



**Committee on Specific Commitments**

**REPORT OF THE MEETING HELD ON 15 MARCH 2017**

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

The Committee on Specific Commitments (CSC) held a meeting on 15 March 2017 chaired by Mr. Changtian Han from China. The agenda for the meeting was contained in document WTO/AIR/CSC/7. The chairperson indicated that since the consultations on the appointments of chairpersons were still under way, the handover of the chair of the Committee due to take place at the end of the meeting would be postponed pending the outcome of such consultations. He suggested therefore that the Committee did not address the agenda item on the appointment of the new chairperson. With that modification, the agenda was adopted.

**1 ITEM A - SCHEDULING ISSUES**

1.1. The Chairperson 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. This document was aimed at reviving the Committee's discussion on Economic Needs Tests (ENTs). The proposal had received general support, as Members had recognized that numerous ambiguous ENT entries in schedules had undermined the value of specific commitments under the GATS. While the need for further work on ENTs had been noted, there had been no agreement on how to proceed with Turkey's proposal. At the previous meeting, a number of delegations expressed their willingness to engage in an information exchange exercise on ENTs as suggested by Turkey. This exercise would depend on Members' initiatives. Noting general support for further work on ENTs during his consultations, the chairperson hoped that such support could be turned into concrete progress.

1.2. As already indicated by Members, numerous ambiguous ENT entries in schedules had put into question the legal certainty of specific commitments, especially due to lack of transparency and predictability. He therefore invited Members to consider how the Committee could contribute to overcoming or minimizing this problem, taking into consideration the proposal from Turkey. One option might be to make entries clearer and provide more transparency to the application or administration of scheduled ENTs. Recalling the interest shown by delegations at previous meetings, he also encouraged Members to consider other scheduling issues, bearing in mind the role of the Committee in the overall services agenda.

1.3. The representative of Turkey stated that her delegation's paper on ENTs, submitted for the meeting of March 2016, aimed at bringing clarity to ENTs inscribed in Members' schedules so that they did not become indirect barriers to trade in services. Turkey was of the view that Article 5 of the Trade Facilitation in Services Agreement (TFS) proposed by India adequately addressed problems arising from scheduled ENTs due to lack of clarity, transparency and predictability. Turkey suggested that the Committee focused on the acceptability and formulation of Article 5 of the proposed TFS. Turkey invited other Members to express their positions and views on this article.

1.4. Supporting Turkey's statement, the representative of Brazil noted that the best way forward to pursue the discussion on ENTs, and to clarify related entries, was to focus on Article 5 of the proposed TFS.

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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.

1.5. The representative of India stated that Article 5 of the proposed TFS had been inspired by document JOB/SERV/224 and discussions with Turkey. While looking forward to discussing ENTs, India would approach such a discussion in the context of its TFS proposal. India welcomed Members' comments to fine-tune the text and take the discussion forward.

1.6. The representative of Brazil agreed with India that Article 5 of its proposal should rather be reviewed during the general discussion on the proposed TFS. He did not see a need to discuss it in the context of the CSC.

1.7. The Chairperson suggested that the Committee take note of the statements made and revert to this item at its next meeting.

1.8. It was so agreed.

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

2.1. The Chairperson recalled that divergent views had been reiterated at the previous meeting with respect to the issue of "new services". For a number of delegations, the Committee had exhausted the discussion on this topic. Nevertheless, some others expressed interest in further exploring related issues. Despite the divergence of views, the discussion at the previous meeting, as well as consultations held with delegations, suggested that there was still interest in having discussions on ICT related classification issues, and other matters, especially in the context of the e-commerce agenda. He invited Members to consider whether and how the Committee could undertake meaningful work in this area.

2.2. The representative of China referred to two issues relating to classification. First, China took issue with the view that the discussion on "new services" had been exhausted. In China's view, the classification of "new services" was far from clear and warranted further discussion. China noted that in W/120 a sub-sector with the title "other" appeared under various sectors and subsectors. By analogy, one could regard a sub-sector named "other" as an anonymous person and subsectors with specific labels as persons with names. Some viewed subsectors entitled "other" as a catch-all title for services related to that sector or subsector, but not elsewhere classified. The problem was that the scope and coverage of these so-called "other" subsectors were not clearly defined. Therefore, multiple scenarios were possible: (1) a "new service" might fall under one particular subsector named "other" as listed in W120; (2) a "new service" might be a combination of several subsectors named "other" as listed in W120; or (3) a "new service" might be a combination of one subsector named "other" and subsectors with specific names as listed in W120. Given the complexity of this issue and its direct relevance to the implementation of specific commitments by Members, it would be useful, important and appropriate to continue in-depth discussions in the CSC on how to classify "new services". He therefore proposed that the Secretariat further study the issue of "new" services and prepare a report before the next meeting of the CSC.

