

Committee on Trade and Environment

ENVIRONMENTAL ISSUES RAISED IN THE SERVICES NEGOTIATIONS

Statement by Mr. A. Hamid Mamdouh¹ at the Regular Session
of the Committee on Trade and Environment of 29-30 April 2003

Paragraph 51

A. INTRODUCTION

1. The negotiations on trade in services began in January 2000, pursuant to Article XIX of the General Agreement on Trade in Services (GATS). In March 2001, the Special Session of the Council for Trade in Services adopted the *Guidelines and Procedures for the Negotiations on Trade in Services*², which provide the overall framework for the negotiations. During the initial phase of the negotiations, a large number of proposals were submitted by Members, on a wide range of sectors and horizontal issues, including the movement of natural persons. The Doha Ministerial Declaration marked the start of the market access negotiations; it called for Members to submit initial requests for specific commitments by 30 June 2002 and initial offers by 31 March 2003.

2. This briefing will focus on environmental services because it appears to be the most relevant environment-related issue under examination in the services negotiations. The briefing will start with an introduction to environmental services and will then give a brief account of the relevant issues raised in the Committee on Specific Commitments (CSC) and the Special Session of the Council for Trade in Services, where the subject of environmental services has been under consideration.

3. Before turning to environmental services, I would like to briefly recall that, pursuant to the Ministerial Decision on Trade in Services and the Environment, the Council for Trade in Services, at its meeting on 1 March 1995, adopted a Decision "[a]cknowledging that measures necessary to protect the environment may conflict with the provisions of the Agreement; and [n]oting that since measures necessary to protect the environment typically have as their objective the protection of human animal or plant life or health, it is not clear that there is a need to provide for more than is contained in paragraph (b) of Article XIV". It decided "[i]n order to determine whether any modification of Article XIV of the Agreement is required to take account of such measures (i.e. measures necessary to protect the environment), to request the CTE to examine and report, with recommendations if any, on the relationship between services trade and the environment including the issue of sustainable development. The CTE shall also examine the relevance of intergovernmental agreements on the environment and their relationship to the Agreement. The CTE shall report the results of its work at the first biennial meeting of the Ministerial Conference after the entry into force of the Agreement Establishing the World Trade Organization".³ We noted that the CTE reported on

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² S/L/93.

³ S/L/4.

this issue in its 1996 Report to the Singapore Ministerial Meeting⁴ and we understand that it is still under consideration. Hence, this topic has not been discussed in the Council for Trade in Services.

B. WHAT ARE ENVIRONMENTAL SERVICES?

4. In the Services Sectoral Classification List (MTN.GNG/W/120) developed during the Uruguay Round, and largely based on the United Nations Provisional Central Product Classification (CPC), the environmental services sector includes: (A) sewage services (CPC 9401); (B) refuse disposal services (CPC 9402); (C) sanitation and similar services (CPC 9403); and (D) other environmental services. Although the "other" category does not refer to any CPC item, it presumably includes the remaining elements of the CPC environmental services category, i.e. cleaning of exhaust gases (CPC 9404), noise abatement services (CPC 9405), nature and landscape protection services (CPC 9406), and other environmental protection services not included elsewhere (CPC 9409). This List has been used by many Members in their schedules of specific commitments.

5. To date, some 47 Members⁵ have undertaken specific commitments in at least one sub-sector of the environmental services sector. Most of them, however, have undertaken specific commitments in several, and for some Members, in all sub-sectors. The number of commitments across sub-sectors is roughly equal. As compared to other sectors, such as tourism, financial services or telecommunications, liberalization bound under the GATS in environmental services appears rather limited. However, one should remember that Members' policies may be more liberal in practice than what is reflected in their schedules.

6. Environmental services is a sector where most trade takes place through commercial presence (mode 3) with the accompanying presence of natural persons (mode 4). Cross-border trade (mode 1) and consumption abroad (mode 2) are of limited relevance; they may offer an avenue for some supporting services, but appear to be technically unfeasible for a number of relevant activities. These patterns are reflected in specific commitments undertaken by Members.

7. A survey of Members' schedules shows that mode 1 is often unbound, in part because some Members consider it not technically feasible. Commitments under mode 2 are rather liberal, reflecting a general trend across services sectors. Most commitments on environmental services focus on mode 3, while commitments on mode 4 are, as in other services sectors, limited to some particular categories of services providers. Overall, few market access and national treatment limitations have been schedules. However, the scope of the commitments is restricted in a number of schedules by horizontal limitations and restrictive definitions of the activities covered.

C. ENVIRONMENTAL ISSUES IN THE COMMITTEE ON SPECIFIC COMMITMENTS

8. In the CSC, Members began considering issues related to sectoral classification, including examination of the adequacy of the existing Secretariat Services Classification List (MTN.GNS/W/120). This was considered to be important to help prepare delegations for the new round of services negotiations.⁶ Some 4 years ago, the Committee agreed on a Member-driven process based on concrete proposals made by delegations. In this context, a detailed examination of various services sectors, including environmental and environmentally-related services, was undertaken.⁷

⁴ WT/CTE/1, paras. 153-158 and 210-211.

⁵ The 15 EC member states counted as one.

⁶ S/CSC/M/1.

