



Committee on Specific Commitments

REPORT OF THE MEETING HELD ON 1 JULY 2020

NOTE BY THE SECRETARIAT¹

The Committee on Specific Commitments (CSC) held a meeting on 1 July 2020 chaired by Mr. Tamás Vattai from Hungary. The agenda for the meeting, contained in document WTO/AIR/CSC/11, was adopted.

1 ITEM A – IMPLEMENTATION OF SPECIFIC COMMITMENTS

1.1. The Chairperson stated that this item was included in the agenda upon the submission of the United States, contained in document S/CSC/W/69, which proposed an exercise of updating GATS Schedules with conditional commitments. Conditional commitments referred to those entries in Members' schedules which conditioned their entry into force, implementation or new commitments on the adoption of new legislation or the review of the pre-existing regime. Dating back to the 1990s, most of these commitments affected the transparency and legal certainty of schedules. Noting that the Committee was mandated to oversee the implementation of specific commitments and to improve their technical accuracy and coherency in the future, the Chairperson believed that the US proposal for updating schedules with conditional commitments was a good and timely contribution to the Committee's efforts to fulfil its mandate. Furthermore, the exercise would improve the transparency and legal certainty of specific commitments.

1.2. The representative of the United States stated that the proposed exercise was indeed designed to improve the transparency and legal certainty of the schedules of specific commitments. Some schedules were conditional on the review or passing of legislation and a promise to update specific commitments upon the completion of legislative action or policy reviews. The proposal requested that the Secretariat catalogue those schedules containing such conditional language. A couple of examples were outlined in the Annotated Agenda for this meeting. The first example was that commitments related to certain aspects of the Telecom Reference Paper would be conditional upon the passage of new legislation. Since this was part of that Member's Schedule of Specific Commitments, the Schedule needed to be updated accordingly. The second and third examples were about commitments conditional upon the outcome of a review of policy, and the Members concerned were not required to update their schedules. It would be helpful for the Committee to hear from those Members about any outcome of their policy reviews. The fourth example mentioned that an improved commitment would be submitted if the government review was favourable. It would also be helpful for the Member concerned to update the Committee on the outcome of the government review. These examples showed gradations in this type of scheduling. It would be helpful to catalogue the conditional commitments, seek policy updates from Members who referenced policy reviews and new commitments to reflect those conditional entries. The exercise was not finger-pointing; as mentioned earlier, it was designed to improve the transparency and legal certainty of specific commitments.

1.3. The representative of Chinese Taipei stated that in order to improve transparency, it would be useful to have Members' indication about the revision of their schedules. Therefore, his delegation supported the proposal raised by the US.

1.4. The representative of Barbados, speaking on behalf of the ACP Group, stated that they were still consulting their capitals on the US proposal (S/CSC/W/69) and some aspects of the Annotated

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Agenda (JOB/SERV/295). They were not in a position to support a consensus on the proposal at this time. She took this opportunity to note with appreciation the role of the Secretariat in assisting developing countries and LDCs, bilaterally and on request, with the examination of their services schedules, assistance of notifications, as well as any other requests for the purpose of transparency and in a manner that did not put the Secretariat in a position of interpreting schedules of specific commitments.

1.5. The representative of China stated that his delegation recognized the significance of updating Members' GATS schedules. Nevertheless, China believed that it was more important for Members to fulfil their existing commitments. China noted that certain Members had taken trade restrictive and protectionist measures in the name of national security and thus violated their GATS commitments and WTO rules. China urged those Members to respect WTO rules and faithfully implement their commitments.

1.6. The representative of Canada thanked the US for submitting this proposal. Canada would support a step-by-step approach. As a first step, Canada would see value in the Secretariat producing a compendium of conditional commitments, for Members' information. Once the document was available, Members could share their views and discuss next steps.

1.7. The representative of the European Union echoed the intervention of Canada and endorsed the step-by-step approach. Recognizing the importance of ensuring the transparency and legal certainty of Members' schedules of specific commitments, the European Union could support the Secretariat to prepare a catalogue of conditional commitments in Members' schedules. Members could then provide updates if they so wished.

1.8. Further to the statements made by Canada and the European Union, the representative of Australia also thanked the United States for their proposal. Recognizing the importance of transparency of Members' commitments, Australia was open to the idea of the Secretariat compiling a list of conditional commitments. It would also be helpful to hear updates from Members on their measures and consider next steps.

