



Committee on Specific Commitments

REPORT OF THE MEETING HELD ON 2 DECEMBER 2020

NOTE BY THE SECRETARIAT¹

The Committee on Specific Commitments (CSC) held a meeting on 2 December 2020 chaired by Mr. Toshihide Aotake from Japan. The Chairperson stated that under Other Business of this meeting, he would inform the Committee of a joint presentation to be made by the Secretariat and the UN Statistics Division on the new classification website. The agenda for the meeting, contained in document WTO/AIR/CSC/13, was adopted as modified.

1 ITEM A – ADOPTION OF THE ANNUAL REPORT TO THE COUNCIL FOR TRADE IN SERVICES

1.1. The Committee adopted the draft annual report as contained in document S/CSC/W/71.

2 ITEM B – IMPLEMENTATION OF SPECIFIC COMMITMENTS

2.1. The Chairperson recalled that this item had been included in the agenda upon a communication (S/CSC/W/69, dated 5 March 2020) from the United States, which proposed that the Committee examine GATS schedules with conditional commitments with a view to improving transparency of commitments. At the last meeting, the Committee had agreed on a step-by-step approach whereby the Secretariat would first prepare a factual compilation of conditional commitments contained in Members' schedules, after which the Committee would consider the next steps of the proposed exercise. Accordingly, the Secretariat had prepared the Compilation of Conditional Commitments, contained in document S/CSC/W/70, which was circulated on 13 November 2020. Meanwhile, the Chairperson had held consultations with some delegations. He encouraged delegations to share thoughts on the proposed exercise, including on how to proceed further. He also welcomed Members to update the Committee on their commitments referred to in the Compilation, if they were willing to do so. He first invited the Secretariat to introduce the Compilation.

2.2. The representative of the Secretariat stated that the Compilation had been prepared upon the request of the Committee, which was factual and self-explanatory. For the purpose of this Compilation, conditional commitments referred to the entries in Members' schedules which contained certain conditions attached to the entry into force, implementation or updating of the commitments. For the sake of completeness, the Compilation also included entries containing vague conditions. Aware that Members might have different understanding of how conditional commitments should be defined, the Secretariat welcomed clarifications from Members. The Compilation included 42 entries made by 24 Members, most of which were related to telecommunications. Also included were the entries in other sectors, such as professional services, distribution services, hospital services and transport services. This Compilation did not include the entries on financial services given the mandate of the Committee. The Secretariat reiterated that the Compilation was to serve transparency purposes only and was without prejudice to the positions of Members and to their rights and obligations under the WTO. It was up to the Committee to consider and decide how to examine conditional commitments within its mandate.

2.3. Referring to Mauritius' entry included in the Compilation, which was the additional commitment on telecommunications, the representative of Mauritius sought clarification on the footnote "The

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.

Reference Paper is not attached to the Schedule". Noting that the Reference Paper was a WTO document, he wondered what else needed to be done.

2.4. The representative of China thanked the United States for the communication and the Secretariat for the Compilation of Conditional Commitments in GATS Schedules, which was extremely helpful for China to better understand the issue. China supported more technical discussions in the CSC meetings. However, any modification of schedules was a complex task, which might involve not only technical modifications but also clarification of a Member's existing commitments. For most Members, to initiate any modification of schedules of specific commitments would involve domestic consultations, authorization and other due legal procedures. China was of the view that this issue could not properly be resolved only in the context of CSC meetings. China therefore suggested that the issue be tackled in the future in a broader context, such as market access negotiations, or through other procedures mandated by the CTS or the WTO.

2.5. The representative of Canada noted value in a step-by-step approach focusing on information exchange and the usefulness of the factual Compilation. Canada supported a dialogue within the CSC which aimed at having more information on the state of play of the measures included in the Compilation. Canada encouraged Members to provide updates to the Committee on their commitments or the measures referred to in the Compilation. Canada was particularly interested in an update on telecommunications as most of the measures in the Compilation were related to that sector. Canada looked forward to engaging in the discussion.

