

WORLD TRADE ORGANIZATION

RESTRICTED

S/WPGR/M/13

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Working Party on GATS Rules

REPORT OF THE MEETING OF 1 OCTOBER 1997

Note by the Secretariat

1. The thirteenth meeting of the Working Party on GATS Rules was chaired by Ms. Jill Courtney of Australia. The agenda for the meeting was contained in WTO/AIR/668. It consisted of five items: negotiations on safeguards under Article X of the GATS; negotiations on subsidies under Article XV of the GATS; negotiations on government procurement under Article XIII of the GATS; date of the next meeting of the Working Party; and other business.

ITEM A: NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF GATS

2. The Chairperson noted that since the previous meeting, one more submission on the subject of emergency safeguard measures had been received from Peru (S/WPGR/W/23), as well as a response to the questionnaire from Cuba (S/WPGR/W/15/Add.7). The report of the last meeting (S/WPGR/M/12) had not mentioned the communication received from ASEAN on the subject of emergency safeguard measures (S/WPGR/W/22). The Chairperson recalled that the Secretariat had been requested to prepare a note on "Examples of situations in which emergency safeguards may be taken", which had been distributed as document S/WPGR/W/24, and invited comments from Members.

3. The Secretariat paper was seen as a useful contribution to the current discussions, though two delegations felt that it had perhaps gone beyond what had originally been requested. Some delegations noted that the paper was concerned with only one of the four key questions identified by the Chairperson in the note of 3 June 1997, and a consideration of the other questions remained important. In particular, how injury would be determined, and how a causal link would be established between injury and increased services imports given the paucity of data, were identified by some delegations as key questions.

4. A number of delegations emphasized the importance of analysing the circumstances in which safeguard action may be taken. Some delegations observed that the basic role of safeguard action should be to provide temporary relief in order to make possible gradual rather than abrupt adjustment, and thus help to reduce the social costs of adjustment. A few delegations expressed doubts about the usefulness of distinguishing between injury-causing developments which were primarily domestic in origin and those which were primarily foreign in origin (discussed in Section II of S/WPGR/W/24). An increase in services trade could occur through the combined effects of domestic and foreign developments, and to distinguish between the two would be difficult. The focus, several delegations felt, should be on whether injury had been caused by increased imports, and the underlying reasons should not be relevant to determine the permissibility of safeguards. Many delegations were of the view that "unfair" trading developments should not be the basis for safeguard action since there were other GATS provisions to deal with such situations. However, some delegations felt that the door should not be closed to the possibility of safeguard action to deal with injury caused by unfair trade practices.

5. Addressing Section III of S/WPGR/W/24, the need to limit safeguard action to deal only with unforeseen circumstances was emphasized by numerous delegations. However, some expressed doubts about the feasibility of developing objective criteria to determine whether circumstances were indeed unforeseen.

6. With regard to Section IV of S/WPGR/W/24, some delegations stated that it was not desirable to impose additional conditions for safeguard action - beyond demonstrating that injury was caused by increased imports. One delegation felt that the introduction of factors like the ones mentioned in paragraph 16 of S/WPGR/W/24 would make the mechanism too complicated to implement. A few delegations also doubted the desirability of creating a presumption in favour of economically superior instruments of safeguard action, such as subsidies. One delegation identified the reasons for its opposition to the idea. First, a Member might need to use measures with a real impact on imports over a short period of time, and so the quantitative restrictions listed in Article XVI may be more efficient. Secondly, the implementation of a subsidy as a safeguard could violate national treatment, which was not feasible in certain countries due to the nature of legal regimes. A few delegations felt that it would be desirable to include a public interest clause in an emergency safeguard mechanism. Such an inclusion would ensure that authorities took into account not only the benefits to an industry but also the costs to other sectors from safeguard action. One delegation expressed the view that if there was a need for a safeguard action at all, it should be related to national welfare objectives rather than trade policy-related objectives, since the latter were covered by GATS provisions and/or scheduled reservations.

7. Several delegations felt that the issue of how far policy objectives should be built *ex ante* into the schedules, and how much scope there should be for *ex post* safeguard action needed to be carefully considered (discussed in Section V of S/WPGR/W/24). Some delegations noted that measures listed in a schedule, to protect or to allow time for gradual adjustment, would be safeguards, but not emergency safeguards. An emergency safeguard would be to cope with an emergency situation which was unforeseen. The delegation of Mexico said that the safeguard contained in NAFTA with respect to financial services, referred to in Section V, was due to certain Mexican legislation, and did not constitute a safeguard measure to cope with an unforeseen or emergency situation. The very nature of an emergency situation, due to unforeseen circumstances, made it difficult for those situations to be provided for in legislation and to be within the control of the government. One delegation suggested that it was important to consider how far a Member could anticipate and specify the circumstances in which it would invoke a safeguard measure. It felt that the notion of scheduled safeguards, as opposed to a more general provision, should be examined on a more exhaustive basis while considering the desirability and feasibility of a safeguard provision in GATS. However, some delegations felt that scheduling safeguards in advance did not seem very useful. One delegation noted that not every injury situation and relevant remedy instrument could be fully examined in advance, and so the process of negotiating scheduled commitments would become too complicated. Another delegation said that Members should be cautious about the idea of scheduled safeguards since a situation could be created in which the possibility to respond to unforeseen circumstances, which were a priori the same for everybody, would be available to certain countries and not to others.