2.3. Second, China noted that some Members frequently used the term "digital trade" in WTO discussions on e-commerce. In certain instances both terms were used together, while in other cases only "digital trade" was used, as if it was synonymous with "e-commerce". China took this opportunity to bring to the Members' attention the distinction between the two terms. The General Council decision establishing the Work Programme on Electronic Commerce (WT/L/274) defined "e-commerce" as "the production, distribution, marketing, sale or delivery of goods and services by electronic means", and mandated the General Council and relevant WTO subsidiary bodies to examine e-commerce. In order to fulfil that mandate, discussions should respect this definition, and use the commonly-agreed term as such.

2.4. Noting that there was no WTO mandate on digital trade per se, let alone rule-making on digital trade, China expressed the concern that the interchangeable use of those two terms might cause misunderstanding and confusion in the future work on e-commerce. During internal consultations, stakeholders, including business representatives, had questioned the distinction between the two terms, as they appeared in some Members' communications. China had heard diverging views. Some experts considered that electronic commerce, as defined in the WTO, was a much broader term than "digital trade". In their view, the term "electronic commerce" covered both trade in goods and trade in services, while "digital trade" potentially related to only some

aspects of e-commerce. Some other experts were of the view that these two terms had different scopes, albeit with some overlap. China expressed the interest in hearing other Members' views on this issue. China proposed that Members refrain from using the term "digital trade" in the context of WTO discussions on e-commerce, and that the Secretariat study the distinction between e-commerce and digital trade and prepare a report before the next meeting of the CSC to be considered under the agenda item on classification issues.

2.5. The representative of the European Union reiterated his delegation's position that the CSC had exhausted the discussion on the issue of "new services". "New services" meant "new ways to provide services", which could be linked to subsectors in the classification. It was important not to confuse two separate concepts. Even if there were to be a concept of "new service" – that the European Union contested – it was not because a service was delivered differently or provided through the Internet that the service became "new" and could not be classified in the existing classification system. One of the good examples put forward in the past was mobile banking, which was provided in a manner different from traditional banking but remained a banking service. His delegation failed to see value in further discussions or in another report by the Secretariat on the issue of "new services" as requested by China.

2.6. The European Union also had concerns with respect to China's request for discussion on the distinction between "e-commerce" and "digital trade". There was no need for such discussion and Members were free to choose terminology to describe their trade objectives. The indicative definition of e-commerce contained in the Work Programme was useful and comprehensive. E-commerce or digital trade was a form of trading goods and services, embedded in all WTO trade agreements. It was unclear where a discussion on the definition, as requested by China, would lead.

2.7. The representative of Brazil also questioned the usefulness of China's first request. With respect to China's second request, he asked why it was raised in the CSC. In addition, the only definition of e-commerce in the WTO was the one contained in the Work Programme, and no delegation had attempted to change it. The use of a different wording would not necessarily imply a change of definition. He sought clarification from China on the reasons for its concern when the work on e-commerce was being conducted in the WTO based on the available definition. He also asked why discussions should be detracted by trying to find a definition before moving forward.

2.8. The representative of Canada thanked China for its efforts to stimulate some substantive discussion in the CSC. With respect to the issue of "new services", the value of services commitments was that they created a predictable trading environment. In order to achieve that, the GATS operated under some important principles, notably that obligations under the GATS, including commitments undertaken by Members, were technologically neutral. Another important principle was that the classification under W/120, based on the Central Product Classification Provisional, was an exhaustive list covering all services. No service fell outside the scope of the classification used by Members. Canada went further in its FTAs, where a negative list approach to scheduling had been adopted, which eliminated uncertainty. Canada was not convinced that further discussion on the issue of "new services", as requested by China, would add value to the work of the Committee. With regard to the issue of "e-commerce" versus "digital trade", Canada agreed with Brazil. It was unclear why China brought this proposal to the CSC rather than raising it in the dedicated discussion under the e-commerce Work Programme. This proposal did not relate to scheduling or classification issues. Canada had great interest in participating in substantive discussions on e-commerce in the WTO and was pleased that Members were ready to engage on a bottom-up exploration of the relevant trade policy issues. These discussions should prove useful in narrowing the knowledge gap and building trust amongst WTO Members around e-commerce. As mentioned in the mapping paper co-sponsored by Canada (JOB/GC/116), the definition of e-commerce contained in the 1998 General Council Decision establishing the e-commerce Work Programme was sufficient to cover all the concepts that Members wanted to address in the WTO. At this stage, Canada preferred to proceed with work on concrete issues rather than debating definitions.

