

**Committee on Specific Commitments**

**REPORT OF THE MEETING HELD ON 5 OCTOBER 2016**

NOTE BY THE SECRETARIAT<sup>1</sup>

The Committee on Specific Commitments (CSC) held a meeting on 5 October 2016 chaired by Mr. Changtian Han from China. The agenda for the meeting, contained in WTO/AIR/CSC/6, was adopted.

**1 ITEM A - SCHEDULING ISSUES**

1.1. The Chairman recalled that a proposal from the delegation of Turkey (contained in document JOB/SERV/224, dated 29 February 2016) had previously been submitted to the Committee under this item, which was aimed at reviving the Committee's discussion on economic needs tests (ENTs). Noting problems arising from vague and ambiguous ENT entries in Members' schedules, Turkey had proposed further work in the Committee, including: (1) an update of the Secretariat's Note on ENTs by examining the schedules of new Members and revised offers; (2) a review of Members' ENT entries in FTAs with a view to developing an acceptable definition and scheduling method of ENTs; (3) an exchange of information by Members on ENT requirements specified in their legislation and *de facto* application of ENTs, on a voluntary basis; (4) identification of common elements in criteria for ENTs by mode and sector.

1.2. The Committee had only agreed to task the Secretariat to update its Note on ENTs by examining the schedules of newly acceded Members. Accordingly, the Secretariat had issued the second addendum to its Note on ENTs, which was contained in document S/CSS/W/118/Add.2 and had been presented at the Committee's last meeting. In the follow-up discussions, it had been recognized that the new addendum to the Secretariat's Note had strengthened the need for further work on ENTs, as it had shown that not only had the total number of scheduled ENTs increased, but also that ambiguous and unspecified ENT entries continued to be a problem. Nevertheless, there had been no agreement on how the Committee should proceed with Turkey's other proposals.

1.3. The Chairman noted that during his consultations, delegations had reiterated their general support for further work on ENTs. He urged Members to make concrete progress at this meeting. In addition to ENTs, he had consulted with Members on other scheduling issues as reflected in the Annotated Agenda. He noted some positive feedbacks, including indications of interest in work on some specific issues, such as localization requirements.

1.4. The representative of Ecuador referred to the document submitted by the delegation of Turkey and the documents provided by the Secretariat with respect to ENT entries in Members' schedules in different modes of supply and sectors. The fact that the ENT application criteria were not clearly defined in most cases led to ambiguity and uncertainty of commitments. ENTs were mentioned in GATS Article XVI as a form of limitation on market access, but the GATS was silent about the definition of ENT and its application criteria. The main problem was how to reduce the degree of subjectivity of ENTs. From various analyses previously made, it could be concluded that ENTs constituted a major barrier to services trade, particularly to mode 4. The application of ENTs by Members, without clear definitions, parameters or application procedures, would affect trade in services. Ecuador therefore suggested that, complementary to the documents previously prepared, the Secretariat conduct an analysis of the degree of ENT's restrictive effects on market access,

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

based on the guidelines provided by the UN Manual on Statistics of International Trade in Services, taking into account implications for each mode of supply. Built upon the analysis of the Secretariat, certain guidelines, criteria, definitions or procedures on ENTs might be established at the multilateral level and, if applicable, for each mode of supply. This suggestion was made for the sole purpose of moving forward the work on ENTs.

1.5. The representative of China noted that the issues and proposals raised by Turkey were worth further consideration. Clearer and more commonly accepted criteria for ENTs could increase the transparency and legal clarity of Members' commitments and help reduce ambiguous scheduling practices. There might be a need to come back to this topic with more in-depth discussion after a substantial information-sharing exercise.

1.6. The representative of the European Union reiterated his delegation's support for further work on ENTs. Seeking clarification again on Turkey's proposal for the Secretariat to examine ENTs in FTAs, he was open to a Member-driven process proposed for the exchange of information with respect to domestic practice on ENTs. Referring to the proposal by Ecuador, he thought that quantifying the level of restrictiveness of existing ENTs went beyond the issue of scheduling and was not within the scope of discussion under this item. In general, his delegation was interested in more discussions on scheduling issues, which should be the main work of the Committee in the future. His delegation was reflecting internally on topics to be prioritized and some domestic consultations were on-going.

1.7. Reiterating her delegation's support for work on ENTs, the representative of India endorsed Turkey's proposal for the Secretariat to analyse ENTs in FTAs and offers. More time was probably needed to specify what was expected from the analysis, but this was a worthwhile exercise. India would support any future work in this area.

