

Committee on Specific Commitments

REPORT OF THE MEETING HELD ON 24 AND 28 FEBRUARY 2000

1. The Committee on Specific Commitments held its thirteenth meeting on 24 and 28 February 2000. The agenda for the meeting is contained in WTO/AIR/1246. No items were raised under other business.

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 introduced a revised version of the draft decision (Job No. 5203/Rev.2), which reflected the debate held in informal consultations on 17 February 2000. Some delegations made comments on the new text, which seemed to enjoy wide support. However, one substantive issue, concerning the timeframe of the procedure, remained open. The Chairman therefore decided to suspend discussions on this item and revert to it in informal consultations in order to find a solution.

II. SCHEDULING GUIDELINES – NOTE BY THE CHAIRMAN

3. Regarding the outstanding issues in the process of revision of the scheduling guidelines, the Chairman introduced two documents: Job No. 4056/Rev.1, dated 31 January 2000, which updated Job No. 4056 by adding the remarks made by delegations at the past two meetings and Job No. 772, which contained comments and suggestions by the Chairman on the outstanding issues. He introduced the latter document in his responsibility as Chairman of the Committee in order to try to simplify and prioritise work on the issue of the scheduling guidelines.

4. He suggested that, rather than going once again through document Job No. 4056/Rev.1, it might be desirable to focus the debate on concrete drafting proposals and to start distinguishing between outstanding issues that could reasonably be solved and those which were either too difficult or too marginal to be addressed usefully. Therefore he suggested that Members structured their discussions around the items listed in document Job No. 772. As the document was two weeks old, he said he understood that some reactions could be of a preliminary nature.

5. The paper was well received by delegations who agreed it represented a useful tool to advance work in this area. In particular, delegations accepted the Chairman's idea, expressed in paragraph 29 of the Note, of agreeing on a list of outstanding issues to be addressed with priority, while putting aside for the time being other less important or more controversial outstanding issues. Some delegations noted, however, that before some more controversial issues were put aside, it would be important to hear the views of all delegations on these matters. The representative of Japan agreed that it was useful to focus discussions on the outstanding issues listed in the Chairman's Note, however, noting that his delegation still had some comments to make on the emerging points of common understanding (reported in document Job No. 4055/Rev.1), he reserved the right to do that at a later stage.

I. GUIDELINES FOR THE LISTING OF MFN EXEMPTIONS

6. The delegations of Australia and Hong Kong, China noted that, although there were benefits in attaching guidelines for the listing of MFN exemptions to the scheduling guidelines, they were ready to put this issue aside in the discussion of the scheduling guidelines, provided that other Members would demonstrate similar flexibility on other issues. Australia proposed that the issue of guidelines for the listing of MFN exemptions could be taken up in the on-going review of Article II exemptions in the Services Council. The delegation of Colombia noted that, although it would be useful to have guidelines for the listing of MFN exemptions, it was a good idea first to bring the work on the scheduling guidelines to a rapid conclusion.

7. The delegations of the European Communities and Norway said that the time was not right for the review of the guidelines for the listing of MFN exemptions. Before considering any work in this area, it would be better to wait for the end of the review of Article II exemptions in the Services Council. The Republic of Korea agreed that it was appropriate to put this issue aside for the time being, but expressed doubts on whether the guidelines for the listing of MFN exemption should be dealt with as a separate item. The representative of the United States agreed with the Chairman that the guidelines for the listing of MFN exemption should be put aside, but, regarding Australia's proposal to take up this issue in the on-going review of Article II exemptions in the Services Council, he said that he did not see the connection between the two exercises. The representative of Venezuela said that in the view of her delegation there was no need for guidelines for the listing of MFN exemptions as paragraph 2 of Article II was already clear enough in this respect. The Chairman concluded that the issue of guidelines for the listing of MFN exemptions could be put aside for the time being. The Committee would revert to this issue in future, if necessary, probably not before the conclusion of the review of Article II exemptions in the Services Council.

