



28 September 2015

(15-4992)

Page: 1/4

Working Party on GATS Rules

REPORT OF THE MEETING HELD ON 2 JUNE 2015

NOTE BY THE SECRETARIAT¹

The Working Party on GATS Rules (WPGR) held a meeting on 2 June 2015, chaired by the incoming Chair, Mr Don McDougall of Canada. The proposed agenda and the Chairperson's annotated agenda for the meeting were circulated in documents WTO/AIR/WPGR/2 and JOB/SERV/206 respectively. The agenda was adopted.

1 ITEM A - NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES (ESM) UNDER ARTICLE X OF THE GATS

1.1. The Chairman recalled that, at its February 2014 meeting, the Working Party had initiated a dedicated discussion on Members' experiences with services-related emergency safeguard provisions in their bilateral and regional trade agreements. Views shared in that meeting were summarized in a Note from the Chairperson (document JOB/SERV/186). The dedicated discussion continued in subsequent meetings of the Working Party, in May and September 2014. Next to the Member-led sharing of experience on safeguard measures in their regional trade agreements ("RTAs"), the Secretariat had also prepared, upon Members' request, an updated Note entitled "*Safeguard-type Provisions in Economic Integration Agreements – a Consolidated List as of 31 July 2014 based on Notifications to the WTO under Article V of the GATS*".² Having recalled these two strands of work, the Chairman opened the floor for Members' comments.

1.2. The representative of the Philippines, on behalf of the delegations of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Thailand and Viet Nam, indicated that her comments regarded the work carried out in the WPGR, and were without prejudice to the process undertaken by the Chair of the Special Session of the Council for Trade in Services regarding the post-Bali work program. The "Friends of ESM" felt that, in order to address the mandate in GATS Article X, Members must build on the work and findings of the past few years. In particular, the proponents would appreciate further comments from Members regarding the dedicated discussion on safeguard-type provisions in bilateral and regional trade agreements. She also invited Members to review again the proponents' 2007 proposal for an "*Annex on Article X Emergency Safeguard Measures*" (document JOB(07)/155). The proponents were available for informal consultations to discuss Members' thoughts and comments regarding this proposal. Members should not be fazed by the gradual work on this topic in the past two decades. Based on promising developments in technical areas and continued relevance of services safeguards in existing trade agreements, the proponents called for continued work on ESM in order to abide by the mandate of GATS Article X, the Doha Development Agenda and the Hong Kong Ministerial Declaration.

1.3. The Chairman thanked the proponents for their statement. He suggested that the Working Party take note of the statement made and revert to this issue at its next meeting.

1.4. It was so agreed.

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.

² Document S/WPGR/W/64, dated 4 September 2014.

2 ITEM B – NEGOTIATIONS ON GOVERNMENT PROCUREMENT UNDER ARTICLE XIII OF THE GATS

2.1. Turning to government procurement, the Chairman recalled that, at the Working Party's last meeting in March 2015, one of the authors had presented the changes introduced in the final version of the WTO Working Paper entitled "*The Relationship between Services Trade and Government Procurement Commitments: Insights from relevant WTO agreements and recent RTAs*".³ The changes had been included in response to comments received from Members in earlier discussions. In the subsequent debate, one delegation had suggested, as a possible way forward, to have a Member-led exchange – and possibly some background research by the Secretariat – on the treatment of locally established service suppliers with respect to government procurement. More discussion was needed to define the contours of possible future work in this respect, including possibly work to be requested from the Secretariat. The Chairman opened the floor for Members' suggestions regarding either the WTO Working Paper or ideas on future work.

2.2. The representative of the European Union stated that, as government procurement was increasingly becoming a critical issue relevant to trade in services, his delegation would welcome further discussions on this topic in the Working Party, as indicated at the last meeting. As a next step, the EU wished to propose that Members exchange information on existing practices regarding the treatment of established service suppliers in government procurement procedures, notably with respect to national treatment. Mode 3 (i.e., services supplied via foreign commercial presence) was commercially the most significant among the four modes. His delegation suggested that Members exchange information in respect of the following questions: 1) How did Members treat foreign-owned or controlled established service suppliers, as compared to "domestic" service suppliers, with regard to government procurement procedures? 2) Was there any discrimination either in the legislation or in practice? And if so, in what form and for which sectors/activities? Was there any discrimination based on the origin of established companies? How common was discrimination based on capital ownership? 3) What good practices could be drawn from national experiences? Further to such Member-led exchange of information, his delegation wished to propose that the Secretariat be asked to analyse Members' practices in this regard as reflected in their regional trade agreements, addressing the above-mentioned questions.

2.3. The EU representative informed delegations that, with respect to government procurement procedures, the European Union treated foreign-owned established service suppliers as EU companies – hence without any discrimination on grounds of capital ownership. A company established in one Member State was accorded the full benefit of access to the EU internal market, including in respect of public procurement. His delegation would circulate the questions mentioned earlier in due course, and welcome a first discussion on these at the Working Party's next meeting.

