

## Committee on Specific Commitments

### REPORT OF THE MEETING HELD ON 28 SEPTEMBER 2004

#### Note by the Secretariat<sup>1</sup>

1. The Committee on Specific Commitments (CSC) held a meeting on 28 September 2004. The agenda for the meeting is contained in WTO/AIR/2387. As no points were raised under Other Business, and the agenda was adopted as proposed in the airgram.

#### A. CLASSIFICATION ISSUES

2. The Chairman stated that he would like to structure the item of Classification Issues into four parts: first, the OECD representative would deliver a presentation on legal services; second, the Committee would revert to the discussion on Indonesia's proposal on the classification of energy services; third, he would invite comments on any other classification issue; and, finally, he would suggest that the Committee switch to informal mode to discuss classification issues in two areas of Business Services, namely management consulting and computer and related services.

3. He recalled that the Committee had considered to invite the OECD for the present meeting to present a paper with the title "*Managing Request-Offer Negotiations under the GATS: The Case of Legal Services*" (JOB(04)/77), but had at the last meeting not come to a conclusion on the most suitable forum for such a presentation. Further to informal consultations, he had informed delegations by fax that there appeared to be a preference for the paper to be discussed in this Committee. Although the presentation was given under the item of classification issues, it would cover the entire paper, and not only classification aspects.

4. The representative of the OECD explained that the study on Legal Services was part of a joint OECD/UNCTAD project, which aimed to assist WTO Members in conducting request/offers negotiations by trying to clarify some of the complex issues involved. The project comprised five sectors, i.e. energy and construction services (UNCTAD) as well as insurance services, legal services and environmental services (OECD).

5. Turning to the topic of his presentation, he stated that the legal sector had experienced continuous growth in the past decade as a result of the expansion of overall trade, as well as the development of new fields of law, particularly in the areas of business- and trade law. The sector had experienced significant consolidation that had increased the number of multinational law firms. While these firms were presently located mainly in a few Anglophone countries, there was strong growth of large firms also in other countries in both Europe and Asia. Naturally, the individual lawyers working for large multinational law firms were nationals of many different countries. A case in point was the example of Baker & McKenzie which, as the second largest law firm in the world, employed nationals from 60 different countries. Comprehensive data on nationalities of lawyers, however, was scarce. Trade in legal services seemed to have grown at a faster rate than the sector

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

overall. Modes 3 and 4 were becoming increasingly important for law firms, as their clients demanded multi-jurisdictional advice and an integrated service covering all aspects of a transaction. To meet these demands, lawyers often attempted to build their own international networks through commercial presence with the purpose of developing a pool of lawyers with a knowledge of the many countries, including the host countries, and practices that were relevant to their clients' businesses. Nevertheless, trade in legal services continued to be affected by a variety of measures, particularly in modes 3 and 4.

6. There had been several proposals by Members, with different degrees of ambition, to improve the current GATS classification. One suggestion was to develop a common definition for foreign legal consultants, meaning professional lawyers who did not wish to practice host country law, and to develop a common definition of international law. Another suggestion was to include sub-sectors that focused on individual professions, e.g. lawyers and judges; legal representation as counselling in business transactions; participation in the governance of business, mediation, arbitration and public advocacy and lobbying. More recently, it had been proposed to add 12 sub-categories based on the area of law and type of services, distinguishing between advisory and representation of legal services on host country, home country, third country, and international law. Similar distinctions had been made by several WTO Members in their Uruguay Round commitments. Another suggestion was to leave the current classification unchanged and address any limitations in the market access and national treatment columns.

7. An overview of existing commitments showed that 45 Members (counting the European Communities and its Members States as one) had made commitments during the Uruguay Round, in addition to nineteen of the twenty Members that acceded to the WTO thereafter. During the earlier stages of the current negotiations, three Members had submitted proposals on legal services, together with four who had made proposals on professional services generally. Three initial offers proposed new commitments in the sector, while 11 offers envisaged changes to existing commitments. The proposed changes included removal of market access and national treatment limitations, such as nationality and residence requirements, or broadening of the scope of commitments to include more than the already committed legal services.

