

Committee on Specific Commitments

REPORT OF THE MEETING HELD ON 12 MAY 2003

Note by the Secretariat¹

1. The Committee on Specific Commitments held a meeting on 12 May 2003. The agenda for the meeting is contained in WTO/AIR/2088. No points were raised under Other Business.

A. APPOINTMENT OF A NEW CHAIRPERSON

2. The Chairperson recalled that according to the rules of procedure for meetings of the Council for Trade in Services (S/L/15), the hand-over of the chairmanship should have taken place at the end of the last meeting of the Committee. However, as consultations on the Chairs of the subsidiary bodies had not been finalized at that time, it was decided that the hand-over would take place at the beginning of the following meeting. He proposed that the Committee elect Mr. Thomas Lambert, from Belgium, as Chairperson of the Committee on Specific Commitments.

3. The Committee elected Mr. Lambert by acclamation.

B. STATE OF PLAY AND POSSIBLE FUTURE WORK

4. The Chairperson stated that the outgoing Chairperson and he had considered that this meeting would offer a good opportunity to discuss possible ways in which the Committee could advance technical work under its terms of reference in the most constructive manner. Several suggestions on how future work could be organized were set out in a note that the outgoing Chairperson and he had prepared, JOB(03)/74. Any other ideas that were not reflected in the note were highly appreciated as input to today's discussion.

1. Classification issues

5. The Chairperson mentioned with regard to possible work concerning "classification issues" that there were informal "friends-groups" which, among other things, also discussed such issues in a sector context. As not all Members were participating, many delegations had continued to express interest in being regularly up-dated about progress in these fora. It might hence be worth considering whether participants could debrief the Committee about progress and possible differences in approach *vis-à-vis* any of the issues under their consideration. The content of such debriefs would depend on developments within the groups. Such debriefs could be a regular item on the agenda of the Committee.

6. The second point brought up in the note related to assistance from the Secretariat. In order to facilitate discussions on classification of certain services sectors, it might be useful to reconsider the possibility of asking the Secretariat to produce a short, analytical note on existing classification proposals. Such an analysis might also help the work in the small groups and thereby facilitate their

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

preparations of debriefs in the Committee about progress made. The analysis could focus only on commonalities of the proposals. If this was considered useful in principle, Members should reflect on whether such analysis should be made on a horizontal basis (i.e. on all sectors in one document) or on a sector-specific basis.

7. In addition to these points, he recalled that some Members had queries regarding bilateral requests they had received, which followed different classification approaches. Any questions in this regard could be addressed under the item of classification issues, particularly since these questions would be of importance to all Members.

8. The representative of Hong Kong, China stated that his delegation felt that the subsidiary bodies were rather under-utilised, and Members should think of ways of trying to better utilise the resources and time available. The CSC had made very good use of time and resources in the past year, and he looked forward to doing the same this year. His delegation generally supported the three suggestions concerning classification, particularly since it considered that the overall aim of work on classification was to arrive, to the extent possible, at a common approach which facilitated the comparability of Members' schedules. Hence, a broad discussion of classification issues in a multilateral forum, preferably the CSC, was essential. He supported the suggestion of inviting representatives from small groups to share their latest ideas on classification as and when they felt they were ready to do so. He considered that that process might be facilitated if the Chair had consultations with delegations involved in the various small groups and invited them to share their views, this of course being without prejudice to individual delegations' positions. Such information-sharing could be done either in a formal or in a separate informal meeting of this Committee.

9. He also supported a technical analysis of classification proposals to be carried out by the Secretariat, focusing first on common elements of the proposals. Such work could prove helpful to Members in formulating their initial offers and deciding on the use of classifications. Thirdly, an open agenda for raising classification issues that arose from bilateral processes was useful. While the discussions on classification were in practice dealt with bilaterally or plurilaterally, it was worth, not least under considerations of transparency, to discuss such questions in a multilateral forum for the purpose of arriving at as broad an understanding among Members as possible.

10. The representative of Poland stated that the Committee was the body responsible for the discussion of technical aspects of classification proposals, including the interpretation or clarification of ideas put forward by Members. He supported the idea to add an item to the agenda to allow delegations participating in small groups to brief Members on progress in their deliberations.

11. The representative of the United States stated that it was important for the Committee to continue addressing classification issues as they arose and to facilitate discussion when Members had questions in the course of the negotiations. She had reservations concerning the proposed Secretarial analysis of existing proposals, even with a focus on commonalities. Her delegation would like to reflect further on that proposal and was interested in other delegations' views. The idea of having a standing item on the agenda concerning classification issues was interesting, although any delegation could raise and put them on the agenda at any time.

12. The representative of Thailand supported all three proposals made by the Chairpersons. Looking at the offers that had been tabled so far, she felt that there was a lot of scope for help by the Committee, especially from the perspective of developing countries which were grappling with classification issues. Her delegation was concerned about classification aspects of the offers, for example concerning Mode 4, environmental services, and legal services. Many Mode 4 offers mentioned a category of "contractual service suppliers," however, each apparently with differences in scope and definition. The membership as a whole would benefit from discussions on definitions in Mode 4, e.g. each Member who made an offer could explain at a multilateral level what it exactly contained. Otherwise, smaller delegations might miss out on some nuances or slight differences.

