

WORLD TRADE ORGANIZATION

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Council for Trade in Services

REPORT OF THE MEETING HELD ON 23 MARCH 2001

Note by the Secretariat

1. The Council for Trade in Services held a meeting on 23 March 2001. The agenda for the meeting is contained in document WTO/AIR/1512. Under Other Business, the representative of Hong Kong, China said that he would make a statement on the subject of a technical review of GATS provisions.

2. The Chairman proposed that the Council adopt the agenda as circulated, with the addition of the item raised under Other Business.

3. The Council so agreed.

A. REVISION OF SCHEDULING GUIDELINES – RECOMMENDATION BY THE COMMITTEE ON SPECIFIC COMMITMENTS

4. The Chairman drew the attention of the Council to document S/CSC/W/30 which contained the draft Revised Guidelines for the Scheduling of Specific Commitments, and document S/C/W/190 which contained a draft decision by the Council to adopt these revised guidelines. He invited the Chairman of the Committee on Specific Commitments, Mr. Tomo Uyama (Japan), to present the Committee's recommendation to the Council.

5. The Chairman of the Committee on Specific Commitments, Mr. Tomo Uyama, informed the Council that the Committee had agreed a text reflecting the revision of the Guidelines for the Scheduling of Specific Commitments under the GATS at its meeting on 22 March 2001. The text was contained in document S/CSC/W/30. The Committee recommended that the Council for Trade in Services adopt that text according to the terms reflected in the draft decision contained in document S/C/W/190.

6. A representative of the Secretariat pointed out that a typing error had occurred in paragraph 28 of document S/CSC/W/30, where the word "diskettes" in line three of the paragraph should be replaced with the word "diskette."

7. The representative of Panama supported the adoption of the revised guidelines, subject to the understanding that the adoption was not detrimental to work in other areas of the WTO, in particular as concerned work on electronic commerce.

8. The representative of the Dominican Republic supported the statement made by Panama, and stated that adoption of the guidelines should not have any consequences on work on classification. He stated that there was no consensus on the list in Attachment 8 to the draft revised guidelines (MTN.GNS/W/120 – Services Sectoral Classification List), and that classification evolved over time.

9. The representative of the European Communities stressed the importance for her delegation of the correction made just made by the Secretariat. This actually reflected the original wording and showed that there had been no change.

10. The Chairman suggested that the Council take note of the statements made and proposed that the Council agree to follow the Committee's recommendation and adopt the draft decision contained in document S/C/W/190, taking into account that the final version of the revised guidelines would be rectified with regard to the typing mistake mentioned by the Secretariat.

11. The Council so decided.

B. REVIEW OF THE UNDERSTANDING ON ACCOUNTING RATES IN TELECOMMUNICATIONS

12. The Chairman recalled that, at its last meeting on 1 December 2000, the Council had held a brief discussion on this item. At that meeting, a report was made by the ITU, circulated as Job No. 8211, on the conclusions reached by the World Telecommunications Standardization Assembly at its meeting in September 2000. Some delegations, while welcoming the report from the ITU, indicated that it was not clear whether there was still discrimination with respect to the application of accounting rates.

13. The representative of Australia noted that at the last meeting there had been support for a substantive review of the moratorium on disputes over accounting rates, and suggested that such a substantive review take place, in the presence of the appropriate experts from capitals, at the May regular meeting. This would give Members sufficient time to consider the issues and develop their positions. In the context of such a substantive review, she expected the demandeurs for the moratorium to produce convincing arguments as to the need of maintaining it. Her delegation, however, could find very few, if any, arguments to keep the moratorium. Current accounting rate practices were not consistent with WTO principles as they were discriminatory and non-transparent. The moratorium would only kick in if accounting rates were regulated. Very few countries actually regulated accounting rates.

14. She noted that contrary to those who believed that the moratorium would serve developing country interests, developing countries could still regulate termination charges under the ITU and the GATS, as long as they applied these charges on MFN basis; furthermore, the main countries affected negatively by discriminatory pricing were developing countries.

15. It was Australia's objective to see all communications systems operate within agreed trade rules and to have clarity that the basis of payment was consistent. Termination services should be recognised as traded telecommunications services and should be offered to any comer.

