

WORLD TRADE ORGANIZATION

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Working Party on GATS Rules

REPORT OF THE MEETING OF 15 JULY 2002

Note by the Secretariat¹

1. The Working Party on GATS Rules held its thirty-eighth meeting under the chairmanship of Mr. Thomas Chan, from Hong Kong, China. The agenda for the meeting was contained in WTO/AIR/1860. It consisted of six items: work programme for the Working Party; negotiations on safeguards under GATS Article X; negotiations on subsidies under GATS Article XV; negotiations on government procurement under GATS Article XIII; date of the next meeting; and other business. The Chairperson drew attention to the *Annotated Agenda* (JOB(02)/83) which proposed themes for discussion under the three agenda items

2. The agenda for the meeting was adopted.

A. WORK PROGRAMME FOR THE WORKING PARTY

3. The Chairperson recalled that paragraph 2 of the *Communication from the Chairperson of the Working Party on GATS Rules* transmitting the *Draft Fourth Decision on Negotiations on Emergency Safeguard Measures* stipulated that, "the Chairman will carry out consultations to establish a programme structuring future work of the Working Party"². At its meeting of 3 June 2002, the Working Party had agreed that the consultations on a work programme for negotiations on emergency safeguard measures should continue and that they should include work programmes for negotiations on subsidies and government procurement as well. Members had also agreed that the possible elements for the work programmes be set out in a Note to be issued by the Chairperson under his own responsibility. On the basis of further informal consultations, he had issued a Chairperson's Note (JOB(02)/82) setting out what were, in his view, the possible elements for the work programmes on emergency safeguard measures, subsidies and government procurement. On 10 July, the Working Party had held an informal meeting at which delegations had been consulted on the elements of the draft work programme. A number of delegations had indicated that they could support the elements as they were. Some delegations had raised concerns or suggestions on individual elements, while others had expressed doubts on the need for changes. After further informal consultations, the work programme, as it now stood, struck an appropriate balance and represented, in his view, the basis on which an agreement could most likely be achieved.

4. Introducing this draft work programme, he stressed three points of understanding under which this draft had been prepared. First, the work programme should not in any way prejudice the outcome of the respective negotiations on emergency safeguard measures, subsidies and government procurement. Members would remain free to bring up any relevant issues for discussion, including the questions of feasibility and desirability, as well as the scope of the negotiations under any of the three subjects of negotiations. Second, benchmarks for submissions were indicative, with a view to encouraging Members to put forward submissions on the respective subjects as early as possible, and

¹ This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.

² S/C/W/205/Rev.1.

would be without prejudice to Members' right to put forward further suggestions and raise relevant issues by way of submissions at any time, under any of the three subjects of negotiation. Third, the undertaking of individual items of work should be without prejudice to each other. For instance, the identification, elaboration and consolidation of elements for ESM should be undertaken without prejudice to addressing the question of feasibility and desirability of ESM and *vice versa*. Similarly, the raising of any relevant issues for discussion by Members should be without prejudice to the continued discussion already being undertaken and *vice versa*. He was aware that there were remaining disagreements over some elements of the work programme. However, many delegates had pointed out that the work programme was no more than a tool to assist the Working Party to organize its work, and had indicated that they were prepared to accept the programme as it was. It was in this same spirit that he wished to appeal to delegations' flexibility. He suggested to turn to informal mode to have an exchange of view on the draft work programme.

5. Upon resuming the formal meeting, the Chairperson said that the informal discussion had allowed a useful exchange. Noting that there were some remaining concerns, he proposed that Members consider adopting the work programme in JOB(02)/82 with the following changes: (i) "work programme" would read "work programmes" throughout the text to reflect that separate work programmes were established for the respective subjects of negotiations, and the first paragraph should be read as referring to all three work programmes; (ii) a reference to paragraph 7 of the Negotiating Guidelines would be added in paragraph 2 of JOB(02)/82. Moreover, the work programmes would be adopted taking note that the three subjects of negotiations were at different stages of progress, and that benchmark for submissions were only indicative. It was also understood that the work programmes would not prejudice in any way the outcome of the negotiations. With respect to the three subjects of negotiations, any issue could be raised, including on the scope of the negotiations or the mandate.

