



Committee on Specific Commitments

REPORT OF THE MEETING HELD ON 1 OCTOBER 2020

NOTE BY THE SECRETARIAT¹

The Committee on Specific Commitments (CSC) held a meeting on 1 October 2020 chaired by Mr. Toshihide Aotake from Japan. The agenda for the meeting, contained in document WTO/AIR/CSC/12, was adopted.

1 ITEM A – IMPLEMENTATION OF SPECIFIC COMMITMENTS

1.1. The Chairperson recalled that this item had been included in the agenda for the last meeting upon a proposal by the United States, which was contained in document S/CSC/W/69. The United States drew attention to the fact that 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 United States proposed that the Committee examine those schedules with conditional commitments with a view to enhancing the transparency and legal certainty of specific commitments. Interventions on the US proposal at the last meeting showed that delegations shared the importance of ensuring transparency and legal certainty of specific commitments. Nevertheless, the Committee had yet to reach agreement with respect to the proposed exercise. Most delegations supported a step-by-step approach whereby the Secretariat would first prepare a factual compilation of conditional commitments for transparency purposes and the Committee would then consider and decide next steps. Some delegations indicated at the last meeting that they might need more time to review the proposal and seek consultations. Since then, the Chairperson had held consultations with delegations. He urged delegates to have a frank exchange of views on the proposed exercise with a view to reaching consensus on this matter. He recalled that the Committee was mandated to oversee the implementation of specific commitments and to improve their technical accuracy and coherency in the future.

1.2. The representative of the United States reiterated that his delegation's proposal was designed to be a transparency exercise. The Secretariat was requested to find conditional commitments Members had undertaken during the Uruguay Round and the extended negotiations in telecom and financial services. Not designed for the Secretariat to interpret the schedules, the exercise was intended to identify the schedules with additional commitments and for the Members concerned to update the Committee on the process of conditions inscribed in the commitments. The step-by-step approach would be first for the Secretariat to catalogue those entries in Members' schedules which contained these conditions and then for the Committee to have an open discussion on the conditions in Members' domestic processes. Therefore, this exercise was designed to help the Committee have more clarity in the schedules with this type of entry. The United States looked forward to updates from those Members who needed more time to consult the capital and hoped that this exercise could be allowed to proceed.

1.3. The representative of the European Union referred to her delegation's statement at the last meeting that it was important to ensure transparency and legal certainty of Members' schedules of specific commitments. To this end, the European Union supported an exercise where, as the first step, the Secretariat would identify conditional commitments in Members' schedules. The Committee could then have a discussion and Members could update on where they stood with these commitments.

¹ 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.

1.4. The representative of Ukraine thanked the United States for the proposal. Recognizing the importance of ensuring transparency and implementation of GATS commitments, Ukraine supported the step-by-step approach where the first step was the preparation by the Secretariat of a catalogue of conditional commitments in Members' schedules. It would be valuable to have better information from Members on their measures and then consider further steps.

1.5. The representative of Australia reiterated that her delegation supported the proposal for a step-by-step approach starting with the Secretariat compiling a list of conditional commitments, which would be useful for transparency purposes. Australia would also be open to a discussion in the CSC once this compilation was circulated.

1.6. Recognizing the importance of transparency, the representative of Chinese Taipei reiterated his delegation's support for the step-by-step exercise starting with the Secretariat compiling conditional commitments in the latest version of Members' schedules.

1.7. The representative of Canada thanked the United States again for presenting the proposal to the Committee. She reiterated her delegation's support for a step-by-step approach. The first step could be a compilation of conditional commitments by the Secretariat. Canada saw this as an initiative in line with its broader transparency efforts. Recognizing the usefulness of having this type of information, Canada supported to have discussions in the Committee. She also thanked the United States for showing flexibility.

1.8. The representative of Switzerland stated that his delegation supported the United States proposal as a step forward for transparency and welcomed the work by the Secretariat.

1.9. The representative of Turkey thanked the United States for the proposal. Not objecting to the proposal, she sought clarification on the nature of the work by the Secretariat.

1.10. The representative of Barbados, speaking on behalf of the ACP Group, noted the reiteration by the United States that the incentive was not for the Secretariat to interpret Members' schedules. Based on the internal research conducted by the Group, there were inscriptions in some Members' schedules which might merit the need for interpretation by the Secretariat. Any ACP countries that were included in the Secretariat's findings as were implicated should be consulted ahead of the communication to the membership. Individual Members that were consulted and wished to participate in the process were free to do so.

1.11. The representative of the United States reiterated that the proposal was not for the Secretariat to interpret the schedules. The work of the Secretariat was to catalogue the language in commitments such as "conditional upon" or "subject to policy reviews". What the United States looked for was updates from Members on what those policy reviews revealed, not negotiations. The United States appreciated the flexibility of Barbados and the ACP on the exercise.

1.12. The representative of India stated that her delegation supported the United States proposal which included the identification of conditional commitments by the Secretariat. India believed that this exercise would improve the transparency of Members' commitments. To further the objective of transparency, 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.

1.13. The representative of Brazil reiterated that his delegation supported and agreed with the proposal for improving transparency in conditional commitments. He appreciated the clarification by the United States that the purpose of the exercise was to improve transparency and not to initiate any kind of negotiation process in the CSC. The CSC was the right place to discuss transparency and implementation of specific commitments. He however noted that there were different kinds of conditionalities, some of which had history behind them and had been subject to market access negotiations before or during the Doha Round. The CSC was not the right body for market access negotiations. Since the United States had clarified that the objective of its proposal was not the market access negotiations, Brazil could fully support the United States initiative.