1.9. The representative of India understood that the proposal by the United States included the identification of conditional commitments by the Secretariat, provision by the Members concerned of updates on the outcome and current status of the measures that conditioned the commitments, and any plan to update the relevant schedules. Apparently, this exercise would improve the transparency of commitments. Therefore, India had no objections to the proposal. With the same objective, India urged the United States to improve its level of compliance with existing notification requirements, notably under GATS Article III:3, especially those affecting their mode 4 commitments, including entry-related measures, as mode 4 was the key mode of export interest to most developing countries and LDCs.

1.10. The representative of Brazil thanked the United States for the proposal. Brazil shared the objective of ensuring transparency and implementation of GATS commitments, and therefore could support the suggestion that the Secretariat prepare a compilation of conditional commitments. With respect to the next steps proposed by the United States, namely "Members with such conditional commitments would be requested to provide an update on the outcome and current status of the measure, review, or reform in question and their plans to revise their schedules", he sought clarification from the United States on whether there were two propositions. Referring to the intervention by Barbados, he thought that there might be a need to have a clearer picture of those conditional commitments including how they should be interpreted. It would be useful to engage with the Secretariat to have a common understanding of those conditional commitments.

1.11. The representative of the United States responded favourably to the suggestion for a step-by-step approach. He thought that this might address some of Brazil's concerns. The United States sought those schedules that specifically conditioned the provision of updated commitments on the passage of legislation. In terms of other schedules with conditional language such as references to policy reviews, the Committee would benefit by having explanations on the outcome of such policy reviews. The United States did not seek any interpretation of Members' schedules by the Secretariat. The exercise was designed to catalogue the entries in Members' schedules which referenced policy reviews or put certain conditions in their schedules that they would provide updated commitments on a future date. Therefore, the first step would be to catalogue those entries without any sort of

interpretation which was not the Secretariat's role. Then Members could consider the next steps. Taking note of India's statement in terms of greater transparency in notifications, he said that his delegation remained open to discussing ways of improving transparency with Members. In conclusion, his delegation would continue to work with delegates clarifying the objectives of the proposal so as to achieve a useful outcome in the Committee's discussion.

1.12. The Chairperson noted the useful considerations by delegations on the US proposal and their shared view on the importance of having transparency in specific commitments. Referring to the step-by-step approach proposed by Canada, which he understood as a compromise, he made the following suggestions. As a first step, the Secretariat would prepare a factual compilation of conditional commitments which should serve transparency purposes only and not involve any interpretation. Based on the compilation, the Committee would then consider and decide the further steps.

1.13. The representative of Barbados reiterated the position of the ACP Group that they were reviewing the US proposal in their capitals and not in a position at this stage to support the consensus to take the proposal forward.

1.14. The Chairperson asked the representative of Barbados whether it was possible to allow the Secretariat to prepare a factual compilation of conditional commitments simply for transparency purposes so that the ACP Group could have a clearer picture of the matter.

1.15. The representative of Barbados responded that they could not go along with the Chairperson's suggestion at this stage and were interested in consultations with the Chairperson at a later date to have more clarity on the matter.

1.16. The representative of Senegal endorsed the statement made by Barbados on behalf of the ACP Group. He suggested that the Committee postpone the matter to another meeting so that delegations would have more time to consult their capitals.

1.17. The representative of South Africa supported the statement made by Barbados on behalf of the ACP Group to postpone the agenda item. Noting some aspects of the US proposal to be clarified as well as the constraints delegations were facing during the pandemic, he believed that it was reasonable to accommodate the ACP Group's request for further consultations and reserve the discussion for a later time.

1.18. The representative of Brazil stated that his delegation wished to have a better understanding of the issues raised by the US proposal. It would be useful for the Chairperson and the Secretariat to hold consultations with interested Members on this matter.

1.19. The Chairperson suggested that the incoming Chairperson hold consultations with interested Members on the US proposal and that the Committee revert to this item at its next meeting.

1.20. It was so agreed.

2 ITEM B - SCHEDULING ISSUES

2.1. The Chairperson recalled the Committee's continued discussion on scheduling issues under mode 4 at the last meeting, which had been initiated by a Communication from the Kyrgyz Republic (contained in JOB/SERV/287). In particular, the Kyrgyz Republic shared its thoughts on how to improve transparency and clarity of mode 4 commitments as well as its domestic experience in relation to the work permit regime. Some other delegations also shared their domestic experience on labour market tests at previous meetings. As noted in the Annotated Agenda for this meeting, he encouraged more Members to share their domestic experience in the administration of labour market tests, which would improve transparency of mode 4 commitments. Some interventions made at the last meeting noted that the discussion under this agenda item should cover other modes of supply as well. He took this point and invited Members to consider other scheduling issues. Some issues had been mentioned in a previous Chair's report, which arose in digital trade and concerned modes 1, 2 and 3, such as the meaning of "Unbound" with an asterisk (i.e. "Unbound*"), the distinction between modes 1 and 2 for online transactions, as well as the line between market access and national treatment for some measures such as data localization requirements. As digitalization was

transforming services trade, these issues might be more relevant than ever. He reiterated that Members might raise any scheduling issues of particular interest to them.