8. The OECD study showed that the benefits of liberalization of trade in legal services were not negligible. Lawyers played a vital role in supporting business transactions, and without their input trade could not take place in a secure and predictable manner. Legal services were therefore increasingly seen as part of the overall infrastructure for commerce. Trade liberalization could increase competition in the domestic market, leading to higher quality of legal services and lower prices of these services for consumers. As for the most part consumers of foreign legal services were corporate clients, the availability of a secure and predictable environment for legal services could help attract investment and provide business opportunities in the local market; presence of foreigners through partnerships with local lawyers and hiring of local lawyers could help transfer knowledge and know-how which in turn contributed to the development of a stronger domestic industry and could potentially lead to development of export capacity in this sector. Also, non-economic benefits could arise from liberalization of trade in services, e.g. learning from others in the administration of justice.

9. The paramount consideration underlying many of the restrictions on trade in legal services appeared to be the protection of the public function of lawyers. Thus, relevant limitations were aimed at ensuring that legal services were rendered with the necessary knowledge of local rules and conditions, e.g. nationality and residency requirements. The refusal to recognise foreign lawyers as lawyers and the prohibition on nationals to form partnerships with such non-recognized lawyers was meant to protect consumers and ensure the quality of the service. Another regulatory consideration was to ensure accountability and liability of lawyers *vis-à-vis* their clients, which was upheld through legal form- and residency requirements. Finally, there was the consideration of ensuring proximity and availability of lawyers via residency requirements.

10. The importance of protecting the public interest was apparent, given the crucial task that lawyers perform, i.e. their contribution to the administration of justice. Reform efforts had to take account of the legitimate role of governments to ensure public policy objectives. The issue, however, was to what extent those objectives were necessarily pursued by the measure used, or whether they could be better or equally served by less trade restrictive means. In this light, the rationale for nationality requirements was not clear: if a foreigner was willing to do what was necessary to acquire or demonstrate the requisite knowledge of the country in question, it appeared that the same level of consumer protection was provided. In the case of residency requirements, while more reasonably related to consumer protection, alternative approaches might be followed. The demand for trade in legal services arose mainly from businesses, who were mostly capable of protecting themselves effectively through private contractual arrangements, including provisions on insurance, indemnification, and dispute resolution. Permitting partnerships and hiring of local lawyers seemed to be of little risk to consumers, as long as the local lawyers provided all advice on local law on behalf of the foreign firms. In reality, such restrictions might well result in lost opportunities for local lawyers with no transfer of knowledge and know-how to the domestic industry. There also appeared to be a need for more focused regulation. For example, concerns about ensuring knowledge of local rules seemed better protected by a fair and transparent qualification process and the right to practice host country law on the basis of knowledge and ability, rather than nationality requirements. Consumer protection and the need for proximity could be ensured through less trade-restrictive means than residency requirements, e.g. by collaboration with locals, bonding requirements, or provisions for insurance. Concerns that incorporation might imply a dilution of professional liability could be addressed through partnerships that preserved full accountability of lawyers towards a firm's clients. An additional step would be to create frameworks that helped build domestic capacity, e.g. by stimulating the transfer of knowledge and know-how and by requiring collaboration with local lawyers.

11. Some countries perceived liberalization of legal services as a threat to their domestic industry. While liberalization both in goods and services was rarely without distributional consequences, it was important to keep in mind that the benefits just outlined would offset the costs. A peculiar characteristic of the sector was that the impact of foreign presence on local suppliers was likely to be less significant than in other sectors: first, local lawyers retained a competitive advantage in the practice of host country law, and secondly, foreign firms tended to hire locals to expand into this field of law. While there were significant benefits potentially flowing from the liberalization of legal services, such liberalization needed to be pursued in a progressive, orderly and transparent manner so as to allow both governments to put in place an appropriate regulatory framework and the incumbents to prepare for greater competition. The GATS was well suited to support these objectives by granting Members broad freedom to choose the terms of liberalization. In the current negotiations Members could exclude parts of the sector, e.g. host country law, or a sub-sector, e.g. representation. Along these lines some Members had pursued the idea of limited licensing for foreign legal consultants, which meant that these did not have to re-qualify to practice host country law but could obtain a limited license to practice the law for which they were qualified. This could be coupled with the possibility to associate with/and employ locals. Law firms could hence meet the demands of the clients to provide an integrated service covering all aspects of a transaction.

