



18 June 2014

(14-3546)

Page: 1/6

---

**Working Party on GATS Rules**

**REPORT OF THE MEETING HELD ON 7 MAY 2014**

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

The Working Party on GATS Rules (WPGR) held a meeting on 7 May 2014, opened by Mr Felipe Sandoval (Chile) and chaired by the incoming Chairperson, Mr Saqer Almoqbel (Saudi Arabia). The proposed agenda and the Chairperson's annotated agenda for the meeting were circulated in documents WTO/AIR/4290 and JOB/SERV/184 respectively. The agenda was adopted.

**1 ITEM A - APPOINTMENT OF THE NEW CHAIRPERSON FOR THE WORKING PARTY**

1.1. Based on the consensus reached in the General Council, the Chairperson proposed that delegations elect Mr Saqer Almoqbel from Saudi Arabia by acclamation as the new Chairperson of the Working Party. As the outgoing Chairperson, he thanked the Members for their trust and support, as well as the Secretariat for its excellent work.

1.2. The Working Party elected Mr Saqer Almoqbel by acclamation.

1.3. On behalf of all Members the new Chairperson, Mr Saqer Almoqbel, thanked the outgoing Chairperson, Mr Felipe Sandoval, for his hard work and dedication, and for leading the Working Party in a very skilful and result-oriented way. The Working Party had greatly benefited from his competence and untiring efforts. He then thanked the Members for their confidence and hoped to follow in his predecessor's footsteps.

1.4. Many of the delegations who spoke at the meeting thanked Mr Felipe Sandoval for his hard work and congratulated Mr Saqer Almoqbel on his appointment as the new Chairperson of the Working Party.

**2 ITEM B - NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ESM) UNDER ARTICLE X OF THE GATS**

2.1. The Chairperson recalled that, at its preceding meeting in February 2014, the Working Party had held a first dedicated discussion on emergency safeguard provisions in regional and bilateral trade agreements. The main purpose of the discussion was to foster a better understanding of emergency safeguard provisions in regional trade agreements (RTAs) by focusing on concrete issues, and concerns, in negotiating and implementing such measures – including the language used, circumstances giving rise to an emergency safeguard measure, etc. As agreed in the February 2014 meeting, the previous Chairperson had prepared, under his own responsibility, a Note summarizing the views shared during the dedicated discussion. The Note, contained in document JOB/SERV/186, summarized the views expressed under five broad items:

- a. ESM in RTAs, and the fact that there was no one-size-fits-all across the RTAs;
- b. Political economy considerations presented by the proponents and the ESM as a "communication channel" in the advent of a substantial adverse impact;
- c. Link between a safeguard and further/deeper liberalization commitments;

---

<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.

- d. Circumstances giving rise to an ESM; and
- e. Difficulties in the operationalization of an ESM.

2.2. Following this introduction, the Chairperson opened the floor for Members' reactions and comments.

2.3. The representative of the Philippines, also on behalf of the delegations of Brunei Darussalam, Cambodia, Indonesia, Malaysia, Myanmar, Philippines, Thailand and Viet Nam, thanked the Secretariat for documenting their presentation and statements during the dedicated discussion of 25 February 2014 as reflected in document S/WPGR/M/83. He also thanked the former Chairperson for his Note summarizing the views shared in that discussion (JOB/SERV/186), underlining that it had been drafted under the Chair's own responsibility and was without prejudice to any Member's assessment of the current situation of the ESM negotiations. Judging from Members' active participation, as reflected in the minutes and the Chair's Note, the dedicated discussion went a long way towards its objective, which was to foster a better understanding of emergency safeguard provisions in FTAs/RTAs. The proponents felt that there was scope for future work that they might explore at the appropriate time.

2.4. He provided further elaboration on the points made by the proponents at the preceding meeting. Firstly, in addition to the previously listed seven trade agreements containing emergency safeguard provisions<sup>2</sup>, three more should be added: Viet Nam–Japan (2009); Malaysia–India (2011) as mentioned by India at the previous meeting; and Malaysia–New Zealand (2010). As previously observed, the degree of detail and scope of the ESM provisions could vary from one agreement to the other.

2.5. Secondly, he reiterated the conclusions from their earlier presentation, namely that, first, emergency safeguard measures had been incorporated in numerous FTAs/RTAs involving the proponents. The consideration of ESM provisions in ongoing ASEAN services negotiations further underlined the continued relevance and importance of such disciplines. Second, there were earnest expectations on the outcome of the GATS Article X negotiations, and the possible incorporation of *multilateral* disciplines in these FTAs/RTAs. And third, even prior to the conclusion of multilateral negotiations, parties to the cited FTAs/RTAs had devised a consultative mechanism – and the availability of mutually agreed solutions – for the possible alleviation of adverse impacts that may be caused by the respective FTAs/RTAs.