2.6. The representative of Russia stated that the exercise was an important contribution to strengthening the transparency principle of this Organization. The Compilation provided an excellent snapshot of conditional commitments, which led to certain conclusions. Noting that telecommunications was the most relevant sector which was a systemic issue, Russia sought comments from the Secretariat in this regard. Russia would like to know whether the WTO had provided technical assistance to implement conditional commitments and whether there was any such request from Members. Further, Russia asked whether the Secretariat had considered the option of adding a separate column in the Compilation to provide information on the further development of conditional commitments by referencing documents or materials such as Trade Policy Reports or related services notifications.

2.7. The representative of Hong Kong, China noted that the Secretariat Note was more of a simple cataloguing exercise, which included an entry on Hong Kong, China. That commitment of Hong Kong, China was not "conditional" as it did not contain any commitment-related "promise" or "conditions" but simply a description of the regime at that time which was subject to review. In fact, regarding the commitment itself, whether it would be relaxed or enhanced would be subject to further negotiations. Hong Kong, China had offered to remove the said limitation during the Doha Round negotiations, which were not completed. Hong Kong, China had also fulfilled its transparency obligation by submitting a notification (S/C/N/312 dated 28 January 2005) under Article III:3 of the GATS to notify that local fixed telecommunication network services had been fully liberalized since January 2003. Hong Kong, China was open-minded so far as the current exercise could help improve transparency, but it would not support if any suggestions for updating might involve a change in commitment and amount to negotiations, which would go beyond a technical exercise. Hong Kong, China would continue to engage and listen to views of Members and proponents on what the appropriate next steps would be.

2.8. The representative of Saudi Arabia stated that while her capital was still assessing the proposal of the United States, she wished to share some preliminary thoughts. One of the Article XII Members, Saudi Arabia had undertaken extensive commitments, especially in telecommunication services. Noting an entry of Saudi Arabia in the Compilation, she echoed the statement of China and suggested more consultations and further discussions. Her delegation was flexible about the venue for such discussion. She agreed with Russia that the work of the Secretariat was useful for information sharing and transparency. She shared China's view that the modification of commitments would involve internal consultations in capital. This might require technical assistance and capacity building for developing countries.

2.9. The representative of Jamaica thanked the Secretariat for the Compilation and appreciated the consultations conducted by the Chair. Taking note of the discussion in the Committee, Jamaica was not in a position at this time to provide updates on the specific commitments identified by the Secretariat as the internal consultations were still ongoing.

2.10. The representative of South Africa observed that the Secretariat Note classified South Africa's additional commitments for telecommunications as "conditional". South Africa did not concur with this. The entries referenced in the Secretariat Note were included in South Africa's Schedule to provide additional information for transparency on aspects of licensing that South Africa was considering to examine in the context of possible policy reviews at the time of making the commitments. As such, there was no undertaking in the Schedule that revising telecommunication commitments would follow. While thanking the United States for proposing the exercise, South Africa was of the view that it could not take it further to provide impetus to mandate progressive liberalization. There was no provision for a ratchet under the GATS. South Africa's additional commitments were not conditions related to entry into force, implementation or improvement based on the adoption of new legislation or review of the pre-existing regime. As such, there was no undertaking to automatically bring commitments up to date. While there had been many positive regulatory developments in South Africa related to licensing, South Africa did not plan to or attempt to update its Schedule of Specific Commitments based on the CSC exercise.