6. The representative of Mexico said that his delegation wished to advance work on all three agenda items. However, the modifications just suggested by the Chairperson did not fully address the concerns of his delegation. Further clarification was needed, in particular with respect to government procurement. Moreover, it was not appropriate to repeat the first paragraph under each agenda item because the first sentence of paragraph 1 of JOB(02)/82 related only to emergency safeguard measures. He proposed that the three points of understanding that the Chairperson had just read out in his introductory statement be included in the work programme instead of the current paragraph 1.

7. The representative of India took note of the views expressed in the informal discussion which had just taken place. His delegation wanted a work programme in place to be able to proceed with the substantive work. However, India had some remaining concerns. First, it should be explicitly reflected in the work programme that the benchmarks for submissions under the various items were only indicative and that Members could put forward submissions after that date. Second, there should be an understanding on the negotiating mandates, to ensure that delegations had a clear idea on what the Working Party was aiming at. It would be useful to have a revised proposal in writing and come back to it later on.

8. The representative of Brazil thanked Mexico for his suggestions. In the interest of adopting a work programme as quickly as possible, his delegation was ready to consider any proposal to accommodate remaining concerns. Brazil had always worked under the assumption that benchmarks for submissions were indicative. He enquired whether India could circulate its drafting suggestions in writing.

9. The representative of the Philippines, speaking on behalf of ASEAN, said that his delegation could support the changes proposed by the Chair. ASEAN was cognizant of the concerns expressed by Mexico and India, and wished to see drafting suggestions by these delegations. He noted that the deadline of 15 March 2004 for negotiations on emergency safeguard measures was compulsory and,

thus, was not an indicative benchmark. The Chairperson noted that the references to the benchmarks concerned only the benchmarks for submissions.

10. The representative of the European Communities said that her delegation had come prepared to accept the text as it was in JOB(02)/82, although it did not necessarily contain everything the EC wanted. After listening to the informal debate, the EC would also have been open to the changes suggested by the Chair. Her delegation would be prepared to look at the suggestions made by Mexico and India, but could not give any guarantee as to what it would do with them without having seen them in writing. She enquired why Mexico insisted on three separate work programmes. In her view, the proposal by the Chair to add an "s" to "work programme" throughout the text would clearly indicate that the Working Party was dealing with three different work programmes. Should it be necessary to adopt them separately, then the Uruguay Round principle "nothing is agreed until everything is agreed" would apply.

11. The representative of the United States said that his delegation could accept the work programme contained in JOB(02)/82, as well as the changes proposed by the Chairperson during this meeting. The United States took careful note of the three points made by the Chair in his introductory statement and agreed with them. He noted that the reference made, in JOB(02)/82, to the Fifth Ministerial Meeting was similar to the reference made in the Communication from the Chairperson contained in S/C/W/205/Rev.1, i.e. that the Fifth Ministerial Meeting provided an opportunity for a stock-taking.

12. The Chairperson invited the Working Party to revert to this item at the end of the meeting.

13. At the end of the afternoon session, the Chairperson drew attention to document JOB(02)/82/Rev.1, which contained a revised work programme, taking into account concerns raised during the morning. The main change was that the three points made earlier in his introductory statement were now reflected in the text and replaced the first sentence of former paragraph 1. Moreover, in line with the suggestions he had made in the morning: (i) an "s" had been added to "work programme" (title, paragraphs 1(a) and 2), to make it clear that each item had a separate work programme, and to recognize the fact that they were at different stages of progress; and, (ii) a reference to paragraph 7 of the Negotiating Guidelines had been added to the work programme on emergency safeguard measures. These changes were meant only to clarify the work programmes and he hoped that the text as it then stood could form the basis for a consensus.