⁷ S/CSC/4 and S/CSC/5.

9. Work on a revised classification of environmental services is currently based on proposals by the United States (S/CSS/W/25), the European Communities (S/CSS/W/38), Switzerland (S/CSS/W/76), Australia (S/CSS/W/112), Colombia (S/CSS/W/121) and Canada (Job No. 5542, 22 September 1999).⁸ These proposals generally share the view that the W/120 classification is no more adequate and should be revised so as to better reflect the current reality of the environmental services industry. Different solutions are proposed to address that problem.

10. The communication presented by the European Communities proposes the creation of seven sub-sectors based on the environmental media (air, water, soil, waste, noise, etc.); this is intended to reflect the way services providers tend to specialize and aims at ensuring a comprehensive coverage of the industry. The communication presented by Switzerland is close to the EC proposal, except for water distribution, which Switzerland has not included. Australia is in favour of broadening the current classification and supports in principle the approach proposed by the EC. The United States supports proposals that incorporate a core list of environmental services comprised primarily of the currently classified environmental services sectors. Canada proposes to revise the W/120 classification in the light of the definitions contained in the revised version of the CPC (CPC 1.0). Colombia considers it would be useful to establish a model list incorporating new services not already included in W/120.

11. Some Members (United States, EC and Switzerland) also propose that, in addition to the identification of "core" environmental services, a list be established which would comprise services which are not environmental *per se*, but which are nevertheless important to the provision of environmental services, for instance because they have environmental end-uses (such as engineering, R&D, etc). These environment-related services would be subject to a "cluster" or "check-list", that could be used as an *aide-mémoire* during the negotiations.

12. In the Committee, different views have been expressed on these issues and work is still proceeding.

D. ENVIRONMENTAL ISSUES IN THE SPECIAL SESSION OF THE COUNCIL FOR TRADE IN SERVICES

1. Issues raised in relation to environmental services

13. As mandated in Article XIX:1 of the GATS, a new round of negotiations in trade in services started on 1st January 2000, covering all services sectors.⁹ The negotiations take place under the aegis of the Special Session of the Council for Trade in Services.

14. Seven sectoral proposals have been tabled by Members on environmental services. These are proposals by the United States (S/CSS/W/25), the European Communities (S/CSS/W/38), Canada (S/CSS/W/51), Switzerland (S/CSS/W/76), Australia (S/C/W/112), Colombia (S/CSS/W/121) and Cuba (S/CSS/W/142). These proposals generally share the premise that increased liberalisation in environmental services could play a positive role to improve environmental protection and human health, assuming that appropriate domestic regulatory instruments are in place, and stress the potential for "win-win" situations, especially for developing countries. Colombia and Cuba add that negotiations will have to take into account the different levels of development of Members.

15. Three main themes seem to emerge from the proposals and the ensuing debate in the Special Session. Firstly, further liberalization is generally called for, in terms of both increased country coverage and reduction of barriers to trade across all modes. Commercial presence is often singled

⁸ JOB(02)/143/Rev.1.

⁹ *Guidelines and Procedures for the Negotiations on Trade in Services*, adopted by the Special Session of the Council for Trade in Services on 28 March 2001, S/L/93.

out as being the most important mode of supply and several proposals identify various market access barriers affecting this mode (equity limitations, restrictions on legal form, unspecified economic needs tests, monopolies, etc). Some Members also stressed the need for further liberalisation of mode 4, and, to a lesser extent, modes 1 and 2.

16. Secondly, some proposals raise regulatory issues, such as the need for increased transparency, implementation of Article I:3(a) of the GATS and recognition of environmentally-related professional qualifications acquired in the territory of another Member. The United States explicitly indicated that liberalization in environmental services must not impair the ability of governments to impose performance and quality controls on environmental services and to otherwise ensure that services providers are fully qualified and carry out their tasks in an environmentally-sound manner. Several Members shared the view that negotiations on environmental services should not impair Members' ability to regulate. Thirdly, most proposals identify classification as a significant issue for this sector and propose to improve the existing W/120 List. The classification component of these proposals is now under consideration in the Committee on Specific Commitments (see above section C).

2. Article 31(iii) of the Doha Declaration

17. In the course of the discussion on environmental services, a question was raised about the reference, in paragraph 31(iii) of the Doha Ministerial Declaration, to environmental services and whether it might affect work in the Special Session of the Council for Trade in Services. As he indicated in his Report to the Trade Negotiations Committee,¹⁰ Ambassador Jara, Chairperson of the Special Session of the Council for Trade in Services, has been consulting on this issue with the Chairpersons of the negotiating bodies concerned, Ambassador Girard for the Negotiating Group on Market Access and Ambassador Biké for the Special Session of the Committee on Trade and Environment. He noted that, in the Special Session of the Committee on Trade and Environment, there is broad support for the idea that the negotiations on environmental services be conducted as part of the overall services negotiations in the Special Session of the Council for Trade in Services.¹¹

¹⁰ *Statement of the Chairman of the Special Session of the Council for Trade in Services to the Trade Negotiations Committee*, 22 March 2002, TN/S/1.

¹¹ *Statement by the Chairperson of the Special Session of the Committee on Trade and Environment to the Trade Negotiations Committee*, 22 March 2002, TN/TE/1.