II. FOOTNOTES, HEADNOTES, ATTACHMENTS AND DATE OF ENTRY INTO FORCE

8. The representative of New Zealand agreed with the proposed language in paragraph 6 of the Chairman's Note, regarding the legally binding nature of all entries in the schedules. He was more hesitant on the suggestions made in paragraphs 7 to 9, which appeared to undermine the principle re-affirmed in paragraph 6. The delegations of Canada, the European Communities, Mexico and Switzerland agreed with the Chairman that everything that was inscribed in the schedules should be considered as legally binding and that in principle the use of footnotes and headnotes should be avoided or limited. Switzerland proposed to add some language to paragraph 6, spelling out that footnotes and headnotes inscribed in schedules were to be considered as legally binding. Mexico said that it was clear that everything that was inscribed in the schedules was legally binding and that there was no need for new language in the guidelines about this.

9. The delegations of Japan, Republic of Korea, Norway, Switzerland and the United States were hesitant about the language in paragraph 8, which in their view appeared to undermine the current role of headnotes. Switzerland noted that in the existing schedules there were hardly any headnotes fulfilling the criteria outlined in paragraph 8. The above delegations felt that a more pragmatic approach to headnotes was desirable. The representatives of Cuba and Uruguay said that their delegations needed some more time to consider the proposals made on these issues and reserved their rights in this respect. In response to some delegations, who had asked about the retroactive effect of possible modifications in the scheduling guidelines, the Chairman recalled that as stated in paragraph 6 of document S/CSC/W/19 "... according to the basic principles of international law the revised guidelines would not have any retroactive effects on the interpretation of existing commitments ". He also took note of the fact that, while some degree of consensus existed on the legally binding nature of all entries in the schedules (paragraph 6), more work was needed on the issues raised in paragraphs 7 to 9. He suggested that delegations revert to this issue as from the next meeting.

III. MEANING OF MARKET ACCESS RESTRICTIONS

10. The representative of Mexico said that there was no need to distinguish between pre- and post-establishment measures and agreed with the proposal, made by the Chairman in paragraph 12 of his Note, to retain the current wording of the scheduling guidelines on this matter. The United States proposed to substitute "they" with "such measures" in the second line of paragraph 13 and "national treatment principle" with "national treatment standard of Article XVII" at the end of the paragraph. The European Communities and Hong Kong, China supported the Chairman's proposal and the changes suggested by the United States. Japan supported the Chairman's proposals and the changes proposed by the United States, provided that the last sentence of paragraph 13 read "national treatment provision of Article XVII ". The Representative of Switzerland said that the Chairman's proposed additional language in paragraph 13 might create confusion and was probably unnecessary. However, if this view was not shared by others, he would not insist on this point. The Chairman suggested that delegations revert to this issue at the next meeting.

IV. SCHEDULING OF MINIMUM REQUIREMENTS

11. The delegations of Hong Kong, China and New Zealand noted that minimum requirements had an impact on small and medium enterprises and that, where they existed, it would be useful to list such measures in the schedules as restrictions. Both delegations, however, said that they would join a consensus and agreed to put this issue aside for the time being. The Chairman proposed that the Committee suspend discussions on this issue in the immediate future and come back to it at an appropriate time. Mexico suggested that rather than postponing discussions, this was an issue worth taking up in the Services Council.

V. RELEVANT COLUMN AND MODE FOR THE SCHEDULING OF NATIONALITY REQUIREMENTS

12. The delegations of Hong Kong, China and Norway agreed with the suggestion by the Secretariat that this was a question which deserved discussion by Members. The Chairman proposed that the Committee deal with this issue as from its next meeting.

VI. INTERPRETATION OF THE TERM "TOTAL" "LIMITATIONS OF THE TOTAL VALUE OF TRANSACTIONS OR ASSETS"

13. Several delegations suggested that discussions on this item should be postponed. Mexico felt, however, that the issue was worth being discussed in the Services Council.

VII. ILLUSTRATIVE LIST OF NATIONAL TREATMENT RESTRICTIONS

14. There was general support for an illustrative list of national treatment restrictions in the guidelines, although delegations suggested that it might be desirable to have a more generic list than the current examples of concrete measures. Mexico said that, as the list was illustrative, it would be useful to have more examples than the current ones. The delegation of India said that, as there was no agreed definition of subsidies, its preference was for the exclusion of subsidies from the examples in the list. The Chairman suggested that delegations revert to this issue as from the next meeting.

VIII. DISCRIMINATORY SUBSIDIES UNDER MODES 1 AND 2

15. As this issue related to the illustrative list of national treatment restrictions, the Chairman proposed that it should be taken up together with the illustrative list.

