

WORLD TRADE ORGANIZATION

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Committee on Specific Commitments

REPORT OF THE MEETING HELD ON 22 SEPTEMBER 1999

Note by the Secretariat

1. The Committee on Specific Commitments held its twelfth meeting on 22 September 1999 under the Chairmanship of Mr. Juan Marchetti of Argentina. The agenda of the meeting was contained in airgram WTO/AIR/1161.

I. DRAFT DECISION OF THE COUNCIL FOR TRADE IN SERVICES ON THE CERTIFICATION OF RECTIFICATIONS OR IMPROVEMENTS TO SCHEDULES OF SPECIFIC COMMITMENTS

2. The Chairman recalled that he had undertaken to take up again the question of the draft decision of the Council for Trade in Services on the certification of rectifications or improvements to schedules. He opened the debate in informal mode on document Job No. 5203 dated 7 September 1999 containing the last draft version of this text. The result of this debate is reflected in document Job No. 5203/Rev.1.

II. SCHEDULING GUIDELINES

3. The Chairman drew the attention of Members to the three options contained in paragraph 4 of the annotated agenda (document S/CSC/W/24 dated 7 September 1999) regarding the modalities of the future work of the Committee on scheduling guidelines: agreeing on a definitive set of guidelines before the end of the year 1999, continuing this work beyond the end of the year and completing it some time during the course of the negotiations, or finally agreeing by the end of the year on a set of provisional guidelines in which any later progress would be incorporated.

4. Australia; Japan; Hong Kong, China; Korea; Norway and the European Communities supported the third option. Canada expressed a preference for the second option but could join a consensus on the third option. The United States indicated it did not consider the end of 1999 as an appropriate deadline for the work of the Committee in view of the fact that a provisional set of guidelines would not be needed as from the start of the negotiations. Therefore Members should allow themselves more time to consider relevant issues.

5. The Chairman concluded that a strong support for the third option had been expressed but that two delegations had not been convinced of the need for an interim solution by the end of the year. The Committee would therefore revert to this question at its next meeting.

6. The Chairman then opened the discussion on document Job No. 4055 dated 15 July 1999 "Revision of scheduling guidelines, points of emerging understanding". He recalled that delegations had already agreed on the merger of documents MTN.GNS/W/164 and MTN.GNS/W/164/Add.1, and

he drew the attention of Members to two previous proposals by the Secretariat that had been incorporated in this document in view of the apparent consensus concerning licencing requirements (paragraph 4, page 3), and the combination of horizontal and sectoral entries (paragraph 20, page 10). He also recalled that an annex to the document contained a possible list of documents relevant for scheduling purposes.

7. India expressed a general reservation on the whole document.

8. With regard to paragraph 4, New Zealand indicated that it was not convinced of the value of the proposed text as it covered the same ground as paragraph 1 of MTN.GNS/W/164/Add.1 whose insertion had been proposed at the end of paragraph 6, page 4. As a minimum, both texts should appear side by side. Canada reserved its position. The Republic of Korea considered that there was an overlap. In addition, the last sentence of the new text implied that licensing requirements containing numerical limitations had to be scheduled under market access. This was disputable as certain numerical limitations such as minimum requirements did not fall, according to the existing guidelines, within the scope of Article XVI. Furthermore the question of licensing requirements still appeared in the document on outstanding issues. That is why Korea suggested to delete the last two sentences of the new text. Norway considered that there were differences and nuances between the two texts and suggested to merge them. Hong Kong, China supported this proposal. The Chairman concluded by requesting the Secretariat to merge the two texts.

9. With regard to paragraph 20, the United States noted that the first sentence of paragraph 20, page 9, stated that "a horizontal commitment applies to trade in services in a number of services sectors" while the first sentence of the new text, page 10, read "to avoid repetition, commitments or limitations applying to all services are to be scheduled in the horizontal section". This gave the impression that in certain instances horizontal means "all" and in other instances "some" or "most". In addition, the approach proposed in the second indent (suggesting that in order to indicate that no restrictions whatsoever are imposed in a given sector, a Member must make clear that the horizontal section did not apply to this sector) might give a misleading impression of the role of the horizontal commitments especially to non-experienced readers of the schedules such as businessmen. Hong Kong, China, while admitting those ambiguities, indicated that the words "in a number of services sectors" in the first line of paragraph 20 could be read as "some or all". There was not necessarily a contradiction between "some" and "all" as for instance the financial services understanding did apply to only one sector, but was technically speaking a horizontal commitment.

