

# WORLD TRADE ORGANIZATION

RESTRICTED

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## Committee on Specific Commitments

### REPORT OF THE MEETING HELD ON 2 APRIL 1998

#### Note by the Secretariat

1. The Committee on Specific Commitments held its fifth meeting on 2 April 1997 under the Chairmanship of Mr Asoke Mukerji of India. The agenda of the meeting was contained in airgram WTO/AIR/805.

#### I. CLASSIFICATION ISSUES

##### A. Assessment of the Relevance of the Adoption of CPC rev 1 for Trade Negotiating purposes

2. The Chairman introduced ten new documents by the Secretariat: six sectoral studies for business services (S/CSC/W/6/Add.6 to 13), the qualitative assessment for business services (S/CSC/W9/Add.1 and Add.1 Corr.1), and the systematic paper on the potential impact of the revision of CPC on sectoral definitions used in the schedules (S/CSC/W16). He also introduced declarations by the Voorburg Group and the UN statistical division (S/CSC/W/13 and S/CSC/W/17). On this basis he suggested that Members discuss the potential benefits and disadvantages of the adoption of CPC rev1 as the basis for the negotiation and scheduling of commitments.

3. Canada complained that the length and late circulation of these documents had made it difficult to review them, and questioned their value, in particular that of the sectoral studies, for the practical problems addressed by the Committee. W/16 seemed excessively academic, and the conclusion in its fourth paragraph that a switch to CPC rev1 would seem to offer only marginal benefits seemed to be premature and unsupported by factual evidence. Further work of this kind should not be undertaken. The conceptual and global approach should therefore be abandoned and practical problems of nomenclature raised by delegations should be addressed. In this context one should look every time in rev1 to see if it solves the problems raised. The fact that rev1 was going to become a universally adopted statistical framework used by IMF, OECD and Eurostat for instance should also be taken into account. Canada acknowledged that CPC rev1 did not have any relevance in telecom and financial services but mentioned energy and transportation as possible areas of work.

4. The United States expressed general support for the position of Canada. Time and resources should not be spent in exhaustive study of the CPC, which was inadequate not only for financial services and telecoms but more generally. That explained why some countries had chosen not to use the CPC as the basis for scheduling and why scheduling in some sectors had been done on a sui generis basis. Rev1 would therefore never be generally adopted. Attention should focus on the improvement of W/120. Delegations should indicate which sectors seem to them poorly defined in W/120 or else where and the Committee should work on an understanding to improve these definitions.

5. The European Communities welcomed the documents, which they believed justified the effort put into them. As arid as the question of classification may be, it was determinant for the extent of the commitments and therefore must not be neglected. Work was needed in two areas. First, efforts should be made to improve W/120, notably by taking into consideration the developments on scheduling in financial services, telecom and maritime. With regard to financial services in particular W/120 should in the view of the EC reflect the content of the financial services annex. The improvement and integration into W/120 of the non-binding model schedule in maritime was also a possible avenue. On telecommunications the discussion on classification remained open. Some services activities which were not listed in W/120 were now listed in rev1 and could therefore be integrated. Concrete examples of new services could also be integrated - for example in environmental services, where OECD had been doing interesting work. Energy services might also be revised in the light of rev1.

6. The Central Product Classification had the merit of describing the services listed, something W/120 did not offer. Dissatisfaction with these descriptions was certainly one of the reasons why certain Members had chosen not to use the CPC as the basis for their schedules. Nevertheless, the description provided by rev1 in a given sector could usefully be studied with a view to improving, changing or clarifying a commitment. In that case however a challenge mechanism should be instituted in order to allow others to question a change if the conversion to rev1 appeared to downgrade existing commitments. When a schedule made no reference to the CPC, the interpretation of the extent of commitments was difficult: for instance in distribution are pre-sales and post-sales services included? Such countries might be required to submit a description of the sector before the negotiation or to notify legislation describing the sector.

7. Japan said that several factors had to be taken into account: the influence of rev1 on W/120, technological changes that may require frequent updating of the nomenclature, and on the other hand, the need for legal stability. If a decision were taken in future to revise W/120 according to rev1, which would not be necessarily the case, due account would have to be taken of the practical needs of the negotiations.