2.11. On behalf of the ACP Group, the representative of Barbados noted that the document contained in S/CSC/W/70 was prepared under the Secretariat's own responsibility and was without prejudice to the rights of Members. However, the Secretariat titled the document "Compilation of Conditional Commitments" and defined "conditional commitments" as "those entries which contain certain conditions attached to the entry into force, implementation, or updating of specific commitments". Some entries referred to "intend to review" without any guarantee or prospect that commitments would follow. She recalled that the ACP Group was among the Members that had requested additional time to consider the proposal and had asked some questions during the July meeting. She recalled that the ACP Group had indicated that it did not want to put the Secretariat in a position of interpreting Members' schedules of specific commitments and asked for assurances that the delegations identified by the Secretariat would be consulted on their willingness to participate in the exercise and whether they were comfortable with any characterization of any elements of their schedules of specific commitments as conditional commitments. The ACP Group's understanding from the participation in consultations, however, was that Members would not have opportunities to make such indications given that the Secretariat's compilation was a factual listing. She was unsure of the usefulness of inviting Members to consultations if their concerns were not addressed. The ACP Group was of the view that information-sharing and transparency were core aspects of the regular work of the WTO and augured well for the institution and the multilateral trading system. The ACP Group believed that it was the prerogative of every WTO Member to enhance its schedule of specific commitments if it chose to do so. The GATS allowed for this as well as for progressive liberalization of Members' services sectors. The GATS also allowed for flexibilities for developing countries and LDCs in the process of such a liberalization. She cautioned that the CSC was not the venue to seek or discuss making market access commitments. While technical information and clarification about the results of reviews were useful, Members seeking liberalization should do so in other services bodies.

2.12. The representative of Turkey noted that Turkey's commitment captured in the Compilation was for "voice telephone services" and "packet-switched data transmission services" and that the commitment read "Türk Telekomünikasyon A.Ş. is the exclusive operator. Exclusive right will end by 31.12.2005, subject to adoption of the relevant legislation by the parliament." The exclusive right of Türk Telekomünikasyon AŞ ended on 31 December 2003 as stipulated in the Law No. 4502 governing the telephony and telegraph services. As such, in line with its commitment, Turkey had lifted the exclusive right before the promised deadline in the quoted commitment. Like Hong Kong, China, Turkey considered its commitment not to be conditional. It was more about a reflection of the state of the play of the time and the sector and at most a signalling for Doha Round negotiations. Turkey also echoed Hong Kong, China that it would not support any decision that would amount to the modification of schedules without a full-fledged market access negotiation.

2.13. The representative of the European Union thanked the Secretariat for its Note (S/CSC/W/70) compiling Members' conditional commitments in GATS schedules. It was very useful to have this factual overview. Without prejudice to any further steps in the exercise, noting the importance of ensuring transparency and legal certainty of Members' schedules, the European Union welcomed exchange of information and updates by Members on the state of play of their conditional commitments, including any domestic legislative development, policy reviews or reforms mentioned therein. The European Union appreciated the information already provided by some Members at the meeting.

2.14. The representative of the United States stated that the spirit with which his delegation had made the proposal was for improving the technical accuracy of schedules, as well as enhancing coherency to those conditional commitments by getting updates on particular policy reviews in certain sectors, mainly telecom. This exercise was not a finger-pointing one, but was a matter of enhancing this organization's functioning at a technical level. With this exercise, the United States was seeking updates from those Members that had indicated that various sectors were undergoing a policy review. In some instances, Members' schedules were conditional upon them submitting a revised schedule after such a review. The United States thus sought information on when such revised schedules might be produced. In other instances, Members simply scheduled that a review would take place upon the expiration of exclusivity for certain services. The membership would then benefit by getting an update from the Members concerned on those policy reviews. In cases where the conditional schedules referenced submitting a revised schedule, the United States would seek an affirmative response that those schedules would be updated as promised. Thailand, for example, in its recent Trade Policy Review, had already responded to this exercise. In response to a question about introducing a new schedule, Thailand stated that it was in the process of internal consultations to revise its telecommunications commitments of the Uruguay Round to be consistent with the Telecommunications Act. It was at the public hearing stage, then to be presented to the cabinet and parliament for approval. After approval, it would proceed to the notification process. Thailand expected to submit the revised schedule of commitments to the WTO by 2021. In cases where the conditional schedules merely referenced a government review, the United States would propose that this update process be voluntary, without prejudice to existing commitments or future negotiations. However, if this voluntary process did not yield updates, the United States would reconsider the suggested approach and might propose a more formal request for an update from Members. But as a first approach, the United States would simply encourage those Members in a position to do so, to update the Committee at the next CSC meeting in 2021.

