

WORLD TRADE ORGANIZATION

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Working Party on GATS Rules

REPORT OF THE MEETING OF 28 MARCH 1996

Note by the Secretariat

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

Negotiations on subsidies under Article XV of GATS

2. The Chairman observed that this was the first time the issue of subsidies had been placed on the agenda. He recalled that the negotiating mandate in Article XV acknowledged that subsidies may, in certain circumstances, have distortive effects on trade in services. The mandate called upon Members to enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations were also to address the appropriateness of countervailing procedures. The mandate further stated that the negotiations would take into account the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area. In addition, the Chairman observed that a footnote to paragraph 1 of Article XV required that a work programme be established to determine how, and in what time-frame, negotiations on multilateral disciplines were to be conducted. Finally, the mandate also stipulated that Members would exchange information concerning all subsidies related to trade in services that they provided to their domestic service suppliers.

3. The Chairman drew the attention of delegations to a background note by the Secretariat (S/WPGR/W/9) introducing the subject. In addition, Chile had circulated a document on subsidies immediately prior to the meeting, which would be circulated as a submission to the Working Party. In introducing his paper, the representative of Chile noted that subsidies could distort trade in services in various ways and could undermine the value of market access commitments under GATS. Moreover, subsidies could take many forms, not necessarily involving a financial contribution by governments. It was essential to distinguish between broad-based subsidies aimed at achieving social and other national objectives, or at addressing market failure, and those subsidies designed to secure commercial advantage for a particular sub-set of services or service suppliers. These different categories of subsidy should not be treated in the same manner under GATS. It would be helpful in clarifying these issues if Members were to exchange information regarding their subsidy programmes, and a good starting point might be the notification obligations under Article 25 of the Agreement on Subsidies and Countervailing Measures.

4. The representative of Chile noted that enormous difficulties would be encountered in any attempt to define injury or causality under subsidy investigations in services, not least because of the complementarity in some circumstances of different modes of supply. A question would also arise as to the nature of countervailing measures in services. Moreover, a countervailing instrument could

be misused for protectionist ends. These considerations favoured an approach that would focus on commitments to eliminate subsidies or reduce their effect on trade.

5. Recognizing the inherent complexity of the subsidy issue in services, many delegations urged a careful and systematic approach to the negotiating mandate. It was important to take full account of the structure of GATS, and the fact that certain subsidy disciplines already existed within this structure. Several delegations also noted that some lessons could be gleaned from the experience of dealing with subsidies in the field of goods, although there were important differences as well when it came to services. The difference in emphasis between *a priori* disciplines on subsidies and reliance on anti-subsidy remedies should be borne in mind. One representative stated that in exploring the kind of subsidy disciplines that might be developed, due consideration should be given to the needs of developing countries. Many delegations stressed the need for gathering information, including in relation to the subsidy practices of Members.

6. In summing up the discussion, the Chairman observed that many delegations had called for caution and careful analysis as the Working Party came to grips with the Article XV negotiating mandate. He urged delegations to put their ideas down on paper, and to give further consideration to those aspects of the negotiating mandate that called for the establishment of a work programme and the exchange of information. The Working Party agreed that the Secretariat would prepare two papers. One would identify subsidy and countervailing measure provisions applicable to services in regional agreements. The other would list subsidy measures that had been inscribed in Members' schedules of specific commitments.

Negotiations on safeguards under Article X of GATS

7. The Chairman noted that differences of view had been expressed as to whether the Article X negotiating mandate committed Members to establish safeguard disciplines, or only to explore the possibility of doing so. He urged that this issue be set aside, and that delegations focus instead on the substantive question of what a safeguard provision might be used for, and how such a provision might work. These were the issues to be addressed in considering the mandate for a decision on "the question of emergency safeguard measures based on the principle of non-discrimination." The Chairman observed that those arguing against the establishment of a safeguard mechanism had based their case on the view that emergency safeguards were intrinsically unnecessary in the field of services, that the nature and scope of specific commitments under GATS rendered safeguards superfluous, and that methodological and statistical difficulties in designing and implementing a safeguard provision were so severe as to outweigh any possible benefit from doing so. On the other hand, those defending the case for a safeguard had argued that action under Article XXI to withdraw or modify specific commitments was not designed as an emergency safeguard, and could not meet the need for such a provision. Those in favour of a safeguard instrument also argued that higher levels of scheduled commitments would likely be forthcoming if subsequent emergency safeguard action were possible, that some domestic legislation may already contemplate safeguards for services and would need to be accommodated in GATS, and that methodological and statistical challenges were not sufficient reason for dispensing with any further consideration of the merits of a safeguard provision. The Chairman said that these different views needed to be developed and defended with greater specificity if the Working Party were to make further progress. He urged delegations to focus on this challenge and to follow the example of those who had already made written submissions. In response to a request from several delegations, the Chairman agreed to circulate his introductory comments as an informal document.

8. In opening the discussion, the Chairman also drew the attention of delegations to a note prepared by the Secretariat entitled "Emergency Safeguard Measures in GATS: The Applicability of Concepts Applied in the WTO Agreement on Safeguards" (S/WPGR/W/8). Several delegations agreed that more

work should be done in relation to the question whether a safeguard mechanism should be developed in GATS. A number of these delegations undertook to prepare written submissions. Certain representatives said that in addressing the various negotiating mandates before it, the Working Party should accord balanced treatment to all of the subjects, bearing in mind the differences in priorities and interests that existed among Members.

9. Some delegations reiterated earlier statements regarding the case for and against a safeguard mechanism. Among the important issues to be addressed as the Working Part deliberated further, delegations identified the questions of how to define an emergency, how to accommodate the needs of developing countries, how to define critical circumstances, how to provide for temporary safeguard action, and how to address differences arising from alternative modes of supply. At the suggestion of a number of delegations, the Chairman proposed that after more written submissions had been received, the Working Party should hold an informal meeting to discuss safeguards in more depth, and consider the next steps to be taken in pursuit of the negotiating mandate. Members of the working Party agreed with the Chairman's suggestion. It was also agreed that safeguards, like the other two negotiating subjects under the Working Party's mandate, would remain for the time being on the agenda of future meetings.

Negotiations on government procurement under Article XIII

10. The Chairman recalled that at its previous meeting, the Working Party had agreed that it would not take up government procurement in a substantive manner at the present meeting, but rather would seek to secure agreement on a set of questions that Members would attempt to answer in regard to their procurement regimes. An informal meeting had been held on 25 March 1996, at which delegations had come close to agreeing on an appropriate set of questions. The Chairman recalled the understanding that a pragmatic approach would be adopted to information-gathering, in order to ensure that this did not become an end in itself, thus crowding out substantive discussion. Delegations would make their best endeavours to provide all the information sought. Notwithstanding the voluntary nature of the exercise, the Chairman urged the Working Party to agree upon a date by which delegations would provide information. The Working Party agreed on the set of questions drafted by the Secretariat and modified at the informal meeting, and also agreed that 28 June 1996 would be the date by which delegations would attempt to provide replies to the questions. In the meantime, the set of questions would be issued as a working document.

Next Meeting of the Working Party

11. The Chairman said that the date of the next meeting of the Working Party would be set to coincide with a meeting of the Committee on Government Procurement.

Other Business

12. No matters were raised under Other Business.