2.6. Thirdly, in reply to the positions of some Members reiterated at the last meeting, the representative of the Philippines on behalf of the Friends of ESM rephrased some lessons that, according to them, remained valid:

- a. *What applied to John should also apply to Jane.* The same elements used in safeguards in trade in goods – determination of a surge in imports, serious injury of the affected domestic industry, and the existence of a causal link between the two – could be applied to trade in services. The existence of GATT Article XXVIII (Modification of Schedules) had not precluded the adoption of a safeguard mechanism in trade in goods. Likewise, GATS Article XXI should not preclude the possible adoption of multilateral disciplines on emergency safeguard measures in trade in services. Some delegations had argued that such measures might affect the stability and predictability of commitments. Had the existence of a safeguard in goods affected the stability and predictability of commitments under the GATT? Some delegations had invoked the lack of a business case for ESM. In practice, a safeguard in goods was invoked precisely for business to strike a balance between allowing the entry of goods from competitive foreign firms and ensuring that the domestic industry would continue to contribute to a country's economic growth and development. The same could be said for services.
- b. *What seemed not possible today might be possible tomorrow.* Much had been said about the difficulties in determining "substantial adverse impact" owing to challenges in statistical measurement and analysis. Data collection and statistical analysis would improve over time. Gathering micro-level statistics from enterprises, which recorded

---

<sup>2</sup> Namely ASEAN-China (2007), ASEAN-Korea (2009), ASEAN-Australia-New Zealand AANZFTA (2010), Malaysia-Japan (2006), Thailand-Japan (2007), Malaysia-Pakistan (2008), and Indonesia-Japan (2008).

disaggregated value-adding services to monitor their costs and revenues, might be an area for further exploration.

- c. *Having similar elements, characteristics or purposes did not make two things the same.* A car and a bicycle both had wheels and steering mechanisms, but they were two different entities. GATS Article XXI and emergency safeguard measures might both provide relief to affected industries. However, the former represented a lengthy process resulting in a long-term closing of borders, while the latter was intended to provide rapid, temporary relief.

2.7. The representative of the Philippines, on behalf of the proponents, thanked the delegations that had expressed interest in, or support for, ESM disciplines. Based on the information gathered from the dedicated discussion, the proponents contemplated requesting the Secretariat to update its Note on ESM provisions in RTAs/FTAs that were currently in force.

2.8. The representative of the United States thanked the outgoing Chairperson for his summary of the dedicated discussion held in February 2014, which touched upon some of the key areas. It did not delve into all the concerns raised by his delegation, but that could not be expected. The Note was issued under the Chair's own responsibility. The concerns repeatedly raised by his delegation regarding emergency safeguard measures in services remained entirely valid. The assumption that the existence of an emergency safeguard in goods meant there needed to be one in services was misleading. Goods and services were traded in different ways. A surge in services imports (however that would be defined in light of the four modes of supply) – brought about by a market opening through a competitive and efficient regime, leading to lower-cost and higher-quality services – would seem a positive development. Blocking such an opening through an emergency safeguard mechanism would undermine the certainty that trade partners were expecting from commitments. An emergency safeguard mechanism might open the door for abuse by incumbent operators fearing competition. For all these reasons, his delegation remained unpersuaded that an ESM in services was necessary at this time.

2.9. The representative of the European Union echoed the concerns expressed by the representative of the United States, pointing out the uncertainties in applying an emergency safeguard to services relating, in particular, to the difficulty to determine what constituted a surge in "service imports". It was also questionable how an alleged parallelism between trade in goods and trade in services would work. However, his delegation was ready to continue listening to the ideas expressed by the Friends of ESM.

2.10. The representative of Chile observed that the Secretariat Note on "*Safeguard-Type Provisions in Economic Integration Agreements*" covered agreements notified to the WTO under GATS Article V between January 2003 and March 2009.<sup>3</sup> Yet, a number of the agreements mentioned by the Friends of ESM either had been negotiated or had entered into force *after* that date. It would be useful to update the Secretariat Note to incorporate more recent agreements and, possibly, identify those that were not anymore in force. Discussions should not be based on a five-year old document.

2.11. The representative of the Philippines backed the suggestion made by the representative of Chile. The ESM proponents had voiced a request to update the Secretariat Note deeming it useful for the Working Party's future work on this matter.

2.12. The representative of Ecuador also supported the proposal made by the representative of Chile. His delegation considered it important to update the Note, and this should be done by the Secretariat. An updated Note would enable Members to better analyse the issue in their future discussions.

