Conference Resolution 13 (11) of March 24, 1968 and the general objectives of the International Development Strategy for the Second U.N. Development Decade in the field of invisibles), UNCTAD recommended, at its plenary meeting of May 17, 1972, Resolution 42 (111). This Resolution called for a wide range of activities by developing and developed nations and international organizations to assist in the development of insurance and reinsurance industries.

The resolution recommended that action be taken in the following areas:

- cost, terms, and conditions of insurance and reinsurance services be provided by developed countries at the lowest cost commensurate with risk
- that developing countries improve and update their legislation dealing with the provision of insurance and reinsurance
- that technical reserves accruing from insurance operations carried out in specific nations are invested in those same nations

- that the unified international system of insurance statistics prepared by UNCTAD's secretariat be adopted by all UNCTAD members.
  
- that international investors use host country insurance services
  
- that developing country members of UNCTAD establish closer co-operation between their insurance services and their insurance institutions and
  
- that the United Nations Development Programme (UNDP) and developed country members of UNCTAD increase their technical and training assistance for insurance services in developing countries.

Like Annex A.IV.23, Resolution 42 (111) is an agreement which does not provide for an institutional or legal process for the operation of international or domestic insurance operations. Rather, it is a call for specific assistance in the development of such industries.

Little has been accomplished in the field of insurance either by UNCTAD or other international agreements, because nations are reluctant to cede authority over their control of insurance matters to an international agreement or authority.

UNCTAD's main efforts, as embodied in Annex A.IV.23 and Resolution 42 (111), have been to find ways to assist developing

nations to establish their domestic insurance industries, to promote regional co-operation in insurance matters, and to improve the terms and conditions for those insurance and reinsurance services that need to be purchased internationally.<sup>22</sup>

UNITED NATIONS CODE OF CONDUCT FOR LINER CONFERENCES

UNCTAD's work in economic, commercial and trade related aspects of shipping has been designed to contribute to the development of the world merchant fleet, and consequently of world sea trade, with the objective of increasing developing countries participation in world shipping and the protection of shippers interests.

UNCTAD's efforts have been directed toward assisting all parties interested in shipping to get a clear insight into the economics of the industry through the medium of UNCTAD's Committee on Shipping.

The Committee has acted primarily through resolutions which are directed at governments and, as such, have to rely on the willingness of these governments to accept and implement the requests that have been made. In UNCTAD's early years, this did not prove to be particularly effective. In 1969, UNCTAD's Committee on Shipping created a subsidiary body, the Working Group on International Shipping Legislation, to work through the medium of international conventions and model rules or norms to bring about the recommended changes in law and practice.<sup>23</sup> The first of these agreements was the U.N. Convention on a Code of Conduct for Liner Conferences<sup>24</sup> in 1974, and entered into force in 1983.

The Code of Conduct for Liner Conferences is an important multilateral 'agreement' because it falls into that category of

international arrangements that set standards or norms of behaviour that signatories are expected to follow, although not legally bound to do so. By setting standards it provides a formula which participating nations can adhere to without the necessity and difficulty of negotiating a legally binding document. As such, this process assists in the functioning of international trade. Moreover, standard setting agreements such as The Liner Conference, may, over time, lead to a general international consensus that the rights, duties and obligations detailed in the agreement should be binding, further ensuring that trade in the particular sector the agreement covers functions in an orderly and equitable fashion.

There are three sections in the Liner Conference which have important ramifications for the development of Liner Conferences and the development of world shipping trade. These are:

ARTICLE I - Membership - provides for the acceptance of any national shipping line into the conference but stipulates certain criteria and conditions which in effect support the continuation of closed conferences. Paragraph 2 of Article I is the operative clause for admission to the conference and states that:

- a shipping line applying for membership must
  - (1) operate a regular adequate and efficient service on a long term basis as defined in the conference agreement,
  - (2) shall undertake to abide by all the terms and

conditions of the conference agreement,

- (3) shall deposit a financial guarantee...in the event of subsequent withdrawal, suspension or expulsion.

ARTICLE II - Participation in trade - endorses the allocation of markets (in effect, restraint) between conference and nonconference members. Paragraph IV Sections A & B of Article 2 states:

1. The group of National Shipping Lines of each of two countries, the foreign trade between which is caused by the conference, shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference..
2. Third country shipping lines, if any, shall have the right to acquire a significant part, such as twenty percent, in the freight and volume of traffic generated by that trade.

In essence, this clause provides for a market allocation of 40% each for members of the conference and 20% for independent carriers.

CHAPTER 6 - Provisions and Machinery for Settlement of Disputes, (Articles 23- 45 inclusive) - are of interest for establishing a dispute settlement procedure for other trade in services agreements and are more comprehensive and binding than the GATT dispute settlement process.

Article 23 sets out the general provisions for dispute settlement between:

- a conference and a shipping line
- the shipping line members of a conference
- the conference or a shipping line member thereof, any shippers' organization or representatives of shipper's or shippers and
- two or more conferences.