8. New Zealand indicated that its analysis of the documents confirmed its view that a full conversion to rev1 would have minimal value for GATS purposes, especially in view of the high level of aggregation of commitments. New Zealand therefore favoured a more practical approach, i.e., to identify where CPC rev1 had clear scheduling advantages and to test them. In that respect the qualitative assessment papers were of great help. The suggestion of the European Communities to examine W/120 seemed useful, whether through the identification of specific problems by delegations or in a more systematic manner. New Zealand also saw merit in attempting to improve the clarity of commitments through cross references to explanations.

9. Australia agreed in general with New Zealand and the European Communities interventions. Rev1 should be studied with a view to incorporating some of its features in the classifications used in schedules. The idea that countries not referring to CPC should clarify the scope of their commitments in some other way was very useful, as was the proposed re-examination of W/120 on the basis of suggestions by delegations.

10. Hong Kong, China was also of the view that an exhaustive examination of rev1 was not necessary. The provisional CPC was merely an individual option for members, and so would be the use of CPC rev1, with a legal challenge and negotiation mechanism to ensure that commitments would not be downgraded. The revision of W/120 was an important question. But it had to be done on the basis of concrete problems. Hong Kong, China wanted additional time to reflect on the suggestion of EU of additional obligations of transparency for Members not referring to the CPC: he saw merits in it but also difficulties, such as the possibility of creating legal uncertainties as to the scope of existing commitments.

11. Finally in response to the various observations made the Secretariat said that the papers submitted by the Secretariat, particularly the sectoral studies, were not intended for discussion by the Committee but were a purely factual analysis of the differences between the two versions of the CPC. In this they were unique and it was hoped might be useful to governments in future consideration of the use of CPC rev1, whether generally or in the revision of particular commitments. The judgement stated in the fourth paragraph of W/16 was not of course based on the three preceding paragraphs of that paper but on the 13 sectoral studies which had been carried out. It was not implied that rev1 was of marginal value, but that its adoption for scheduling purposes would make only marginal differences to current commitments. The question considered from the beginning had been the desirability of complete conversion from the provisional CPC to rev1, which it now appeared that no delegation was advocating.

12. The Chairman concluded that there was an agreement that further work on classification should be pragmatic and based on contributions by Members, notably in identifying concrete problems arising in scheduling. In such work both the provisional and revised versions of the CPC should be taken into consideration for their possible relevance to the problems identified. There was also agreement on the need to examine and if necessary revise W/120 in the light of developments in scheduling, in trade and in the understanding of Members. Suggestions and proposals by Members in regard to the revision of W/120 would be extremely useful. The work undertaken by other organizations in the field of classification, notably by the IMF and OECD, was also of interest and would be followed up by the Secretariat; the Chairman also encouraged delegations to provide any information they could on these matters.

#### B. Treatment of New Services

13. The Chairman recalled that in the previous discussion of this subject, on the basis of his non-paper dated 10 October 1997, it had been agreed that future discussions would take place on the basis of concrete examples brought forward by Members.

14. The European Communities had three comments on this topic. First, the provision of a service by a new means or another mode of delivery (for instance cross border instead of commercial presence) did not mean that the service is new. Secondly, if for a given mode a service had been scheduled as unbound due to technical infeasibility, the fact that the service had later become technically feasible for this mode would not create a commitment; in these circumstances the entry would simply become "unbound" and a possible commitment would fall to be discussed in future negotiations. Thirdly, if a genuinely new service were identified it should be added to the W/120 list. Such new services would presumably be only subsectors or part of subsectors and might emerge, for example, in particular in the financial services sector, where the management functions provided by banks has tended to throw up new services. The provisions of the financial services understanding on new services was worth studying as a possible example for new services in general.

15. The United States recalled that a discussion during the Uruguay Round of a possible standstill obligation for new services had produced no agreement as countries had wished to preserve their rights for the future. On the other hand the example of the financial services understanding was interesting; products were evolving and this evolution needed to be "captured" in order to formulate requests of commitments for these new services. However, further progress on that point would depend on the collective ability of Members to identify new services. The question of the mode of delivery was not relevant, as the problem was posed in terms of nomenclature and sectoral coverage. The conceptual approach to the problem of new services seemed both difficult and irrelevant. The only concrete manner to advance was to identify new services clearly, to define their boundaries and to open them to negotiations. New products were more relevant in already identified sectors such as financial services.

16. New Zealand shared the view of the European Communities on the absence of impact of the modes of delivery. The built in flexibility of the "other" category in CPC and in W/120 allowed the coverage in most instances of the universe of services. Further disaggregation and explanation on new services as an end in itself was irrelevant; if concrete examples could be identified.

