

## Council for Trade in Services

### REPORT OF THE MEETING HELD ON 22 AND 23 JULY 1998

#### Note by the Secretariat

1. The Council for Trade in Services held a meeting on 22 and 23 July 1998. The agenda for the meeting is contained in WTO/AIR/888. The delegation of India raised a point under other business regarding the format of records of meetings.

#### A. COOPERATION BETWEEN THE INTERNATIONAL TELECOMMUNICATION UNION (ITU) AND THE WTO - STATEMENT BY THE CHAIRMAN

2. The Chairman recalled that at the last meeting the Council had discussed the draft prepared by the ITU Secretariat of a cooperation agreement with the WTO. Although the general view seemed to be that a Cooperation Agreement in some form with the ITU would be desirable, it was felt that in some respects the draft went beyond what was considered appropriate. As agreed at that meeting the Chairman had held informal consultations during which Members clarified further their positions. Subsequently, the WTO Secretariat started consultations with the ITU Secretariat on the basis of the guidance it had received during the informal consultations. A representative of the WTO Secretariat reported to the Council on the consultations held with the ITU Secretariat. He said that the reaction of the ITU Secretariat to the Council's position on the ITU draft had been entirely receptive and that it appeared that it would not be difficult to reach an agreement with the ITU on the substance of the cooperation. There was already a substantial amount of cooperation between the two Secretariats, and the ITU had been particularly active in advising its Members on the implementation and the implications of the Reference Paper on basic telecommunications. The ITU Secretariat had also expressed the desire to submit a draft agreed text to the ITU Plenipotentiary Conference, taking place between October 1998 and March 1999.

3. The representative of the United States supported a timetable providing for the possibility of an agreement in the Council on a draft text at its next meeting and for the submission of such text to the ITU Plenipotentiary Conference. He argued that such an agreement could support the ITU efforts on reform in the telecommunication sector and the implementation of the Reference paper. The representative of the European Communities reminded participants that the Council had to agree on the form as well as the substance of an agreement with the ITU and in particular on whether it should take the form of a formal cooperation agreement or of a simple exchange of letters. The representatives of India and Indonesia said that more work needed to be done on the substance and on the form of the cooperation with the ITU and that at the time being they were not in a position to agree on any timetable. Mexico argued that a formal cooperation agreement was not necessary and that a mere exchange of letters and informal cooperation between the two Secretariats was sufficient. The representative of Hong Kong, China said that although providing an agreed text for the ITU Plenipotentiary would be useful, his delegation did not want to rush into an agreement without having clarified all its details. Like other delegations he wondered whether the ITU could explain why a formal agreement was needed to ensure cooperation between the two organizations.

4. The Chairman asked the Secretariat to continue consultations with the ITU Secretariat and to report back to the Council at its next meeting. He suggested that the next discussion be based on a draft agreement which the Secretariat would prepare on the basis of its further consultations with the ITU Secretariat. If at the end of the discussion in the Council the draft text turned out to be an acceptable basis for continuing consultations with the ITU, the Council might decide to transmit it to the ITU for consideration at its Plenipotentiary Conference.

5. He also suggested that a representative of the ITU Secretariat could be invited to the next Council to participate in the discussion on the draft cooperation agreement text. The representative of India agreed to the Chairman's suggestions provided that the discussion with the ITU Secretariat's representative would be conducted in informal mode. The representative of Hong Kong, China said that for the next Council meeting he would have liked to see some written text from the ITU. The Chairman suggested that the Council take note of the statements made and revert to this item at its next meeting.

6. The Council took note.

#### B. REQUESTS FOR OBSERVER STATUS BY INTERNATIONAL INTERGOVERNMENTAL ORGANIZATIONS

7. The Chairman recalled that at its last meeting the Council had discussed briefly the outstanding requests for observer status, which were listed in Document S/C/W/19/Rev.1. In subsequent informal consultations on this matter a distinction was made between international and regional organizations. All of the requests were from regional organizations with the exception of three: the International Telecommunication Union (ITU), International Civil Aviation Organization (ICAO) and the International Trade Centre (ITC). The Chairman suggested that the Council focus on these three international organizations and postpone the consideration of other requests from regional organizations to a later stage.

8. Regarding the request from the ITC, the Chairman recalled that the General Council had agreed that the ITC, being a subsidiary organ of the WTO, should not be required to formally submit a request for observer status, but that it should be invited, as appropriate, to those meetings of the WTO bodies it wished to attend. The Chairman therefore suggested that the ITC be invited to attend meetings of the Council on this basis.