IX. MEASURES INCONSISTENT WITH BOTH ARTICLES XVI AND XVII

16. The delegations of Australia, Hong Kong, China, and Mexico supported the Chairman's proposal. The United States also supported Chairman's proposal, but added that there was no need for an amendment to the GATS. Canada was of the opinion that this issue should be taken up in the Services Council rather than in the Committee on Specific Commitments, but offered flexibility if there was a consensus for discussing this issue in the Committee. Japan expressed support for continuing discussions on this issue. Uruguay noted that, in any event, the guidelines could not change the provision in Article XX:2 and that the language proposed by the Chairman could be inserted in the guidelines only as a clarification. The representative of Switzerland said that the proposal by the Chairman was too risky as it raised doubts regarding the validity of Article XX:2 of the GATS. He proposed the following alternative language: "*When measures are inscribed in the column relating to Article XVI that, contrary to Article XX:2, are not intended to be inconsistent with Article XVII, Members should indicate that this is the case in the market access column (e.g. by stating "notwithstanding Article XX:2, does not limit national treatment")*". The Chairman suggested that these issues, including the Swiss proposal, be taken up as from the next meeting.

X. POSSIBILITY OF AN ADDITIONAL COMMITMENT LIMITED TO ONE MODE OF SUPPLY

17. Mexico said that the existing text of the guidelines on this issue was already clear and saw no need to add additional language. The Chairman proposed to put this issue aside for the time being with a view to reverting to it at a later stage.

XI. REFERENCE TO CLASSIFICATION SYSTEMS

18. The Chairman proposed to put this issue aside for the time being and revert to it at a later stage.

XII. DISTINCTIONS BETWEEN MODES OF SUPPLY

19. The representative of Norway noted that this issue was also relevant to the work programme on electronic commerce and to the work of the Committee on Financial Services. He suggested that the Committee on Specific Commitments discussed it as a separate item from the scheduling guidelines. The delegations of Brazil and Uruguay pointed out that this was a technically complex issue and that further discussions might benefit from a paper by the Secretariat. The Chairman replied that, although in principle there was no objection to a paper by the Secretariat on modes 1 and 2, such a paper would clarify and summarize previous papers, rather than add new elements to the discussion. The delegations of Colombia and of the United States, while not opposing this proposal, wondered whether it was appropriate to attach previous papers by the Secretariat on the issue of modes 1 and 2 to the scheduling guidelines. The representative of Hong Kong, China noted that this was a complex technical subject, which deserved further discussion, but that it would be better to put it aside for the time being. The Chairman noted that this issue had also been discussed in other fora and suggested that the Committee could come back to it at a later stage, possibly under a separate agenda item.

XIII. LACK OF TECHNICAL FEASIBILITY

20. The representative of New Zealand said that this issue had generated a lot of interest, and that his delegation was available to continue to discuss it with any other interested Member. He agreed, however, with the Chairman's proposal to put it aside for the time being in the discussion of the scheduling guidelines. Norway noted that having an asterisk after "unbound" for purposes of transparency might be inconsistent with the statement that everything which is in the schedules had legal value. The Chairman noted that, although there was a considerable interest in this matter, no

consensus existed among delegations on a solution. He suggested that the Committee put this issue aside for the time being and revert to it at a later stage.

XIV. MEANING OF "NO LIMITATION"

21. The representative of Canada said that, as for the discussion under point IX, this issue was for the Services Council to discuss rather than for the Committee on Specific Commitments. The representative of Switzerland said that the language relating to Article XX:2, which he had proposed under point IX, was also relevant for this issue. The Chairman proposed to revert to this item, including the points made by Switzerland, as from the next meeting.