16. The ITU was not the appropriate body to deal with these issues. While the ITU did much valuable work and was tackling many of the problems associated with accounting rates, it would not deal in trade-related rules, nor would it offer its members recourse to dispute action to overcome discriminatory treatment. Also, ITU culture would define "communications relations" as being between two governments or countries. This view was outdated in the case of modern telecommunications. Today, many options existed for getting voice and data from point A to point B. These options often involved third and fourth and even more 'intermediaries'. In addition, the principle of technological neutrality would come into play, e.g. in the question whether telephony over the internet should no longer be considered telephony.

17. Removing the moratorium would provide an opportunity for any Member who felt subject to a discriminatory accounting regulation to seek redress under the dispute resolution mechanism. In the

ITU, such an opportunity did not exist. Therefore, her delegation would like to see agreement that there was no need for a moratorium, possibly based on an understanding that governments would see no reason to pursue dispute action on this matter during the negotiations.

18. The representative of Mexico stated that in the view of his delegation, the Understanding on Accounting Rates continued to be valid and it was not a question of debate whether the moratorium should come to an end or not.

19. The representative of the United States stated that his delegation was agnostic on the question of continuing the gentlemen's agreement on accounting rates. In a competitive telecommunications environment, there was no value to the agreement. His delegation would nevertheless agree to continue the agreement provided that the text clarified that the original intent of the agreement was to refrain from challenging the MFN consistency of accounting rates for a limited time period.

20. Concluding the discussion of this item, the Chairman recalled that one delegation had stated that it might be helpful if experts from capitals were present to consider this item at the next meeting, and suggested that the Council revert to the item at its next meeting.

21. It was so agreed.

C. NOTIFICATIONS TO THE COUNCIL PURSUANT TO ARTICLE V OF THE GATS

22. The Chairman recalled that, at the previous Council meeting, a discussion of this item had ensued based on a statement by the delegation of the United States, contained in document S/C/W/147, concerning the notification and examination of economic integration agreements pursuant to Article V of the GATS. That statement raised the question of how to improve the timeliness of such notifications and their transmittal to the Committee on Regional Trade Agreements (CRTA) for examination. In response to a request by Members, the Secretariat had drawn up a list of all economic integration agreements notified to the Council for Trade in Services, indicating the ones which had not been referred to the CRTA. That list was contained in Job (01)/33.

23. The Chairman further recalled that the delegation of Canada had made two additional suggestions, namely that referral to the CRTA be automatic 60 days after notification, and that the Secretariat should review recent Trade Policy Review reports to identify agreements which could require notification under Article V. Some delegations had expressed concern on these proposals, and others had indicated that they needed to reflect further.

24. The representative of Japan noted that the Secretariat had listed fourteen economic integration agreements of which only seven had been forwarded to the CRTA. He inquired what the reasons for non-referral of half the agreements were and sought clarification whether any procedure existed by which to refer those agreements to the CRTA.

25. A representative from the Secretariat stated that notified economic integration agreements were automatically put on the Council agenda for consideration. Often, the Council only took note without taking further action, while in other cases, the agreements were referred to the CRTA. The only procedure necessary for referral was an agreement of the Council.

26. The representative of the United States suggested that the Council should during future considerations of Article V notifications be reminded that referral to the CRTA required affirmative action by Members. He proposed that the Council refer the seven agreements under the "not-referred" heading in the Secretariat list Job (01)/33 to the CRTA at this meeting. He stated that to the knowledge of his delegation, a relatively large number of other agreements had been concluded and

entered into force, but had not been notified to date. He encouraged Members to take steps to comply with their notification obligations under GATS Article V.

27. The representatives of Hong Kong, China and Canada supported the comments by the United States and stated that all economic integration agreements should be referred to the CRTA.

28. The representative of Brazil, supported by the representative of the European Communities and Switzerland, stated that the proposal by Canada would go beyond the obligations in Article V of the GATS. However, his delegation could accept to refer economic integration agreements on a case-by-case basis to the CRTA.

29. The representative of New Zealand noted that the Secretariat note in Job (01)/33 referred to ANZCERTA under both the "referred" and "not-referred" heading. His delegation's understanding had been that all aspects of ANZCERTA had been considered in a recent CRTA review.

30. The Chairman proposed to refer the seven economic integration agreements listed as "not referred" in Job (01)/33 to the CRTA for examination.