Turning to environmental services, she noted that many Members had tabled their negotiating proposals concerning re-classification in the CSC and in the Special Session a long time ago. As there was no agreement on the ideal classification of environmental services, delegations had submitted offers that included the changes that they would like to see. While it was clear that Members could not be forced to have a common understanding on classification, it would be useful to get a full explanation on the changes contained in the offers. Another example concerned a Member who had made commitments on advertising services, without further specification of the scope of that commitment or any reference to a CPC code. In its offer, the Member had now listed several activities under the heading of advertising services. It was not clear whether this amounted in reality to a reduction, or roll back of the previous commitments. She was interested in an explanation. Lastly, concerning legal services, some Members had changed the scope of their legal services offers from the way the commitments were set out previously. Also in that case, the question arose how the scope of the offers related to the existing commitments. While it was unlikely that Members would agree, at this stage, that the Secretariat carry out an analysis of the classification used in the offers, her delegation would welcome any opportunity for an in-depth discussion sector-by-sector, in light of the offers that had been tabled.

13. The representative of Switzerland supported the idea of having a standing item on the Committee's agenda dedicated to debriefs about discussions in small groups. Such an exercise was very important for transparency and would help to advance work towards common classifications. His delegation believed that analytical work by the Secretariat could be useful, but further thought should be given to this suggestion to ensure concrete results. Such work was not a first priority as it was principally up to Members to carry out the necessary analysis. He agreed to have a standing item for questions on classifications on the agenda. On the suggestion by Thailand, he concurred that there would be merit in looking more closely at the definitions used in Mode 4 offers which were indeed very different. However, he had doubts about the possible results of such a discussion as it was not very realistic to think that Members would change their definitions in such sensitive areas, as these were closely linked to national legislation.

14. The representative of Chile believed that a standing item on the agenda on debriefs from small groups would be a positive step and would achieve greater transparency. Members not participating in these groups would benefit. Such an exchange of information could avoid short-term problems in analysing offers and requests from Members and could help to address conflicts between different classification systems.

15. The representative of the Philippines stated that, while almost all Members agreed that the subsidiary bodies had been under-utilised and everyone wished to resuscitate them, to a large extent the problem had been to operationalize this notion. Concerning the informal discussions going on in friends groups, he thought that these groups would naturally come forward and provide additional insights on the various classification issues once they had arrived at solutions. For developing countries, there would be obvious value-added from having the Secretariat build on the existing Compendium. His delegation had no problem concerning a note focusing on commonalities of the various proposals on the table, although some had evolved since the time they had first been tabled. Hence, the question was what the basis or raw material to be used by the Secretariat would be, i.e. the existing classification proposals or the classifications reflected in the initial offers? He wondered to what extent the Committee was going to carry forward this analytical exercise. Perhaps, as a first step, the focus could be on commonalities. He agreed with the idea of having on the agenda an item that allowed for an opportunity for delegations to raise technical issues regarding the classifications in the offers submitted.

16. The representative of Indonesia supported the proposal of analytical work focusing on commonalities in the existing classification proposals.

17. The representative of Cuba welcomed the idea of a standing item on debriefs by small groups. This would enhance transparency and facilitate progress in Members' work. Concerning possible Secretariat analysis, he thought that this was in principle a good idea, as long as it concentrated on comparing technical differences in proposals. Such an analysis would enhance clarity and would not try to guide or put any pressure on Members' work. He also supported the idea of a standing item on classification approaches in offers.

18. The representative of Korea noted big differences in the classification methods applied in certain sectors in the initial offers. Those differences needed to be clarified and, if necessary, harmonized in order to make the new schedules more user-friendly. Therefore, he favoured the idea that small informal groups be invited to report on progress made on classification issues. Korea concurred with other Members that the subsidiary bodies to the CTS should be used to their maximum capacity. In this light, the CSC should continue to focus on the technical aspects of the services negotiations to give guidance to Members in the process of drafting requests and offers and, eventually, final schedules.

19. The representative of Canada questioned the usefulness of having structured debriefs by informal groups, especially given the status of discussion in many of these groups. Any Member or group of Members was free to raise any issue at any time. Concerning the suggestion that the Committee request an analytical note from the Secretariat on commonalities in existing classification proposals, he shared the reservations made by some Members and noted that such a note might include interpretative assessments by the Secretariat. On the issue of technical clarifications of classification proposals, his delegation appreciated the objective of the Chair's suggestion to provide as much clarity as possible. In this regard, the Committee should continue to review the proposals presented to it. Technical clarifications of specific bilateral requests might ideally be dealt with at bilateral meetings. To the extent that Members raised technical questions regarding requests, this should bear in mind the sensitivity of the documents concerned.

20. The representative of Brazil stated that the note by the Chairpersons addressed one of the concerns of his delegation, that is the excessive segmentation of the initiatives on classification. Some classification proposals consisted of reallocating activities from one sector or sub-sector of the current classification to another, while others proposed the inclusion of new activities not covered in the present classification system. His delegation's concerns related to the consequences of an in-depth modification of the classification list W/120² in view of commitments already taken under the GATS. Since the present classification had been used by most Members to formulate legally binding obligations, alterations in definitions and sectoral coverage could weaken the transparency and predictability of current and new commitments. He believed that the proposal made by Hong Kong, China at the previous meeting concerning analytical work on classification by the Secretariat merited more detailed consideration by the Committee. The Secretariat could undertake more analytical work based on the Compendium of classification proposals, and also the new offers that were being circulated could be used as a basis for further work as had been suggested by Thailand and the Philippines. Such an exercise should be regarded as a technical contribution and would not prejudice any delegations' position on classification. Concerning a standing item devoted to debriefs by informal groups, he felt that this could create the impression that these groups were the appropriate fora to discuss such issues. This differed from the situation of a Member asking for the floor to give its point of view on questions that arose in those informal groups. Having shared its concerns on this issue, Brazil would not oppose a consensus that may emerge within the Committee on this matter. Finally, he supported the idea of placing a classification item on the agenda of the CSC so that technical questions, especially on the new offers, could be raised. Given the dynamic and informal nature of the request and offer process, perhaps Members might be more comfortable with discussing classification in a formal meeting based on their official offers rather than talking about their requests. In the absence of such initiatives, the increased segmentation made it very difficult to evaluate