9. The Council so agreed.

10. On the basis of the informal consultations, the Chairman suggested the ITU and ICAO be granted observer status on an *ad hoc* basis. The representative of Japan supported the Chairman's proposal and said that every time there was something regarding telecommunications or air transport services on the agenda of the information exchange exercise, the ITU and ICAO respectively could be invited to attend meetings of services bodies on an *ad hoc* basis. The representative of India supported the Chairman's proposal provided that these organizations sent written communications on the matters they wished to discuss. The representative of Uruguay asked what was the status of all other requests including the request from SELA (Latin American Economic System). The Chairman replied that all the requests from regional organizations were still the object of consultations taking place at the level of the General Council. The Council would revert to such request after an agreement was reached in the General Council.

11. The Council took note of the statements made and agreed to grant observer status on an *ad hoc* basis to the ITU and ICAO.

C. STATUS OF ACCEPTANCES OF THE FOURTH PROTOCOL

12. The Chairman recalled that the Council adopted a Decision on 19 January 1998 extending the deadline for acceptances of this Protocol until 31 July 1998. He drew attention to the note by the Secretariat dated 22 July containing the latest account of the status of acceptances. Nine acceptances were still outstanding. The Chairman invited those Members who had not yet accepted to give any information to the Council concerning their acceptance.

13. The representative of Bolivia informed the Council that its capital had ratified the protocol and that her delegation would shortly be formalising the acceptance. The representative of Argentina said that the legislation ratifying the Protocol had been approved by the Congress at the beginning of July and was sent to the executive, which would be finalizing the acceptance shortly. Although the acceptance procedure was at its final stage, he said could not indicate a date when the acceptance would take place. The representative of Brazil said that the process of approval of the Protocol by the Parliament was near to conclusion and that the delay was due to some last minute procedural difficulties; there were no substantial difficulties. He also informed participants that following the approval by Parliament of a general law on telecommunications, Brazil would be making new commitments in telecommunications and that its delegation was consulting with the Secretariat on how to incorporate these new commitments in its schedule. Responding to a question from the representative of the United States the representative of Brazil confirmed that the new law had already been approved and was in force, so that the new commitments would apply on a *de facto* basis, pending the finalization of a new schedule. The representative of Guatemala said that her government had decided not to ratify the Protocol, as the Guatemala's general law on telecommunications, adopted in November 1997, contained a provision inconsistent with the Schedule attached to the Protocol. She added, however that her delegation would be submitting a new Schedule in telecommunications under the certification procedure in conformity with the new legislation. The representative of the United States said that his delegation might seek further information from the delegation of Guatemala. The representative of Poland said that it would be accepting the Protocol shortly.

14. The Chairman emphasised the importance of concluding the acceptance procedures by the expiry of the deadline for all those Members who had not yet accepted the Protocol. He recalled that failure to do so would mean that those Members who had missed the deadline would not be able to accept the Fourth Protocol unless the Council took another decision to re-open the Protocol for acceptance. The delegations of Japan, Switzerland and the United States thanked those delegations who had informed the Council about recent developments in their acceptance procedures and urged all those Members who had not yet done so to accept by the deadline of 31 July 1998. The Chairman suggested that the Council take note of the statements made.

15. The Council took note.

16. The Chairman informed the Council of the latest situation concerning the status of acceptances of the Fifth Protocol relating to Financial Services. Since the last meeting of the Council Israel and Japan had accepted the Protocol and Uruguay had signed subject to ratification. He recalled that the deadline for accepting the Fifth Protocol was 29 January 1999. Although this deadline was some time away, on the basis of experience with other Protocols he suggested that Members concerned expedite their acceptance procedures in order to meet the deadline and avoid the need for any extensions.

#### D. REOPENING OF THE SECOND AND THIRD PROTOCOLS FOR ACCEPTANCE

17. The Chairman recalled that at the last meeting of the Council the delegation of the European Communities made a statement under Other Business requesting that this item be inscribed on the agenda. He drew attention to document S/C/W/48 which contained a draft Decision by the Council to re-open the Second and Third Protocols for acceptance. The draft Decision stipulated the re-opening as of the date of its adoption. The representative of the European Communities introduced the draft Decision re-opening the Second and Third Protocols, which would allow Belgium to accept these protocols. The representative of Japan welcomed the fact that Belgium was now in a position to accept the protocols, but expressed concern about the principle of re-opening of protocols. He stressed that deadlines have an important function which should not be allowed to deteriorate. Other participants agreed that it was a positive development that Belgium could accept the protocols, but said that the re-opening should not constitute a precedent. The deadline for acceptance was set for 30 September 1998, taking into account of the fact that the process of acceptance in Belgium would be interrupted by the summer break. The representatives of Japan and the United States suggested amendments to the text of the decision which were incorporated in a new draft.