12. Others had proposed making commitments on all legal services with the assumption that host country law would be reserved to locally qualified lawyers. Members could also limit access for or discriminate against foreign suppliers, but care should be taken to put in place an appropriate regulatory framework that continued to achieve public policy objectives in an efficient manner. Developing countries could also specify limitations to strengthen domestic capacity, e.g. through the transfer of knowledge and know-how. This additional flexibility was granted through Articles IV and XIX. In these cases, care should be taken not to put in place overly burdensome policies, which might result in deterring trade and investment and subsequently the development of a strong domestic industry. Countries could also pre-commit to further liberalization to give the local industry time to adjust. Finally, they could maintain any non-discriminatory measure to specify the requirements to

practice host country law with no need to schedule them, even though such measures might usefully be scheduled under Article XVIII.

13. A key issue for many developing countries which determined the nature and pace of liberalization, was the lack of regulatory capacity. Technical assistance and capacity building were therefore an important dimension of the GATS negotiations. In conclusion, he stated that the questions in Annex I of the paper might be useful when Members framed requests and offers with trading partners. The questions were divided into GATS-related and non GATS-related questions.

14. The representative of Canada noted that legal services were a priority sector for Canada in the context of on-going negotiations in the WTO. Law firms had taken on a more international orientation in recent years in order to keep pace with of the growing global needs of their clients. The OCED paper was useful for GATS negotiators, particularly the questions in Annex I, which Members might wish to consider in the context of the request/offer process. He sought more information on these questions.

15. The representative of the Republic of Korea thought that the OECD paper could be very helpful to many Members. Benefits and direction of liberalization in the legal sector reflected the characteristics of international legal services transactions. However, he noted several points of concern for Members for which his delegation would call for an additional examination. In particular, these included the statement in the OECD paper that the residency and nationality requirements scheduled by various Members could be considered more trade restrictive than necessary to achieve the intended objective.

16. To certain extent, nationality requirements might be regarded as trade restrictive as they could not easily be considered as essential for ensuring a substantial level of capacity or knowledge. However, his delegation believed that it was absolutely necessary to require certain periods of residency to ensure public policy objectives, such as the protection of consumers, even in light of recent developments in information technology. This was particularly true in countries whose legal markets were opening for the first time, and the reputation and credibility of foreign lawyers or law firms had not been well established. The participation of foreign lawyers without residency could hence be detrimental to consumer protection. On public interest grounds, Korea applied similar measures to domestic lawyers as well, prohibiting the provision of legal services in the lawyer's absence by banning establishments of multiple branch offices in different regions, except those by law firms. The alternatives to residency requirements mentioned in the OECD paper, i.e. insurance, dispute resolution and indemnification were all *ex post* measures, and were therefore insufficient to replace this pre-requisite for public policy objectives.

17. The OECD paper emphasized that open markets for legal services would bring about benefits such as enhancing the quality of legal services available, reducing legal service fees, and encouraging foreign investment. These were the usual arguments raised by countries calling for market opening. Concrete evidence of the impact of liberalization was required, however. The paper quoted a quantitative study by Nguyen-Hong on the costs of restrictions (Box 1) which he found unconvincing, as there was no proven parallel between the restrictions' impact on costs in engineering services and those in legal services. Further, it was not clear from the content of Box 1 which econometric method the study had adopted. He doubted whether it provided sufficient grounds to conclude that restrictions were substantially increasing the cost and price of providing legal services. Many of the benefits deriving from broader market access would materialize only over time, as stated in paragraph 50 of the paper. This was a significant factor that could not be ignored. There were still no answers to some critical questions, including on the initial cost of liberalizing the legal service market, and he wondered how long it would take until the benefits outweighed the costs of market opening. Objective analysis based on actual cases was essential. Some countries had seen that the adverse effects of market opening, such as the increase of consumer prices to cover the cost incurred while establishing an association, actually exceeded the expected gains associated, for example, with the

expansion of foreign direct investment. Consequently, his delegation believed that a transition period was imperative for countries to adjust to the changes caused by liberalization. In addition, liberalization had to be carried out in a progressive manner in order to maximise beneficial outcomes. Despite considerable difficulties in convincing domestic stake-holders of the necessities of liberalization, Korea had submitted an initial offer on opening its legal service market for the first time, and was making a strenuous effort to open its market gradually on the basis of the proposal.