² MTN.GNS/W/120, 10 July 1991

whether undertaking obligations on the basis of different classifications would have a liberalising effect, or on the contrary would limit an existing commitment.

21. The representative of Colombia stressed the importance of classification for better understanding schedules of specific commitments. Debriefs by informal groups should be a standing item on the agenda of the CSC. While this would improve transparency in the process, the informal discussions should nevertheless be open to all delegations. Colombia supported the idea of an analytical note by the Secretariat, but inquired about the exact content of such a document. Picking up the suggestion by Thailand on Mode 4, he believed that this extremely important issue could be discussed at a technical level in the CSC. The objective of technical discussions of classifications needed to be clarified. It was not clear whether the purpose was to improve the classification list or to broaden or expand commitments. It was important not to mix technical work with negotiations on market access.

22. The representative of Egypt stated that her delegation preferred if debriefs by informal groups were to be made on an informal basis and not as regular items on the agenda, and also without prejudice to the individual Member's position. Second, analytical work by the Secretariat could help Members understand various issues relating to classification; however, any such work must not affect in any way Members' right to interpret their schedules of commitments.

23. The representative of European Communities, commenting on the suggestion of debriefs by informal groups, stated that transparency was vitally important to help all Members understand proposals or intentions concerning classification. However, the question was how best to encourage delegations to address the Committee when they had been talking informally in friends' or other gatherings. While she would agree with the principle, there were also some hesitations about having a standing item on the agenda, partly because of the points put forward by Brazil, but also because much of the relevant work might be best addressed as the Committee dealt with individual issues under the classification agenda item. The proposal put forward by Hong Kong, China about having the Chair consult with different groups seemed to give too much weight to the work by some Members though not by all. She understood that the proposal concerning an analysis of commonalities in classification proposals to be provided by the Secretariat, was intended to solve potential difficulties. One might have to determine what the commonalities were. Since many of the relevant ideas were contained in negotiating proposals, taking a partial view of individual proposals could in some way skew the ensuing debates. Her delegation was more than willing to answer questions on its own proposals. There was a distinction to be made between a technical discussion of issues and the actual negotiations. In relation to Thailand's request for discussion of certain terminology concerning Mode 4, and in particular in relation to contractual suppliers, the different nuances in Members' schedules most likely reflected the individual legislation that existed in those countries.

24. The representative of Japan shared the view of other delegations that transparency concerning classifications was extremely important. The proposals presented a good occasion for Members to reflect on how to utilise this forum for increasing the transparency of work. The approaches proposed in the Chairpersons' note, including debriefing, analysis or technical question-and-answer sessions should be considered by those countries that wished to make new proposals to revise or review existing classifications. Those approaches could be very useful for enhancing further understanding of classification issues. He suggested that informal consultations between the Chair and the various protagonists of classification proposals or groups might be a useful way of identifying areas for discussion in this forum. With reference to the suggestion of analytical work by the Secretariat, he suggested that in order to maximize on the resources of the Secretariat, agreement should be sought on a limited number of areas of priority importance, rather than instructing the Secretariat to carry out an analysis of all sectors.

25. The representative of Chinese Taipei stated that for his delegation classification was one of the most important elements of the current negotiations. His delegation supported the proposed debriefings on progress in the informal groups. The specific issues should be agreed at the preceding Committee meeting. His delegation was interested in an analytical note to be produced by the Secretariat; however, that note could be prepared after the discussions and debriefings on individual items.

26. The representative of India shared the view of other delegations that it would be useful for the Committee to invite Members who were participating in the small informal group discussions to update the Committee on progress and approaches. This was of course without prejudice to Members' positions on classification proposals. He concurred that the classification item on the agenda should remain open for any Member to raise technical questions or definitional issues relating to specific sectors or modes of supply, as alluded to by Thailand. In light of the divergent views on the issue of mandating the Secretariat to undertake further analytical work on classification proposals, he thought that more clarity on what was actually intended in terms of scope of analysis might help Members decide the future course of action in this matter.

27. The representative of Venezuela noted that in the Services Council, some Members which were part of the groups on energy, had made spontaneous interventions on the classification of energy services. His delegation had no problem if such an approach, whether it was as an information exchange, or a debrief on consensus was adopted by any such group.

28. The representative of Uruguay stated that he could generally go along with the proposals made by the Chairpersons. In order to reconcile the various views concerning the debriefings by informal groups, he suggested that rather than having a standing item on the agenda, those delegations who were participating in these informal groups could request, as appropriate, that the item be placed on the agenda. Alternatively, a standing item on classification issues could be maintained on the agenda, and under that item any delegation could intervene, not necessarily only on discussions taking place in informal groups, but also to raise any classification issue.