2.4. The representative of India thanked the EU delegation for its comprehensive oral presentation, asking for the questions to be provided in writing in order to facilitate consultations with her capital. She observed that the WTO Working Paper on "*The Relationship between Services Trade and Government Procurement Commitments: Insights from relevant WTO agreements and recent RTAs*" also mentioned mode 4 – albeit to a limited extent. The Paper cited the differential treatment of foreign service suppliers in government procurement as one of the major constraints on international trade in services through the movement of natural persons. Her delegation believed that this aspect of government procurement – namely its limited benefits, if any, in an area that was essential for export interest to developing countries – had to be factored in any discussion, study or future work of the Working Party.

2.5. The representative of Turkey also asked the delegation of the EU to provide further details on its proposal in writing. She cautioned Members against focussing only on mode 3, which already enjoyed much better conditions, inviting them to include also mode 4.

2.6. The representative of Canada thanked the EU for its ideas on how to take forward the work on government procurement. The issue of non-discrimination of established service suppliers in government procurement markets raised interesting questions, which could be usefully examined in this Working Party. His delegation supported pursuing this line of work and looked forward to receiving more details on the EU proposal.

³ The final version was released in November 2014 as WTO Working Paper No. ERSD-2014-21. See the following webpage: https://www.wto.org/english/res_e/reser_e/wpaps_e.htm

2.7. The Chairman invited the Working Party to take note of the statements made. He invited the delegation of the European Union to circulate its questions in writing, if possible in advance of the next meeting. The Working Party would revert to this item at its next meeting.

2.8. It was so agreed.

3 ITEM C – NEGOTIATIONS ON SUBSIDIES UNDER ARTICLE XV OF THE GATS

3.1. Turning to subsidies, the Chairman reminded delegations that the Secretariat had circulated a revised version of its Background Note entitled "*Subsidies for Services Sectors – Information contained in WTO Trade Policy Reviews*" in January 2015 (S/WPGR/W/25/Add.7/Rev.1). At the preceding meeting, a couple of delegations had commented upon the Secretariat Note. He acknowledged that discussions on this topic had stood at an impasse for a while. No new ideas on how to carry forward the work in this area had emerged from his informal outreach to Members preceding this meeting. Following these introductory remarks, the Chairman opened the floor for Members' observations.

3.2. The representative of Turkey wished to provide further information with regard to Turkey's Savings Deposit Insurance Fund scheme. She explained that her delegation approached the Secretariat Background Note with great caution when it came to the financial sector, given the latter's crucial role for overall economic stability. Regarding financial services, Members had the right to implement any measure taken to protect the integrity and stability of the financial system, as provided in Paragraph 2(a) of the GATS Annex on Financial Services. The Turkish Banking Rehabilitation and Restructuring Program was conducted within two separate subcategories: (i) the restructuring of public banks controlled by Treasury; and (ii) the resolution of private banks by the Savings Deposit Insurance Fund ("SDIF") scheme. This program was aimed at strengthening the financial structure of public banks, and some of the problematic banks were either liquidated or transferred to the private sector. A significant amount of revenue was collected from the transfers of ownership of these banks, or from the sales of assets transferred to SDIF from problematic banks. The funds transferred to the public banks could be classified in two different categories. The first one regarded awarding public banks securities issued by Treasury in exchange for Treasury's existing debt held by these banks, in order to strengthen their liquidity position and, also, restructure existing public debt. This operation could not be regarded as funds transfers since the government had not taken any extra obligations. The second category involved capital injections to public banks. Her delegation was of the view that these could not be interpreted as subsidies. Turkey's SDIF scheme was fully in line with the recommendations of international standard-setting bodies for financial services such as the Financial Stability Board and the Basel Committee on Banking Supervision.

3.3. The representative of Ecuador thanked the Secretariat for updating its Background Note, and indicated that his delegation was in favour of provisions regulating subsidies under the condition that a special and differential treatment as well as the necessary policy space be secured for developing countries to support the promotion and diversification of their services sector. This was a general principle that had to govern any future negotiation.

3.4. The Chairman thanked the delegations who spoke. He invited the Working Party to take note of the statements made and revert to this item at its next meeting.

3.5. It was so agreed.

4 ITEM D – FUTURE WORK

4.1. The Chairman explained that the item "future work" had been placed on the agenda in light of ongoing discussions in various WTO bodies on elements for the post-Bali work programme. Over the last weeks, the Chairman of the Special Session of the Council for Trade in Services had been consulting on the services elements of a work programme. While the overall discussion on future work was to be held in the Council for Trade in Services in Special Session, Members might want to discuss how to proceed more specifically with the GATS Rules topics in the context of the post-Bali work programme under this agenda item. He opened the floor for comments.

4.2. No delegation took the floor.

4.3. The Chairman invited the Working Party to take note of the lack of statements. He would reassess the situation to evaluate whether to revert to this item at a later meeting.

4.4. It was so agreed.

5 ITEM E – OTHER BUSINESS

5.1. No matters were raised under this agenda item.

5.2. The meeting was adjourned.
