

WORLD TRADE ORGANIZATION

RESTRICTED

S/C/M/28
20 July 1998

(98-2876)

Council for Trade in Services

REPORT OF THE MEETING HELD ON 24 AND 25 JUNE 1998

Note by the Secretariat

1. The Council for Trade in Services held a meeting on 24 and 25 June 1998. The agenda for the meeting is contained in WTO/AIR/860. The Chairman raised a point under other business concerning the Chairmanship of the Committee on Financial Services. The delegation of the United States also raised a point under other business concerning the status of acceptances of the Fourth Protocol to the GATS.

A. COOPERATION BETWEEN THE INTERNATIONAL TELECOMMUNICATION UNION AND THE WTO

2. The Chairman recalled that the question of a cooperation agreement between the ITU and the WTO had been raised at previous Council meetings. Members had requested further information on the views and intentions of the ITU with regard to such an agreement. The Chairman introduced document S/C/W/41, containing a draft Cooperation Agreement between the two organizations prepared by the ITU Secretariat. The text, which had not yet been approved by the ITU Council, reflected only the views of the ITU Secretariat, and it had not been discussed between the ITU Secretariat and the WTO Secretariat. The Chairman asked delegations to provide any necessary guidance or directives to the WTO Secretariat in its future contacts with the ITU.

3. Although delegations agreed that a cooperation agreement in some form with the ITU would be desirable, it was felt that in some respects the draft submitted to their Council by the ITU Secretariat went beyond what would be appropriate. Questions were raised in particular about the provisions relating to ITU participation in the WTO Dispute Settlement Body and about the extension of technical cooperation by the Secretariat to countries not Members of the WTO. It was stressed that cooperation between the two organizations should be strictly focused on issues related to telecommunications. It was also noted that the form such an agreement might take was still a matter for discussion. It was agreed that further informal consultations should be held to allow the Council to further clarify its position. The delegation of the United States circulated informally a revised version of the ITU draft, reflecting changes the US would suggest, for the Council's consideration.

B. REQUESTS FOR OBSERVER STATUS BY INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

4. The Chairman reminded participants that the Council for Trade in Services had granted regular observer status to only four organisations: the UN, UNCTAD, the IMF and the World Bank. All other requests had been postponed until the conclusion of the ongoing consultations in the General Council on observership. However, according to the Rules of Procedure, each WTO Council and Committee was entitled to take its own decisions on the admission of observers.

5. The Chairman drew attention to document S/C/W/19/Rev.1 which contained an updated list of the organisations which had requested observer status in the Council for Trade in Services. Delegations agreed that although general rules on observership should be left to the General Council it would be desirable to reach agreement in the Services Council on the requests of some organisations at the next meeting. As the requests made to the Services Council had been outstanding for a long time, the Chairman suggested that the Council take up this item in informal consultations with a view to taking a decision on some of the outstanding requests at its next meeting.

C. STATUS OF ACCEPTANCES OF THE FIFTH PROTOCOL

6. The Chairman drew attention to document S/FIN/W/13, a Note by the Secretariat on the status of acceptances of the Fifth Protocol. Since that note had been issued, Brazil had signed on 8th June subject to ratification and, Bahrain, Chile and Peru had accepted on 5th, 16th and 23rd June respectively. The delegation of Japan informed the Council that the internal ratification procedure was nearly completed and that Japan would be accepting the Protocol shortly. The delegation of Israel informed the Council that the internal ratification procedure was completed and that Israel would accept the Protocol in the following days. The Chairman suggested that the Council take note of the statements made.

7. The Council took note.

D. PREPARATION FOR NEGOTIATIONS UNDER ARTICLE XIX - EXCHANGE OF INFORMATION, SECTORAL DISCUSSION

8. The Chairman recalled that the purpose of the exchange of information exercise was to facilitate the access of all Members, in particular developing country Members, to information regarding laws, regulations and administrative guidelines and policies affecting trade in services. He suggested that in the sectoral discussions the Council focus on the manner in which the services in question are traded and regulated. These discussions should enable Members to identify in due course negotiating issues and priorities. The discussion focused on the following four sectors: Postal and Courier Services; Audiovisual Services; Construction and Engineering Services; and Distribution Services. The Secretariat introduced the papers it had prepared on each of these sectors, in documents S/C/W/37 to 40.