XV. MODE 4 COMMITMENT WITHOUT SPECIFIED DURATION

22. The representative of Hong Kong, China said that his delegation shared the observations made by the Chairman in the first part of paragraph 25 of his Note, but not in the second part. The current second last sentence of paragraph 4 of MTN.GNS/W/164 appeared to give too favourable an interpretation to the many entries that did not have a specific duration. Regarding the redrafting proposed by the Chairman in his Note, he said that his delegation did not find the new language acceptable, since without a DSU case it would not be possible to decide whether nullification or impairment had happened. His delegation preferred something which drew attention to the problem of lack of specified duration and the interest in legal certainty. He proposed to re-word the last two sentences of paragraph 4 along the following lines: *"However, many Members have not indicated the specific duration of temporary stay of a foreign service supplier and this could lead to legal uncertainty as to the scope of their commitments. Bearing in mind that Article XX:1(a) of the Agreement states that "each schedule shall specify ... the terms, limitations and conditions on market access", Members should include the duration of temporary stay."*

23. As regards the reference to the language of the Annex on the Movement of Natural Persons in the Chairman's Note, he said that it seemed to be a bit out of context. If Members wished to see it retained in some form, he proposed to add a third sentence along the following lines: *"Attention is also drawn to paragraph 4 of the Annex on Movement of Natural Persons regarding the application of measures which may nullify or impair the benefits accruing to any other Member under the terms of a specific commitment."*

24. The Chairman noted that the main problem identified for mode 4 commitments was the lack of a specified duration and suggested that delegations revert to this item and to the Hong Kong, China proposal as from the next meeting.

XVI. CUSTOMS DUTIES AND REGULATION OF CROSS BORDER MOVEMENTS OF GOODS

25. The Chairman noted that delegations had expressed little interest in this issue and proposed to put it aside for the time being and eventually revert to it at a later stage.

XVII. FOREIGN EXCHANGE CONTROLS

26. The Chairman noted that delegations had expressed little interest in this issue and proposed to put it aside for the time being and eventually revert to it at a later stage.

XVIII. CONCLUSIONS ON CHAIRMAN'S PROPOSED METHOD OF FUTURE WORK

27. In the light of the proposals made in his Note and of the discussions held during the meeting, the Chairman proposed that from the next meeting, Members concentrate their discussions on the scheduling guidelines on the following items:

- II. FOOTNOTES, HEADNOTES, ATTACHMENTS, ETC.;
- III. MEANING OF MARKET ACCESS RESTRICTIONS;
- V. RELEVANT COLUMNS AND MODE FOR THE SCHEDULING OF NATIONALITY REQUIREMENTS;
- VII. ILLUSTRATIVE LIST OF NATIONAL TREATMENT LIMITATIONS;
- IX. MEASURES INCONSISTENT WITH BOTH ARTICLES XVI AND XVII (ARTICLE XX:2);
- XIV. MEANING OF "NO LIMITATION"; AND
- XV. MODE 4 COMMITMENTS WITHOUT SPECIFIED DURATION.

28. The Committee so agreed.

III. CLASSIFICATION ISSUES

29. The discussion on classification was held in informal mode. A summary of the discussion is contained in document Job No. 205/Rev.6. At the end of the discussion, the Chairman indicated that in order to advance work in classification Members might consider introducing some changes in the method of work. In that regard, he proposed that Members consider the possibility of holding informal meetings for interested delegations on the various sectors. The meetings, open to all Members, would be held back to back with the formal meetings of the Committee, according to a calendar known in advance. The meetings would be chaired in principle by the Chairman of the Committee, who would report back to the Committee on the activities performed and the progress made in those meetings. All working documents would be circulated to the Members of the Committee. The proposal was well received; Members encouraged the Chairman to consult with the next Chairman of the Committee and with delegations on this matter. The delegation of Mexico could not agree at this meeting to such a proposal, but had no objections that the Chairman began consultations on this matter.

IV. ELABORATION OF CONSOLIDATED ELECTRONIC SCHEDULES

30. The Chairman recalled that at its last meeting held on 22 September 1999, the Committee had agreed on the format and on the procedure for the verification of the electronic schedules. The Committee had also approved an extension of the deadline from 60 to 75 days as of reception of the schedules. As a consequence of these decisions, on 20 December 1999, the Secretariat sent to delegations the electronic version of the schedules to be verified with the original schedule.

31. The Chairman reminded delegations that the effective date of expiry of the 75-day period was 4 March 2000 and that the procedure chosen by the Committee was that of implicit approbation. This meant that without comments by a delegation before the expiry date, the electronic version would be considered accurate and therefore ready for inclusion in the cd-rom. He noted that so far very few delegations had come back to the Secretariat to propose changes or indicate agreement to the electronic version. This could mean there were no problems with the electronic version, but also that Members had not yet completed the verification. He urged delegations to consider this matter expeditiously, as there was a little more than one week left to make observations.