29. The Chairperson concluded that there did not seem to be a genuine consensus on any of the three classification proposals. Several participants had indicated that they wished to reflect further on the issues proposed. He suggested that Members take note of the statements made and revert to the proposals at the next meeting. He would consult with delegations and contact those delegations that had asked more specific questions. He invited any delegation with further views to contact him or the Secretariat.

2. Matters relating to the scheduling co commitments

30. The Chairperson recalled that JOB(03)/74 had expressed the view that, for the time being, the discussion on the consolidation of schedules and on questions relating to additional commitments appeared to be exhausted. However, if Members thought it useful to maintain or reintroduce these items at the appropriate moment, this was of course possible.

31. The representative of Thailand agreed that discussions on consolidation of schedules and additional commitments could be removed from the agenda for the time being. She noted that errors in the consolidation of Thailand's schedule had been corrected. Concerning additional commitments, she believed that the item would need to be revisited at a later stage in light of proposals by Members.

32. The representative of Japan asked whether the Secretariat had verified the three schedules that had been consolidated by the respective Members rather than the Secretariat. He requested clarification on how to proceed should there be a need for rectification of the consolidated schedules.

33. A representative of the Secretariat recalled that the draft consolidated schedules were only working documents without any legal status. The Secretariat had prepared the drafts to the best of its ability, but the final responsibility for the accuracy of each consolidated schedule remained with the respective Member itself. In situations where technical errors had been identified, the Secretariat had corrected them. With respect to the verification process mentioned by Japan, he expected such a process to take place through the negotiations itself. Until the end of the negotiations, Members had the opportunity to examine all schedules, which were presented in the format of an offer and even pre-existing schedules. There was no need for an official rectification of those documents, since a certification of rectifications was only necessary for changes in the legally binding schedules, i.e. the schedules that were currently in force. Any errors in the working documents would be corrected by way of a corrigendum, as for other working documents. The original schedules would only be changed once the final protocol at the end of these negotiations entered into force. Anything presented in the interim would be no more than a working document.

34. The representative of Hong Kong, China shared the Chairperson's conclusion that discussion of issues relating to scheduling of commitments had been exhausted for the time being. He was confident, however, that such issues would arise in the course of the negotiations, and delegations should remain free to bring them up. Concerning the scheduling of additional commitments, he expected further questions on how it would impact on existing rules and the interpretation of commitments. Secondly, it was likely that some delegations had included in their offers modifications of existing commitments. He considered that there could be three types of possible changes. The first case concerned improvements in commitments subject to negotiations under Article XIX of the GATS. The second case related to technical modifications of commitments for which a separate procedure had been provided for in document S/L/84. He noted that when tabling their initial offers, Members were also allowed to indicate where they were proposing technical modifications of their commitments. The third case concerned the modification or withdrawal of existing commitments which fell under Article XXI of the GATS. He took note of previous statements by the Secretariat that it had not yet been settled whether there was still scope for addressing this issue in the course of the final verification of all schedules of commitments. However, there was no mandate for doing so for the time being. Further discussion would be required on how to deal with any offers that included modifications or withdrawals of existing commitments. He recognised that this might be an issue beyond the remit of the CSC, as it might not simply concern technical changes.

35. The representative of Indonesia stated that his delegation had discovered a few errors in the draft consolidated schedule of specific commitments, which he would correct and request the Secretariat to circulate.

36. The representative of Canada stated that the consolidated schedules by Members who had undertaken to do their own consolidation were under review in his capital. He concurred with some of the concerns related to rectification procedures. It would be confusing if negotiations for liberalizing commitments were to be combined with Article XXI procedures. He reiterated that the goal of these negotiations should be to ensure that the level of liberalization achieved in previous rounds of negotiations was increased rather than reduced. There were several important issues that would have to be dealt with as part of the discussion under the agenda item "Matters related to the scheduling of commitments." In particular, Members should begin thinking about what elements the Sixth Protocol should contain. Also, Canada considered that the relationship between existing and new commitments was an important unresolved issue.

37. The Chairperson concluded that given the interest by delegations, discussions on additional commitments and consolidation of schedules could be reintroduced on the agenda at a later stage. He emphasised that in their informal note, he and the outgoing Chairperson had stressed that flexibility should be kept for Members to bring up any issue they considered important.

3. New issues to be considered

38. Turning to other areas of possible future work, the Chairperson stated that in their informal note, he and his predecessor had suggested two areas for Members' consideration. The first related to the scheduling of commitments. Doing this in a manner that allowed other Members to fully appreciate the scope and the exact content of a commitment was not always an easy task. There were numerous technical questions that could be addressed and several of them had been flagged at the scheduling workshop that the Secretariat had organised last November. It might be useful to request the Secretariat to prepare a note illustrating - on an anonymous basis - examples of existing inconsistencies in schedules. That note could also analyse the pros and cons of various approaches, and would document the lessons learnt from last years' scheduling workshop. Such a note could well assist Members in technical preparations for the ongoing negotiations and could inspire a higher degree of harmonisation in the scheduling of commitments. Alternatively, Members themselves could flag the issues they would like to see addressed by the Committee, and the Secretariat could then be asked to provide specific inputs as needed.