31. It was so agreed.

D. NOTIFICATIONS MADE TO THE COUNCIL PURSUANT TO GATS ARTICLES III:3, V AND VII:4

32. The Chairman drew Members' attention to the notifications made pursuant to Article III:3 of the GATS by Egypt (S/C/N/116), the Kyrgyz Republic (S/C/N/177-120), the United States (S/C/N/121), Costa Rica (S/C/N/123), the Slovak Republic (S/C/N/124), the Czech Republic (S/C/N/125-126), Japan (S/C/N/127-131), Madagascar (S/C/N/132-137), and Poland (S/C/N/138-141).

33. He then drew Members' attention to the notifications made by Chile and Mexico, contained in document S/C/N/142, pursuant to Article V (Economic Integration), and a notification by Costa Rica in document S/C/N/122 pursuant to paragraph 4 of Article VII (Recognition).

34. The representative of India welcomed Costa Rica's notification on recognition and encouraged other delegations to likewise make notifications on recognition agreements.

35. The representative of Canada proposed that the economic integration agreement notified by Chile and a Mexico under Article V be referred to the CRTA.

36. The Chairman suggested that the Council take note of the notifications and proposed that the Council refer the economic integration agreement between Chile and Mexico to the CRTA.

37. It was so agreed.

E. COMMITMENTS IN BASIC TELECOMMUNICATIONS – STATEMENT BY BRAZIL

38. The Chairman recalled that, at the last meeting of the Council on 1 December 2000, the delegation of Brazil had informed the Council that consultations were continuing with other Members on Brazil's submission in document S/C/W/160 concerning its revised commitments in basic telecommunications. The delegation of Brazil also had made some procedural suggestions at a prior meeting, which would allow Brazil to bind its new proposed schedule and maintain the MFN exemption resulting from the negotiations and listed in the Fourth Protocol. At the last meeting the

delegation of Brazil had informed the Council that consultations with Members were still under way, and that its telecommunications expert had not been able to be present at the meeting. It therefore requested that the item be placed on the agenda of this meeting. The Chairman invited the delegation of Brazil to inform the Council of any developments.

39. The representative of Brazil stated that following the Council's last meeting, his delegation had engaged in consultations with interested delegations on Brazil's new schedule of commitments in basic telecommunications. These consultations had offered the opportunity to provide both information about the regulatory and economic situation of the sector in Brazil and further clarification on Brazil's schedule of commitments. The consultations had also focused on the question of a procedure that would allow Brazil to bind these commitments while maintaining at the same time the MFN exemption listed during the negotiations on basic telecommunications.

40. At the meeting of the Council held in October last year, Brazil had proposed to proceed on the basis of a decision by the Council on Brazil's MFN exemption together with the certification of the schedule. On the basis of this proposal, Brazil had distributed an informal paper containing a draft decision during today's meeting. The informal paper was put forward for consideration of Members the terms of the decision his delegation was seeking from the Council concerning the MFN exemption.

41. The draft decision took account of the fact that: (a) notwithstanding that the Fourth Protocol did not enter into force for Brazil, the MFN exemption listed in the Protocol had been submitted within the specified period of time, in accordance with paragraphs 3 and 6 of the "Decision on Commitments in Basic Telecommunications" contained in document S/L/19; (b) the MFN exemption had also been within the legal terms specified in the Annex on Basic Telecommunications according to which the listing of exemptions was not contingent upon the submission of specific commitments. Therefore, the decision stated that Brazil's MFN exemption shall take legal effect.

42. Brazil's schedule would be put for certification in accordance with the procedures set out in document S/L/84 (Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments). The entry into force of the schedule would be contingent upon its ratification by the Brazilian Congress.

43. Additionally, the decision on the MFN exemption specified that the entry into force of the exemption was contingent upon the entry into force of the specific commitments, i.e. upon their ratification by Brazil. Such a procedure would avoid the possibility that only the MFN exemption entered into force in the event that the offer of specific commitments did not enter into force. The proposed procedure would not constitute a precedent in terms of listing MFN exemptions because it would refer to a peculiar case, limited to the context of the negotiations on basic telecommunications in which this exemption was duly listed.

44. The representative of the United States stated that his delegation would refer the document and statement distributed by Brazil back to his capital for examination. At this point, his delegation remained concerned by the content of Brazil's proposed new schedule of commitments. The most significant shortcoming of the proposed schedule was the legal prerogative held by the executive branch of Brazil to establish limits on foreign equity ownership of telecommunications service providers. This provision would undermine legal certainty for companies entering the market and would establish a negative precedent for future commitments in the WTO. Other concerns of his delegation related to the number of licenses to be granted after 31 December 2001, and a Mode 3 limitation imposing a licensing requirement. He expressed his hope that these issues could be addressed in future discussions with the Brazilian delegation.

