

# WORLD TRADE ORGANIZATION

RESTRICTED

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## **Council for Trade in Services**

### REPORT OF THE MEETING HELD ON 11 AND 15 APRIL 1997

#### Note by the Secretariat

1. The Council for Trade in Services held a special meeting on 11 and 15 April 1997. The purpose of the meeting was to conclude the verification of the Schedules of Commitments and Lists of MFN exemptions on basic telecommunications. The meeting was convened by airgram WTO/AIR/562. Under other business two points were raised. The Chairman invited a representative of the Secretariat to make a statement concerning contacts between the WTO Secretariat and the International Telecommunication Union (ITU). The representative of Japan raised another point concerning application for licenses by foreign telecommunication companies.

#### A. VERIFICATION OF THE SCHEDULES IN BASIC TELECOMMUNICATIONS

2. The Chairman recalled that an informal meeting had been held on 14 and 17 March 1997 to conduct the examination of the Schedules of Commitments and Lists of MFN exemptions resulting from the negotiations on basic telecommunications. Almost all delegations had undertaken to consider possible improvements in the presentation or technical accuracy of their Schedules, which had been proposed during the informal meeting. The Chairman drew attention to the Compilation dated 11 April 1997, the Schedule of the European Communities (in the three languages), the Schedule of Colombia, the Schedule of Dominica and the Schedule and MFN Exemption List of Antigua and Barbuda, which incorporated the technical changes made during verification and represented the final results of the negotiations on basic telecommunications.

3. The Chairman noted that a difficulty had arisen concerning the reference, contained in the Schedules of some Members, to the Notes of the Chairman of the Group on Basic Telecommunications concerning 'Market Access Limitations on Spectrum Availability' (S/GBT/W/3) and 'Scheduling Basic Telecom Services Commitments' (S/GBT/W/2/Rev.1) (Chairman's Notes).

4. The representative of the United States said that his delegation was concerned about changes made during verification to the Schedules of some Members. In particular he was concerned with the fact that some Schedules contained reference to the Chairman's Note on Market Access Limitations on Spectrum Availability. He said that it would have been ideal from his point of view that all references to the Note were deleted from those Schedules which still contained them: otherwise his delegation and perhaps others would feel it necessary to insert similar references. Alternatively he suggested that a statement by Chairman of the Services Council might be developed in order to allow those countries which still had the references to delete them from their Schedules. The representative of the European Communities said that on the basis of the understanding contained in the Chairman's Note on Spectrum Availability, the European Communities and a number of other Members had deleted reference to frequency or spectrum availability from the Market Access Limitations column and explained in the cover page of their Schedules that such deletion had been based on the Chairman's Note. Subsequently, during verification it had been agreed that cover pages should disappear from all final Schedules, provided that any substantive elements that needed to be retained would be inscribed in the main body of the Schedule. Some delegations had accordingly transferred references to S/GBT/W/3 to their schedules in the form of a headnote. He also said that he had no objection if the United States and other delegations wished to insert similar headnotes referring to the Chairman's Notes in their

Schedules. However, he suggested that his delegation would favour a solution, where all references to both Notes would be deleted following a common understanding to be reflected in a statement by the Chairman of the Services Council and recorded in this report. The representative of Argentina said that the cover page of his country's Schedule had contained substantive information, including reference to the Note on Spectrum Availability, which had been transferred into the Schedule during technical verification. He noted that during the course of the informal verification meeting no delegation raised any objection in this regard.

5. The representative of Japan said that his delegation had serious time constraints due to their internal ratification process. The Japanese Diet needed a copy of the verified Schedules as soon as possible in order to be able to approve the agreement in time for its entry into force, and it was very much to be hoped that this question would not cause a delay that would make this impossible.

6. The representative of Chile said his delegation had had a reference to the Chairman's Notes in their Schedule since the beginning and hence they were indirectly affected by the discussion which was taking place. Nevertheless, he agreed to consult his capital on the proposal to allow all Members to delete reference to the Notes. Venezuela said that they also had included reference to the Chairman's Note on Spectrum Availability in their Schedule before the end of the negotiations but that they would consult their capital on the possibility of deleting the reference following a statement from the Chairman of the Services Council.