17. The Chairman concluded that Members felt that these issues could usefully be addressed only when sufficient practical and concrete examples were available. It was also felt that consideration could usefully be given to the question of the fate of an "unbound due to lack of technical feasibility" entry in the context of a technological evolution, and to the possibility of defining in W/120 and in the schedules services now entered under the "other" category.

C. "Ad hoc" Sectoral Scheduling

18. The Chairman recalled that the secretariat had produced a background historical note on the specific scheduling classifications used in the past for certain sectors (S/CSC/W/11) and asked Members if they felt that further work was needed in this area.

19. The European Communities indicated that the telecommunications, air transport and maritime transport sectors were included in their proposal to revise W/120. Options should be kept open with regard to future work on *ad hoc* sectoral scheduling. Australia indicated that it would revert to these matters at a latter meeting. The Chairman concluded that this item would remain on the agenda for the next meeting.

II. PROCEDURAL AND COST IMPLICATIONS OF THE DEVELOPMENT OF ELECTRONICALLY MAINTAINED SCHEDULES

20. The Chairman recalled that the compilation and checking of electronic schedules could only begin, due to lack of financial resources, in 1999 and that the Secretariat had however undertaken to submit a draft format. He then introduced Secretariat document S/CSC/W/14 which explained the difficulties in assigning the effective dates of commitments in the schedules and therefore proposed, contrary to its earlier suggestion, that such dates should not be included, at least for the time being, in the electronic schedules.

21. Delegations expressed strong interest in this work and requested the secretariat to ascertain whether it could be advanced through use of the budget reserve. The Secretariat undertook to do so and said that the degree of priority attached to this matter by Members would be emphasized in its budget proposals for 1999.

22. Members also agreed that the definition of the date of commitments for the purposes of the three-year "freeze" following their entry into force was important, but that it could be considered separately from the question of electronic schedules. Canada suggested that work on the former question should begin after the finalization of the Article XXI guidelines.

23. As to the inclusion of dates in the electronic schedules, some delegation suggested that, since the electronic schedules would have no legal status in any case, inclusion of the dates would be useful and would entail no risks. Others however felt that the legal and technical difficulties were such that no mention of dates would be preferable.

24. Japan recalled its question on the intellectual property rights on the compilation.

25. The Chairman concluded that the Secretariat should inquire about the possible use of the budget reserve in 1997.

### III. SCHEDULING GUIDELINES

26. Discussions of this subject took place on the basis of the proposals contained in an informal paper submitted by the delegation of Switzerland. This gave rise to the following comments.

27. On the idea of substantiating document GNS/W/164/Add.1 by concrete examples, Argentina indicated it found the idea interesting. The European Communities however said that they were opposed to any illustrative list of examples and especially to lists distinguishing between Article XVI and Article XVII measures. Such lists would entail judgement on a legally grey area and would also be a bad precedent for another grey area, the overlap between Articles XVII and VI. This might preempt the future Article VI disciplines and incline to a lenient interpretation of those disciplines. The long-term objective of strong disciplines on domestic regulation was worth the sacrifice of the short-term objective of scheduling clarifications.

28. The proposal of drafting an abbreviated version of the scheduling guidelines seemed to Argentina to pose too many practical problems: experience showed that what was needed was more detailed guidelines.

29. On the proposal of drafting an illustrative list of examples to clarify how reservations should be formulated regarding licensing requirements, New Zealand and Argentina found the idea useful. The United States found the question important, as shown by the negotiations on accession and financial services, but were nevertheless concerned that an illustrative list would run the risk of misleading acceding countries or regulators about a rule which is in itself straightforward: Articles XVI and XVII were the only elements available on that question and they were clear in themselves - a list of examples would not add anything valuable to them. The European Communities shared the same opinion. Hong Kong, China generally shared the views of the United States, although it was not hostile to a list of examples provided it was agreed to be non exhaustive. It was anyhow difficult, whatever the clarifications, to prevent Members scheduling those kinds of requirements, as the negotiation on financial services had shown. For the European Communities the recurrent scheduling of licensing requirements during the financial services negotiation proved their earlier point that such an illustrative list would be counterproductive, as it was likely that future disciplines on Article VI would simply disallow those kind of entries where the absence of criteria meant that decisions were merely discretionary, or would make it clear that they did not have to be scheduled where they had no restrictive effect.