39. A second issue that he and his predecessor had been thinking of was the scheduling of economic needs tests (ENTs) and the related underlying criteria. There were approximately 250 ENTs in the schedules of more than 90 Members and in many cases the Members applying ENTs had not specified the criteria upon which these tests were based. He requested Members' comments as to whether the use and treatment of ENTs in schedules could be a topic for further work, and whether possible ways to better specify the technical criteria underlying ENTs in the schedules of commitments could be explored in the near future. An initial basis for discussion of this issue could be the Secretariat note on ENTs of November 2001 (S/CSS/W/118). He stressed that any consideration of the two topics would remain within the mandate of the CSC, i.e. be limited to clarifications of technical aspects of the respective subjects.

40. The representative of India stated that ENTs were major entry barriers preventing free movement of service suppliers, and were hence an issue important to his delegation. The conditions on which ENTs were based were not clearly specified and defined in many cases, thereby leaving complete discretion in their application and reducing the predictability of specific commitments. He was flexible in looking at technical aspects of ENTs, and noted that his delegation had submitted a very comprehensive proposal on Mode 4 in the Special Session of the Council outlining possible approaches and strategies for undertaking liberalization in this mode of supply. The paper also included the issue of ENTs and outlined possible ways to deal with it in the context of ongoing negotiations. Other Members also had submitted papers on ENTs in the Special Session and his delegation would, of course, welcome a substantive discussion and engagement in the Special Session to address this issue.

41. The representative of Indonesia supported the proposal that the Secretariat prepare a note illustrating examples of existing inconsistencies in Members' schedules.

42. The representative of Poland supported the proposal that the Secretariat be asked to prepare a note illustrating examples of potential scheduling inconsistencies in Member's schedules. He also thought that the Committee should be responsible for the discussion of technical aspects of economic needs tests.

43. The representative of Uruguay welcomed the idea that the Secretariat be tasked to prepare a factual note giving examples of scheduling inconsistencies. The note should not be slanted in any way and should simply identify possible cases. Secondly, with regard to economic needs tests, he recalled that Mercosur had made a proposal. He had no problem with having discussions on this subject, even though he thought that the ultimate objective should be the elimination of ENTs. Picking up on an issue discussed earlier, he requested further clarification on the relationship between the procedures under Article XXI and the negotiations underway under Article XIX.

44. The Chairperson stated that, staying within the parameters and terms of reference of this Committee, he had suggested work on scheduling and underlying criteria of ENTs. This was without prejudice to any delegation's position on the desirability of removing ENTs in general.

45. A representative of the Secretariat stated that from a legal point of view, the negotiations under Article XIX had clear objectives as set out in that Article, i.e. to achieve progressively higher levels of liberalization. From Article XIX, as well as the negotiating guidelines which were subsequently affirmed by Ministers, it was evident that the objective of the negotiations was to add on to what was already contained in the existing schedules of commitments. Article XXI, on the other hand, was designed to address the completely different situation of cases where a Member wished to withdraw or modify an existing commitment. Neither Article XIX nor the negotiating guidelines restricted the right of any Member to invoke the procedures of Article XXI at any time. If the latter were invoked during a broader round of negotiations, both negotiations would of course be conducted simultaneously. As both processes were legally distinct, a Member who wished to withdraw a commitment was expected to do so transparently under Article XXI. He noted that at the end of the Uruguay Round, concerning trade in goods, paragraph 7 of the Marrakesh Protocol referred to three countries, who had invoked Article XXVIII of the GATT and explicitly stated that those countries were deemed to have invoked Article XXVIII, and therefore the results of the negotiations in their totality reflected also the results of the Article XXVIII negotiations with respect to the tariff bindings that those three countries had wished to modify.

46. The representative of Chile supported the idea that the Secretariat be asked to prepare a note referring to certain inconsistencies that may exist in Members' schedules. The note could be useful in helping Members to ask further questions and thereby contribute to the overall debate. He added that the note could also refer to other issues. His delegation, for example, was holding internal consultations about the retail distribution sector and had noted that some schedules of other Members contained restrictions under Article XVI on municipal regulations on the locations or numbers of shopping centres in urban areas. Other schedules of commitments did not make any such reference. Both the delegations who had scheduled limitations and those who had not, thought that they were free to impose such restrictions. There was a need to clarify this grey area. On ENTs, Chile believed that it would be desirable to do away with these measures altogether. All technical aspects related to ENTs could be dealt with in the Committee on Specific Commitments.

47. The representative of the Philippines supported the idea of a Secretariat note pointing to possible inconsistencies in Members' schedules. Regarding ENTs, he was mindful that without the corresponding political commitment on the part of all Members to address them as a negotiating issue in the Special Session, the CSC could only contribute marginally given its terms of reference.

48. Responding to a question from Canada, a representative of the Secretariat stated that the documentation that had been prepared for the scheduling workshop was on the Members' web-site. The exercise sheets were available from the Secretariat.

49. The representative of Canada stated that it was very difficult to draw the line between a technical analysis of inconsistencies and legal interpretations. His delegation was uncomfortable with the idea of a Secretariat paper in this regard. As the documents that were prepared for the scheduling workshop were available to Members already, these were perhaps a better basis for Members to develop their understanding of where inconsistencies might lie. Turning to the ENT issue, he was not sure if an analysis was possible on a horizontal basis. The discussions earlier this morning about different scheduling approaches in the area of Mode 4 clearly reflected national regulatory regimes. It may be the case that ENTs similarly varied on the basis of domestic regimes. If ENTs were to be analysed, maybe a sectoral analysis would be more useful. He noted that ENTs were a market access issue and were addressed in the bilateral negotiations. It might be useful to wait until more offers had come in before the CSC began a detailed analysis.