14. The representative of the European Communities sought clarification regarding the last two sentences of paragraph 1(c).³ The Chairperson replied that these sentences were meant to illustrate the first sentence. This sentence reflected Members' understanding in previous consultations that the treatment of individual items of work should be without prejudice to each other. The representative of the Philippines, speaking on behalf of ASEAN, expressed concerns regarding paragraph 1(c), in particular the second sentence. He understood that the first sentence referred to the relationship among the three agenda items, and not to different elements within an item. The last sentence of the paragraph was not problematic. The Chairperson said that the second sentence of paragraph 1(c) was meant to clarify the relationship between the two elements of paragraph 3(a).⁴

³ Paragraph 1(c) of JOB(82)/82/Rev.1 reads as follows: "The undertaking of individual items of work should be without prejudice to each other. For instance, the identification, elaboration and consolidation of elements for ESM should be undertaken without prejudice to addressing the question of feasibility and desirability of ESM and vice versa. Similarly, the raising of any relevant issues for discussion by Members should be without prejudice to the continued discussion already being undertaken by Members and vice versa."

⁴ Paragraph 3(a) of JOB(02)/82/Rev.1 reads as follows: "to identify, elaborate and consolidate elements for ESM and to address the question of feasibility and desirability of ESM;"

15. The representative of Uruguay agreed with the European Communities that the last two sentences of paragraph 1(c) lacked clarity. He suggested to delete them and add, at the end of the first sentence, the following words: "... under each negotiating mandate".

16. The representative of India recalled that his delegation had concerns, in particular with respect to the benchmark and the scope of the negotiating mandate under GATS Article XIII. Paragraphs 1(a) and (b) partly addressed these concerns. With respect to paragraph 1(c), he shared the doubts of other delegations and would consider the suggestion just made by Uruguay.

17. The representative of Switzerland said that, in spite of remaining concerns, his delegation had come prepared to support the work programme as contained in JOB(02)/82, which would have enabled the Working Party to proceed in a precise manner on the substantive issues. However, the delicate balance which had been reached was once again put into question. He needed to consult his capital on this new version. He shared the concerns expressed with respect to paragraph 1(c).

18. The representative of the United States understood the concerns expressed regarding paragraph 1(c). However, the second sentence was important for his delegation and should be retained or reflected somewhere else.

19. The Chairperson felt that the Working Group was very close to an agreement. The proposal made by the representative of Uruguay could alleviate the concerns expressed with respect to paragraph 1(c). The second and third sentences of this paragraph were on record in his introductory statement and could be deleted from the text. He proposed that Members consider adopting the work programmes on an *ad referendum* basis, which meant that the text would be adopted, unless any Member(s) objected to it within one week from that meeting. The text proposed for adoption was contained in JOB(02)/82/Rev.1, with the modification proposed by Uruguay on paragraph 1(c), i.e. the second and third sentences of that paragraph would be deleted, and the words "under each negotiating mandate" would be inserted at the end of the first sentence. The one-week deadline would allow the Working Party to take advantage, for any further consultations, of the services week, should it be necessary.

20. The representative of Mexico said that the Working Party was very close to achieving a result. Paragraph 1(c) would be acceptable with the modification suggested by Uruguay. In the absence of any objection, the text could be agreed on an *ad referendum* basis. The representative of the Philippines also said he could support the *ad referendum* procedure.

21. The representative of Uruguay said that, with some flexibility, the text could be adopted at this meeting. He proposed to include a reference to feasibility and desirability in the new paragraph 1(c), so as to take into account the concern expressed by the United States with respect to the proposal his delegation had just made. Thus, a reference to "including the question of feasibility and desirability" could be inserted into the first sentence, between the words "work" and "should". The representative of the United States said that his delegation could accept this suggestion.

22. The representative of Switzerland sought further clarification concerning the *ad referendum* procedure. A representative of the Secretariat replied that the *ad referendum* procedure was used when, although there was no complete consensus, Members were very close to agreeing on a text. The *ad referendum* procedure provided a period of time during which those delegations which might still be in doubt as to whether they could join the consensus, could come back and notify the Secretariat that they were not able to join the consensus. In such a case, the *ad referendum* adoption of the text would be void and the Working Party would go back to the status quo, i.e. a draft instead of an adopted work programme. The Chairperson had suggested that Members would have one week, i.e. until Monday 22 July, for expressing any objection to the text. The representative of Switzerland said that his delegation could go along with this procedure.