30. The suggestion to clarify the distinction between market access and national treatment reservations was considered worth studying by New Zealand. Argentina and Hong Kong, China considered that this problem was important but stemmed from the agreement itself (Article XX:2) and not from the scheduling guidelines and that it should be addressed at a later stage and in another context. Hong Kong, China mentioned also the scope of national treatment as being a partially unclear provision of the GATS which had to be addressed at a later stage. The United States considered that nevertheless the guidelines could clarify the distinction between market access and national treatment in accordance with the provisions of Article XX:2.

31. The proposal to clarify the relationship between the modes of supply and the various services was welcomed by New Zealand and Argentina. Hong Kong, China pointed out that the mode 1-mode 2 distinction in particular was a real problem, especially in the context of electronic commerce, but was not sure that an illustrative list was the best way to address it. The European Communities were open to the idea of clarifying this question, which could not be addressed during the telecoms and financial services negotiations, and which might trigger at a later stage a debate on the relevance of the four modes.

32. The proposal to draw up guidelines for standardized application of terms, with a view to achieving uniformity in references to regulatory measures, was judged of interest but needing concrete examples to begin with by New Zealand. Argentina and the European Communities found it difficult to imagine how one could standardize terms coming from different national legislations. For the European Communities this again showed the need for real improvements in transparency. The provisions of the agreement on transparency could certainly be improved and the additional precision required by Members during bilateral negotiations on the scope of commitments was not a complete solution to the problem.

33. The suggestion to draft a list of examples of measures covered by Article XIV and XIVbis was welcomed by New Zealand on the condition that concrete examples of problems would be given to initiate the discussion.

34. The idea of adding an explanatory paragraph to document GNS/W/164/Add.1 in order to clarify if the visa regime has to be listed seemed inopportune to New Zealand and Argentina.

35. Finally the suggestion to update the references to the Articles of GATS in the scheduling guidelines was welcomed.

36. New Zealand introduced its informal paper dated 2 April 1998 and indicated it was inspired notably by difficulties of scheduling encountered during accession negotiations. On licensing requirements, New Zealand suggested that the Committee should draw up a check list of questions which would help a Member to determine whether or not a particular licensing requirement should be scheduled. Additionally the Committee should reflect on the way to capture transparency information that do not need to be scheduled as such but are useful to understand the commitments. Secondly on the technical feasibility question, the scheduling experience should be studied in order to identify where Members have found technical constraints. The Committee should then on this basis have a broader discussion including for instance the impact of the evolution of technology on services delivery. This discussion would aim at a common understanding on a short list of sectors and subsectors where certain modes of supply are generally considered as unfeasible, though this would not preclude some activities within such sectors and subsectors being considered technically feasible.

37. Argentina welcomed the proposal on licensing requirements. The United States indicated that they had the same concern about this checklist idea that they had about the illustrative list of examples: Articles XVI and XVII were in their view straightforward and self sufficient. The European Communities found interesting, although complex to conceive and implement, the idea to improve transparency.

38. On the technical feasibility question Hong Kong, China recalled that according to the scheduling guidelines "where the mode of supply thought to be inapplicable is in fact applicable, or becomes so in the future, the entry means unbound" and indicated that it would revert to this question.

39. The Chairman concluded that there was an agreement by the Members to correct the misprint mentioned in the informal paper of Switzerland and the scheduling guidelines would need to be examined to see whether and how they could be improved. He indicated that the papers submitted by Switzerland and New Zealand would be discussed again at further meetings and encouraged Members to contribute to the debates with similar papers.

#### IV. STATISTICS

40. Members decided to maintain this item on the agenda of the Committee.

V. OTHER BUSINESS

41. The European Communities indicated that it felt the need of a more formal procedure for the certification of new commitments and new schedules. Japan supported this idea. The Secretariat indicated that it also had felt that the *ad hoc* procedures now being followed should be reviewed and revised; for example, the 30 days which had been provided for comment on commitments, following their circulation to Members, was probably too short.

42. The Committee installed its new Chairman, Mr Juan Marchetti from Argentina.

43. The Chairman indicated that he would conduct informal consultations on the Article XXI procedures before the end of April on the basis of the fourth revision which had been distributed on 23 March 1998.

44. The date of the next meeting was agreed as 9 July 1998.

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