2.2. The representative of Switzerland stated that his delegation supported discussions aiming at enhancing clarity and predictability in all modes and sectors. In this respect, Switzerland welcomed discussions on the meaning of "Unbound*" entries under mode 1. Such exchange of views could provide more transparency both on the initial intentions behind the listing of "Unbound*" and on where these entries stood today. Due to the technical developments in the last years, many services where Members had inscribed "Unbound*" were expected to be tradeable, notably through mode 1. Thus, one could argue that in such cases, "Unbound*" was equivalent to "None". In its recent FTAs, Switzerland had undertaken full market access and national treatment commitments in several sectors where "None" were inscribed instead of "Unbound*" under mode 1. This approach had been followed, for instance, in environmental services or in services of maintenance and repair of aircraft, as technology made cross-border supply possible. Switzerland would be interested in other Members' views and practices in this regard and open to other discussions that would enhance clarity and predictability of Members' schedules.

2.3. The representative of India thanked the delegation of the Kyrgyz Republic again for having tabled a useful proposal on "Scheduling issues under mode 4", as contained in document JOB/SERV/287. She reiterated her delegation's advocacy for Members to jointly work in the identified areas. The criteria for administering economic needs tests (ENTs) should be transparent and objective and not on a discretionary basis. It would be desirable to jointly develop a list of specific elements such as criteria and details of ENT/LMT requirements, and procedures and guidelines for administration of such tests. India welcomed the suggestion by the European Union that all Members should agree to remove ENTs for the category of Intra-Corporate Transferees (ICTs). With respect to developing agreed definitions for the commonly scheduled mode 4 categories, India agreed that this would be difficult at the multilateral level, given different domestic legislations. However, it might be workable to develop key definitional elements or some common criteria for committed categories of mode 4. As suggested by the Kyrgyz Republic, it would be useful to specify the degree of education or specialisation. Service suppliers from India had faced difficulties due to subjective and arbitrary assessment of an applicant's qualifications, especially in the case of the "specialist" sub-category of ICTs. India noted that many Members had agreed at one previous meeting that it would be helpful to clarify the relationship between horizontal and sector-specific commitments in the case of mode 4. On this point, referring to the current proposal by the US, she noted that the Secretariat could similarly help identify relevant instances in Members' schedules and that the concerned Members could then consider providing necessary updates. This exercise would also improve the transparency of commitments. India looked forward to constructive engagement with Members on these issues.

2.4. The Chairperson sought other Members' views on the Indian proposal for possible work by the Secretariat.

2.5. The representative of the United States stated that his delegation would have to see the proposal in writing in order to have clarity on the scope and nature of what was being requested and then consult with the capital.

2.6. The Chairperson proposed that the Committee take note of the statements made and revert to this agenda item at the next meeting.

2.7. It was so agreed.

3 ITEM C – CLASSIFICATION ISSUES

3.1. The Chairperson recalled a well-received presentation by the Secretariat at the last meeting with respect to recent developments in the measurement of digital trade. The presentation covered the conceptual framework developed by the international statistical community on digital trade and related services classification issues. The presentation highlighted, among other points, that the digitalization of services trade might pose some challenges for services classification. How to classify digital platforms was a case in point. Members were invited to give further thought in this regard and raise any issue of particular interest to them.

3.2. The representative of Japan stated that his delegation was interested in the measurement of digital trade, and thus appreciated the useful presentation by the Secretariat at the last meeting. Discussing classification would provide more clarity and, as actual services trade evolved over time, it was necessary to keep updating classifications. Japan hoped to continue to join the discussion on this matter.

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

3.4. It was so agreed.

4 ITEM D – OTHER BUSINESS

4.1. No issue was raised under this item.

5 ITEM E – APPOINTMENT OF THE CHAIRPERSON FOR THE COMMITTEE

5.1. Noting that the Chairperson of the Council for Trade in Services had recently concluded his consultations on the slate of names for the Chairpersons of the subsidiary bodies, the outgoing Chairperson, Mr. Tamás Vattai, thanked Members for their trust and support in the past year and proposed that the Committee elect Mr. Toshihide Aotake from Japan as its new Chairperson by acclamation.

5.2. It was so agreed.

5.3. The meeting was adjourned.