1.8. The representative of Ecuador explained that his delegation's proposal was to request the Secretariat to undertake an analysis of levels of restriction on market access represented by ENTs. For this purpose, it would be useful to take guidance from the Manual on Statistics of International Trade in Services. This document had been edited by the Statistics Division within the Economic and Social Affairs Department in February 2010 and adopted by the UN Statistics Commission at its 41st periodic session. The Manual set out an internationally agreed framework for the compilation and submission of statistics for international trade in services, which would contribute to facilitating services trade negotiations. Seven organisations and agencies had participated in revising the Manual, including the WTO, IMF, UNCTAD, OCDE, and Eurostat. Ecuador felt that this document would be useful for the Committee to continue with its work.

1.9. The representative of Canada reiterated his delegation's interest in the Turkish proposal. In general, Canada was willing to engage in the discussion on scheduling issues which could be a useful focus for the Committee. He stressed that the Committee's work should be member-driven. Noting general support for the Turkish proposal, he urged Members to engage in substantive discussions. Members could start with sharing their experience on ENTs if they felt comfortable with this. Reacting to the proposal from Ecuador, he shared the view of the EU that an economic study on the impact of ENTs went beyond the issue of scheduling.

1.10. The representative of Australia stated that her delegation had expressed strong support for work on ENTs since the proposal had initially been tabled. Interested in all of the ideas raised in the Turkish proposal, Australia wished to see them turned into something concrete. For Australia, the next step could be an exchange of information between Members on their experience in scheduling ENTs.

1.11. The representative of Singapore noted that the list of examples regarding scheduling practices arising from the Chairman's consultations provided a good direction for Members to continue discussion. Singapore was interested in further work on scheduling issues. For example, it would be interesting to hear Members' views about references to laws and regulations of general application in a schedule.

1.12. The representative of Seychelles stated that her delegation supported Turkey's proposal and further discussion on scheduling and exchange of information with respect to ENTs. As one of the

Members who had entered ENTs in their schedules with clear criteria, Seychelles was interested to know how other Members scheduled ENTs.

1.13. The representative of the United States questioned the purpose of discussion in the Committee in the absence of actual market access negotiations. Regarding Turkey's proposal, he indicated that no answer was given to the questions his delegation had previously raised, such as where the work was heading, what specificity could be added to what the Secretariat was being asked to produce, and what was the problem to be addressed. Noting no progress on Turkey's proposal, he thought that this might be due to lack of clarity. He therefore sought specificity and clarity again from Turkey on its proposal. On Ecuador's proposal, he shared the concerns expressed by other delegations.

1.14. The representative of Turkey recalled that his delegation had submitted its paper on ENTs during the March cluster of 2016, hoping for a lively debate on how Members could address the problem. It had been acknowledged that ENTs had been scheduled in an ambiguous manner. Lack of clarity and precise criteria for application created chilling effects on service suppliers. Ambiguous ENTs also breached one of the fundamental principles of the GATS, which was transparency. ENTs allowed for discrimination and arbitrariness in the market and made it difficult to assess compliance with commitments. While it was recognized that ENTs in Members' schedules were problematic, the discussion in the Committee as to how to address this problem had been insufficient. His delegation's paper on ENTs aimed to foster discussion in this respect with a view to exploiting Members' experiences. Turkey thus had made four proposals in its paper as noted by the Chairman in his introductory remarks. The Secretariat fulfilled the first proposal by circulating an addendum to its Note which covered ENT entries in newly acceded Members' schedules. There was no consensus on other proposals for the Secretariat to undertake relevant studies. He believed that the proposed studies would help Members have a better knowledge of the magnitude and nature of the problem and find possible solutions to it. He welcomed Members' willingness to share their experience on ENTs. Taking note of the questions raised, his delegation would provide more details at the next meeting.

1.15. The representative of the Secretariat shared the concerns expressed about Ecuador's proposal which seemed to be an exercise of analysing the cause - effect relationship between ENTs requirements and the degree of their restrictiveness in services market. The Secretariat might not be in a position to conduct such analysis due to lack of information. The problem with ENTs was that relevant entries without the application criteria did not provide any certainty to commitments. This was a scheduling issue, while an economic analysis of the effect of ENTs was a different matter. Even from a methodological point of view, it would be difficult to analyse the impact of a measure when the definition of the measure was ambiguous.

1.16. The representative of Ecuador explained that the purpose of his delegation's proposal was to move forward the discussion on ENTs as there was no analysis on their restrictive impact on services market. He expressed thanks for the comments made by other delegations and would report them back to the capital. His delegation was open to further discussions.

1.17. The Chairman noted the general willingness to continue the discussion on ENTs and other scheduling issues. He would continue with his consultations on how to proceed with Turkey's proposals as well as the work on other scheduling issues. He then suggested that the Committee take note of the statements made and revert to this item at its next meeting.