2.9. The representative of the Plurinational State of Bolivia noted some merits in China's proposal for work on the distinction between the two terms. In various workshops and seminars on electronic commerce, terms such as digital trade, electronic commerce, and cross-border transfer of data were used almost as synonyms. He did not think that these were synonyms. An academic exercise would be useful to clarify the meanings of these terms. He questioned however whether

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the CSC was the right body to discuss this topic. All such proposals, including those on definitions, should be made in the framework of the e-commerce Work Programme.

2.10. The representative of Australia stated that W/120 was an exhaustive list of service sectors/subsectors and that any new means of delivery could be linked to an identifiable service in W/120. Australia shared the view that there was no value in further Secretariat work on the issue of "new services", which had been well covered in previous CSC discussions. On the second issue raised by China, Australia echoed other delegations' comments that there was no need to examine a potential distinction between "e-commerce" and "digital trade". In Australia's view, China's suggestion was not helpful for advancing either the services or the e-commerce agenda in the WTO. The Work Programme on electronic commerce had already defined the term "e-commerce" for its use within the WTO.

2.11. The representative of Korea echoed Australia, the European Union and Canada in stating that the Work Programme's definition agreed in 1998 was sufficient. She did not see the value that might be added to the discussion by making a further distinction between e-commerce and digital trade.

2.12. The representative of Argentina also referred to the question of definition, indicating that it was probably not appropriate to consider the terms when a definition was already available in the Work Programme on electronic commerce. Such discussion would not contribute to any progress in services, nor in e-commerce.

2.13. The representative of Mexico supported the views of other delegations on this issue. Mexico did not see the need to deepen debates on the definition of electronic commerce. The definition in the Work Programme was sufficient for work in the WTO context. The discussion proposed by China could divert attention from the main objectives.

2.14. The representative of China responded to delegations' questions and comments. First, China's interest in learning more about "new services" was not to challenge W/120. On the contrary, China relied on this important document. Due to rapid technological development, regulators had difficulty in defining a "new service" and linking that to specific commitments. Businesses kept using new and innovative terms to describe the services they wanted to offer. It was challenging for regulators to understand what they meant and relate those services to China's specific commitments. This was the reason why China wanted to improve its understanding on how to address this classification issue.

2.15. Second, the reason for requesting the Secretariat to build on its previous work was that the existing informal note entitled "Compilation of the Discussions on Classification Issues", dated 14 March 2014, touched only briefly upon the issue of "new services" and failed to provide sufficient guidance on how to address it in reality. China therefore thought it meaningful and appropriate for the CSC to provide further guidance and ask the Secretariat to assist in improving Members' understanding.

2.16. Third, China had doubts on the argument that "new services" were new ways of delivering services. "New services" might involve new forms or ways of delivery, but there might be other possibilities. For example, a new service might be a combination of existing subsectors named "other" and part of another subsector with a specific name. A new service might also be a combination of different things. New ways of delivery was only one out of many options. China was not convinced by the arguments provided, but took note that Members had diverging views.

2.17. Fourth, with respect to the concern that a debate on the distinction between digital trade and e-commerce would derail or distract discussions on e-commerce, he explained that the sole purpose of China's proposal was to facilitate the discussion. The proposal was based on China's experience in soliciting input from domestic stakeholders. China found that the random use of terms had caused a lot of confusion and had rendered domestic stakeholders hesitant to engage in WTO discussions on e-commerce. Stakeholders wanted to be reassured that all WTO Members would respect the agreed definition adopted in 1998.

2.18. Finally, China questioned the argument that the negative listing approach could solve the problem of uncertainty. Most recent negative list approach agreements referred to "new financial

services." If "new services" could be addressed effectively by using a negative list approach, he wondered why there was a need to use the terminology "new financial services". The issue of "new services" was not limited to the financial sector. It also appeared in ICT related services. In conclusion, China was mindful of Members' concerns and would seek further inputs from domestic stakeholders. If necessary, China would table a written proposal to clarify its position.

2.19. The representative of Canada reiterated the points made in previous meetings on the definition of "new services" and the Understanding on Commitments in Financial Services. He stated that the reason new financial services were defined in the Understanding was because there was a positive obligation to allow people to provide new services. Outside of that context, there was no value in trying to come up with a definition of "new services". He was concerned that Members might start interpreting their commitments as only applying to services that had previously been supplied in their territory. This would severely narrow the scope of commitments and was therefore undesirable.