50. The representative of Thailand agreed with both proposals in principle. Thailand had always opted for an elimination of ENTs, and if that was not possible, a reduction of ENTs on the basis of clear criteria.

51. Further to a question by Thailand as to where to draw the line between a technical change which did not alter the substance of a commitment and a substantive change, a representative of the Secretariat stated that the answer would be found in the procedures relating to the certification of modifications and rectifications of schedules. The certification procedure developed and adopted by the Council in document S/L/84 meant to address cases where the Member introducing the change claimed that it was only of a technical nature. The only judge on whether this was actually the case was the rest of the membership. Therefore, the procedure in S/L/84 specified that after a period of 45 days, if Members had not objected, the change would take effect. If any Member objected to the change on the grounds that it was not just technical but substantive, the procedure of Article XXI was triggered automatically; it was designed to deal with situations where a Member introduced a substantive change.

52. The representative of Cuba supported the idea that the Secretariat prepare a note which would give concrete, anonymous examples of existing inconsistencies in Members' schedules. This would help in the negotiations presently underway and assist Members in identifying any inconsistencies that might exist.

53. The representative of the European Communities shared some hesitations expressed by other Members, and stated that her delegation would like to revert to the issues proposed at a future meeting.

54. The representative of Switzerland welcomed the suggestion concerning a factual Secretariat note. He also supported a discussion on technical issues on ENTs despite the fact that, as it was the case for other delegations, Switzerland's aim was to reduce or eliminate ENTs.

55. The representative of Brazil supported the idea of a note from the Secretariat regarding possible inconsistencies in schedules as long as the note did not attribute names of delegations. Such a note would enable Members to be more specific in defining their positions in the negotiations and looking at the offers. He asked the delegations of Canada and the European Communities to reconsider their positions. It seemed that a document such as the one proposed would not imply a value judgement on measures. It would be useful particularly to developing countries. He also supported technical work on economic needs tests, without prejudice to Mercosur's position on this issue as presented in a proposal last year. Mercosur was interested in a complete elimination of economic needs tests.

56. The representative of Hong Kong, China supported both suggestions for new work. A note by the Secretariat on scheduling inconsistencies would be useful as it could built on the basis of last year's scheduling workshop. With the caveats indicated by the Chair in his introduction, such a note would not prejudge Members' positions on how they applied the scheduling guidelines or how they scheduled their commitments. The note would serve as a useful tool for individual delegations and assist them in avoiding potential inconsistencies when they were drawing up their schedules. One way of preserving anonymity would be for the Secretariat to abstract from the origin of the examples and to actually emphasise the key areas where the inconsistency might lie. On the question of ENTs, he took note that there were two parallel tracks of discussion, one in the context of the ongoing negotiations, and addressed in the Special Session of the Council. The second track would relate to technical aspects for the purpose of scheduling ENTs in light of what already existed in the scheduling guidelines. He stressed this because there were clear provisions on ENTs in the scheduling guidelines. The question then, for the technical discussions, would be how these provisions could be properly followed when Members were to include ENTs in their schedules of commitments.

57. The representative of the United States shared the concerns and reservations coming from the delegations of Canada and the EC. She wanted to reflect a little more on the thought by Canada to recompile in some user-friendly manner what had been produced in the exercises for the scheduling workshop. She also wished to reflect further on the question of work on ENTs. She recalled that the scheduling guidelines were non-binding.

58. The Chairperson noted a widespread interest by Members on further work on technical criteria of ENTs. However, some reservations had been expressed as well. He proposed to consult with the Members concerned. Likewise, there was substantial interest in discussing scheduling inconsistencies on the basis of a note by the Secretariat. Although some delegations had expressed hesitations. A practical suggestion had been made to present the problems in a more abstract form to increase user-friendliness and ensure that anonymity could be preserved. He invited his predecessor to comment on the scheduling workshop which had been carried out under his auspices.

59. The previous Chairperson, Mr. Niklas Bergström, noted that the scheduling workshop had been a major technical assistance project, with the participation of many capital-based officials from developing countries. Given their positive feedback, he felt that examples of possible inconsistencies might prove be very helpful for them to have.

60. The Chairperson suggested that the Committee take note of the statements made and revert to the item at the next meeting.

61. It was so agreed.

C. CLASSIFICATION ISSUES

62. The Chairperson recalled recent discussions on computer- and related services, on the basis of papers submitted by the European Communities (S/CSC/W/35) and Chinese Taipei (S/CSC/W/37). Prior to this meeting, the delegation of the European Communities had submitted a paper on the classification of legal services, contained in document S/CSC/W/39.