45. The representative of Hong Kong, China asked Brazil at what point in time it intended to proceed with the certification process.

46. In reply to the question by Hong Kong, China, the representative of Brazil stated that his delegation intended to put its schedule forward for certification in the coming days. With regard to the comments by the United States, he stated that his delegation's intention in submitting the schedule of specific commitments to the Council derived from the commitment that Brazil had assumed by the fact of having participated in the negotiations on basic telecommunications in 1996-97. At the time, Brazil had made an offer. In the offer itself, Brazil had taken a commitment to improve its offer at a later stage. The reasons why Brazil was not in a position to ratify the Fourth Protocol were amply documented in S/C/W/160, but his delegation's motivation behind its approach had been to fulfill the commitment to lock in Brazil's liberalization of this sector in the WTO which it had assumed in the negotiations on Basic Telecommunications. The proposed schedule of commitments reflected the maximum Brazil was able to offer, which was much more than what the 1997 offer had contained. If the offer was not acceptable to Members, Brazil was left only with the possibility of not binding its offer in its schedule of commitments.

47. Concluding the discussion on this item, the Chairman said that the Council would take note of the informal paper that had been distributed by Brazil, the statement by the Brazilian delegate, the other statements made, and revert to this item at the next meeting.

48. It was so agreed.

F. ELECTRONIC COMMERCE

49. The Chairman drew the attention of the Council to a communication from the European Communities on electronic commerce, contained in document S/C/W/183.

50. The representative of the European Communities stated that an important discussion on electronic commerce was scheduled for the General Council meeting in May 2001. In the meantime, the Council should proceed with the work on e-commerce as agreed in the course of 2000. His delegation had made its proposal in order to progress on substantive issues as quickly as possible in order to conclude the work programme on e-commerce. The first step in the EC paper was to focus on a limited number of still open issues that required further substantive debate. The second step was to recall the EC approach to those issues, and thirdly, the paper set out a checklist of services that were needed to conduct e-commerce.

51. With regard to open issues, some further work could be carried out on the so-called issue of classification, where some delegations held that certain electronic deliveries were not services. He called on those delegations to provide examples of such deliveries. The application of customs duties was a related issue. Another issue was telecommunications. The telecom Annex was very relevant for public telecommunication services, in particular concerning the use of any protocol to carry out and supply other services in telecommunication services. A related issue was the application of the Reference Paper.

52. The third part of the EC communication dealt with preparations for the GATS negotiations. In this regard, a number of sectors were constituting the infrastructure of e-commerce. Without proper, cheap, reliable supply of those services it was difficult for e-commerce to take off. The tentative EC list referred to such services, mainly covering telecommunication services, payment services, distribution services, computer-related services and advertising services.

53. The EC proposal was meant to stimulate further discussions with a view to concluding the work programme and to completing the understanding of WTO Members of how existing rules applied to e-commerce, as well as to prepare for GATS negotiations.

54. The representative of the Dominican Republic stated that the approach of the EC submission was very similar to the approach that other countries including his own had been proposing for negotiating these sectors. However, the EC paper proposed specific commitments in a set of sectors deemed critical for e-commerce, and thus went far beyond the technical discussion that the General Council had requested from the Council. As a proposal for negotiations, it should be discussed at the special session of the Council, together with other proposals on the table.

55. The representative of Australia stated that the EC paper raised a number of issues both in the context of this Council as well as in the General Council. Commenting on some outstanding issues, she mentioned the scope of the GATS with respect to electronic delivery of services, domestic regulation, standards and recognition, protection of privacy and public morals, the prevention of fraud, access to and use of public telecommunications, transport networks and services. She agreed with the EC that the application of the telecom annex and the reference paper to internet-related services should be addressed by the Services Council. A final outstanding issue related to classification problems in relation to the services sectoral classification lists. Commenting on the progress report in document S/L/74, she found four issues that appeared to have cross-cutting characteristics and could be better dealt with in the General Council. These issues included the goods vs. services vs. intellectual property classification questions, technical assistance, competition-related issues and the moratorium on customs duties, and possibly a jurisdiction issue in relation to the protection of privacy and the prevention of fraud.