2.13. The representative of New Zealand requested a clarification as she had understood from their initial intervention that the Friends of ESM were *contemplating* requesting the Secretariat to update its Note. However, it seemed from the subsequent discussion that they were indeed posing the request at this meeting. If that was the case, her delegation would appreciate some

---

<sup>3</sup> Secretariat Note as contained in document S/WPGR/W/4/Add.2 of 25 March 2009.

clarification on the scope and nature of the analysis that was proposed to be undertaken. Would it merely update the previous version or was some different/new analysis envisaged?

2.14. The representative of the Philippines confirmed that the proponents had been contemplating such request. Given the support expressed in favour of their proposal in the course of the meeting, they intended to ask the Secretariat to update its Note based on its existing structure. It would provide an updated factual overview of the FTAs/RTAs notified to the WTO since March 2009 and, possibly, of those that were no longer in force or had been overtaken by subsequent developments. An updated version providing the current facts could serve Members' future work whether analytical or otherwise.

2.15. The representative of Chile further elaborated on his previous intervention explaining that his delegation suggested keeping the work strictly to: (i) updating the Secretariat Note by adding relevant agreements not previously covered (e.g., because they had entered into force only after March 2009); and possibly (ii) going through the agreements included in previous versions of the Secretariat Note<sup>4</sup> to identify those no longer in force. His delegation was not, at this point, suggesting any sort of deeper analysis, or change in the substance of the Secretariat Note.

2.16. The representative of Canada stated that his delegation remained unconvinced that an ESM would add value to the GATS. As they had said before, it was not clear what kinds of circumstances would potentially require an ESM. It was difficult to conceive what a surge in service imports would look like, how damage would be assessed and whether it could be linked to a Member's GATS commitments. Nonetheless, his delegation remained open to further discussion on these issues and would not oppose the proposed update of the Secretariat Note.

2.17. Taking stock of the different interventions made, a representative of the Secretariat recapped that it had been requested to update its Note issued in March 2009 in document S/WPDR/W/4/Add.2. The idea would be to remove references to agreements that were no longer in force (or provisions that were no longer operative), and add any agreements (or provisions) that had entered into force or been notified since March 2009. The new Addendum would follow the same structure as S/WPDR/W/4/Add.2, except that its content would be updated. Unless Members had further observations or comments, the Secretariat would proceed as described.

2.18. In concluding, the Chairperson thanked the delegations who spoke for their constructive interventions. He suggested that the Working Party take note of the statements made. They would be duly reflected in the meeting report. As to the update of the Secretariat's Note, he had got a sense from the meeting that delegations could lend their support to the proposal made by the ESM proponents. He therefore suggested mandating the Secretariat to update its Note.

2.19. It was so agreed.

### **3 ITEM C - NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS**

3.1. Turning to government procurement, the Chairperson recalled that, at the October 2013 meeting, a preliminary version of the Staff Working Paper on *"The Relationship between Services Trade and Government Procurement Commitments: Insights from relevant WTO agreements and recent RTAs"* had been presented by its authors. Being prepared by the authors in their personal capacity, views expressed in the Paper were their personal responsibility and should not be attributed to the WTO, or the Secretariat. Several delegations had provided useful suggestions to improve the Paper, and the co-authors were still working based on these comments. A revised, final version would be available in time for the next meeting. Following this introduction, the Chairperson opened the floor for questions and comments.

3.2. The representative of the European Union noted that his delegation had already provided a first batch of comments on the preliminary Staff Working Paper and was looking forward to receiving the revised version.

---

<sup>4</sup> Secretariat Note S/WPGR/W/4 of 24 November 1995 as updated in Addenda 1 and 2 (dated 20 February 2003 and 25 March 2009 respectively).

3.3. The Chairperson suggested that the Working Party take note of the statement made and revert to this item at its next meeting.

3.4. It was so agreed.

#### 4 ITEM D - NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

4.1. Turning to subsidies, the Chairperson stated that, as agreed at the previous meeting, the Secretariat had issued a revised version of its Background Note entitled "*Subsidies for Services Sectors – Information contained in WTO Trade Policy Reviews*" (S/WPGR/W/25/Add.7). It had the same content as Addendum 6, the difference being that the information on subsidy measures was structured according to individual services sectors/sub-sectors. The Chairperson then turned to a representative of the Secretariat to introduce the Note.