23. The Chairperson clarified that the text he submitted to the *ad referendum* adoption procedure was the text contained in JOB(02)/82/Rev.1, with a new paragraph 1(c) which would read: "The undertaking of individual items of work, including the question of feasibility and desirability, should be without prejudice to each other under each subject of negotiations".

24. The Working Party adopted the work programme in JOB(02)/82/Rev.2, as modified, *ad referendum*.

B. NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ARTICLE X OF THE GATS)

25. The Chairperson invited delegations to give further consideration to the Communication from the European Communities and Their Member States on *Modal Application of an Emergency Safeguard Measure* (S/WPGR/W/38), as well to the Communication from Australia on *Elements for a Possible "Core Mechanism" for Temporary Suspension or Modification of Commitments* (JOB(02)/8).⁵ Delegations might also wish to continue their comparison of the various approaches on the table with a view to identifying possible common elements. In this regard, delegations might give some thought to what they would see as possible outcomes from a broader perspective, taking into account not only their standpoints, but also the views and positions expressed by other Members. He proposed that this discussion take place in informal mode.⁶

26. The representative of Australia said that the informal communication presented by her delegation in JOB(02)/85 reflected the intervention she had made at the informal meeting of 3 June. A few major points needed to be emphasised. The two models had been discussed, at least in general terms, and this discussion should not be repeated. The Australian model was based on less prescriptiveness and more accountability, and would allow Members in genuine emergency situations to take corrective action by temporarily suspending the commitment that was causing the emergency. A number of delegations had suggested that it might be useful to seek a compromise that would be broadly acceptable to all Members. Her delegation had suggested that a possible compromise could lie in a strengthened CTS role, somewhere between the two models suggested. The CTS role should have enough "teeth" to discourage abuse, while allowing Members facing genuine difficulties to take temporary remedial action without having to obtain explicit CTS approval. Australia had found that most of the elements of the Synopsis either clearly applied or were not relevant to the core mechanism. For example, points A to H of the Synopsis could be dealt with expeditiously since both Australian models dealt with these issues in a fairly extensive fashion and made clear whether they were applicable or not. It might, however, be useful to focus efforts on process-related issues (point I of the Synopsis), where the two models centered on guidelines and disciplines aimed at upholding good faith and creating a credible and effective mechanism for dealing expeditiously with the temporary suspension of commitments. There were a number of remaining questions, the main ones being the duration of the process once the CTS was notified and the precise role of the CTS. Notification and surveillance were important issues, which were addressed in points 1 to 5 of JOB(02)/85. But the key issue that had to be resolved *a priori* was whether a Member had an absolute right to suspend a commitment. At the next meeting, Members could focus on the issue of absolute right, and the Working Group might well conclude that Members did have a qualified right to suspend commitments in certain conditions. She was unsure, however, what these conditions would be. After having reached some understanding on this issue as soon as possible, Members would be ready to move on to the next step, which was designing a mechanism or procedure governing Members' temporary suspension of their commitments. She urged Members to avoid falling back into the trap of losing sight of the forest for the tree, in other words in getting bogged down in irrelevant details or in details that were not going to lead to anything practical. The focus should be on

⁵ See also Communication from Australia on *Questions raised at the informal meeting of the Working Party on GATS rules held on 12 February 2002*, JOB(02)/9, 13 February 2002.

⁶ See *Summary of Comments Made During the Meeting of 3 June*, JOB(02)/96.

designing a practical and workable mechanism and, then, on looking at the respective roles of the invoking Member and the CTS. Under the core mechanism proposal, Australia had spelt out quite clearly the role and the disciplines on the invoking Member, but had not managed to do so for the role of the CTS, mainly because there were too many outstanding questions in terms of process.

C. NEGOTIATIONS ON SUBSIDIES (ARTICLE XV OF THE GATS)

27. The Chairperson invited delegations to continue their general exchange of views on subsidies. He noted that, on 12 July, an informal paper had been circulated by the delegations of Argentina, Chile and Hong Kong, China (JOB(02)/84) and invited the delegation of Chile to introduce it.