1.18. It was so agreed.

## **2 ITEM B - CLASSIFICATION ISSUES**

2.1. The Chairman recalled that there had been no substantive discussion on any specific classification issues at the last meeting, though some Members had continued to express general interest in further discussion in this regard. He had held consultations on possible future work under this item. Questions subject to consultations included: whether it was desirable for the Committee to examine the correspondence between W/120 which was based on the CPC Provisional, on the one hand, and the CPC version 2.1, on the other hand; whether it was worth giving a closer look at some outstanding issues, in particular the classification of services involved

in e-commerce, as well as services related to environmental goods, which were not easily identified in the current classification system.

2.2. The representative of China noted that the sectoral classification applied in the schedules of specific commitments of WTO Members, i.e. W/120 and the Provisional CPC, was developed more than 20 years ago. Subsequent evolution of services industries and market reality needed to be reflected properly in a classification system serving future negotiations, if there was to be one. Therefore, without prejudice to the legal certainty of existing commitments, the Committee should continue the technical discussion on classification issues. An issue of interest for China was new services. In China's view, cloud computing and social networking services fell into the category of new services as they could not be captured properly by any service sector in the provisional CPC, nor could they fit neatly in the current WTO classification system. For example, given that public cloud services normally included IaaS (Infrastructure as a service), PaaS (Platform as a Service) and SaaS (Software as a Service), different types of cloud services should be classified on a case-by-case basis, as opposed to the practice of treating the whole set of cloud services as computer-related services. China suggested that Members exchange information on their regulation and classification practices with respect to the above mentioned services and that the Secretariat compile such information and assist Members in relevant analysis.

2.3. Referring to the questions raised by the Chairman in consultations, the representative of Australia stated that her delegation continued to have interest in discussions on scheduling and classification issues. However, discussions had proved most productive when they could support or fit into active negotiations. Noting that there was a growing services agenda where a lot of interesting ideas were currently under discussion, Australia believed that, as these ideas were further developed in other bodies, they could be of value in complementary discussions in the CSC. Examples could include discussion on ICT related classification issues as the shape of the e-commerce agenda became clearer or discussion on the scheduling of localisation measures as part of any discussions on trade facilitation under mode 1. The Committee could also pick up any issues related to MFN exemptions resulting from the current MFN exemption review once it was concluded. Open to suggestions from other Members, Australia would continue to consider what discussions might be most useful in the context of a broader services agenda.

2.4. Regarding the suggestion raised by China, more information was needed as to how the suggested work could build on previous discussions in the CSC. Recent discussions on new services had been very useful and thorough, but Australia considered that the topic had been exhausted. Australia disagreed with China's presumption that those discussions had drawn any conclusions linking cloud computing to new services. In Australia's view, cloud computing fit very well within the existing classification under the GATS. Australia was willing to have a further discussion or exchange of information on the classification of cloud computing and computer related services if it was clear that this would build on previous work without repeating the previous discussions in this Committee.

2.5. The representative of Canada echoed Australia's intervention. He added that a negative list approach to scheduling would obviate a need to debate on new services and improve the quality of commitments.

2.6. The representative of the European Union sought clarification from China on the objective of the suggested discussion. He recalled previous discussions in the Committee on new services, including the presentation by the UN statistical officer about the exhaustiveness of CPC. He disagreed with the interpretation that cloud computing was not covered by the existing classification. For the European Union, cloud computing was computer related services.

2.7. The representative of the United States echoed the previous interventions, reiterating that the discussion on new services had been exhausted and that the negative list approach would be beneficial in this area.

2.8. The representative of China stressed again that W/120 and the provisional CPC had been developed more than 20 years ago and that classification should respond to the evolution of the services industry. What his delegation had suggested was an exchange of information on a voluntary basis, which could be done in an informal mode if Members preferred to do so.

2.9. The representative of the Secretariat recalled that previous discussions in the Committee had covered cloud computing, though they might not be conclusive and had not resulted in any convergence. Previous discussions had been centred on whether new technologies necessarily created new services and whether certain services were genuinely new or simply supplied through new means of delivery. These issues had also been addressed in a number of services related disputes. If requested, the Secretariat could provide references to relevant documents.

2.10. The Chairman noted that divergence remained on whether the consideration of new services should continue. He also noted interest in having discussions on some specific classification issues. He therefore urged Members to come up with concrete contributions in this regard. He then suggested that the Committee take note of the statements made and revert to this item at the next meeting.

2.11. It was so agreed.

### **3 ITEM C – FUTURE WORK AND TIMING OF THE NEXT MEETING**

3.1. The Chairman suggested that he would hold consultations on the timing of the next meeting and inform Members of that in due course.

3.2. It was so agreed.

### **4 ITEM D - OTHER BUSINESS**

4.1. No delegation made interventions under this item. The Chairman adjourned the meeting.

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