63. The representative of the European Communities noted the usefulness of the compendium, and requested that his delegation's proposal on legal services be included in a future updated version. He noted that it was not proposing any new classification, but rather tried to bring legal services in line with other services sectors. The definition of an activity should be separated from the licencing conditions that had to be fulfilled in order to perform that activity. The classification contained in document W/120 had shown enough flexibility for Members to schedule commitments; what was needed was a common understanding of the commitments so that the current classification could provide a basis to reflect modern international legal practice. The first point in his delegation's communication was a description of how international legal practice worked at present. The ongoing globalisation of commercial activity by business made it imperative that lawyers were able to provide to their clients advice and assistance with respect to the laws of the jurisdictions in which these lawyers were qualified to practice, no matter the place or context in which these laws had to be examined (the jurisdiction of the territory where the client was established, another jurisdiction, or arbitration procedures). Whenever a client requested advice or assistance in respect of the laws of jurisdictions for which the lawyer was not qualified to practice, he should be able to cooperate either through a network of "best friends" or through a partnership with lawyers qualified in the law of the jurisdiction. This possibility of cooperation became fundamental whenever the client had to be represented in a national court or administrative body that applied the law of a jurisdiction for which the lawyer was not qualified to practice. The requirements of contemporary international legal practice could be easily met by law firms, provided that they were allowed to recruit or enter into partnership with lawyers qualified to practice in different jurisdictions.

64. Most WTO Members that had taken commitments for legal services had limited them to only legal advice or consultancy. This was probably the case because Members feared that commitments on all legal services would imply that a lawyer who had not been admitted to the Bar in their territory, could represent clients in front of the national court. In addition, most of the commitments referred to specific fields of law that they covered. For that purpose, the distinction between host country, home country, third country in international law was used. This terminology raised many questions: for example, the concept of home country law which could be defined as the law of the country or jurisdiction where the lawyer was qualified to practice, might overlap with the concept of host country law. Also the concept of third country law could lead to different interpretations. If it was meant to be any third country law where a lawyer was qualified to practice, it was no different from home country law. Another interpretation of third country law was that it comprised the law of any country other than the host country, where the lawyer was not necessarily qualified to practice. Also the definition of international law was fraught with difficulties because it could be defined either by source (i.e. Body, Treaty), content (i.e. regulations of international relations between the states) or even by the jurisdiction in charge of applying that law – an International Court or Tribunal.

65. In his delegation's view, all these approaches unnecessarily mixed the definition of a service with the qualifications that were necessary to provide that service, and consequently tended to overlook the situation of law firms. For classification purposes, the only parameter to be taken into account should be the nature of the different services that could be provided by legal professionals, and in this regard the CPC, after the revision of 1997 which added Arbitration and Conciliation Services, was exhaustive. It was not necessary to make a further distinction based on different fields of law, because it was understood that whatever service a supplier wished to provide, whether a legal service or not, it was a service for which that supplier was qualified. Commitments should cover all legal services without further specification of the scope of activities. As regards the fields of law, there was no need to reflect them in the schedule. Members willing to undertake commitments on third country law on the basis of an interpretation that would cover law for which a lawyer was not qualified would go beyond the relevant scope of a commitment. Hence, Members should act on legal services as they did with any other service sector and distinguish regulatory measures from market access and national treatment measures. Some regulatory issues might need to be addressed through additional commitments, namely the acceptance of non-qualified lawyers, while others had to be dealt with in the market access and national treatment columns - namely the issues of partnerships and foreign establishments of law firms.

66. The representative of Australia disagreed with the EC view that maintaining the undifferentiated entry of legal services in the W/120 would assist in increasing the number or improve the quality of legal service commitments. The nature of commitments made by Members in the Uruguay Round was a clear demonstration of the problems of a single entry. One might go as far as stating that the 44 Members who had made legal services commitments in the Uruguay Round had done so despite the single entry provided for in W/120. Instead of using the single entry to identify the sub-sector, most of those Members had made commitments using a classification that reflected, for them, the reality of transnational trade in legal services. Legal services were broken down into sub-categories that made possible the distinction between host country law, home country law, third country law and international law. These sub-categories were meaningful to the wider legal profession and, very importantly, allowed for precision in making commitments. CPC 861, which the EC favoured, suffered not so much from a lack of coverage of legal services, but from inappropriate coverage. It had a purely domestic, or one-jurisdictional perspective and was not conducive for use in transnational trade in legal services. In addition, the sub-categories under CPC 861 were primarily defined with a strong focus on conducting litigation, i.e. providing both advisory and representational services in relation to either pleading or preparing for a case in court, including any out-of-court legal work or preparation of a case. This did not provide a suitable framework for classifying transnational legal services under the GATS. Transnational legal services' providers were primarily interested in providing advisory services that underpinned business transactions in the commercial sphere with an opportunity to base that advice on the laws of multiple jurisdictions. Australia considered that the

sub-categories of host country law, home country law, third country law and international law provided the required degree of flexibility and specificity for Members to make commitments.

67. He was in agreement with the EC on one fundamental aspect, namely that legal practitioners should be able to provide legal services in relation to the law of the jurisdiction where the service supplier was qualified. The term "qualified" here was understood to mean that the service supplier had a legal right to practice law. However, it was difficult to see how Members could make meaningful specific commitments on that basis if the sub-categories identifying the relevant jurisdictions, ie. home country, third country and host country, were not available.

68. The representative of the United States stated that as part of its initial requests her delegation had circulated a document concerning a legal services reference paper, and looked forward to consult further on that particular approach to making legal services commitments.

69. The representative of Mexico requested clarification regarding paragraphs 8, 9 and 10 of the definition of international law and third country law. According to the EC, did the definition remain in the hands of the Member assuming the commitment? An answer to this question was very important when it came to making commitments. In Mexico, there was no legal definition of "law", as difficult to understand as this may be.