56. The representative of Canada stated that the challenge posed by the classification of electronic deliverables, such as software, music and books, represented a particularly important and difficult issue for Members to deal with. Canada had so far not taken a position on this issue. Canada's position on the current moratorium on customs duties applied to electronic transmissions was that the moratorium should be renewed at the next Ministerial Conference. However, he did not support the proposal of other Members that the moratorium be made permanent at this time. He further appreciated the efforts made in the EC paper to discuss the application of the telecommunications annex and the reference paper to intranet-related services. The treatment of intranet services under the GATS was an important issue and Canada aimed to create conditions that would enhance competition and contribute to creating growth of the internet and electronic commerce, while at the same time respecting public policy objectives. Finally, with regard to the EC checklist of e-commerce infrastructural services which could be used in the GATS negotiations as an agreed basis for request-offer negotiations that would include telecommunication services, computer-related services, distribution services, advertising and some financial services, he noted that such an approach would defer from the mandatory package approach that had been proposed by other Member countries. Canada welcomed the continuation of the e-commerce work programme in the four subsidiary bodies, but believed that this work should be complemented by the creation of an ad hoc task force.

57. The representative of Japan stated that his delegation supported a number of views expressed in the EC paper, such as on the issue of applicability of existing rules to e-commerce, or the view that the electronic supply of services would fall under the GATS. His delegation was of the view that electronically delivered products or their digital contents should be subject to full MFN and national treatment obligations and subject to a general prohibition of quantitative restrictions. While he agreed with the EC on the usefulness of a checklist for e-commerce infrastructure services, he believed that this related to the negotiations and wondered if it was the EC's intention to pursue the issue at the regular session or the special session of the Council.

58. The progress report to the General Council in July 1999 contained several issues on which further discussions were needed. This Council should first focus on those issues specific to services or to the GATS. Paragraph 5 of the progress report mentioned that it was agreed that it was necessary to make a distinction between supplier under modes 1 and 2 in the case of electronic commerce. Another example was contained in paragraph 20 which emphasized the desirability of further examining whether the telecommunications annex guaranteed service suppliers access to and use of the internet. Paragraph 26 of the progress report said that further work was needed to identify any new services and to decide how those should be classified.

59. The representative of Hong Kong, China found the EU's checklist of "infrastructure services" very useful. His delegation, in its paper to the special session – document S/CSS/W/6, had stated that a reference or additional commitments approach to regulatory principles could also be useful in promoting e-commerce as an activity. His delegation hoped to come forward with a proposal in this respect in due course. It would be also useful to look at other areas such as the rule of law, the validity of contracts, security of transactions and assurance of quality concerning on-line service providers.

60. The representative of Panama highlighted the issue of technological neutrality and the question of how special treatment for e-commerce might affect other systems – so-called normal systems to the list of issues. His delegation did not share the view that any electronic transaction should be classified as a service. This issue required further study and could be dealt with in a horizontal context. A decision to treat the content of all electronic transmissions as services could be taken politically if deemed advantageous. The issue of applicability of tariffs should be seen as separate from the issue of classification. The fact that countries at present did not apply tariffs to e-commerce would not imply that it was impossible to do so. As regards the application of the annex on telecommunications, he believed that electronic transmissions should not be conceived as a super mode for the supply of services and should not have the effect that simply because a transaction had been carried out by electronic means Members were obliged to allow a service transaction. His delegation had proposed the possibility of creating a fifth mode for electronic transmissions. He agreed with the representative of the Dominican Republic that elements of the EC checklist related to proposals for further commitments should be further examined at the special session.

61. The representative of the United States stated that the EC reference to public networks required further work, including on the definition of public networks. He supported the EC view of the relevance of the telecom annex to the use of internet protocols, which had been also outlined in a submission by his delegation to the Services Council in October 1999. The sections of the paper dealing with the existing environment could be addressed in the regular session along with the points for discussions suggested by the EC. His delegation's proposal on a sectoral negotiating approach for e-commerce highlighted some similar complementary sectors that could be addressed in a sort of checklist approach.

62. The representative of Singapore noted that there would be a substantive discussion in the General Council on electronic commerce in May. In the meantime, his delegation welcomed the opportunity to discuss the issue further in the Services Council. The EC had raised a number of issues that in their view were left open by the report of the Council for Trade in Services to the General Council in July 1999. He noted that there may be also other issues that Council for Trade in Services could examine and noted that some delegations had listed a number of these issues. The issue of classification of digitised products was a matter better dealt with on a horizontal basis. His delegation was examining the checklist of e-commerce infrastructure services and was looking forward to revert to that issue at a future meeting.