8. Several delegations addressed the modal issues raised by safeguard action. One delegation noted that in the context of mode 1, it would be difficult to restrict transactions at the border, especially electronic transactions, and that safeguards would rarely be needed for mode 2 as consumption did not occur in the country wishing to apply the safeguard. Another delegation was of the view that increased "consumption" of foreign services may be a more appropriate concept than increased "imports" since it was not clear as to how the latter notion could be applied to modes 2, 3 and 4. Several delegations expressed doubts about the desirability of application of safeguards post-establishment but some felt that, even though acquired rights should be preserved, they could be suspended during an emergency. One delegation observed that the stage at which a person was considered a foreign services supplier was not always clear. Frequently foreign service suppliers participated in joint ventures where

their equity might be in the minority. Moreover, it would create an unpredictable element in the GATS if the rights that foreign suppliers had as corporate citizens of the country in which they were operating could be lessened.

9. The delegation of Thailand informed the Working Party that his delegation had organized a seminar on "Emergency Safeguard Measures in GATS". A brief outline of the content of the seminar was provided by the Secretariat.

10. The Chairperson said that she would hold further informal meetings to continue the discussion based on the Secretariat's paper, taking into account the comments already made, and to address the other questions in the Chairperson's note of 3 June 1997. She also noted that her consultations had revealed that Members agreed, in principle, that it would not be possible to conclude the negotiations on emergency safeguard measures before the end-of-the-year deadline specified in Article X. She recalled that at the previous informal meeting, Members had agreed to consider whether a deadline of 30 June 1999 would be acceptable. She proposed that the Working Party take a decision in principle on extending negotiations until 30 June 1999 under the existing terms stipulated in Article X of the GATS. On this basis, the Secretariat would prepare a draft decision to be circulated to Members for comments within the next two weeks. Members agreed to the Chairperson's proposal.

11. One delegation sought clarification on certain aspects of the Secretariat's note of 1 October 1997 on "Extending the negotiations on safeguards". Some Members indicated that they would need to reflect on the modalities for the extension.

ITEM B: NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF GATS

12. The Chairperson indicated that only two responses to the questionnaire on subsidies had so far been received, from Norway and New Zealand, circulated as documents S/WPGR/W/16/Add. 1 and 2, respectively. She urged delegations to make an effort to provide responses soon and stressed the importance of such information for substantive discussions on the subject.

ITEM C: NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF GATS

13. The Chairperson indicated that two more responses to the questionnaire had been received since the previous meeting, from Peru (S/WPGR/W/11/Add.20) and Turkey (S/WPGR/W/11/Add.21). She observed that the synthesis prepared by the Secretariat of the first 19 responses and the more recent responses provided a large corpus of information on national regimes. She also drew Member's attention to a non-paper submitted by New Zealand on the subject of government procurement.

14. In introducing the non-paper, the representative of New Zealand said that its purpose was to examine issues and questions arising from the application of fundamental WTO principles to government procurement in services and explore possible areas of common understanding on such principles. The non-paper did not attempt to examine the question of the possible form that the outcome of negotiations might take nor did it seek to comment on any possible relationship between the negotiations and other work in the government procurement field.

15. Norway provided some clarification regarding its procurement of construction services, which was referred to in the synthesis of different procurement regimes (S/WPGR/W/20), under the heading Laws and Regulations in Force. According to the document, procurement above specified thresholds took place through a central specialized agency. In Norway, state construction works above the WTO

GPA thresholds were usually undertaken by either the Directorate of Public Construction and Property or by the Norwegian Defense Construction Service, the latter being responsible for defense entities. All Norwegian municipalities and counties, which were also covered by the WTO GPA, were however responsible for their own construction services and organised these independently and on an individual basis.

16. One delegation suggested that substantive discussion could begin by looking at the question of how government procurement should be defined. As a first step, Members needed to examine what services would be covered by any provisions on government procurement that resulted from the current negotiations. The next step would be to examine what entities would be covered, an issue for which Article I of the GATS would be relevant. Another delegation suggested that it would be appropriate to address the principle of non-discrimination, and emphasized the importance of clarifying how the work of the Working Party would relate to ongoing work on procurement in other WTO fora.

17. The Chairperson noted that more discussion was necessary in respect of definitions and/or the principle of non-discrimination. She suggested holding an informal meeting on 6 November 1997 to discuss issues related both to government procurement and safeguards. Members agreed with the Chairperson's suggestion.

ITEM D: DATE OF THE NEXT MEETING

18. It was agreed that the Working Party would meet next on Wednesday, 26 November 1997.

ITEM E: OTHER BUSINESS

19. No matters were raised under other business.