Its main provisions are:

- disputes between shipping lines of the same flag or organizations belonging to the same country shall be dealt with in accordance with their nation's domestic law
- parties to a dispute are to attempt to settle their differences by an exchange of views or direct negotiation and
- international mandatory conciliation.

The first two provisions are based on the concept of self-regulation. If, however, this mechanism fails to resolve the issue, either party to the dispute (i.e. the conference or the shipper) can invoke the code's provisions for the third process



-- international mandatory conciliation. This conciliation procedure provides detailed rules for arbitration which are binding if the parties to the dispute agree to their binding before the procedure begins. The provisions for dispute settlement in the Liner Conference are rare in international agreements since they provide for an international arbitration procedure to have precedence over domestic laws. In the annex to the Convention, model rules of procedure for the process of international mandatory conciliation are presented.

While the Liner Conference Code is an important international arrangement the inclusion of the first two sections noted above detract from its transferability to other transportation or services agreements. Its arrangements for international mandatory conciliation, however, provides a dispute settlement mechanism that at first glance may be transferable to other trade in service agreements.

RESTRICTIVE BUSINESS PRACTICES CODE

The developing world has serious reservations about allowing greater access to their service markets. Their main concerns centre on the perceived loss of sovereignty over those service industries directed at the public good, the inability of their domestic service industries to compete against multinational corporations and, their desire to create an independent service sector that will meet their specific cultural, social and economic needs. In an attempt to provide a standard that would allow them to take advantage of increased trade and retain control, UNCTAD introduced the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices (R.B.P. Code) to the U.N. General Assembly in 1980.

At its 35th session of December, 1980, the United Nations' General Assembly adopted Resolution 35/63 bringing into effect this Code.

The motivations for this Code are:

- The recognition that restrictive business practices impede international trade and economic development.
- The adverse effect of the growth of transnational corporations on the trade and development of developing countries through price-fixing, market domination and

decreased competition.

- The desire to ensure that transnational corporations do not take unfair advantage of the benefits from liberalizing tariff and non-tariff barriers.

The set of equitable rules and principles were primarily developed to control restrictive business practices at the international level with the secondary objective of facilitating the adoption of similar rules or laws within national and regional jurisdictions. Like all U.N. resolutions, however, resolution 35/63 has no legally binding basis. While it clearly sets out a norm for international conduct it is a consensus style declaration. Thus governments, even though agreeing to it by their vote at the U.N., are under no obligation to abide by it.

Unlike many U.N. general assembly resolutions passed under the auspices of UNCTAD, this resolution provides for a version of equitable national treatment rather than a form of preferential treatment for developing countries.

The focus of this Agreement is found in Sections E and F of The R.P.B. Code which defines the principles and rules to be followed at the national and international levels respectively.

Section E, Article 1 requests that:

"states.....at the national level, or through regional groupings, adopt, impose and

effectively enforce appropriate legislation and implement judicial and administrative procedures for the control of restricted business practices, including those of transnational corporations."

Section F, in its introduction requests that:

"collaboration at the international level should aim at eliminating or effectively dealing with restrictive business practices including those of transnational corporations through strengthening and improving controls over restrictive business practices adversely affecting international trade, particularly that of developing countries and the economic development of those countries."

The R.P.B. Code purports to be a blueprint for the development of internationally agreed conditions controlling restrictive business practices. In many respects it is. Yet any legal code, by definition, requires a dispute settlement procedure that is both mutually acceptable and enforceable. The Code does not provide for this and therefore, lacks a fundamental element of acceptable international agreements.

At most, it suggests consultation between disputing nations in order to achieve a mutually acceptable solution. At the very least it leaves the door open for states to ignore or reject

calls for consultation and dispute settlement. The arrangement the Code does provide is for the striking of an intergovernmental committee to oversee the implementation and operation of the set of principles and rules. However, this group is severely limited in its performance as it is not allowed to "act like a tribunal or pass judgement on the conduct of individual governments or of individual enterprises..."

CONVENTION ON INTERNATIONAL MULTI-MODAL TRANSPORT

The ability to use various means of transportation to move goods from one country to another and the development of the means of various types of transportation are processes that are globally recognized as enhancing the expansion of world trade.

The convention on international multi-modal transport is an agreement that provides a basis for the improvement of all aspects of international transportation. It sets the rights, duties and obligations of members to the convention for the transport of goods between the members. (There are 76 member countries to the convention). While it is a mandatory convention it does not hold legal precedence over other international conventions or national laws dealing with the regulation and control of transport operations. The convention, is a sector specific document setting out the procedures for regulation and control of transport, liability, jurisdiction and arbitration. As such, its procedures are not easily transferable to a general trade in services agreement.

The convention, like other UNCTAD induced conventions, is directed primarily at assisting and supporting the needs of developing countries. As the introduction states:

"the States, parties to this convention recognize...the need to have regard to special interests and problems of developing countries...as regards the introduction of new technologies, participation in multi-modal services of

their national carriers and operators, cost efficiency and maximum use of local labour and insurance.