63. The representative of Venezuela emphasized the importance of the classification issue, the questions of internet protocol which were having implications for on public policy, and standard-

setting with regard to telecommunications. He welcomed the EC paper as a contribution to the discussions, both on the electronic commerce work programme and, as far as the checklist on infrastructure services was concerned, to the negotiations.

64. The representative of Uruguay stated that his delegation favoured continuing the analysis of the pending sectoral issues in the four subsidiary bodies of the General Council. He requested clarification from the Secretariat, whether the GC had taken a formal decision on the continuation of work in the subsidiary bodies.

65. A representative from the Secretariat stated that no formal decision on the future work on electronic commerce had been taken so far. The recent discussions on electronic commerce in the General Council had been held in informal mode only.

66. The representative of Switzerland agreed that further work needed to be done in the field of classification and stated that some of that work was really a matter of negotiation. The clarification of rules applying to e-commerce was very important. The EC suggestion to consider a checklist on the so-called e-commerce infrastructure services was a good starting-point for sectoral work, notwithstanding the fact that horizontal issues might be involved.

67. The representative of New Zealand stated that the EC paper was of significance for both the electronic commerce work programme and the services negotiations. The notion of a cluster of electronic commerce infrastructure services was better suited to the special negotiating session as opposed to the regular Council meetings. From his delegation's perspective, electronic commerce was merely another form of delivering a service, and it remained unclear why this particular delivery mechanism should be carved out from other forms of delivering services. He could not concur with the US speaking of electronic commerce as a services sector and sought clarification on their thinking. His delegation had reservations about the creation of a specific cluster for electronic commerce, particularly if that was to be on an agreed basis for request-offer negotiations.

68. The representative of Malaysia stated that his delegation had not made up its mind whether a decision on the continuation of the moratorium on customs duties should be taken at the Doha Ministerial Conference, but in no case would he support a permanent continuation of the moratorium. He noted the significance of this question, as by now it was technologically possible, though not easy, to impose customs duties or taxes on electronic transmissions. His delegation concurred with the EC that there was still debate about whether telecommunications covered internet access. The cluster approach as set out in the EC checklist was not acceptable to his delegation as a mandatory basis for negotiations. In all work on electronic commerce, the development perspective needed to be taken into account.

69. The representative of Korea stated that a horizontal approach was needed on the cross-cutting issue of whether digitised products should be defined as goods or services. The suggestions to set up a task force to look at this issue on a horizontal perspective was worth considering. As regards the checklist or cluster approach, he believed that this question was very closely related to the modalities of negotiation, and should be addressed in the special session of the Services Council.

70. The representative of Brazil reiterated his delegation's position that the activities of the work programme should continue in the subsidiary bodies of the General Council. He supported the view that the checklist approach by the EC should be discussed in the Special Session of the Services Council.

71. The representative of the United States, responding to the request for clarification by New Zealand, stated that his delegation had made a proposal concerning a checklist similar to the one by the EC. That proposal related to complementary services that could be negotiated on a sectoral basis.

The US submission was entitled "Market access in telecommunications and complementary services - the WTO's role in accelerating the globally networked economy," and while it did not mention electronic commerce *per se*, it set out what types of transactions and sectors facilitated or complemented electronic commerce transactions.

72. The representative of Thailand stated that his country had passed six domestic laws related to electronic commerce. Work on the subject should also be reinvigorated in the WTO, and his delegation was flexible on the question of the appropriate forum for continued work. He supported the extension of the moratorium on customs duties on a temporary basis, yet did not favour a permanent extension of such a moratorium. The cluster approach outlined by the EC was not suitable for services negotiations.

73. The representative of the European Communities stated that the checklist in the EC communication was not meant to be a cluster, but rather a reminder of services that were important for electronic commerce. The list was not meant to form a basis for negotiations or for schedules.

74. The representatives of the Philippines, the Dominican Republic, and New Zealand requested clarification from the EC as to the intentions behind the checklist: paragraph 9 of the EC paper stated that the cluster could in fact be an agreed basis for request-offer negotiations.

75. The representative of the European Communities agreed that perhaps the wording in paragraph 9 of their submission was unclear. Past discussions had shown that it was unlikely to arrive at a common approach on clusters, so the checklist was meant to be a reminder of the subsectors relevant for promoting trade through electronic commerce. His delegation was not seeking any agreement on negotiating on the basis of the checklist.

