



Council for Trade in Services

REPORT OF THE MEETING HELD ON 5 DECEMBER 2008

NOTE BY THE SECRETARIAT¹

Addendum

As agreed at the meeting of the Council for Trade in Services held on 26 November 2004 (S/C/M/75), the statements relating to the modification or renegotiation of specific commitments pursuant to Article XXI of the GATS, which were contained in an informal document, are now circulated as an addendum to the meeting report.

Statements Made at the Meeting of the Council for Trade in Services
on 5 December 2008 Under Item E of the Agenda

This document² contains statements made by Members of the Council for Trade in Services under item E (Notification pursuant to GATS Article XXI) of the agenda contained in WTO/AIR/3290, relating to a notification made by Bolivia pursuant to Article XXI of the GATS (document S/SECRET/12).

E. NOTIFICATION PURSUANT TO GATS ARTICLE XXI

1. The Chairperson drew attention to a notification from Bolivia, made pursuant to GATS Article XXI (Modification of schedules). He recalled that, according to paragraph 1 of the *Procedures for the Implementation of Article XXI of the General Agreement on Trade in Services*, adopted by the Council on 19 July 1999 and contained in document S/L/80: "A Member intending to modify or withdraw a scheduled commitment in accordance with Article XXI (the "modifying Member") shall transmit a notification to that effect, no later than three months before the intended date of implementation of such modification or withdrawal, to the Secretariat which will distribute the notification to all other Members in a secret document. The intention by a Member to modify or withdraw scheduled commitments shall be included in the agenda of the next meeting of the Council for Trade in Services." The notification by Bolivia was contained in document S/SECRET/12, dated 11 November 2008. He noted that each delegation had received a numbered copy and recalled that, as agreed by this Council at its meeting of 26 November 2004 (S/C/M/75) with respect to records of discussions relating to negotiations under GATS Article XXI, the record of the statements made under this agenda item would be circulated in an informal document shortly after the meeting. It would be re-issued as an unrestricted addendum to the minutes of the meeting, after the conclusion of the negotiations under Article XXI and the certification of any changes to the relevant schedule of commitments.

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

² Previously circulated as JOB(08)/131, dated 11 December 2008.

2. The representative of Bolivia recalled that, on 6 November 2008, her delegation had notified to the CTS, in accordance with GATS Article XXI, the intention to withdraw its specific commitment on hospital services from the Health Services sector of its schedule, GATS/SC/12. Five reasons justified this notification: (i) make Bolivia's GATS commitments compatible with the new political Constitution of the State; (ii) ensure that GATS commitments were compatible with Bolivia's national health objectives and new government policies; (iii) ensure compatibility with international instruments on human rights; (iv) the position of Bolivia to withdraw basic services, such as health, education, water, energy and communication, from the scope of the GATS on the ground that they were human rights; (v) liberalization of health services had not translated into real benefits for the health of the people in Bolivia, especially for the poor and vulnerable. She further explained that, pursuant to article 18, chapter 2, of the new political Constitution of Bolivia, which dealt with fundamental rights, everyone was entitled to health. The State guaranteed the inclusion and access to health of all persons, without discrimination. The unique health system put in place by the new Constitution would be universal, free of charge, intra- and intercultural, participative, with all the necessary qualities and social values. It would be based on solidarity, efficiency and co-responsibility and would be developed through public policies at all levels of the government. Furthermore, there was an entire chapter on the right to health and social security. Article 35.1 of the new Constitution indicated that the State at all levels should protect the right to health, promote public policies directed to improving the quality of life and the general welfare, as well as free of charge access by the population to health services. Article 12 said that the health system was a single one and included the traditional medicine, as carried out by indigenous people. In article 36.1, it was stated that the State should guarantee access to universal health insurance. Article 37 referred quite clearly to the fact that the State had the absolute obligation of sustaining a right to health as one of its primary financial responsibilities. Secondly, the Bolivian State had adopted new health objectives in order to put an end to social exclusion, which had been deepened by neo-liberal policies, to the privatization of the sector, to the merchandisation of services and to the establishment of an individualistic culture for health. According to the new plan, health was a fundamental social and human right, not a merchandise, and it was the function of the State to protect it. Social considerations prevailed. One of the objectives contained in the national development plan tried to eliminate the social exclusion which had been provoked through the liberalization of the health sector, in particular with the implementation of a single system, which would be intercultural and of a community nature, and which would include traditional medicine. This system would be inclusive, equitable, based on solidarity, and of quality, which was potentially incompatible with Bolivia's GATS commitments.

3. Concerning the third point, the representative of Bolivia noted that the entitlement to health was contained in many international and regional human rights treaties to which Bolivia was a party. Article 12 of the UN Covenant on Economic, Social and Cultural Rights (UNCESCR) spelt out "the right of everyone to the enjoyment of the highest attainable standard of physical and mental health". Among the measures to be adopted by the State in order to ensure the full effectiveness of this right, conditions had to be created so as to ensure that everybody obtained the necessary medical healthcare. According to General Comment No. 14 on Article 12 of the UNCESCR, the right to health in all its forms and at all levels included, among others, "availability" (each State needed to have a sufficient amount of health establishments, goods and services, as well as programmes), and "accessibility" (health establishments, goods and services should be accessible to everyone without any discrimination). With respect to the fourth point, she explained that, for Bolivia, basic services, such as water, health, energy, education and communication, among others, were human rights which could not be the object of private business and liberalization, because, inevitably, this would lead to privatization and create problems of accessibility for the population in general, and in particular for the poorest among them. For this reason, her delegation had stated on numerous occasions, that it was fundamental to preserve these basic services as human rights. It was Bolivia's view that the WTO should initiate serious discussions so that these services be recognized as human rights and be totally excluded from the scope of the GATS. Finally, in Bolivia's view, the liberalization of the health sector had not translated into real benefits for the health of the population. None of the possible opportunities offered by liberalization of trade in services had become reality in Bolivia, nor had it contributed to improving the quality and efficiency of the supply. The study called "Social Exclusion in Health in Bolivia", carried out by the Pan-American Health Organization, had come to the conclusion that seventy-seven percent of the Bolivian population was excluded one way or another from health services. Maintaining the liberalization of this sector could increase problems of access to the services, which would affect more particularly the poorest and most vulnerable, such as indigenous people. Furthermore, the reduced size of the Bolivian economy, the high level of poverty and unemployment did not make the market attractive for foreign investments. Her

delegation had not come across any data which showed that somehow, the current of investments had started thanks to the liberalization of this sector.

4. The representative of the European Communities said that her delegation had carefully assessed the notification made by Bolivia. The EC did not intend to file a claim of interest in this case. This was, however, without prejudice to other notifications made under GATS Article XXI.

5. A representative of the Secretariat indicated that, due to the end-year closure of the WTO, and in accordance with the practice regarding legal deadlines, the deadline for filing claims of interests was postponed until 5 January 2009.

6. The Council took note of the statements made.