7. Morocco noted that either there was going to be an agreement on a statement by the Chairman, allowing for the deletion of all references to the Chairman's Notes or, if such references were to remain in certain Schedules, other delegations should be allowed to insert the same references. The representative of Singapore said that his delegation was among those who had agreed during verification to delete the cover page containing reference to the Chairman's Note on Spectrum Availability. He indicated that a statement by the Chairman was the preferred solution. However, if there was no agreement on such statement, his delegation would wish to insert reference to the Chairman's Note in the Schedule. The representative of Mexico noted that her delegation deleted the cover page during verification on the understanding that the substance contained in it would be moved into the Schedule and that at that time her delegation had received no objections from other delegations. She agreed to consult her capital on the matter of a statement by the Chairman. The representative of Hungary stated that his delegation reserved its right to insert reference to the Chairman's Notes in the Schedule if no agreement was reached on a statement by the Chairman. The representatives of Canada and New Zealand argued that it would have been counterproductive if delegations had gone in the direction of adding reference to the Notes in the Schedules and that it would be better to focus on the statement by the Chairman as the means to allow those countries who had references to the Chairman's Notes to delete them. The representative of Brazil said that his delegation was not sure that a statement by the Chairman would be a solution to the issue of the references to the Notes and that his delegation needed certainty on the matter. He added that his delegation would probably accept a situation where all references were to be deleted in the light of a statement by the Chairman, but he would need to consult his capital on the matter.

8. The Chairman noted that a consensus seemed possible on deleting all the references, if an agreement could be reached on a statement referring to the two Notes of the Chairman of the Group on Basic Telecommunications relating to 'Market Access Limitations on Spectrum Availability' and to 'Scheduling Basic Telecom Services Commitments'. A draft statement was circulated reflecting the understanding by the Council for Trade in Services that all the Schedules would be read in the light of the Notes of the Chairman of the GBT, and that on that basis, references to such Notes in particular Schedules would be deleted. Some delegations suggested a few changes to the draft statement of the Chairman. The Chairman agreed to produce a revised draft of his statement incorporating the changes suggested. He also noted that some delegations needed to consult their capital before being

able to agree on the deletion of the references to the Notes. He suspended the meeting and reconvened it for the 15th of April at 11 am.

9. The meeting was resumed on 15 April 1997. A number of delegations announced that they had received instructions from their capitals to delete references in their schedules to the Notes of the Chairman of the Group on Basic Telecommunications, provided that there was an agreement on the statement by the Chairman of the Services Council and provided that such references were deleted from all Schedules.

10. The delegation of the European Communities expressed concern that this point had been raised at the very end of the verification procedure, but said that they were prepared to delete references to the two Notes on the basis of the statement from the Council Chairman, if all such references were to disappear from other Schedules. The representative of Chile noted that the references to the Chairman's Notes, which his delegation had inserted before the end of the negotiations, were a substantive part of their Schedule and an element of added value to Chile's commitments. He said that although the verification exercise was only of a technical nature, Chile agreed to delete reference to the Notes from the Schedule, if all other Members were prepared to do the same, and regarded this deletion as an additional contribution to Chile's commitments in basic telecommunications. He stressed that at this point it was important to move the process forward so that the protocol could enter into force on time. The representatives of Brazil, Dominican Republic and Guatemala said that they had instructions to delete reference to the Note on Spectrum Availability, but only if all other delegations who had similar references did the same and if the statement by the Chairman of the Services Council was reproduced in this report. The representatives of Argentina and Venezuela agreed provisionally to the deletion of the references to the Chairman's Notes from their Schedules, subject to final clearance from their capitals.