9. The Chairman stated that at the end of the discussions on the various sectors the Council would not be seeking to agree on any particular conclusions. He therefore encouraged delegations to engage as much as possible into spontaneous exchanges. It had previously been agreed that the Council would conduct the discussions in informal mode and revert back to formal mode at the end of the meeting. In the final formal session the Chairman gave the following summary of the main points raised during the informal discussions on each of the sectors:

(a) Postal and Courier Services

10. Although there are very few commitments on postal services and a limited though larger number of commitments on courier services, the regulatory environment and market structure of these sectors is changing, driven by deregulation and privatisation policies, and competing technologies and consumer preferences. It may be necessary to pursue more work to understand the nature of market access and national treatment limitations in these sub-sectors. Due to the multi-modal nature of global courier service suppliers, classification issues arise concerning the relation between courier services definitions and commitments and those for air and road transport services generally, as well as the "transport of mail" sub-activities included within these two sectors. The corresponding UNCPC definitions for postal and courier services may inadequately reflect the commercial service transactions concerned and the way these businesses operate at present.

11. The extent to which the domestic market dominates the volume of postal letter mail points to the importance of commercial presence in respect to postal services. For courier services, cross border supply may have relatively greater importance, as may the presence of natural persons not only for suppliers established in the market, but also for firms wishing to supply service into a market where they have no commercial presence.

12. There could be a need to further examine certain international postal service arrangements, particularly in respect to possible MFN implications. There may also be a need to improve transparency in respect to these services. Some regulatory issues with important consequences for the supply of these services may merit further examination: some such areas may include customs practices and procedures, universal service requirements and other public policy considerations.

(b) Audiovisual Services

13. On Audiovisual Services, Members provided details of their own domestic regimes. The importance of cultural issues for this sector, and the linkage between cultural issues and the large number of MFN exemptions in place, was noted by many speakers. The economic importance of the sector was noted, and attention was drawn to the large financial commitments required for film production and distribution particularly. The point was made that GATS and the WTO system were in general flexible enough to accommodate national policy objectives in this sector. Several Members stated that public financial support for the sector and the requirements of the GATS were not incompatible. Others observed that further examination may be required of the relevant subsidies issues, as well as of the possible effects of MFN exemptions on market access.

14. Members observed that the rapid pace of technological change, especially the convergence between the audiovisual and telecommunications sectors, created substantial challenges for regulators, and raised additional classification issues. The importance of intellectual property issues was noted, and additional information requested from the relevant WTO divisions.

(c) Construction and Engineering Services

15. Several delegations introduced their existing domestic regimes and recent reforms and their GATS commitments.

16. The importance of the construction sector for economic growth and development was underlined. It is an important sector for developing countries, not only for infrastructure development and employment, but also for transfers of technology and know-how.

17. One question of classification raised was where to put "dredging services". It was not clear whether it belonged to construction services or transport services.

18. As a general point, it was stated that in liberalizing this sector, a balance needed to be struck between safety and other public interest considerations and the need for effective competition.

19. In terms of commitments in Members' schedules, it was noted that commitments in mode 3 (commercial presence) were very important for the sector, while mode 1 (cross-border supply) did not appear to be particularly relevant.

20. Some of the market access and national treatment limitations identified were: limitations on the participation of foreign capital; limitations on the types of legal entity; limitations on the scope of business activities of foreign construction firms; nationality and residency requirements; subsidies; and discriminatory tax and other requirements on foreign companies seeking approval.

21. It was stressed that limitations on the movement of natural persons at all skill levels have particular relevance to this sector. There was a need to elaborate on how the freedom of movement of professionals and other personnel affected construction service suppliers.

22. It was pointed out that commitments made in other sectors, such as financial services, business services and transport services also affect the construction sector.