18. The Council adopted the Decision.

#### E. PREPARATION FOR NEGOTIATIONS UNDER ARTICLE XIX - EXCHANGE OF INFORMATION, SECTORAL DISCUSSIONS

19. The Chairman invited participants to refer back to the four main questions which Members had agreed in order to structure the discussions on the exchange of information: (1) What are the regulatory authorities, governmental and/or non-governmental?; (2) Are there any special or common problems encountered as regards transparency or the application of the most favoured national principle?; (3) What are the most prevalent types of restriction on market access or national treatment?; (4) Are there other types of regulation - for example in the areas of licensing, technical standards or qualification requirements - which commonly restrict trade in the sector? In addition the Chairman suggested that Members add a fifth question addressing the main barriers exports face in the market of other Members.

20. The discussion focused on the following five sectors: Legal Services, Advertising Services, Architecture and Engineering Services, Computer and Related Services, Environmental Services. The Secretariat introduced the papers it had prepared on each of these sectors, in documents S/C/W/43 to 47. The Chairman also invited participants to raise points concerning sectors discussed at the last meeting of the Council.

21. The following informal papers were submitted by delegations on the services sectors under discussion: (a) Legal Services: Australia, Canada, Japan and the United States; (b) Advertising Services: Australia, Japan and the United States; (c) Architectural Services: Australia, Canada, Japan and the United States; (d) Engineering Services: Canada; Computer and Related Services: Australia, Canada and the United States; Environmental Services: Australia, Canada, and Japan. The delegation of the United States circulated a submission made to the Committee on Trade and Environment on Liberalization of Trade in Services and the Environment, dated 21 November 1997 (Document WT/CTE/W/70). Regarding sectors discussed at the previous meeting of the Council, held on 24 and 25 June 1998, the delegation of Canada submitted two informal papers one on Courier and Postal Services and the other on Construction Services, while the delegation of Poland submitted an informal paper on Postal and courier services. The Chairman circulated an informal paper containing a communication from the International Bar Association (IBA) on legal services.

22. The Chairman suggested that for the discussion on the exchange of information the Council follow the same procedure as at the last meeting. The Council would conduct the discussions in informal mode and revert back to formal mode at the end of the meeting. In the formal session the Chairman gave the following summary of the main points raised during the informal discussions on each of the sectors:

(a) Legal Services

23. Members noted that international trade in legal services performs a fundamental role in facilitating investment and international business transactions. In this respect the growth of the legal services sector has paralleled the growth of international trade. As some legal services sectors, which happen to be the most relevant to international business transactions, are traded more than others, future negotiations might start by focusing on these sectors. In particular business demand for cross-border legal services appears to be concentrated in sectors such as home country law, third country law and international law. Liberalization of legal services, however, cannot progress without taking into consideration some fundamental aspects of consumer protection. For this reason Members should explore ways of collaborating with professional legal organizations.

24. Some Members have legal services regulatory regimes that are more liberal than stated in their specific commitments. The current level of market openness could therefore represent the baseline for future discussions and negotiations in this sector. The classification adopted by the vast majority of Members in the Uruguay Round is useful and reflects domestic regulatory distinctions. It was suggested that classification issues relating *inter alia* to multidisciplinary practices, the distinct character of the legal profession and the identification of new legal services sectors (such as alternative dispute resolution, legal training and business counselling) could be addressed in the Committee on Specific Commitments.

25. It was also noted that domestic regulatory measures can constitute significant barriers to trade in legal services. For this reason it would be important to develop Article VI:4 disciplines applicable to legal services either on a sectoral basis or at the horizontal level. An important role in the field of domestic regulation could also be performed by mutual recognition at the bilateral and at the multilateral level. It was suggested that work in the field of domestic regulation should look at, and take advantage of, principles developed by other international organizations and professional associations.

(b) Advertising Services

26. Members noted the economic importance of the advertising sector and its role in facilitating trade across a wide range of goods and services. While appreciating the generally high level of commitments in the sector, several delegations drew attention to the limited coverage of various schedules and to access barriers resulting from local content provisions, joint venture requirements and other investment-related restrictions. It was widely felt that trading opportunities could be further enhanced by more efficient domestic regulation, taking into account the potential for industrial self-regulation and, possibly, some form of international co-ordination. Some delegations also pointed out classification problems, including a potential overlap with audiovisual services.

(c) Architecture and Engineering Services

27. Several Members referred to the economic importance of the professions and perceived barriers to trade for those services. Some examples of limitations on market access identified in Members' schedules were: limitations on the types of legal entity permitted, limitations on foreign capital participation, limitations on the number of foreign executives, and nationality or citizenship requirements. Non-transparent taxation regimes, restrictions on obtaining work permits and visas, and

burdensome requirements in documentation were also referred to as barriers encountered by the professionals.

