



COMMUNICATION FROM TURKEY

IMPLEMENTATION OF SPECIFIC COMMITMENTS AND ARTICLE II (MFN) ON CROSS-BORDER SUPPLY OF ROAD TRANSPORTATION SERVICES

The following communication, dated 7 March 2022, is being circulated to the Members of the Committee on Specific Commitments, at the request of the delegation of Turkey.

1 INTRODUCTION

1.1 Importance of the sector

1.1. International logistics maintains its eminence in global trade. Costs relating to logistics services continue to be a key factor for the competitiveness of exporting companies and SMEs. Besides actual costs, the time value of logistics continues to have great implications for company operations. In terms of international freight transportation, businesses continue to be in dire need of a predictable international legal infrastructure with efficient and business friendly practices.

1.2. Covid-19 pandemic as well as geo-political developments of different nature keep reminding us the importance of a sound logistics infrastructure for the smooth functioning of the global trading system.

1.3. With the rise of electronic commerce transactions, the demand for door-to-door logistics dramatically increased and the reflections of this high demand is observed mostly on the road transport services which lie at the heart of the e-commerce logistics chain.

1.4. Another negative impact of the pandemic was the container crisis, which resulted in rocket high freight charges and also affected the demand on other modes of transport alternative to maritime, including road transport.

1.5. In practice, international governance of road transportation arrangements is accorded at bilateral level, particularly the Bilateral Road Transport Agreements (BRTAs), with their implications of quotas, fees, charges and other rules and procedures, which may translate into a domain that is inconsistent with the ideals of liberalization in trade of goods and services.

1.6. While freight transportation is a service in itself, it is also critical in terms of boosting merchandise trade. Hence, while liberalization of road transportation services should be seen as an important component of the GATS; it also carries a potential of a multiplier effect in trade of goods.

1.7. In this framework, we would like to highlight the questions associated with the interpretation of specific commitments on cross border supply of road transport services inscribed in Members' schedules as well as the implementation of the MFN Article of GATS. Therefore, the purpose of this paper is to promote substantive discussion with regard to these questions, exchange views among Members about how they interpret these commitments and explore the possibility of establishing an "Understanding" for the interpretation of specific commitments and MFN in cross border supply of road transport services.

2 BACKGROUND OF THE QUESTIONS

2.1 Projecting the sector reality onto GATS commitments

2.1. In the Services Sectoral Classification List (document MTN.GNS/W/120, hereinafter W/120), road freight transport is one of the sub-sectors listed under category 11.F, "Road Transport Services". The corresponding UN Provisional Central Product Classification (CPC Prov) code is 7123.

2.2. According to the Background Note prepared by the Secretariat on Road Freight Transport Services (S/C/W/324) "international road freight transport services" can be defined as road freight transport between a place of loading and a place of unloading that are located in two different countries, which mainly corresponds to a mode 1 notion of trade as defined in Article I-2(a) of the GATS. Similarly, the Scheduling Guidelines (S/L/92) determines "international transport" as one of the prominent examples of cross border supply. **Therefore, it can be interpreted that the specific commitments undertaken by a Member for CPC 7123 under Mode 1 corresponds to the commitments in international road freight transport services.**

2.3. In the field, bilateral traffic-sharing agreements are the predominant method for governance of international road freight transport. Through these agreements the number and conditions of permits for different types of carriages are negotiated. The number of permits is called "the quotas" and there are mainly four different types of permits:

- a. transport between the territories of the two Contracting Parties (*bilateral transport*);
- b. transport between a point in the territory of the other Contracting Party and a point in the territory of a third State, (*third country carriage*);
- c. *unladen entry* (bilateral and/or third country carriage); and
- d. *transit* transport.

2.4. With regard to the exercise we have conducted in order to understand the reflection of this permit system in the GATS, we considered that bilateral transport and third country carriage may well be covered by the cross border supply mode as long as the carriage (the service) is supplied "from the territory of one Member into the territory of any other Member". As regards the unladen entry, however, it is questionable whether an empty truck to enter the territory of a Member is -by itself- the supply of a service or should we consider entrance of an empty truck as part of the service supply, considering that the truck will be loaded and eventually complete the contract of a service. Another question is how much of transit transport can be covered by the GATS, assuming that the carriage is from the territory of one Member into the territory of another Member, through transiting the territory of a third Member.

2.1.1 MARKET ACCESS COMMITMENTS

2.5. Ultimately what is important is determining the obligation (specific commitment) undertaken by a Member. In that respect, we have first analysed the market access commitments of Members and their compatibility with the applied regime of permits.

