

# WORLD TRADE ORGANIZATION

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## Working Party on GATS Rules

### REPORT OF THE MEETINGS OF 13 AND 15 MARCH 2002

#### Note by the Secretariat

1. The Working Party on GATS Rules held its thirty-sixth meeting under the chairmanship of Mr. Hugo Cayrus, from Uruguay. The agenda for the meeting was contained in WTO/AIR/1727. It consisted of six items: 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; other business; and appointment of a new chairperson. The agenda for the meeting was adopted.

#### A. NEGOTIATIONS ON SAFEGUARDS UNDER ARTICLE X OF THE GATS

##### **1. Extension of the deadline for negotiations under GATS Article X**

###### (a) Session of 13 March 2002

2. The Chairperson recalled that the deadline for negotiations under GATS Article X would expire on 15 March 2002. Over the last two months, he had held several bilateral, plurilateral and multilateral consultations with delegations, the aim being to reach a consensus on an extension of the deadline. The main points of view raised in these consultations were as follows: (i) several delegations had expressed their frustration at the need to extend the deadline for a fourth time; other delegations, however, felt that progress had been made in the discussions; (ii) certain delegations had said that this should be the last extension of the deadline; (iii) in principle, no delegation had communicated any opposition to extending the deadline; (iv) however, different opinions had been expressed as regards the length of the extension. Some delegations were in favour of a date close to the end of the negotiations, whilst other delegations favoured a short extension (e.g. one year). Alternatives had been put forward, such as extending the deadline until the WTO's Fifth Ministerial Conference or until March 2004. Other delegations meanwhile expressed their flexibility as regards the date of the extension, but had said that there should be a progress report or a "stocktaking" of the progress made, at the Fifth Ministerial Conference. Some delegations also had made reference to establishing a work programme for these negotiations in the Working Party. The consultations had led him to the following conclusions: the two opinions at opposite extremes (i.e. a one-year extension or an extension until the end of the negotiations) should be ruled out because it was impossible to reach a consensus on either one. Moreover, several delegations supported the idea of the final deadline for negotiations on safeguards coinciding with the future Fifth Ministerial Conference, but other delegations were equally strong in expressing their opposition to this idea; so at present it was clear that there was no consensus on extending the deadline up until the Fifth Ministerial Conference. He recalled that, should no consensus be found, the mandate of the negotiations on emergency safeguard measures would end.

3. He reminded Members that, at the informal meeting of the Working Party on 7 March, he had put forward a proposal which attempted to take into account, as much as possible, the different stances taken by delegations. This proposal comprised the following items: a decision to extend the deadline until 15 March 2004, which would be accompanied by a communication from the

Chairperson containing two additional elements: (i) a reference to the Fifth Ministerial Conference in 2003 as an opportunity to carry out a "stocktaking" of the progress made in the negotiations, and (ii) a reference to the possibility of a work programme in order to structure the Working Party's future activities in this field. At the meeting on 7 March, many delegations had indicated that this proposal was acceptable. Other delegations, however, had withheld their opinion in order to consult their capitals. The proposal had then been faxed on 8 March 2002 to each delegation in the three official languages. He stressed that this proposal was the result of what the Chairperson had been able to identify as a possible solution leading to consensus on this issue.

4. A representative of the Secretariat apologised for the premature distribution of document S/C/W/205, containing the Communication from the Chairperson of the Working Party and the Draft Decision on the extension of the deadline. This document, which had been prepared to be circulated at the beginning of the meeting of the Council for Trade in Services, had been circulated by mistake in this Working Party.

5. The representatives of the European Communities, Thailand, on behalf of ASEAN, Mexico, Brazil, Canada, New Zealand, Paraguay, Mauritius, Argentina, the Republic of Korea, Japan, Chile, Poland and Turkey thanked the Chairperson for the efforts he had made in attempting to find a consensus on the extension of the deadline.

6. The representative of the European Communities said that reaching a decision on this matter had been difficult. Her delegation could now accept the draft transmitted by the Chairperson on 8 March. The representative of Thailand, on behalf of ASEAN, recalled that ASEAN attached great importance to the issue of emergency safeguard measures. ASEAN greatly appreciated the efforts made by the Chairperson and was aware of the urgency of the matter. A successful conclusion of the negotiations under Article X would have a bearing on the overall services negotiations. ASEAN had difficulties with the proposal made by the Chairperson and wished to have more time to consult in order to come up with a positive solution. The representative of Mexico said that the proposal made by the Chairperson was the result of an intensive process of consultations. Although it was not Mexico's preferred option, his delegation was ready to accept this proposal.

7. The representative of Brazil said that the issue of emergency safeguard measures was important to his delegation. There seemed to be no objection to the idea of prolonging the negotiating deadline, which was now the main objective of the Working Party. The extension of the deadline should be kept separate from the idea, raised by some delegations, of conditioning availability of an ESM on achieving a higher level of liberalisation. Brazil wished to avoid a scenario where there would be no ESM and no meaningful liberalization. In fact, Members should aim at having both an ESM and meaningful liberalisation.