10. Norway indicated that in an ideal world the most user-friendly solution would be to replace in the schedules "none" by "none except as indicated in the horizontal section" to echo the practice used for mode 4 ("unbound except as indicated in the horizontal section"). However, that was not the approach negotiators had decided to pursue during the Uruguay Round, and the question was now to decide on whether to change the existing rules or to keep them. Hong Kong, China supported that point of view. New Zealand considered that the insertion of paragraph 8 of document MTN.GNS/W/164/Add.1, page 10, created some repetition with the preceding text. The Secretariat indicated that its intention with the second indent was to clarify that, except if explicitly provided otherwise, horizontal commitments did apply across the board. The wording of the second indent could certainly be improved as the rest of the new text, including paragraph 8 of MTN.GNS/W/164/Add.1, but the clarification was worth being made in any case. The Secretariat also indicated that, since "none" meant "none except the conditions set out in the horizontal commitments", its intention was not to change the rules and make a systematic reference to horizontal commitments, which would be too heavy, but to recall explicitly this essential scheduling convention. Hong Kong, China maintained that a "none" was confusing for businessmen as it could be read as true "none" which it was not. The United States saw merit in that point of view and suggested to insert a headnote in the schedule indicating that throughout the schedule the words "none" had to be read as meaning "none except the conditions set out in the horizontal section". With regard to the absence of

any limitation in a given sector, the United States suggested to include a specific reference in the horizontal section indicating that the content of the section did not apply to this sector. Egypt suggested to create a general code ("H.C.") which would refer back to the horizontal commitments and, thus, qualify and clarify the "none" entries in individual sectors.

11. The Chairman concluded by asking the Secretariat to clarify the first sentence of paragraph 20 by replacing a "number of services sector" by "all services sectors", and to modify the wording of the first indent of the proposed text. This modification should establish a balance between the need to clarify the reference to horizontal commitments and the need not to further complicate the drafting of schedules. Thirdly, the first sentence of paragraph 8 of MTN.GNS/W/164/Add.1, page 10, would need to be changed in the light of the observations made.

12. The Chairman called for comments on the list of documents contained in Annex 1 and asked Members if they wanted the alphabetical index to cover only the revised guidelines or the Annex as well. Norway indicated a preference for a wide coverage of the alphabetical index in order to be user friendly. India expressed a similar view. While not opposing the attachment of the documents relevant for scheduling purposes contained in Annex 2, India felt it was necessary to indicate that these were models applicable to certain sectors and not necessarily to all sectors. The Chairman concluded by requesting the Secretariat to prepare the alphabetical index and draft a footnote indicating that the documents contained in the Annex only covered scheduling issues for the sector mentioned.

13. The Chairman then opened the debate on document Job No. 4056 dated 15 July 1999 "Revision of scheduling guidelines - checklist of outstanding issues".

14. On the possible attachment of guidelines for the listing of MFN exemptions, Japan felt that finally there was no need for such an attachment as no new mfn exemptions were allowed in future except under Article IX:3 of the WTO Agreement. Korea and Hong Kong, China expressed similar views. The United States inquired about the respective legal status of the mfn guidelines and of MTN.GNS/W/164 and MTN.GNS/W/164/Add.1. The Secretariat recalled that the preambles of MTN.GNS/W/164 and MTN.GNS/W/164/Add.1 already indicated that the documents had no legal value. They were nevertheless official negotiating documents of the Uruguay Round with a "green band", which was not the case of the mfn guidelines (Job No. 2061) because there had been disagreement over one sentence in them. Australia was in favour of attaching these guidelines. Norway, recalling that the possibility of mfn exemptions was still open for maritime transport, also requested the attachment of the guidelines and called for their clarification. The Chairman concluded that there were two unresolved issues, the question of attaching these guidelines on which there was no agreement, and the possible need for the Committee to re-examine their content. He concluded that the Committee would revert to these questions.

15. On footnotes, headnotes, attachments and date of entry into force (point II of document Job No. 4056), India considered that footnotes should be avoided. On headnotes, India requested the Secretariat to provide examples from existing schedules to clarify the problem at issue. India agreed with the Secretariat's view that the indication of the date of entry into force in schedules was not relevant, but suggested a more detailed examination of this issue by the Secretariat. The Chairman recalled that the Secretariat had produced document S/CSC/W/14 on these questions. As India nevertheless saw a need for further studies, the Chairman requested the Secretariat to reconsider document S/CSC/W/14 for any gaps that might need to be filled. Korea shared the view that footnotes should be avoided, but was not convinced of the need to eliminate existing footnotes as they enhanced transparency. Ways to balance legal clarity with transparency requirements had to be studied further. In that respect the proposal by Egypt to add a fifth column was worth considering, although outside the scope of the revision of the guidelines. Headnotes were useful in avoiding repetitions; as they were legally binding they should remain within the schedules.

16. On the meaning of market access restrictions (point III of document Job No. 4056) India felt that the use of the words "pre-entry" and "post entry" should be avoided. The United States indicated that this issue had never occurred during accession negotiations. Hong Kong, China opposed the deletion of these terms which helped to clarify a problem. Norway also considered that the current text should be maintained as it contributed to avoiding a common misunderstanding.

