

WORLD TRADE ORGANIZATION

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Working Party on GATS Rules

REPORT OF THE MEETING OF 3 JUNE 1996

Note by the Secretariat

1. The sixth meeting of the Working Party on GATS Rules was chaired by Mr. Stuart Carre of Canada. The agenda consisted of five items: negotiations on government procurement under Article XIII of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on safeguards under Article X of the GATS; date of the next meeting of the Working Party; and other business.

Negotiations on government procurement under Article XIII of the GATS

2. The Chairman recalled that the Working Party had agreed to set aside part of the present meeting for a discussion on the concept of transparency in the field of government procurement. In response to a request from one delegation, a representative from the Secretariat made a short presentation on transparency provisions contained in the Agreement on Government Procurement. The Secretariat representative said that transparency and non-discrimination were the twin pillars upon which the Agreement was founded. She identified three essential aspects of transparency. The first concerned pre-tendering procedures and the requirement for tendering entities to provide adequate and timely information of the intention to procure. Secondly, following the award of a contract, certain information relating to the award decision had to be made public. The third general aspect of transparency provisions under the Agreement related to the obligation to publish established rules and procedures in a readily accessible manner. The Secretariat representative also referred to discussions that had taken place in the Committee on Government Procurement in regard to the influence of information technology in promoting transparency, including through increased computerization of information relating to procurement.

3. Many delegations who spoke emphasized the key role of information in relation to procurement regimes, and therefore the need for a maximum degree of transparency. In this connection, information technology was crucial. One representative wondered whether the centralized collection and dissemination of information might be a task that could be suitably performed at the multilateral level. Another idea was to use the Internet as a medium for making information available in relation to procurement. The point was also made that while under some national and regional procurement regimes all information was centralized, under others this was not the case, and trying to centralize all information might prove costly and difficult. Several delegations raised specific aspects of transparency, emphasizing the importance that they attached to them. These included the clarity and neutrality of technical specifications in tender documents, with emphasis where possible on performance rather than design, the prior specification of evaluation criteria, the establishment of clear and reasonable deadlines for all procedural aspects of procurement, and the use of bid challenge possibilities and other aspects of due process as instruments of transparency. One delegation expressed the view that transparency was not only important for suppliers, but was also useful in obliging purchasers to think carefully about the exact nature of the good or service to be purchased.

4. Some delegations expressed the view that although transparency was obviously of great importance, the need to promote non-discriminatory approaches to procurement and to respect due process were also vital elements of an open and competitive system of procurement. One delegation, supported by several others, said that it was also important to bear in mind the objective of progressive liberalization. Moreover, while transparency was undoubtedly crucial, it should not be over-emphasized. An excessive concern with transparency requirements could force governments and purchasing authorities into undesirable regulatory interventions whose effect might be to prejudice the openness of procurement markets. It was a matter of balance. Another representative observed that the GATS' transparency requirements in Article III applied to Article XIII, and wondered what status any new transparency requirements relating to procurement might have within the structure of GATS as a whole. Would they be of general application, or applied selectively? Would they be linked to scheduled commitments, perhaps appearing as additional commitments? Other delegations agreed that these questions should be examined.

5. The representative of the United States made reference to the submission by his authorities of a proposal relating to procurement in the context of preparations for the Singapore Ministerial Meeting. He noted that this proposal emphasized the role of transparency, and foresaw a more gradual approach towards the question of non-discrimination in procurement. He urged the Working Party to keep abreast of the progress of discussions in the preparatory process for the Singapore meeting, since they could have implications for the work of the Working Party. In the meanwhile, he was of the view that the GATS exercise should move ahead in accordance with its mandate.

6. One delegation enquired about the actual coverage of the Agreement on Government Procurement (GPA) in terms of current procurement activity. The representative of the Secretariat said that extreme caution was required in making any estimates of covered procurement. However, it seemed that most central government entities (excluding defence-related entities) were covered by all GPA signatories. Perhaps somewhere between one-half and three-quarters of all sub-central procurement was similarly covered. It was important to note that these crude estimates did not capture the considerable variations in coverage that existed among countries. No estimate could be made of coverage in respect of other procurement entities, such as parastatals. One delegation emphasized the difficulty of making reliable quantitative estimates, and added that there were vast gaps in coverage, worth trillions of dollars worldwide.

Negotiations on subsidies under Article XV of GATS

7. In considering the next steps in work on subsidies, particularly in relation to the requirement to determine a future work programme and to exchange information on subsidies related to trade in services, several delegations expressed the view that it was essential to arrive at a definition of subsidy. It was also suggested that perhaps a working definition could be agreed upon, without prejudice to any future decision regarding the nature of subsidy disciplines under GATS. A delegation said that if the concern was that the negotiations may be prejudged through the early establishment of a definition of subsidy for information gathering purposes, one way of avoiding this risk would be to focus in the first instance on the objectives of subsidies. Another delegation said that at least in the first instance, the Working Party should look at a broad definition of subsidy, going beyond the question whether a subsidy involved a direct budgetary contribution from government. The suggestion was made that as a first step, the Working Party might consider whether the Agreement on Subsidies and Countervailing Measures provided any useful guidance in the matter of a definition. The Chairman urged delegations to reflect further on this issue, which would be taken up at the next meeting.

8. A number of delegations addressed the question whether it was appropriate to distinguish between different categories of subsidy. One of these delegations made a three-fold distinction between subsidies directed explicitly at support of particular industries, subsidies designed to meet broad social and

economic objectives, and other forms of government support. Another delegation said subsidy practices might be divided between those that were broad-based and permissible, those with trade effects that may need to be disciplined, and those that were clearly discriminatory and actionable, in that they focused on specific sectors or activities. A number of delegations agreed that categories such as these may correspond to different levels of discipline and available remedies that might be established, in a similar fashion to the approach adopted in the field of goods. However, further analysis would be required on this point. A delegation emphasized his view that while it may be warranted to make these kinds of distinctions, no subsidy practices should be excluded *a priori* from examination by the Working Party. A number of delegations were of the view that although it may be legitimate to exclude certain types of subsidy, such as broad-based social subsidies, from disciplines under GATS, such an approach should take into account the effects of subsidies as well as their aims. One delegation stated that any subsidy disciplines would need to accommodate the existence of different modes of supply under GATS. Referring to an earlier discussion in the Working Party, as well as to the Chilean submission in S/WPGR/W/10, a delegation expressed the view that it was as yet unclear that in choosing whether to emphasize a normative or a remedial approach to subsidy disciplines, the normative approach should be paramount. It was yet to be established that injury and causality investigations would be especially difficult in services. More generally, a good deal of analysis remained to be done in relation to the subsidy issue.

Negotiations on safeguards under Article X of GATS

9. The Chairman recalled that the Working Party had agreed it would be useful to discuss safeguards further in an informal setting, and that such a discussion would be more fruitful if it was based on written submissions by Members. Although certain delegations had indicated their intention to submit papers on safeguards, in addition to those already submitted by Australia and Thailand, these had not yet been forthcoming. The Chairman indicated his preference to wait for some written submissions before fixing a date for an informal meeting.

Next meeting of the Working Party

10. The Chairman said that the next meeting would be scheduled towards the end of July, if possible to coincide with meetings of the Committee on Subsidies and Countervailing Measures.

Other business

11. No matters were raised under other business.