28. As with other professional services, the importance of domestic regulation, particularly with regard to qualifications and licensing, was emphasized. It was necessary to balance the necessity of such regulation with their effects on trade. Other related issues taken up were: compulsory membership in professional associations, the possibility of technology transfers, the effect of new technologies on the modes of delivery of those services, and the elimination of MFN exemptions based on reciprocity.

29. With regard to the sectoral classification, it was suggested that the appropriateness of the classification in document MTN.GNS/W/120 of "engineering services" and "construction and related engineering services" needed to be looked at, as well as the proper classification for surveyors or topographical engineers.

30. Suggestions were made to deal with classification issues in the Committee on Specific Commitments, and issues relating to licensing requirements and other Article VI issues in the Working Party on Professional Services. However, the procedure for such work needed to be discussed further in a broader context for all other relevant sectors.

31. A question was raised concerning regulations in those sectors; i.e., suppliers of architectural and engineering services generally required temporary presence in the markets in which the projects were undertaken, while the regulations applied assumed a more permanent supply of the service or permanent establishment. It was suggested that this could make the regulations disproportionately burdensome for the suppliers.

32. The fact that individual or small-scale suppliers constituted the bulk of suppliers for architectural and engineering services was also a point to be noted, since it could make it more difficult for them to access foreign markets compared to suppliers of other services.

(d) Computer and Related Services

33. On computer and related services, delegations noted that these services were important not only to the computer and software industries, but also to a wide range of other service industries who rely on computer networks. It was noted that the trade barriers most commonly encountered by suppliers of computer services were often horizontal in nature, so that future efforts to reduce horizontal limitations would be beneficial. Finally, a number of delegations pointed to four areas as lending themselves to further examination in respect to these services: (1) mode four, movement of natural persons; (2) regulatory issues, including professional qualifications and issues related to convergence; (3) classification issues, which should be remitted to the Committee on Specific Commitments; and (4) issues bearing on e-commerce, which would be relevant the work of the Council in this area. There were also observations that, while mode 1, cross-border supply, was increasingly feasible for computer services, mode 3, commercial presence, would nevertheless remain important and that efforts to reduce barriers to movement of personnel with the required computer skills warranted greater attention.

(e) Environmental Services

34. Delegations emphasized the significant benefits arising from the liberalization of trade in environmental services. Several Members stated that the environmental industry, including environmental services, played a significant role in their economies and trade was growing from previously low levels. Some Members described their own regimes, emphasizing liberalizing trends, and drew attention to the barriers their exporters faced in other markets. It was stated that only a

limited number of Members had made commitments in this sector. The problem of natural monopoly in certain segments of the market was noted as was the importance of public sector production, notwithstanding trends towards privatization. Several delegations spoke of the important role of public procurement of environmental services, and expressed the need for meaningful disciplines in this area. Some Members pointed to restrictions on investment and movement of natural persons as significant problems while others noted that many of these restrictions were of a horizontal rather than sector-specific nature. A few delegations pointed to discriminatory taxes, subsidies and non-recognition of foreign qualifications as problems. Barriers to trade arose in some cases because of restrictions on trade in complementary sectors like construction. Inadequate protection of intellectual property rights was also cited as a problem.

35. Environmental regulation played an important role in generating demand for environmental services. But Members emphasized the need to prevent the creation of technical barriers to trade. Regulatory mechanisms which relied on economic incentives and allowed the purchaser to choose the type of technology were to be preferred to those which specified the type of technology and could bias choice towards domestic sources. In several cases, regulations were formulated at the central level but implemented at the local level. Some noted that there was no industry-specific regulator and regulation was carried out entirely at the local level.

36. Some delegations suggested that it may be necessary to rethink the existing classification of environmental services contained in the Services Sectoral Classification List (MTN.GNS/W/120). Others felt that the proposals for changes in classifications should be carefully assessed. Discussion also focused on certain scheduling issues, particularly the indication in several Members' schedules that a particular mode as technically infeasible.

#### F. CHAIRMANSHIP OF THE COMMITTEE ON TRADE IN FINANCIAL SERVICES

37. The Chairman informed participants that in his informal consultations a consensus had emerged among Members on the issue of the chairmanship of the Committee on Trade in Financial Services. He said that it was envisaged that the Committee would meet once in 1998 in the fall. He then suggested that the Council agree that Mr. Okubo continue as Chairman of the Committee for this year. This agreement was reached on the understanding that for 1999 Mr Okubo will be replaced by a new Chairman.

38. The Council so agreed.

#### G. OTHER BUSINESS

39. The representative of India raised a point regarding the format of records of meetings. He requested that for the convenience of members and for the sake of transparency in general, meetings of the Council should be recorded in greater detail, attributing views to Members expressing them as it was done in other Councils. This point had been raised before by India, and it had become more important since then, as the Council engaged in preparations for a new round of negotiations and because reference had been made to records of meetings in recent dispute settlement proceedings.

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