2.6. The Scheduling Guidelines (S/L/92) indicate that a Member grants full market access in a given sector and mode of supply when it does not maintain in that sector and mode any of the types of measures listed in Article XVI. Four out of six types of measures listed in Article XVI comprise of quantitative restrictions (sub-paragraphs a-d), including absolute numerical restrictions such as quotas. In other words, a Member who undertakes full commitment (inscribed in the schedule as "None") shall not impose quantitative restrictions, including quotas, in the committed sector and mode of supply. In that framework, **if a Member inscribes "None" into its schedule for Mode 1 in CPC 7123, that Member may not impose quotas on international road freight transport services, particularly on "bilateral transport" and "third country carriage".**

2.7. However, we observe that Members who have full market access commitments for Mode 1 in CPC 7123 continue to negotiate permits and apply quotas for international road freight transporters of other WTO Members. Some of these Members claim that their MFN exemptions provide them the

ability to apply quotas as opposed to their market access commitments. Yet, again, according to the Scheduling Guidelines: *“Where an MFN exemption has been granted for a measure, a Member is free to deviate from its Article II obligations, but not from its Article XVI and Article XVII commitments. Therefore, in such cases, a Member may accord treatment in that sector more favourable than the minimum standard to some Members, as long as all other Members receive at least that minimum standard of market access and national treatment appearing in its schedule”.*

2.1.2 NATIONAL TREATMENT COMMITMENTS

2.8. The specific commitments for CPC 7123 differ among Members. Some of them have full market access and full national treatment, while some has “Unbound” inscribed for market access with a full national treatment commitment. The first case is easier to interpret as the Member should not restrict the market and not apply discriminatory measures to services and service suppliers of any other Member. But in the second case, it is ambiguous where the obligation of non-discrimination between domestic and foreign service suppliers starts. In many cases, we observe that the applied regime is not in line with national treatment obligation as the committed Members still impose measures like discriminatory fees, discriminatory treatment at the customs, border crossings and/or truck waiting areas.

2.1.3 MFN OBLIGATION

2.9. The MFN obligation, stipulated by Article II of the GATS, requires that the most favourable treatment actually accorded in all sectors, whether the subject of a commitment or not, must also be accorded to all other Members unless there is an MFN exemption listed by that Member. In this respect, a Member who hasn’t listed an exemption for international road freight transport services may not differentiate the conditions between other Members, even if it did not undertake any specific commitments on market access and national treatment.

2.10. According to our observations, some Members who have no MFN exemptions listed for international road freight transport sector apply different truck quotas to different Members/countries based on its preferential BRTA regime.

3 TURKEY’S PROPOSAL

3.1 Questions for discussions

3.1. Considering the importance of the sector and increasing demand for these services followed by the pandemic; as a first step, the Turkish delegation suggests that Members of the Committee on Specific Commitments engage in substantive discussions and exchange views about the interpretation and implementation of commitments on cross border supply of road freight transport services. The preliminary questions that Turkey would like to bring to the attention of the Committee are the following:

- a. Do you think that imposing certain annual truck quotas to a WTO Member is in line with the full market access commitments under mode 1 in CPC 7123? What kind of policy space does the quota imposing Member have if it has listed an MFN-exemption for that sector?

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
F.Road Transport Services	1) None	1) -	
(b) Freight transportation (CPC7123)	2) -	2) -	
	3) -	3) -	
	4) -	4) -	

Sector or Sub sector	Description of measure indicating its inconsistency with Article xx on MFN	Countries to which the measure applies	Intended duration	Conditions creating the need for the exemption
Road Transport Services	To grant, on the basis of reciprocity, the privileges about the quotas and fees, the exemptions from the permission procedures.	All countries with which agreements are or will be in force.	Indefinite

- b. What do you understand from "none" in national treatment column, with "unbound" inscribed in market access column? If entering the market is equal to the entry into the territory, then where do you think the national treatment obligation starts, in the case where the real market situation is regulated by quotas? (e.g. after the border crossing or customs point?)

Sector or Subsector	Limitations on Market Access	Limitations on National Treatment	Additional Commitments
F.Road Transport Services (b) Freight transportation (CPC7123)	1) Unbound 2) - 3) - 4) -	1) None 2) - 3) - 4) -	

- c. In a case where a Member didn't undertake any market access or national treatment commitments but also didn't list any MFN exemption, is it compliant with the GATS if that Member applies different quotas to Members or non-Members?

3.2. As a second step, Turkey would like to ask the Membership to explore the possibility of establishing an "Understanding on Interpretation of Obligations in Cross Border Supply of Road Freight Transport Services".

3.3. We believe that further discussion will help to a better understanding of specific commitments and MFN obligation for this important sector and improve the transparency, predictability and relevance of our road transport commitments for trade negotiators and business people. Therefore, the Turkish delegation looks forward to hearing the views of other delegations on the subject and to joining the exchange of views on the questions. Based on the interest shown Turkey would be ready to work on the revision and expansion of this communication for more in-depth discussion in the coming meetings.