18. In conclusion, he stated that the OECD report certainly provided useful material for most Members, including Korea, in respect of the negotiations in legal services. However, as the report seemed to focus only on the positive side of opening markets, he suggested that further efforts be made to identify and minimize the adverse effects based on rigorous empirical analysis.

19. The representative of Chinese Taipei agreed with many elements of the OECD presentations, such as the growth-enhancing effects of trade in legal services and the increasing importance of modes 3 and 4. As for nationality requirements, Chinese Taipei did not prohibit foreigners from participating in examinations that qualified candidates to practice as an attorney of law. He agreed that there was no compelling relationship between the nationality of a lawyer and the quality of the service provided. The quality of legal services was related to the practitioner's legal training, as evidenced by examinations, and experience, but was not to the length of residence in the host country. Consequently, Chinese Taipei was requesting Members to abolish residency requirements in the ongoing negotiations. Turning to questions related to domestic regulation, he considered that the disciplines on domestic regulation in the accounting sector were not a suitable model for legal services. Unlike legal services, accounting services had been long internationalized as a result of the effort of the International Federation of Accountants (IFAC) and its International Accounting Standards Committee (IASC). In comparison, legal services were part of a national judicial system which, in turn, reflected legal, economic and cultural traditions.

20. He noted that Members had employed different scheduling methods for making commitments on foreign legal consultants. Chinese Taipei believed that the method of sub-dividing legal services and inscribing commitments for consultants in the sectoral column was most appropriate. Responding to the OECD's call for transparency, he stated that Chinese Taipei had put on the Ministry of Justice's website the provisions of the Attorney Act. The website also permitted foreign attorneys to make enquiries.

21. Turning to classification, he supported the Australian proposal which he considered instrumental in the systemization of topics related to the classification of legal services. The detailed classification suggested by Australia reflected the actual form of legal service transactions and also the regulation in each Member. In this regard, the classification would make the negotiations more efficient and lent more flexibility to individual Members.

22. In reply to the comments made, the representative of the OECD stated that the measures addressed in Annex 1 had been divided by modes of supply and the fact whether they were sector-specific or related to horizontal measures. Also included were measures that had a closer bearing on the negotiations on domestic regulation. Several of the latter measures could be an obstacle to trade, particularly in a profession such as legal services. Questions outside the scope of the GATS had also been included. With respect to the comments made by Korea on residency requirements, he stated that the paper was without prejudice to countries' rights to put in place measures that suited their particular situations. The paper proposed several less trade restrictive options that could be used instead, or at a later stage. On the comment that more rigorous evidence of benefits of liberalization was needed, he noted that current research was of a preliminary nature in general. The study quoted in the paper used a restrictiveness index that ranked different measures in different countries for the legal, accountancy, engineering, and architecture professions. On this index, an econometric price-cost margin technique was applied. This was done only with the engineering profession. However, since in the restrictiveness index for the legal profession was one of the highest, it was plausible to

assume that similar effects would occur in the legal profession, where price hikes of up to 15% had been observed in certain cases. He recalled that the paper also mentioned possible downsides of liberalization, and suggested a gradual approach in certain cases, stressing that the GATS architecture was suited to allow for progressive liberalization.

23. The representative of Australia reiterated his delegation's view that the limited licensing concept was an effective way to advance the liberalization of legal services. He hoped that a shared understanding of the classification issues could be developed among Members of the informal friends group. The contribution of the OECD would be of great assistance in that context.

24. The representative of Singapore stated that any classification used in the current round should be a tool to facilitate the scheduling of commitments, but not become a disincentive or barrier in itself. He supported the classification proposal by Australia, which structured legal services according to jurisdiction (home country law, host country, third country law, international law) and the type of service, namely representation and advisory services. During the Uruguay Round, a large number of Members had undertaken commitments according to distinctions based on jurisdiction and the type of law.