28. The representative of Chile recalled that the primary objective was to increase transparency in the area of subsidies, so as to comply with the mandate contained in Article XV and with paragraph 7 of the Negotiating Guidelines. Against this background, Chile, together with Argentina and Hong Kong, China presented a simplified questionnaire, which was based on the 1997 questionnaire circulated in document S/WPGR/W/16, to which only four Members had responded so far. Various Members had considered at the time that it was difficult to respond to the questionnaire, because there was no agreed definition for subsidy in services and the questions were too detailed. The new informal paper suggested that the definition contained in the Agreement on Subsidies and Countervailing Measures (SCM Agreement) be used as a working basis, but Members might use any other definition of subsidy, as long as it was specified. Argentina, Chile and Hong Kong, China had kept only five of the ten questions in S/WPGR/W/16, and had simplified them. It was important to obtain replies, even if, in a first round, the level of precision was not very high. What mattered was to increase transparency in services subsidies. This was particularly important at the beginning of a market access negotiations.

29. The Chairperson welcomed this new contribution which would allow to continue the debate on the need for more and improved information on services subsidies. He recalled that, at the last meeting, delegations had addressed issues such as scope, modalities, problems encountered, results achieved – or not achieved – in this information exchange to date. It had also been suggested that Members might provide information on subsidies they encountered in other markets, without identifying the trading partner(s) concerned. Moreover, several Members had suggested that the Chairperson's Checklist on Subsidies (Job No. 4519/Rev.1) be revised. He was ready to consider such a revision, should Members so wish, but concrete proposals were needed.

30. The representatives of the Republic of Korea, Canada, the United States, Mexico, Uruguay, Canada thanked Argentina, Chile and Hong Kong, China for the written contribution.

31. The representative of Hong Kong, China recalled that the Working Party had a mandate to fulfill on subsidies and hoped that this simplified questionnaire in JOB(02)/84 would help Members to address seriously the issue of subsidies.

32. The representative of the Republic of Korea said that the proposed simplified questionnaire represented a good start to gather information on subsidy programmes. At the last meeting, his delegation had suggested that the Secretariat update its note on information contained in WTO Trade Policy Reviews (S/WPGR/W/25), and undertake a compilation of subsidy-related information found in the various sectoral proposals. This information would be very helpful to facilitate discussions.

33. The Chairperson recalled that, at the last meeting, the Working Party had an inconclusive discussion on the background work that the Secretariat could usefully undertake under this agenda item. Having addressed this issue in his informal consultations, he understood that there was no objection to ask the Secretariat to update its background note on information contained in WTO Trade Policy Reviews (S/WPGR/W/25 and Addenda).

34. The representative of Canada said that the simplified questionnaire proposed in JOB(02)/84 did not seem to make it less difficult for Members to notify relevant subsidies in services. Fundamental questions remained, such as how to define a subsidy. Moreover, it was not clear whether governmental assistance to service sectors was trade-distortive. He asked further clarification with respect to the sentence, in paragraph 4, that the existence of subsidies in different markets was "relevant". The representative of Chile said that the information exchange under Article XV covered all subsidies, not only trade-distortive ones. In a second instance, the Working Party could examine the nature of the subsidies and address the various questions in the Chair's Checklist. Chile was ready to participate in market access negotiations, but wanted to be assured that its market would not be distorted by subsidies granted in other markets; this was the message that the word "relevant" tried to convey.

35. The representative of the United States said that the purpose of the discussion was to look at the need for any possible new disciplines to address trade-distortive effects of subsidies. He wondered how the Secretariat could distinguish between trade-distortive and non trade-distortive subsidies in collecting information contained in TPR reports. If the Secretariat did not make that distinction, then the undifferentiated information was not really helpful for the discussion under Article XV. A representative of the Secretariat said that the initial demand for this compilation had been triggered by the feeling that, as the information exchange under Article XV was not taking off, there was a need to find a substitute. As indicated in relevant disclaimers to documents S/WPGR/W/25 and its Addenda, the Secretariat never attempted to propose whether a given subsidy was trade-distortive or not. It was up to Members to make this judgement.