## CONCLUSION

The purpose of this paper was to review, through the medium of multilateral agreements and a research report, work initiated by UNCTAD to determine in general terms their value to the current international debate on trade in services and their possible application to other trade in services agreements.

What has emerged from this review is that the report on "Services and the Development Process" may be a valuable addition to the debate but that the multilateral agreements, with a couple of exceptions, notably the Liner Conference Code's procedure for dispute settlement and the Transport of Goods Conventions provide very little to the trade in services debate or establishing a basis for other trade in services agreements.

The reasons for this are readily apparent. First, each of the agreements deal with the concerns of the developing nations and their problems with specific sectors. As such, the concerns facing the developing world are addressed in the agreements on a priority basis creating agreements that appear to inhibit or restrict trade until those concerns are dealt with. UNCTAD proposals normally include a preferential treatment clause, which given the vagaries apparent in international economic development, are, it can be argued, necessary.

Second, the institutional process of the agreements deal strictly with the sector concerned. Thus, they are not easily transferable to other services agreements, either general or

specific. The one obvious exception to this has been noted.

Third, the agreements have no binding base in international law and certainly have no precedence over municipal laws. U.N. General Assembly powers and functions include the option of international conferences. However, its recommendations are not binding. They may however, operate with what has been termed permissive force that instigates action by member states to implement U.N. Conference or Convention recommendations in their domestic laws. The requirement for permissive force is a degree of economic power that the developing world does not possess. Moreover, recommendations and resolutions passed by the U.N. General Assembly are at best quasi-judicial in nature. They perform as model regulations which individual governments may or may not follow. In addition the U.N. does not have a process for implementing its recommendations or resolutions other than moral suasion. Given that the UNCTAD recommendations and resolutions focus on certain sectors and promote third world concerns, it is unlikely that they would be implemented by governments that have their own national objectives and concerns to consider.

Recommendation A.I.V. 23 and Resolution 42(111) are examples of this problem. They stem from the perceived need and desire of developing nations to develop independent insurance industries. To do this, however, they require developed nations to relinquish a significant portion of a profitable, exportable service. Nothing in the recommendation or resolution requires domestic governments to implement them. As they could prove costly, the prospect of these requests being adhered to are minimal.

Fourth, the agreements under review in this paper are not technical in nature with respect to the functional process of international trade. They are, it could be argued, general statements that deal not so much with expanding world trade through the process of liberalizing tariffs and restrictions on trade as they do with requesting special treatment in certain sectors that are traded internationally.

Returning to the report, Services and the Development Process, it is, as has been stated before a worthwhile review of the trade in services debate. Not so much because it adds to the debate but because it suggests that the drive to come to an international agreement on trade in services may be charged with the wrong, or at the very least, restricted information.

The report suggests that, as the nature of services are changing and changing rapidly, before an international agreement is drawn up using existing forums (e.g. GATT) further work needs to be done to analyse the impact of services on national economies so that any potential agreement provides the most comprehensive arrangement possible. The present debate tends to focus on existing structures and processes for expanding international trade. The UNCTAD report argues that existing structures and process are not the most appropriate vehicles for an international trade in services agreement.

FOOTNOTES

1. The "Fisher-Clarke" three step theory.
2. United Nations Conference on Trade and Development, Services and the Development Process, United Nations, Geneva, 1985, p.IV
3. These agreements have no force in international law. They are manifesto type documents, indicating norms of behavior or direction which UNCTAD believes progress should be made.
4. Starke, J., Introduction to International Law, 9th ed., Butterworth Co., Publisher Ltd. London, 1987, p. 360
5. Conference recommendations/resolutions refer to the Standing Committee of the Conference, The Trade and Development Board, which is the permanent Executive organ of UNCTAD.
6. General Agreement on Tariffs and Trade, First Analytical Summary of information Exchanged Between Contracting Parties, Gatt, Geneva, 1985.
7. Services and The Development Process, pp. 78-80
8. Services and The Development Process, p.V.
9. Services and The Development Process, p.V.
10. Services and The Development Process, p. 7.
11. Services and The Development Process, p. 12
12. Ibid. p. 12
13. Services and The Development Process, p. 15
14. Services and The Development Process, p. 31
15. Services and The Development Process, p. 36
16. Ibid p.36
17. For example: Stalson, H., U.S. Service Exports and Foreign Barriers: An Agenda for Negotiations. National Planning Association, Washington, 1985 and Gatt, First Analytical Summary of Information Exchanged Between Contracting Parties, Geneva, 1985.
18. Services and the Development Process, p. 43
19. Services and The Development Process, p.49
20. Services and The Development Process, p. 80
21. "Financing for an Expansion of International Trade and Improvement of the Invisible Trade of Developing Countries."

22. Office of the United States Trade Representative, U.S. National Study on Services, A Submission by the United States Government to the General Agreement on Tariffs and Trade, Washington, 1983.
23. Services and the Development Process, p. 58
24. A Conference is " A group of two or more vessels operating carriers which provide international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or an arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions..."
25. Services and The Development Process, Annex II, p.1.
26. Refer to the Agreement for a definition.