17. On the scheduling of minimum requirements (point IV of document Job No. 4056), the United States suggested that paragraph 5 of document Job No. 4055 should be deleted as it did not form part of an emerging common understanding, but remained an outstanding issue. The Chairman explained that document Job No. 4055 had been drafted on the basis of all existing - and agreed - paragraphs of MTN.GNS/W/164/Add.1; the US concern should be addressed by an asterisk signalling that there was also an outstanding issue involved. The Committee so agreed. India considered that certain minimum requirements related to the quality of the services, financial prudence, safety and security of consumers were not market access restrictions and therefore did not have to be scheduled.

18. On the illustrative list of national treatment limitations, (point VII of document Job No. 4056), India agreed with the idea that the list would remain purely illustrative and that the current example pertaining to subsidies be deleted as there were no agreed definitions or disciplines for subsidies. Hong Kong, China recalled that discriminatory subsidies had to be scheduled. The Chairman concluded by asking the Secretariat to provide in a separate document a new list of examples for consideration.

19. On discriminatory subsidies under modes 1 and 2 (point VIII of document Job No. 4056), India considered that the distinction between suppliers located within the domestic territory of the Member and those located outside this territory should be maintained as far as subsidies for domestic service suppliers were concerned. India also felt that the addition suggested by the Secretariat would introduce subjective elements in determining whether a subsidy modifies the conditions of competition against suppliers selling in the domestic territory from abroad.

20. On the distinction between the modes of supply (point XII of document Job No. 4056), India considered that modes three and four were absolutely distinct and that, therefore, the Secretariat's view that there were problems of identification for mode four seemed to be misplaced. There was no need for further clarification. However, given the growth of electronic commerce, India felt that more work was needed on the relationship between modes one and two.

21. Concerning the lack of technical feasibility of supplying a service in a given mode, (point XIII of document Job No. 4056), India stated that there were discrepancies among Member's schedules. Moreover, technological change was transforming infeasible modes into feasible modes. Consequently, the use of "unbound*" should be abolished in order to avoid confusion and discrepancies of interpretation among Members.

22. On mode four commitments without specified duration (point XV of document Job No. 4056), India suggested, instead of dropping the relevant paragraph, to strengthen disciplines by making it mandatory to indicate the duration.

23. On customs duties and regulations on cross-border movement of goods (point XVI of document Job No. 4056), India felt that the broadening of the scope of GATS implied in the Secretariat's comments, was not desirable and practically feasible since it might always be possible to draw some indirect relationship between a measure which affected the supply of a service and the cross-border movement of goods associated with the provision of that service. Hence, it would be better to keep the two as separate entities; since the relevant measures are in any case subject to the disciplines of the GATS.

24. On foreign exchange controls (point XVII of document Job No. 4056), India noted that the existing guidelines for foreign exchange restrictions seemed to be adequate and that there might be no need for scheduling such restrictions as limitations on market access or national treatment. In addition, since Articles XI and XII provided for general disciplines, these issues would not fall under Articles XVI and XVII.

25. The Chairman concluded the discussion of this agenda item by requesting the Secretariat to introduce the changes agreed and the comments made during the last two meetings in a new version of the document. He urged Members to begin thinking of new ways of advancing the work on scheduling guidelines and proceeding from the stage of detailed comments to the discussion of concrete solutions.

III. CLASSIFICATION

26. The Chairman recalled that this part of the meeting was going to be conducted in informal mode. Details of the discussion are contained in document Job No. 205/Rev.5.

IV. ELABORATION OF CONSOLIDATED ELECTRONIC SCHEDULES

27. The Chairman drew the attention of Members to document S/CSC/W/22 dated 19 July 1999 which described the main differences between the paper copy and the electronic version of schedules, the possibilities of searches allowed by the software, and suggested a procedure for the verification of the electronic version.

28. Australia inquired if Members would have to buy a special software in order to use the CD-ROM and whether searches could be conducted by sector and country. The European Communities sought clarification on the meaning of "aggregated". Panama inquired about the non-availability of a Spanish version.

29. The Secretariat indicated that the necessary search facilities would be built into the CD-ROM and that therefore no additional software would be needed. The programme allowed searches by sectors and by countries. The term "aggregation" referred to the combination of all successive layers of commitments to date. No Spanish or French version would be available as structured data existed only in English, but the utmost would be done to be able to present structured data in the three official languages at the end of the next negotiations.

30. New Zealand considered that the differences between the hard copy and the electronic version were marginal and therefore acceptable. The Chairman suggested that the Committee endorse the procedure for verification explained in document S/CSC/W/22. The Committee so agreed.

V. OTHER BUSINESS

31. The United States indicated it would submit a paper on the classification of internet access services in respect of existing commitments at the next meeting of the Committee.