8. The representative of Canada said his delegation could support the proposal made by the Chairperson. It was a well-balanced and carefully crafted text. The representative of New Zealand said that, although it did not fully reflect New Zealand's interests, the proposal of the Chairperson represented the best possibility for reaching a consensus. It was now time to go back to substantive work. The representative of Paraguay said that his delegation had shown flexibility during the consultations with the objective of finding a consensus on the extension of the deadline. He was concerned about the possible adverse effects of an eventual failure to reach a consensus on this issue. The representative of Mauritius said that the Working Party had come a long way and was close to a solution. A decision should be made as soon as possible. The representative of Argentina said that the proposal made by the Chairperson was balanced and took into account the different positions which had been expressed on this issue. It was important to continue working on an ESM.

9. The representative of the Republic of Korea said that, although it did not reflect Korea's preferred option, the draft proposed by the Chairperson was balanced and his delegation was ready to

join the consensus to adopt it. It was now time to revert to substantive issues. The representative of Japan said that his delegation had difficulties with the subject of emergency safeguard measures, but was nevertheless ready to join the emerging consensus on the basis of the proposal made by the Chairperson. The representative of Chile said that, like others, his delegation was ready to agree to the text proposed by the Chairperson. Chile still remained to be convinced of the necessity to include an ESM into the GATS, but was nevertheless ready to continue working on this matter. The representative of Poland supported the proposal made by the Chairperson. A period of two years should be sufficient for Members to reach an agreement on safeguard measures. The representative of Turkey said his delegation could support the proposal made by the Chairperson.

10. The Chairperson called for all delegations' flexibility on this issue. He said that the formal meeting of the Working Party would resume on Friday 15 March, at 9 a.m. In the meantime, he would ensure that all delegations would be kept informed of new developments.

(b) Session of 15 March 2002

11. The Chairperson resumed the meeting of the Working Party. He reminded delegations that, during the meeting of 13 March, a number of delegations had indicated that they were ready to accept the proposal he had made on 8 March 2002 regarding the extension of the deadline under GATS Article X. Some delegations, however, had asked to suspend the meeting in order to continue consultations on this matter. On 14 March, he had sent a fax to all Members, inviting them to an informal meeting on the same day, at 6 p.m. He had attached to the fax a proposal by Thailand, on behalf of the ASEAN Members, whereby the second sentence of paragraph 2 of the Communication from the Chairperson would read: "The Chairman will carry out consultations to establish a programme structuring future work of the Working Party". In the informal meeting of 14 March, no delegation had opposed the change proposed by ASEAN. Consequently, he proposed to modify his original proposal in order to take into account ASEAN's suggested text. The date of 15 March 2004 stipulated in the draft Decision would remain unchanged. The draft Decision, as well as the Communication from the Chairperson, would be transmitted to the Council for Trade in Services for approval.<sup>1</sup>

12. It was so agreed.

## **2. Discussion on substantive issues**

13. The Chairperson said that, since its last formal meeting, the Working Party had held two informal meetings – 17-18 January 2002 and 12 February – which had allowed a debate on various written communications:<sup>2</sup> *Communication from Cuba, Guatemala, Honduras, Nicaragua and Dominican Republic*, JOB(01)/166; *Communication from the European Communities and Their Member States*, S/WPGR/W/38; and *Communication from Australia*, JOB(02)/8 and JOB(02)/9.

14. The representative of the European Communities recalled that the Communication contained in S/WPGR/W/38 had been presented during the informal meeting of 12 February. Her delegation was interested to hear delegations' views on this paper. She requested that S/WPGR/W/38 be derestricted.

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<sup>1</sup> See document S/C/W/205/Rev.1.

<sup>2</sup> The reports of these meetings are contained in documents JOB(02)/2 and JOB(02)/14.

B. NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

15. The Chairperson said that, in the absence of new contributions, delegations were invited to address the issue of subsidies on the basis of the Chairperson's Checklist contained in Job No. 4519/Rev.1 (6 October 2000). Delegations could comment on any point of that list.

16. The representative of Argentina said that his delegation was interested in substantive discussions. Work on this subject should continue.

17. The representative of Brazil said that this agenda item was important and work should be carried on in the coming months. Trade-distortive effects of subsidies were a matter of concern. In its communication on construction services and related services (S/CSS/W/113), Brazil indicated that subsidies played a crucial role in restricting access to foreign markets by developing country firms and proposed that that this issue be addressed in the negotiations in the context of the development of horizontal disciplines on subsidies under Article XV of the GATS, so as to ensure a level-playing field between developed and developing countries.

C. NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

18. The Chairperson proposed that delegations should continue their general exchange of views on any aspect of government procurement of services.

D. DATE OF THE NEXT MEETING

19. The Chairperson indicated that the next formal meeting of the Working Party was expected to take place during the week of 27 May. The definitive date would be communicated in due time.

E. OTHER BUSINESS

20. Nothing was raised under this agenda item.

F. APPOINTMENT OF THE CHAIRPERSON

21. The Chairperson said that, in accordance with the rules of procedure for meetings of the Council for Trade in Services (S/L/15), and which had also been adopted for this Working Party, the election of a new Chairperson was to take place at the first meeting of the year and take effect at the end of that meeting. However, given that the Chairperson of the Council for Trade in Services was still holding consultations on the issue, he proposed that the election of the new Chairperson take place at the beginning of the next meeting. It would be the first item on the agenda of the next meeting.

22. It was so agreed.

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