25. The representative of Switzerland underscored the infrastructural function that legal services provided in that they contributed to overall economic efficiency. He concurred that there was an increasing demand for multi-jurisdictional advice and integrated legal services. He was interested in the OECD representative's views on the relationship between increasing demand in multi-jurisdictional advice and integrated services on the one hand, and a larger number of sub-categories in the sector column on the other hand. To him, changes to classification and the creation of new sub-categories were not necessarily helpful in this regard. The GATS provided sufficient flexibility for meaningful offers.

26. The representative of New Zealand stated that her delegation had found that Annex 1 contained helpful questions, even with a wider application than only to legal services. New Zealand had drawn similar conclusions as the OECD paper about the benefits of liberalization in legal services. Noting the large number of lawyers from different jurisdictions that were employed by big law firms, she wondered whether these lawyers would retain certificates for practising their own home jurisdiction so that they could provide representation services or whether their focus was solely on advisory services.

27. The representative of the United States stated that the OECD paper provided helpful information on the nature of impediments on trade in legal services as well as the potential benefits to liberalization. The paper could be a useful reference document for negotiating proposals and classification issues throughout the course of the negotiations. Her delegation had found Annex 4 particularly interesting, where the Uruguay Round commitments on legal services were listed according to home country, host country and international law. While it was difficult to draw conclusions from an analysis that looked only at the scope, but not the substance of the commitments, the table pointed to one way of considering their overall balance. In addition, the table could be helpful in assessing the relative merits of the terminology proposed by Australia and the IBA Resolution.

28. The representative of Brazil welcomed the OECD paper as a useful input for the negotiations, as it contained a very good summary of what had happened in the past, and identified certain differences between "demandeurs" in respect of legal services. With reference to paragraph 69, he was pleased that the paper noted that a significant number of Members were not in favour of prior consultation requirements. The list of questions contained in Annex 1 contained very interesting elements for developing countries, in particular as to whether commitments on legal services should be taken. He requested more information on Annex 2, in particular on the column relating to "lawyers

outside home country." What proportion of these lawyers were citizens of the country where the law firm had established an office, and how many were based in developing and developed countries?

29. In response to the question by Switzerland, the representative of the OECD stated that firms sought to meet the demand for multi-jurisdictional advice by employing, or associating with, lawyers qualified in different jurisdictions. Restrictions on partnerships and hiring of locals were therefore often key problems. On the question by New Zealand, although not closely familiar to the actual practices of companies, he thought that lawyers who were permitted to supply representation services would normally be disadvantaged by the fact that they worked for a foreign law firm. Turning to the question by Brazil, he regretted that no sufficiently disaggregated data was available to respond.

30. The representative of the United States stated that her delegation had submitted a proposal for disciplines in order to move forward in the negotiations in the Working Party on Domestic Regulation. The proposal build upon the notion, already in the accounting disciplines, of prior consultation and prior comment. The proposal was still being considered and she hoped that the Working Party would be able to discuss how to make a commitment to prior comment without a best-endeavours clause, and how to address concerns relating to administrative burden and solve capacity and technical constraints.

31. The Chairman thanked the representative of the OECD for the presentation. He recalled the discussion at the June meeting on the IBA Resolution in support of a system of terminology for legal services (JOB(04)/17). The Secretariat had received since a letter by the IBA, which commented on the purpose of the Resolution, an issue which the Committee had debated at the last meeting. He proposed that the letter be made available as a room document for information.

32. It was so agreed.

33. The representative of Australia recalled that replies to several questions concerning the Resolution by the International Bar Association (IBA) were still outstanding. He suggested that the IBA be invited to the next CSC meeting in order to provide clarifications. The delegations of Japan and Switzerland supported the suggestion.

34. The Chairman proposed that the Committee invite the IBA to reply to questions by Members concerning its Resolution.

35. It was so agreed.

36. Turning to other classification issues, the Chairman recalled that the Committee had discussed Indonesia's proposal concerning the classification of energy services (S/CSC/W/42) at the last three meetings. At these meetings, delegations had commented in substance on the proposal, and posed questions to the delegation of Indonesia.