70. The representative of Switzerland stated that his delegation shared many points of the EC analysis, particularly as contained in paragraphs 4, 8 and 9 of the EC paper. A look at modern international legal practice revealed that a distinction between different fields of law was no longer appropriate. Many clients needed legal services in different fields of law, which rendered the distinction frequently found in Members' schedules between fields of law increasingly artificial. A modification of the current classification contained in W/120 was not necessary to improve the quality of the schedules and commitments. The example contained in paragraph 21 of the EC paper was very useful. In its initial offer, Switzerland had precisely taken this kind of commitment for legal services.

71. The representative of Japan stated that his delegation would consider the modification or revision of a classification, limited to the minimal extent necessary, if and when there were clear benefits to be derived from it. Taking into account the reality of trade in legal services, and also taking into account the fact that there was already a certain level of commitments with a certain level of specificity, he thought that it was important, for the sake of legal stability of existing commitments, to protect the clarity of schedules. He had the impression that the level of transparency was not necessarily enhanced by the approach advocated by the EC which carried the risk of losing the transparency that already existed in various commitments. The distinction between home country, host country, third country and international law, as explained in existing schedules, was useful and should be conserved for the sake of transparency.

72. The representative of the Republic of Korea agreed in essence with the EC paper that, instead of the distinction between home country, host country, and third country law, the concept of law of jurisdiction where the services supplier was qualified could be more appropriate. He further agreed that the notion of international law should be limited to public international law. He had three preliminary questions to the EC at this point: firstly, in paragraph 9, with regard to scope of public international law, the EC pointed out that community law was not international law but domestic EC law. Was there a separate qualification requirement for being an expert on EC law, other than the qualification for being able to provide representation services? Secondly, he referred to paragraph 11, concerning the distinction between the service supplier and the law firm. Under Mode 3, the service supplier was a law firm which was composed of individual professionals with appropriate qualifications. But service suppliers under Mode 4 were the same individual professionals. The law firm was a mode of supply and not a service supplier *per se* without the professionals. Therefore, he wondered what purpose the proposed reclassification of law firms would serve. The third question related to the scope of CPC 861, as discussed in paragraphs 16 and 17. Did the EC proposal include

areas such as documentation and certification, which were part of CPC 861, and should a Member inscribe specific limitation in this area if it wanted to exclude them from market-access commitments?

73. The representative of Chile stated that his delegation did not have a clear position yet on whether there was a need to open the classification of this sector to the various types of legal services that may be provided. As lawyers were providing their services more and more frequently in different countries, he wondered whether the necessary licensing requirements could be avoided by means of mutual recognition agreements (MRAs) and, if this was the case, whether the European Community would submit a proposal in order to promote MRAs under Article VII:5 of the GATS?

74. The representative of New Zealand considered that the selectivity contained in the approach taken during the Uruguay Round was quite useful, particularly with regard to the flexibility it provided. Therefore, breaking legal services down into the four fields of law was quite useful and she saw no reason at present to abandon that approach.

75. The representative of Brazil noted while it was necessary to distinguish between the services and the qualification for providing the services, sometimes the qualification to provide a legal service was related to the field of law. In this sense, if the qualification was tied somehow to the field of law in which the foreign lawyer could provide services, there could be effectively discrimination. He was not sure whether information was enhanced or in fact lost through a statement indicating that the commitment was limited to the laws in which the services supplier was a qualified lawyer.

76. The representative of the European Communities stated that the concepts of host country, home country, third country and international law might be useful as technical terms, but not as a classification. If an Australian lawyer was qualified in the US, and the US commitments only applied to home country law and not to host country law, this Australian lawyer was not covered by the commitments. The whole purpose of the paper was to avoid a definition of categories. If a lawyer was qualified, this was always in relation to a certain law. There was no need to define categories. He agreed that it was difficult to define international law, mainly because depending on the interpretation it could conflict with national law and some countries required a specific qualification to do national law. For practical purposes, the EC preferred to keep the definition of international law limited to public international law to avoid conflict with national law.

77. Turning to a comment by Japan, he explained that the footnote in the EC paper was merely intended to enhance transparency. It was clear that whenever a supplier went to a country, he/she had to comply with the licensing conditions of that country. When the licensing conditions amounted to market access or national treatment restrictions, then they had to be inscribed in the relevant columns. With regard to the first question posed by Korea, he noted that EC law was the domestic law of the EC and any qualification in any Member State of the EU was sufficient to practice EC law. This was set out in the EC offer. Regarding the question about the service supplier, he stated that the EC was trying to bring legal services in line with other service sectors. For example, in case of financial services, banks were service suppliers, but perhaps there were also brokers providing specific services. On the scope of CPC 861 – the question of documentation or certification – he stated that these were clearly legal services. However, commitments only extended to those people who were qualified. If a foreign lawyer had obtained a qualification to perform documentation and certification services in a country, he should be allowed to supply these services. If a Member wanted to exclude specific services, it could always leave it unbound for that specific CPC number, subject to negotiation. On the comment by New Zealand, he noted that the Uruguay Round commitments were not always clear, as was explained in footnote 10 of the EC document. He concluded that Members needed to reach a common understanding of how to address legal services and whether it was necessary to make a distinction which did not exist in other services areas.

78. The Chairperson said that the EC's contribution would be integrated into the next revision of the Compendium. He suggested that the Committee take note of the statements made and revert to

the item at the next meeting. As there were no items under Other Business, he proposed that the next formal meeting be held during the week before the next formal meeting of the Council for Trade in Services in July.

79. The Committee so agreed.