2.20. The representative of South Africa agreed with China that a better understanding on the classification of "new services" was needed. Her delegation was open to a discussion on this subject. The fact that there was no agreement meant that a discussion was necessary, bearing in mind the several non-papers that were on the table on the issue. On the definitions of "e-commerce" and "digital trade", South Africa also observed that there were references in the various non-papers by Members to terms such as digital trade, digital economy or digital products. These terms were used interchangeably with the term e-commerce by some Members. South Africa viewed the term digital trade as being much broader than e-commerce as defined under the Work Programme. She urged proponents to restrict their non-papers and proposals to those terms agreed in the WTO. Her delegation favoured a more detailed discussion on the issue at the following meeting, and looked forward to China's submission in writing.

2.21. The representative of Australia noted that there were indeed challenges for translating the work of the WTO when discussing with service suppliers as the language used in the WTO context did not necessarily reflect commercial terms. But that did not require theoretical discussions. Some issues might deserve more in-depth consideration between interested Members. Those Members could come up with issues that might warrant further discussion in the CSC. At this stage, Australia was not sure whether there was something to add to the discussion. While recognizing the value of previous discussions on "new services", Australia did not believe that further discussion would be useful as there were clearly diverging views among Members on this topic. Further thinking between interested Members would be required to work out how to reframe constructive discussions in the future.

2.22. The representative of Brazil echoed Australia's statement. No one questioned that classification was fundamental. Members needed to be cautious before entering into theoretical discussions. It was important to make the best use of the remaining time up to MC11.

2.23. The representative of the Secretariat first recalled the need to distinguish legal definitions from working definitions. Those raised in the meeting were the working definitions within the Work Programme, which were different from the legal definitions that determined the rights and obligations of Members under WTO agreements, including the GATS. Legal definitions could only be found in legal instruments, such as the GATS. He noted that the terms "e-commerce" or "digital trade" did not appear in the GATS.

2.24. Second, Members' deliberations and conclusions regarding the application of the GATS to e-commerce activities could be found in a report adopted by the Services Council in July 1999 (S/L/74). This document reflected the collective understanding of the membership on the topic. It reviewed the provisions of the GATS and clarified their application to e-commerce activities. The definition of trade in services, i.e. the production, distribution, marketing, sale or delivery of services, was what prevailed. Anything captured by this definition fell within the scope of the GATS, whether it was called e-commerce, e-trade, digital trade or something different. These terms did not define Members' rights and obligations. There was always a need for translation from WTO legal terminology into business reality.

2.25. Finally, it was important to keep in mind that the classification system adopted by the drafters of the GATS was product-based, guided by the Central Product Classification system. One

of the confusions arising from technology and evolving business models concerned the distinction between a business model that might combine a number of services and the service itself as a single product. A business model might encompass several services products but this did not mean that this kind of combination or this kind of package in itself was a new product. The conceptual distinction between a business model and a single product might help determine, in a particular situation, whether a "new service" was genuinely new, or was, rather, a business model consisting of a package of a few other products.

2.26. The representative of China referred to document S/L/74. China made the proposal to further examine this issue based on three paragraphs of that document. The last sentence of paragraph 4 stated that "[s]ome delegations expressed a view that these issues were complex and needed further examination." Paragraph 5 mentioned that "[i]t was recognized that services could be supplied electronically under any of the four modes of supply. However, there was particular difficulty in making a distinction between supply under modes 1 and 2 in the case of electronic commerce, and no conclusion was reached as to how to clarify the matter, and it was agreed that further work is necessary". Finally, paragraph 6 indicated that "[s]everal delegations expressed the view that all products delivered electronically are services and that in the context of the Work Programme it would be useful to make clear that the GATS applies to all products delivered electronically. Other delegations said that it was not clear to them that all electronically delivered products are services and that if there were some which would not be considered services, rules other than those of the GATS would apply to them. It was suggested that further work on this issue was necessary". These paragraphs mandated Members to work further on the issues.

2.27. In conclusion, the Chairperson noted divergent views on whether to continue the discussion on "new services", as well as on the distinction between e-commerce and digital trade. There was no consensus on China's request for a study by the Secretariat on these issues either. He suggested that the Committee take note of the statements made and revert to this item at the next meeting.

2.28. It was so agreed.

### **3 ITEM C – OTHER BUSINESS**

3.1. No delegation made interventions under this item.

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

3.3. The meeting was adjourned.

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