2.15. The representative of Australia thanked the Secretariat for the Compilation and considered it to be a useful transparency exercise. Australia was open to continuing discussions in the Committee and hearing updates from Members on the status of their conditional commitments.

2.16. In response to the questions raised by Russia, the representative of the Secretariat noted that most conditional commitments were indeed related to telecommunications. Another sector with an important number of such commitments was financial services which was not included in the Compilation. These commitments were mostly undertaken during the extended negotiations after the Uruguay Round from 1996 to 1998. While each Member concerned had its own reasons to subject its commitments to certain conditions, the dynamics of the extended negotiations had probably played a certain role therein. The Secretariat was not aware of technical assistance specifically provided to address conditional commitments, but there had been requests from Members for technical assistance on telecommunications and financial services in the past, given the importance of these sectors. Regarding the option of adding a separate column in the Compilation to provide information on the further development of conditional commitments, the Secretariat would follow the decision of the Members.

2.17. The Chairperson thanked Members for their interventions, which were useful and informative. Noting some concerns raised, he assured Members that the CSC was not a venue for market access negotiations. He also noted the request for exchange of information on the commitments referred to in the Note. It was his understanding that some Members might provide more information in this regard at the next meeting. He took note of some Members' statements that their commitments should not be considered as conditional commitments and would welcome this type of information as well. He understood that the broad definition of conditional commitments in the Secretariat's Note was meant to increase transparency. He suggested that the Committee continue to exchange information based on the Note at the next meeting. To this end, he encouraged those Members concerned to provide information on their commitments as they saw appropriate. Meanwhile, he would continue to make himself available for consultations. He then suggested that the Committee take note of the statements made and revert to this agenda item at its next meeting.

2.18. It was so agreed.

3 ITEM C - SCHEDULING ISSUES

3.1. The Chairperson recalled two topics that had been briefly addressed under this item at the last meeting. One concerned some scheduling issues under mode 4, initially identified in a

Communication from the Kyrgyz Republic (contained in JOB/SERV/287). Another was about the desirability to revisit "Unbound*" entries (i.e. "no commitments due to lack of technical feasibility") under mode 1 in GATS schedules given recent technological developments.

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 – CLASSIFICATION ISSUES

4.1. The Chairperson noted that there had been no discussion under this item at the last meeting. He thought that this did not mean there was a lack of interest in classification issues. It was well known that the services classification system under the GATS was facing challenges as trade conditions had evolved significantly.

4.2. No intervention was made under this item.

4.3. The Chairperson suggested that the Committee revert to this agenda item at its next meeting.

4.4. It was so agreed.

5 ITEM E – OTHER BUSINESS

5.1. The Chairperson recalled that the website of the United Nations Statistics Division (UNSD) had stopped providing access to the Provisional Version of the Central Product Classification which was the basis of the classification system under the GATS. Upon New Zealand's request, the Secretariat had been in regular and repeated contact with the UNSD on that matter. As indicated by the Secretariat at the last meeting of the Council for Trade in Services, the entire series of CPC was now available in a new format on the UNSD classification website. At the next meeting, the Secretariat and the UNSD would provide a joint presentation on the new functionalities of the website and help Members navigate between the different CPC versions and other classifications, in particular the correspondences between the Provisional Version and the later versions of the CPC. This presentation was in line with the agreement adopted at the Committee's meeting of 16 November 2010 that the Committee should be informed on a regular basis of changes and developments in services classification.

5.2. The meeting was then adjourned.