76. The Chairman suggested to revert to this item at the next meeting.

77. The Council so agreed.

G. REVIEW OF ARTICLE II (MFN) EXEMPTIONS

78. The Chairman recalled the discussions of the question of the determination of a date for any further review of MFN exemptions, as provided for in paragraph 4(b) of the GATS Annex on Article II exemptions. At earlier discussions, there had been considerable support for the proposal made by Japan that the next review should take place no later than June 2004. While some delegations had supported the idea to take up this question at the stocktaking in the special session, others had been of the view that the MFN review was separate from the negotiations and therefore questioned the appropriateness of such a discussion in the special session. Delegations had agreed to revert to the matter at this meeting.

79. The representative of Japan stated that there had been two delegations which at earlier meetings had preferred to take this matter up in the context of the stock-taking meeting. He felt that now that the scheduling guidelines were agreed, it would be a good opportunity to also conclude the review of MFN exemptions.

80. The Chairman proposed to revert to the matter at the next meeting.

81. The Council so agreed.

H. RECTIFICATION OF A TECHNICAL ERROR IN AN MFN EXEMPTION LIST

82. The Chairman recalled that the Council had received a communication from the Dominican Republic (S/C/W/175) concerning a technical rectification of its list of Article II (MFN) exemptions concerning legal services. The communication had drawn attention to the fact that the error in question existed since the conclusion of the Uruguay Round. At the last meeting, several delegations had expressed views on the appropriate procedure that should be followed to introduce such a rectification. However, the discussion had not been conclusive and it was agreed to revert to the matter at this meeting.

83. The representative of the Dominican Republic stated that earlier discussions had leaned towards the idea to apply, mutatis mutandis, the procedures developed for the rectification of schedules of commitments. The rectification of the schedule of the Dominican Republic was a purely technical matter that could be resolved quickly.

84. The representative of the United States stated that his delegation needed more time to reflect on this matter.

85. The Chairman proposed to revert to the matter at the next meeting.

86. The Council so agreed.

I. ARTICLE (MFN) EXEMPTIONS – ISSUES ARISING FROM THE REVIEW

87. The Chairman suggested that, due to time constraints, the discussion of this agenda item be postponed to the following meeting of the Council. The Council so agreed.

J. OTHER BUSINESS

88. The representative of Hong Kong, China, speaking on behalf of Australia, the European Communities and their Member States, Japan, Norway and Switzerland, introduced a proposal for the Council for Trade in Services to undertake a technical review of the GATS, contained in JOB (01)/40, circulated earlier on this day. The objective of the proposed review was the improvement of the overall consistency of the GATS and the removal of ambiguities on the basis of submissions by Members. Any changes or results of the review would have to be agreed by consensus and in accordance with the relevant WTO Agreement.

89. The idea of such a review had figured in the discussions on the negotiating guidelines, but there seemed to be a general understanding that this matter would be better dealt with in the regular meetings of the Services Council rather than in the special sessions. Notwithstanding that the proposal had been tabled under Other Business, the representative of Hong Kong, China hoped that in light of the link to the discussions on the negotiating guidelines, the proposal could be exceptionally agreed upon at this meeting.

90. The representatives of New Zealand, Canada, Korea, and Chile supported the proposal and stated that their delegations were ready to agree to the proposal at this meeting under Other Business.

91. The representative of Panama stated that he could in principle support the idea of discussing a technical review of the GATS, but was concerned with taking such a decision under Other Business, as this did not provide for sufficient transparency.

92. The representative of Mexico stated that the Council should identify the different elements that would be part of the technical review, and should further set a timeframe for such a review. Without those elements, his delegation had difficulties to agree to a review.

93. The representative of Uruguay supported the statement made by Mexico and added that his delegation had not been aware of informal consultations in relation to the current proposal. His understanding of the Rules of Procedure was that substantive decisions could not be taken under Other Business. He sought clarification from the Secretariat on this matter.

94. The representative of Malaysia shared the concerns raised by Panama and Uruguay and stated that he needed further time for reflection. He also wondered whether acceptance of the proposal at this meeting meant acceptance of the text as set out in paragraph 5 of the proposal. He stressed the importance that whatever the results of a possible technical review would be, it should not affect the existing structure of the GATS.