23. Issues concerning domestic regulation, such as construction permits, qualifications and licensing requirements to do certain work, and technical standards were also identified as relevant to the sector. There were also questions of transparency and competition policy.

24. Government procurement also plays an important role for this sector, requiring progress to be made in other bodies of the WTO, including the Working Party on GATS Rules.

25. It was suggested that the relatively high quality of commitments made by Members, particularly for mode 3, may enable Members to jointly undertake action in achieving a higher level of liberalisation in the sector.

(d) Distribution Services

26. Members noted the economic significance of the sector. The impact of technological developments on distribution activities was highlighted. Some noted the difficulties in coming to grips with the sector, particularly in light of statistical gaps.

27. The need was expressed for a closer examination of the adequacy of the existing classification of distribution services and the description of covered activities. For instance, the question of how the activities of certain fast-food restaurants and franchising should be classified may need clarification.

28. It was suggested by some that some questions pertaining to electronic commerce be reformulated and the responses be used as an input into work in the General Council.

29. The concern was expressed that only a few Members have commitments in the sector and many had excluded particular sectors from the scope of their commitments. Even though there were few MFN exemptions explicitly for distribution services, other, more general, MFN exemptions may, nevertheless, impact on the sector. Furthermore, the presence of licensing requirements and of economic needs tests could have a trade restrictive impact.

30. Certain liberalising measures taken by Members were described. A particular interest was expressed in certain questions, such as those pertaining to whether liberal access was granted to foreign natural persons in the sector. Some however doubted the particular or immediate relevance of competition rules for the distribution sector.

31. The point was made that in addition to restrictions on market access and national treatment, domestic regulatory measures, such as those related to location and store-size, could also have a powerful effect on the ability of foreign suppliers to operate efficiently. The need for disciplines under Article VI therefore needed to be explored.

E. REVIEW OF THE SECTORAL DISCUSSION EXERCISE AND DATES FOR FUTURE MEETINGS

32. The Chairman noted that some useful suggestions were made during the sectoral discussions. It was suggested that in structuring the discussions, a fifth question on the main barriers facing Members' exporters of services in other markets, should be added to the four previously agreed. This

would encourage Members to provide information not only on their own regulations but also on the regulations of their trading partners. It was also suggested that future sectoral papers by the Secretariat should include questions of the types found in the Secretariat paper on Distribution Services (S/C/W/37). It was the view of some delegations that such questions would help focus the discussions on matters related to future negotiations. The Chairman pointed out that if the Council asked the Secretariat to formulate such questions, it would not be reasonable afterwards to criticise them for touching upon policy issues. In this connection he emphasised that the content of these papers by the Secretariat had no legal status. One delegation suggested that at the next meetings of the Council it might be useful to provide an opportunity for delegations to return to issues and sectors discussed at the previous meetings.

33. The delegation of Japan made a proposal on the order of sectors to be taken up at future meetings. After a brief discussion Members agreed that in principle the Council would take up the following services sectors at its meeting in July: legal services, architectural and engineering services, computer and related services, advertising services and environmental services. Regarding the order of the sectors to be discussed in the September, October and November meetings, the Council agreed to come back to this issue in July.

F. OTHER BUSINESS

34. The Chairman drew attention to an informal note by the Secretariat (dated 24 June 1998), which provided a revised account of the status of acceptances of the Fourth Protocol. The delegation of the United States said they remained concerned about the fact that some important WTO Members had not yet accepted the protocol and urged all those Members to do so as soon as possible and by the deadline of 31 July 1998. The representative of Japan also urged the remaining nine Members to accept the Protocol by the deadline. The representative of European Communities informed the Council that one of its Member States had recently accepted the Fourth Protocol and asked the Council to include in its next agenda the re-opening the Second and Third Protocols for acceptance. The representative of Poland informed the Council that its Parliament had passed the law authorizing the President to ratify the Protocol and that acceptance would follow shortly.

35. The Chairman informed participants that his consultations on the appointment of a new chairperson for the Committee on Trade in Financial Services were continuing.