36. The representative of Mexico said that TPR reports did not allow to tell whether a subsidy was trade-distortive and it was up to Members to judge that. The informal paper by Argentina, Chile and Hong Kong, China in JOB(02)/84 contained useful ideas on what to do before discussing the need for new disciplines. It would be useful if the Secretariat could update its compilation of TPR-related information.

37. The representative of the Republic of Korea said that factual information provided by the Secretariat, such as updating information contained in TPR reports and compiling relevant elements in sectoral proposals, could be considered as part of the information exchange in Article XV, which concerned all subsidies. This was a first step which should not pose difficulties.

38. The representative of Uruguay said that there were two sources of information for subsidies. First, the information contained in TPR reports was interesting and did not prejudice whether these subsidies were trade-distortive. Second, Members could provide information on the subsidies they found in notifications or in legislations. He wondered whether the replies to the simplified questionnaire proposed in JOB(02)/84 would be given on a voluntary basis.

39. The representative of Canada enquired whether the information contained in TPR reports was based on the notifications made under Article 25 of the SCM Agreement. Should this be the case, the information would have to be read in the particular context of the SCM Agreement, in the light of the definition contained in Article 1 of that Agreement. It was important to keep in mind the distinction between trade-related and trade-distortive subsidies. Moreover, some subsidies might concern goods, but had no relevance for services. A representative of the Secretariat said that TPR reports were based on any information available. They did not distinguish between trade-distortive and non trade-distortive subsidies, nor did they necessarily indicate whether the objective of the subsidy was trade-related or, say, social.

40. The representative of Argentina said that the purpose of the simplified questionnaire was to comply with the information exchange, but not to decide whether subsidies were trade-distortive or not. He trusted that all delegations, and in particular those who traditionally emphasised the need for

transparency, could support the approach proposed in JOB(02)/82. The representative of Chile said that it was up to each Member to decide whether to reply to the simplified questionnaire.

41. The Chairperson understood that there was a general feeling among Members that more information was needed. Such information could come from Members and the Secretariat. Members were invited to give consideration to the simplified questionnaire proposed by Argentina, Chile and Hong Kong, China. The Secretariat would undertake to update its note on TPR-related information for the next meeting of the Working Party, on the same basis as in the past.

D. NEGOTIATIONS ON GOVERNMENT PROCUREMENT (ARTICLE XIII OF THE GATS)

42. The Chairperson invited delegations to continue their general exchange of views on government procurement. He noted that, on 11 July, the European Communities and their Member States had circulated a communication on government procurement of services (S/WPGR/W/39).

43. The representative of the European Communities said that the communication in S/WPGR/W/39 underscored the size of government procurement markets, as well as the particular interest developing countries would have to liberalise this sector. The EC proposed to make the best use of the flexibility provided by the GATS and to discuss the implementation of a number of general principles applying to services, and, where necessary, the possibility of choosing which sector could be opened up. In other words, each Member would be free to undertake commitments where it would be in its interest and have the possibility of opening up on a partial basis, indicating which restrictions were maintained.

44. The Chairperson recalled that, at the last meeting, Members had exchanged views on the scope of the mandate contained in Article XIII. The *Annotated Agenda* prepared for this meeting identified some references to previous discussions on the issue of the mandate, which had been first raised at this Working Party in July 2000.

45. The representatives of Chile, Japan, Canada, Venezuela, India, Philippines, Mexico, Peru and Pakistan thanked the European Communities for the communication.

46. The representative of Chile said that her delegation was aiming at the best effective access to procurement markets. In Chile, government procurement was open and transparent. Her delegation could share the objective of the EC proposal to do away with unnecessary restrictions, increase transparency and achieve simplified procedures. She enquired what the EC position was with respect to thresholds, since this issue was not mentioned in the EC communication; yet, it was an important one. Secondly, the relationship between the MFN principle and the Agreement on Government Procurement should be specified. Thirdly, more information was needed on the linkage between development of general disciplines (Section A) and sectoral disciplines (Section B).