37. The representative of Indonesia informed delegations that his delegation was revising its proposal, taking into account the comments and suggestions made during the CSC meetings of December 2003, March and June 2004. The revised proposal would be circulated ahead of the next meeting. Turning to a question raised by Kuwait at the last meeting, he state that the revised proposal had disaggregated energy services based on the sequence of energy activities. Gravity survey had now been included as a new 1A.1.4.2, magnetic survey as 1A.1.4.3, and seismic data interpretation as 1A.1.4.1.3. He also thanked the delegation of China for having provided a list of questions. Unfortunately, due to time constraints, his delegation was not in a position to reply to China's questions at the present meeting.

38. The representative of Japan recalled that his delegation, together with Chile and the United States, had proposed a "Guide for Scheduling Commitments on Energy Services in the WTO"

(JOB(03)/89), which addressed certain issues differently from the Indonesian paper. Referring to page 8 of the Indonesian paper, (section 2.7.1), he noted that CPC 7131 was limited in W/120 to transportation via pipeline and that the entry under section 2.7.1 probably should be confined to that sector. Transportation of coal, under section 2.7.3, would better be included in other distribution or transportation entries. As for section 2.7.4, the Indonesian paper stated that transmission and distribution of electricity was included in services incidental to energy distribution. His delegation's understanding was that this was not part of CPC 887, but that a separate entry would be needed. His delegation also considered that separate entries could be necessary for sections 3.1.2 (wholesale trade services of electricity, town gas, steam and hot water) and 3.2.2 (retailing services of electricity on town gas, steam and hot water). With regard to section 2.2.2 (liquification and regasification), he felt that it covered manufacturing activities.

39. The Chairman concluded that the Committee awaited the revision of Indonesia's proposal for discussion at the next meeting. He recalled that there had been broad agreement that switching to informal mode for a discussion of classification issues would facilitate a more open exchange of views. Based on inputs from interested delegations, he suggested to discuss in informal mode: Consulting Services, and Computer- and Related Services. He intended to prepare a concise, non-attributable summary of the discussion, which would be circulated under his own responsibility as a working document without any document reference.

40. It was so agreed.

#### B. SCHEDULING ISSUES

41. The Chairman noted that two new papers were available: one had been received recently from the delegation of Hong Kong, China and contained further observations on scheduling issues (JOB(04)/133); the other had been prepared by the Secretariat upon request by the Committee, and contained a list of documents that had been issued during the discussions on the revision of the scheduling guidelines (JOB(04)/97). The list included, in chronological order, formal as well as informal documents that had been submitted during the revision process by Members, the Chairman, or the Secretariat. Last week, the delegation of Hong Kong, China had made a submission. He then recalled that several other papers were still in front of the Committee, notably two communications by Brazil (JOB(03)/189) and JOB(04)/12) containing preliminary questions on a number of initial offers, as well as a communication by Hong Kong, China on scheduling questions (JOB(04)/81), and comments on these questions by Chinese Taipei (JOB(04)/82).

42. The representative of Hong Kong, China stated that his delegation's new communication sought to advance the discussion and draw attention to possible ambiguities and pitfalls, which Members could avoid when inscribing new commitments. He had no intention of re-opening the Scheduling Guidelines, but rather wanted to ensure that these remained the foundation for scheduling commitments and promoting a common understanding among Members as to how they should be applied. Important scheduling issues had been discussed the day before in the Special Session, where delegations considered a paper from Switzerland concerning the need for transparency and legal certainty of schedules. Many elements in the paper were linked to the ongoing work in this Committee. Hong Kong, China's new communication took into account comments from other delegations. He hoped that the discussion on scheduling issues would evolve on two tracks, the first being the continued examination of issues which his and other delegations had raised, i.e. general and horizontal scheduling questions. He considered it useful to structure this discussion according to the sections of the Scheduling Guidelines. Secondly, economic needs tests were a specific issue in their own right as some ENT-related questions, albeit still within the mandate of the Committee, might go beyond scheduling. He noted that a background note by the Secretariat (S/CSS/W/118) provided a list of ENTs in schedules and contained some interesting and thought-provoking observations. The note would assist Members in conducting a substantive discussion on ENTs. His delegation would put forward more specific ideas and thoughts in future meetings.