95. A representative of the Secretariat stated that the relevant section in the Rules of Procedure for the General Council stated that "discussions on substantive issues under Other Business shall be avoided and the General Council shall limit itself to taking note of the announcement by the sponsoring delegation." However, it would be possible by consensus to add another item to the agenda and agree that this was not an item of Other Business. In principle, such a decision should have been taken at the start of the meeting. Procedural issues raised had to be taken seriously. At present there appeared to be formal impediments to taking a formal decision.

96. The representative of Pakistan supported procedural and substantial concerns raised by Panama, Mexico and Uruguay. He further sought clarification on the implications of a sentence in paragraph 5 of the proposal, where it said that the matter of technical review "should be placed on the agenda on a regular basis." His delegation was not willing to support an open-ended mandate on technical review. Members had to be very specific as to the elements and timeframe of such a review.

97. The representative of Venezuela supported the points raised by Mexico, Uruguay, Malaysia and Pakistan, and stated that in light of the statements and the Secretariat's clarifications, it was clear that there was no consensus on the proposal. An open-ended review could prejudice negotiations underway. The structure of the GATS was important for developing countries and should not be upset.

98. The representative of the Dominican Republic stated that the technical review should not be tied to the negotiating guidelines, which had been prepared with regard to Article XIX of the GATS. In addition, he noted that the proposal on technical review was limited to the GATS and did not address other Agreements. He noted that in the discussions on implementation there was no consensus to alter the balance which was established by the Uruguay Round. He also believed that the proposal would be better received if it were presented in the General Council as part of the preparation for the Ministerial Conference – where it could be part of other technical reviews of other Agreements.

99. The representatives of Cuba, Brazil, Morocco, Indonesia and Turkey supported the substantive and procedural concerns raised by other delegations.

100. The representative of India, supported by the representatives of Uruguay and Mauritius; suggested to inscribe the item of technical review on the agenda of the next regular meeting of the CTS. The proponents should also provide further clarification about the elements proposed for discussion.

101. The representative of the Philippines stated that there appeared to be no consensus to adopt the proposal on the technical review at this stage. He supported the view that any technical review of the GATS should be without prejudice to retaining the existing structure of the GATS. This understanding should be reflected in any proposal on this matter. Any technical review should be conducted on the basis of specific proposals, i.e. elements that the proponents would like to see as subject of the review itself. It appeared difficult to agree to any technical review without exactly appreciating the parameters of such a review.

102. The representative of the European Communities noted that many delegations had stated in the context of the discussions on the negotiating guidelines that they preferred to carry out a technical review under the regular session. She stated that her understanding of the interventions by other delegations was that there was the possibility of carrying out a technical review within the existing structure and principles of the GATS, however on the basis of specific elements rather than as an open-ended review.

103. The representative of Hong Kong, China stated that the issue of technical review had long been linked to the negotiating guidelines. He nevertheless fully respected the procedural concerns of delegations. On substance, he noted that no delegation had objected in principle to entertaining a technical review. He was in full agreement with those delegations that wished to ensure that matters such as the structure and principles of the GATS should be maintained. He suggested that the Chairman suspend this item so that it might be revisited before the negotiating guidelines were concluded.

104. The Chairman stated that Members had two options: one, to put the item of technical review on the regular agenda of the next meeting, and two, to suspend the meeting on this item so that it might be taken up, if appropriate, before then. Despite the procedural concerns, he requested delegations to consider the second option.

105. The representative of the Dominican Republic suggested to send this proposal to the meetings of the General Council dealing with the preparation for the Ministerial Conference. The General Council was currently working on other proposals for technical review of other agreements such as the anti-dumping, TRIPs, etc.

106. The representative of Panama expressed his preference for putting the item on the agenda for the next regular meeting of the Services Council. On the statement made by Hong Kong, China, he pointed out that the issue of technical review may have been on the minds of some delegations, yet there had never been a decision on the issue. Therefore, one could not assume a linkage of the matter with the negotiating guidelines. While his delegation was not opposed in principle to considering the proposal, he would not want to be understood as being in agreement on undertaking a review of this type.

107. The Chairman stated that the issue could be suspended with a view of possibly picking it up at the end of the Special Session, i.e. within a week. If the issues was not ready for decision by then, it could still be put onto the agenda for the next regular CTS meeting.

108. The representative of Panama reiterated his preference for reverting to the issue at the next regular meeting.

109. The Chairman suggested to revert to this item at the next regular meeting.

110. The Council so agreed.