11. The Chairman issued the following statement concerning the Notes of the Chairman of the Group on Basic Telecommunications:

*'There is a point that I should draw to your attention relating to the management of spectrum or frequency. It will be recalled that a large number of the conditional offers tabled during the negotiations contained references to the allocation or management of spectrum, reflecting the fact that spectrum is a physically limited resource whose use is subject to certain inevitable constraints. This being so, it was the general view of negotiators that the management of spectrum is not a measure which needs to be listed under Article XVI as a limitation on market access, and that such limitations, being unnecessary, should be deleted from schedules. The Chairman of the Group on Basic Telecommunications issued a note on 3 February 1997 (S/GBT/W/3) which stated, inter alia:*

*"Spectrum/frequency management is not, per se, a measure which needs to be listed under Article XVI. Furthermore under the GATS each Member has the right to exercise spectrum/frequency management, which may affect the number of service suppliers, provided that this is done in accordance with Article VI and other relevant provisions of the GATS. This includes the ability to allocate frequency bands taking into account existing and future needs. Also, Members which have made additional commitments in line with the Reference Paper on regulatory principles are bound by its paragraph 6."*

*In the light of the above, a very large number of Members have removed references to the availability of spectrum from their schedules in accordance with the understanding contained in S/GBT/W/3. A number of schedules, however, contained references not to the availability of spectrum, but rather to the Chairman's note itself, which might be taken as an indication that the Chairman's note was taken into account in deciding not to refer to the management of spectrum. It had been suggested in the context of the verification exercise that these references to the Chairman's note might create a presentational problem, by suggesting that for the countries making such references, the Chairman's note might have a different status than for others. Clearly, this cannot be the case. In order to avoid any such implications, it is made clear that the Council's understanding is that all schedules, insofar as the matter of spectrum management is concerned, shall be read in the light of the Chairman's note.*

*There is also another Note by the Chairman of the Group on Basic Telecommunications dated 16 January 1997 (S/GBT/W/2/Rev.1) entitled "Notes for Scheduling Basic Telecom Services Commitments". Since it is of a similar nature to that of the Note on Spectrum Availability, it is the Council's understanding that all schedules shall be read in the light of that Chairman's Note.'*

12. The Chairman suggested that on the basis of this statement, of the statements made by delegations and in the light of the understanding that references in eight Schedules to the Chairman's Notes on 'Market Access Limitations on Spectrum Availability' (S/GBT/W/3) and on 'Scheduling Basic Telecom Services Commitments' (S/GBT/W/2/Rev.1) would be deleted, the Council should formally take note of the Schedules contained in the Compilation dated 11 April 1997, the Schedules of the European Communities (in the three languages), the Schedule of Colombia, the Schedule of Dominica and the Schedule and MFN Exemption List of Antigua and Barbuda were the final results of the negotiations on basic telecommunications and would be attached to the Fourth Protocol to the GATS. The Schedules were unrestricted and would be made public.

13. The Council so agreed. This agreement became definitive following confirmation from Argentina and Venezuela that the references in their Schedules to the Chairman's Notes had been deleted.

14. The Chairman informed delegations that as of 15 April 1997, the Fourth Protocol to the GATS would be open for acceptance by Members who had annexed to it their Schedules of Commitments on Basic Telecommunications. The certified copies of the Protocol would be available on the same date. The Treaty copy of the Protocol would be available for signature in Room 2148 in the Centre William Rappard.

## B. OTHER BUSINESS

15. The representative of Japan made a statement to the effect that a major trading partner was withholding decisions on licence applications of Japanese subsidiaries of telecommunication companies, due to trade policy concerns. He stated that such measures were inconsistent with the process of negotiations in basic telecommunication and with the spirit of the WTO Agreement and noted that they would become impossible to take after the entry into force of the Fourth Protocol. For this reason he called for the earliest possible ratification and implementation of the Fourth Protocol.

16. The Chairman asked the Secretariat to inform the Council of conversations which had taken place between the Secretariat of the WTO and the Secretariat of the International Telecommunication Union. A representative of the Secretariat reported that the ITU had approached the Secretariat with the suggestion that a cooperation agreement should be drawn up between the two organisations. In the discussion the ITU Secretariat suggested what they regarded could be the possible content of such a co-operation agreement, including for example exchange of information and mutual access to meetings. The WTO Secretariat had made it clear that decisions on this matter were reserved to the General Council. The Secretariat undertook to keep the Council for Trade in Services informed of any further developments.