1.14. The representative of the Kingdom of Saudi Arabia thanked the United States for its proposal on which her delegation was still having internal consultations. For the sake of transparency, it was important and useful to examine conditional commitments and share information prepared by the Secretariat in this regard.

1.15. With respect to the United States proposal, the representative of China stated that in principle, his delegation supported work towards improving transparency and more legal certainty in Members' specific commitments. At the same time, China was aware of the complexity of the issue involved. Therefore, the Committee should take a progressive approach in the follow-up work and have further discussions on the proposal. His delegation was analysing it internally and would get back to it at a later stage.

1.16. The representative of Hong Kong, China thanked the United States for the clarification on the intention of its proposal. In particular, he noted that the intention was to improve the transparency of schedules and seek updates on conditional commitments. He however cautioned that any related updates should not go beyond technical exercise. On the way forward, there might be an additional notification burden on some Members. Therefore, his delegation supported a step-by-step approach starting with the Secretariat preparing a factual account of conditional commitments.

1.17. The representative of Japan thanked the United States for its proposal. He noted the importance of the proposal as it would enhance transparency of specific commitments. His delegation was flexible on how to conduct the exercise and thus open to the step-by-step approach.

1.18. The Chairperson noted a broad support for the step-by-step approach to bringing the United States proposal forward. He thanked delegations for their flexibility and noted the request of the ACP Group for consultations. He then suggested that the Secretariat identify and compile conditional commitments in Members' schedules and that the Committee consider the next steps at its next meeting.

1.19. It was so agreed.

1.20. The representative of the United States stated that his delegation was flexible with respect to how to take the work forward. Once the compilation by the Secretariat was presented, the Committee could decide on the next steps.

1.21. The Chairperson stated that he would hold consultations on the next steps. He then suggested that the Committee take note of the statements made and revert to this item at its next meeting.

1.22. It was so agreed.

2 ITEM B – SCHEDULING ISSUES

2.1. The Chairperson recalled that two issues had been briefly addressed under this item at the last meeting, which were both related to clarity and predictability of specific commitments. One issue was about the meaning of "Unbound*" entries under mode 1 in GATS schedules. In schedules, "Unbound*" was usually annotated with "unbound due to lack of technical feasibility". Given that many services where Members had inscribed "Unbound*" in their schedules became tradeable as a result of recent technological developments, there was interest in having discussions on this issue. Another issue concerned scheduling questions under mode 4, initially identified in a Communication from the Kyrgyz Republic (contained in JOB/SERV/287). This matter had been discussed in several previous meetings.

2.2. The representative of India reiterated her delegation's appreciation for the Kyrgyz Republic for having tabled a useful proposal on "Scheduling issues under mode 4", as contained in document JOB/SERV/287. As stated in the interventions at previous meetings, India supported discussions under three identified areas, namely: developing a list of specific elements such as criteria and details of ENT/LMT requirements, and procedures and guidelines for administration of such tests; developing key definitional elements or some common criteria for committed categories of Mode 4; and clarifying the relationship between horizontal and sector-specific commitments in case of mode 4. India recalled the suggestion by the European Union at one of the earlier meetings that all Members should agree to remove ENTs for the category of Intra-Corporate Transferees (ICTs).

Believing that this was a valuable suggestion, India solicited other Members' views in this regard. With respect to India's suggestion that the Secretariat compile such instances in Members' schedules where there was a need to clarify the relationship between horizontal and sectoral-specific commitments in the case of mode 4, India noted that at the last meeting, one Member had requested a written proposal. India believed that the paper from the Kyrgyz Republic contained in document JOB/SERV/287 was already on the table as it intended to discuss ways to improve clarity and accuracy of Members' commitments in this regard. To take it forward, India requested that the Secretariat compile Members' horizontal and sector-specific commitments to identify any inconsistencies between them in mode 4 (or in all modes if Members so wished), and as a second step, that the concerned Members consider providing necessary updates. India believed that, similarly to the United States proposal, this would lead to greater clarity and transparency in Members' commitments. The Secretariat could consider both of them together.

2.3. In response to India's request, the representative of the United States questioned what the Secretariat was asked to do. In the United States proposal, it was clear that the Secretariat was requested to catalogue entries in Members' schedules. What India requested was leaning more towards interpretative mode as the Secretariat was asked to find inconsistencies in Members' commitments. In terms of removing ENTs for the category of Intra-Corporate Transferees (ICTs), while Members were free to revise their schedules, this might move into market access negotiations, which the United States could not agree with.

2.4. The representative of Switzerland recalled that his delegation had raised the issue of "Unbound*" at the last meeting. Due to technological development, many services where Members had inscribed "Unbound*" in their schedules became tradeable. This concerned notably mode 1. Similarly to the United States proposal on conditional commitments, the aim of his delegation's suggestion was to have exchange of views and increase certainty and predictability of specific commitments. Before embarking on any potential way forward, his delegation intended to hear interest from other Members at this meeting.

2.5. The representative of India stated that she had taken note of the statements by the United States and Switzerland and would get back to them at the next meeting.

2.6. The representative of Switzerland thanked the delegate of India for her intervention. His delegation would reflect on whether and how the issue of "Unbound*" could be pursued.

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

2.8. It was so agreed.

3 ITEM C – CLASSIFICATION ISSUES

3.1. The Chairperson stated that the GATS services classification system was facing challenges as trade conditions had evolved significantly. How to classify digital platforms was a case in point. Some had noted at the last meeting that discussing classification would provide more clarity to specific commitments.

3.2. No intervention was made under this item.

3.3. The Chairperson suggested that the Committee 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.

4.2. The meeting was adjourned.