43. The representative of Chinese Taipei concurred that many scheduling issues called for a common understanding on the application of the Scheduling Guidelines. Commenting preliminarily on Hong Kong, China's latest paper, she stated with reference to question 1, that there should be a different interpretation of the "none" and "unbound" in the sector-specific section. The views held by the Panel in *Mexico- Telecom* might provide clues to address problems such as those raised in question 2. A further discussion might be useful on question 4, additional commitments, or question 5 on ENTs.

44. The representative of Korea agreed with Hong Kong, China that it would not be desirable to seek to revise the Scheduling Guidelines. Delegations should rather concentrate on how to apply the Guidelines properly to current schedules. In view of the preparation of revised offers, it might be useful to discuss the inclusion of transparency elements in schedules which strictly speaking were not subject to scheduling. She also supported a further discussion to clarify the content of ENTs and the types of criteria used for them.

45. The representative of Switzerland stated that the clarification of technical aspects was very important for the preparation of the improved offers by May 2005. With regard to the questions put forward by Hong Kong, China, his delegation agreed broadly with the comments by Chinese Taipei on questions 13 and 7 to 10. Switzerland would wish to see further discussions on questions 5 and 6. To advance discussions, he suggested to focus on solutions rather than problems and supported the idea by Hong Kong, China to follow the structure of the Scheduling Guidelines.

46. The representative of Thailand supported a discussion on ENTs, preferably as a separate agenda item.

47. The representative of the Philippines saw great benefit in examining Hong Kong, China's questions, and agreed that there was no point in re-opening the Scheduling Guidelines. However, if certain paragraphs of the Guidelines were not sufficiently clear, these should be addressed with an open mind. He also endorsed a more focused discussion of ENTs.

48. The representative of Hong Kong, China agreed with Switzerland on the need for a solution-oriented focus. His delegation had made available a room document containing scheduling questions concerning the initial offer of Brazil. The purpose was to put these questions in a more specific context. He was not trying to single out Brazil, and the delegate of Brazil had indeed approved this approach. Many of the questions raised applied to other initial offers as well and Members would benefit from the discussion of horizontal and general issues. With regard to the comment by the representative of the Philippines, he said that problems had not arisen because of the content of the Scheduling Guidelines, but because of their actual use by Members.

49. The representative of Brazil stated that some of the questions his delegation had put to other delegations had been addressed in bilaterals. He stressed the need for more discussion with a view to promote clarity, comparability and certainty in schedules. Hong Kong, China's questions to his delegation had come too late for this meeting. However, concerning question 9, he could confirm that the missing words had been omitted by mistake. His delegation was preparing a new round of questions for the United States, Canada, EC, Japan and Hong Kong, China for discussion in November. The aim was to sufficiently clarify scheduling and classification issues in these negotiations, and he hoped that the closer the May deadline for revised offers approached, the more progress would be made. If some Members had concerns and difficulties in engaging in a formal debate, he hoped that the discussion could take place in informal mode, or at least on a bilateral basis.

50. The representative of Guatemala suggested that Members who had replied bilaterally to Brazil's questions share these replies with others.

51. The representative of Hong Kong, China welcomed Brazil's readiness to discuss scheduling issues, as this would contribute to the clarity of offers and provide useful inputs for the preparation of revised offers. He was looking forward to further work in the CSC.

52. The representative of the United States noted that her delegation had responded directly to Brazil, and would continue to proceed in that manner with respect to any additional questions that might be raised. While it was appropriate to discuss broader scheduling issues in the CSC, the Committee was not the forum to raise specific questions with regard to individual Member's initial offers.

53. The Chairman suggested that Members take note of the statements made and the Committee revert to the discussion at the next meeting. He would further reflect on the comments as to how progress under this agenda item could be made

54. It was so agreed.

C. OTHER BUSINESS

55. As no issues had been raised under Other Business, the Chairman suggested that, in accordance with the practice of grouping meetings of subsidiary bodies close to meetings of the Council, the next formal meeting be held in conjunction with the next services cluster.

56. It was so agreed.

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