47. The representative of Japan noted that the EC communication made a reference, in Section A, to the need for consistency between this Working Party and the Working Party on Transparency in Government Procurement (WGTGP). He enquired how the European Communities intended to ensure this consistency. Japan was open to a discussion on sector-specific rules, but would be interested in having more details on the kind of issue that should be addressed in this context. Japan had particular interest in the sectors of construction, engineering and architecture, and, in the light of further explanations from the EC, might want to submit an own contribution. Section C, dealing with commitments was ambitious, but, given the importance of government procurement in trade in services, the Working Party should work towards this objective.

48. The representative of Canada said that the EC communication contained a number of new ideas. His delegation intended to come back to it at future meetings.

49. The representative of Venezuela said the negotiations should be driven by contributions from Members. The European Communities had announced on several occasions in the past that it intended to deepen this issue. As the document was not available in Spanish, it had not been possible for her delegation to analyse it. Venezuela was prudent since procurement of services was an important aspect of development policies, and should remain so. She noted that paragraphs 8 and 15 of W/39 acknowledged that flexibility was necessary for developing countries in order to take into account national policy objectives. A mere liberalisation of markets might bring benefits, but would need to be complemented by adequate policies. She enquired which criteria had been used by the European Communities to select the various sectors referred to in paragraph 13, and whether only those sectors should be discussed.

50. The representative of India recalled that he had indicated the position of his delegation on the scope of the mandate contained in Article XIII at the last meeting, i.e. paragraph 1 of Article XIII exempted government procurement from the application of Articles II, XVI and XVII. The discussion on government procurement should be in accordance with the mandate in Article XIII. Whether transparency and the provisions on domestic regulation applied to government procurement was a matter for discussion. Transparency issues were examined in the WGTGP, which had not yet reached any conclusion. It would therefore be difficult to address the transparency issues raised in W/39. It was India's understanding that Members could not be asked to take more extensive or onerous commitments than what appeared in their schedules.

51. The representative of the Philippines, speaking also on behalf of Malaysia, took note of the direction taken in the EC proposal. Philippines and Malaysia understood, however, that the negotiating mandate under Article XIII included only transparency issues; Articles II, XVI and XVII were outside the negotiations. He expressed concern regarding paragraph 10 of W/39 and wondered how the Working Party could discuss MFN since Article II was excluded from the scope of the negotiations. Section C, which spoke about "access to" and "national treatment" raised similar concerns. The Article XIII mandate was limited to transparency issues.

52. The representative of Mexico did not share the EC view, in paragraph 10 of W/39, on the applicability of various GATS provisions to government procurement. On paragraph 12, he noted that the respective coverage of the various provisions of Article VI remained unclear. He enquired how the European Communities had selected the sectors mentioned in paragraph 13 and said that governments' participation in other sectors, such as energy, telecommunication or audiovisual services was still important in a number of countries. He asked what the difference was between the approach proposed by the EC and the undertaking of commitments under Article XVIII.

53. The representative of Peru said that the mandate in Article XIII covered only transparency-related issues in government procurement. The representative of Pakistan stressed, like others, that Articles II, XVI and XVII fell outside the scope of the negotiating mandate of Article XIII.

54. The representative of the European Communities thanked delegations for their comments and questions. The negotiating mandate in Article XIII did not contain any limitation. The issue of thresholds was important and should be further examined. With respect to the relation between the MFN obligation and its impact on the Agreement on Government Procurement, one could envisage exemptions from this obligation. The list of sectors in paragraph 13 was illustrative and his delegation was open to further suggestions. It might be useful to take one sector of interest to various Members and see which rules could be developed in that particular sectors. The respective mandates of this Working Party and of the WGTGP were different, and it should be possible to continue negotiating in the two bodies, while ensuring consistency. He reiterated that the EC proposal aimed at ensuring a maximum of flexibility, in particular for developing countries, which should be able to open their procurement markets while pursuing national policy objectives.

55. The Chairperson proposed to revert to the EC communication and to continue the general debate on the scope of the mandate under Article XIII. The minutes of past discussions on this latter issue could be found in S/WPGR/M/28 and S/WPGR/M/29.

E. DATE OF THE NEXT MEETING

56. The Chairperson indicated that the next formal meeting of the Working Party was expected to take place during the week of 21 October 2002. The definitive date would be communicated in due time.

F. OTHER BUSINESS

57. Nothing was raised under this agenda item.