4.2. A representative of the Secretariat explained that the Note covered measures in 19 sectors/subsectors among which, for instance: tourism and travel related services; a range of different transport services; software development services, information and communication technologies related services, data processing services and telephone call centre services; health related services; "other" or unspecified services; etc. Citing examples of measures from various sectors, he explained how the reorganisation by sector had helped extracting valuable insights from the information contained in Trade Policy Review reports. Taking the transport sector as an example, support measures ranged from tax incentive schemes and duty-free imports to privileged access to funding, State aid to back or rescue certain companies, fixed payments to operators and subsidies to public transport services.

4.3. According to the findings made, the measures tended to concentrate in five main sectors: tourism and travel; transport; financial services; telecommunications services; and software development and ICT-related services. Unsurprisingly, public involvement appeared particularly widespread in key infrastructural services. The Note also revealed two interesting recent trends. Firstly, software development and ICT-related services attracted an increasingly significant number of support measures. Secondly, some Members' manufacturing operations in free zones treated services more and more as directly related to, or even an integral part of, the industrial process. Consequently, some support programmes tended not to distinguish anymore between manufacturing and service activities, which made it difficult to disentangle the measures applied to services from the ones relating to goods. This evolution was reflected in the significant rise of entries in the "Other or unspecified services" category.

4.4. As explained in the Note, the compilation suffered from a number of limitations inherent to the nature of the information. For instance, the limited level of detail in TPR reports made it difficult to identify the extent to which a benefit was being conferred, as well as its actual beneficiary.<sup>5</sup> Another shortcoming was the already-mentioned difficulty to distinguish goods from services. Thus, the impact of a given support programme on a specific *service* was not always ascertainable. Finally, the TPR reports contained no information on possible trade-distortive effects of subsidies. These determinations were most appropriately left to Members; the Note merely aimed at facilitating the discussions. In conclusion, the representative of the Secretariat invited Members to review the Note, welcoming any comments or suggestions for changes.

4.5. The Chairperson thanked the representative of the Secretariat for his introduction. Delegations might wish to consider organizing discussions of the revised Note on a sector-by-sector basis. Information could for instance be collected on: (1) the form of support measures – whether they could be considered to amount to a production, investment, export or consumption subsidy; (2) whether *foreign* services and service suppliers were entitled to them, or not (national treatment); (3) the affected mode(s) of supply; and (4) possible trade effects, including any distortions that might be involved. He then opened the floor for Members' comments.

4.6. The representative of Chinese Taipei expressed the view that the presentation of subsidy measures on a sectoral basis was very helpful. Her delegation still had some editorial questions regarding the previous versions and would contact the Secretariat after the meeting.

---

<sup>5</sup> In particular, whether the final beneficiary of the subsidy was the company supplying the service or the end-user/consumer.

4.7. The representative of the United States thanked the Secretariat for its hard work in putting together the Note. His delegation was still reviewing the document and had no specific comments on its content at this stage. However, his delegation was not sure whether the Note identified any problem, or concern, to be addressed by delegations. As mentioned by the Secretariat, the Note did not reveal any trade distortions related to the subsidies described. The only complaint his delegation had heard regarding subsidies concerned the audiovisual sector. Before Members embarked on a Chair-led process on the issue, as suggested in the Chairperson's Annotated Agenda<sup>6</sup>, his delegation would prefer that they answered the questions raised by the United States in its 2010 Communication (S/WPGR/W/59) regarding the identification of particular *problems* relating to subsidies in services. The word of caution expressed by his delegation on emergency safeguard measures applied equally to subsidies: the mere existence of disciplines on the use of subsidies in the goods' area did not necessarily mean that such disciplines were needed in trade in services. The two contexts were completely different.

4.8. The representative of Switzerland stressed that, given the great importance attached by his delegation to the topic of subsidies in general, and to export subsidies in particular, they considered the Secretariat Note to be very useful. His delegation would study it in-depth and possibly come back to it in a later meeting.

4.9. The representative of Chile recalled that, over the years, Chile has been one of the delegations pushing the issue of developing disciplines on subsidies forward. At the same time, his delegation was realistic and fully cognisant of the current situation of the negotiations in the WTO. However it was precisely bearing this situation in mind, that the Secretariat Note gained greater value. By compiling in a systematic manner empirical evidence of Members' subsidy measures in service sectors, it enabled delegations to search for, and more easily understand the information already on the table. It gave Members a new tool to prepare for a more active negotiation in a hopefully not too distant future.

4.10. The Chairperson thanked delegations for their constructive engagement. He invited the Working Party to take note of the statements made and revert to the item at its next meeting.

4.11. It was so agreed.

## **5 ITEM D: OTHER BUSINESS**

5.1. No topic was raised under this agenda item.

5.2. The meeting was adjourned.

---

---

<sup>6</sup> JOB/SERV/184.