



2 June 2016

(16-2975)

Page: 1/3

Working Party on GATS Rules

REPORT OF THE MEETING HELD ON 17 MARCH 2016

NOTE BY THE SECRETARIAT¹

The Working Party on GATS Rules (WPGR) held a meeting on 17 March 2016, chaired by Mr Don McDougall of Canada. The proposed agenda and the Chairman's annotated agenda for the meeting were circulated in documents WTO/AIR/WPGR/4 and JOB/SERV/227 respectively. Given that the consultations for the appointment of the chairpersons for the subsidiary bodies of the Council for Trade in Services had not been finalized at the time of the meeting, the Working Party adopted the agenda without the proposed item 2.E "Appointment of the Chairperson for the Working Party".

1 ITEM A – NEGOTIATIONS ON EMERGENCY SAFEGUARD MEASURES UNDER ARTICLE X OF THE GATS

1.1. The Chairman recalled that the Working Party had started in early 2014 a dedicated discussion on Members' experiences with emergency safeguard provisions in their bilateral and regional trade agreements (RTAs). The dedicated discussion continued in two subsequent meetings in 2014. In 2015, the proponents had re-affirmed their interest in pursuing work on emergency safeguards, and invited Members to review again their 2007 proposal as contained in document JOB(07)/155. The Chairman opened the floor for Members' interventions.

1.2. The representative of the Philippines, on behalf of the delegations of Brunei Darussalam, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, the Philippines, Thailand and Viet Nam, called for continued work on emergency safeguard measures (ESM) in conformity with the built-in mandate in GATS Article X, as confirmed by subsequent Ministerial Declarations. She further recalled the dedicated discussion on provisions relating to safeguard measures in RTAs, the proponents' 2007 proposal as contained in document JOB(07)/155 and the dedicated discussion on ESM-relevant statistics. In the run-up to the Nairobi Ministerial Conference, the 'Friends of ESM' had constructively engaged in all aspects of the services negotiations, including ESM, with the ultimate objective of achieving a development-oriented outcome in MC10 and post-Nairobi. While being disappointed by the absence of an outcome on services in Nairobi, the proponents reaffirmed their commitment to resume the unfinished work in trade in services, including in respect of emergency safeguard measures. The proponents recognized that the period of reflection on the future of the overall negotiations had an impact on progress in particular technical areas, including the work of this Working Party. Nonetheless, the proponents stood ready to continue their consultations with interested Members on possible next steps, including possible further dedicated discussions, for instance on relevant statistical developments.

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

2.1. Turning to government procurement, the Chairman reminded delegations that, at the Working Party's meeting in March 2015, the delegation of the European Union had proposed that Members start a discussion on the treatment of foreign-owned or –controlled, established service suppliers in their government procurement procedures, notably in respect of national treatment. Following another round of discussions in the Working Party in June 2015, the EU delegation had circulated its proposal in writing in September 2015 (document JOB/SERV/215), providing further details on possible questions for further information exchange. At the Working Party's last formal meeting, in October 2015, several Members had posed questions or made suggestions to the European Union on its proposal. A couple of delegations had expressed specific areas of concern, notably regarding the purpose of the proposed discussion. Several delegations had suggested expanding the information exchange to include also modes 1 and 4. As agreed by Members in October 2015, open-ended informal consultations were convened on 26 February 2016. The Chairman reported on these consultations at the meeting. He explained that the consultations were mainly aimed at: seeking clarification from the European Union on the objectives and some key features of its proposal; discussing specific questions and concerns that Members had raised; and examining the parameters for a possible discussion on these issues in the future.

2.2. The Chairman informed Members that, in the informal consultations, the EU delegation had made it clear that its proposal, made in the context of the Working Party's regular work, aimed at a voluntary exchange of information among Members regarding their existing government procurement practices. The EU delegation had also clarified that the definition of "*established*" service suppliers designated a "juridical person", that is, any legal entity duly constituted or otherwise organized under applicable law in the host country in accordance with GATS Article XXVIII, lit. (l) – thus excluding forms of commercial presence without separate legal personality such as branches or representative offices. The EU delegation had also explained that the definition of "*foreign-owned or controlled*" service suppliers was in accordance with the definitions in GATS Article XXVIII, lit. (n). Furthermore, it had stated its openness, in principle, to covering all levels of governments – this would be left to the discretion of the Members participating in the information exchange. Finally, the EU delegation was also open to including other modes of supply, and invited those Members who had made this suggestion to present specific proposals in this regard.

2.3. The Chairman noted that, in the informal consultations conducted in February 2016, broad support had been expressed in favour of resuming the Working Party's regular work. A number of Members had supported the EU proposal, while one Member had expressed concerns regarding the purpose of an information exchange and the suggestion to develop 'good practices'. The point had also been made that more clarity on the potential interactions between the GPA and the GATS would be desirable. It was understood that such an information exchange would not imply any change to the scope of the exemption contained in GATS Article XIII:1. While being in principle supportive of a voluntary information exchange, several delegations saw value in better defining its scope. Some delegations had invited the EU to reflect the complexity of national government procurement regimes in its proposal. In particular, when awarding public contracts, authorities were employing a myriad of different public policy tools, which did not necessarily distinguish clearly between goods and services, or between "foreign" and "national" suppliers. Furthermore, the GPA's non-discrimination obligations applied only with respect to measures regarding each party's "covered procurement". Sharing information about government procurement practices *outside* these "covered procurement" categories might prove difficult. The EU delegation was invited to give further thought to these questions.

2.4. The Chairman reported that, in the informal consultations, one delegation had shared more concrete information about its good practices regarding the treatment of foreign-owned or –controlled service suppliers in government procurement procedures. The delegation noted that foreign suppliers often had to establish local companies in order to benefit from advantages such as tax reimbursements or bank guarantees in relation to public contracts.

2.5. Finally, the Chairman further stated that several delegations had expressed interest in further studying the developmental aspects of government procurement, as well as the impact of opening-up government procurement markets on countries' growth and development.

2.6. Having summarised the gist of the informal consultations, the Chairman opened the floor for Members' comments.

2.7. The representative of the European Union stated that her delegation had felt encouraged by Members' feedback. An exchange of information by Members on their existing government procurement practices would bring concrete added value to the discussions. As a next step, her delegation intended to reach out to those Members that had expressed interest, or raised questions or concerns. Her delegation was open to adapting some elements of the proposal, such as clarifying that GATS definitions would be used, or reconsidering the reference to good practices. She recalled her delegation's readiness to extend the information exchange to other modes of supply. To conclude, she noted that, in the informal consultation, some Members had already shared elements of answers to the questions raised in their proposal. This was encouraging, and showed that the exercise was both useful and not burdensome.

2.8. The representative of Japan thanked the EU delegation for their explanations and flexibility. His delegation encouraged the European Union to further clarify the objectives of the proposed information exchange. He observed that the questions raised in the proposal were relevant for the procurement of both goods and services. He therefore suggested to integrate the broad and specialised knowledge accumulated by the GPA Committee, and to better define those questions that were specific to services procurement.

2.9. Summarizing the interventions made, the Chairman took note that the delegation of the European Union would continue to reflect on the feedback it had received. He suggested that the Working Party take note of the statements made so far. The Chairman would continue to consult informally with the European Union and other interested delegations on the way forward.

2.10. It was so agreed.

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

3.1. Turning to subsidies, the Chairman observed that the Working Party had not had substantive discussions on this topic for some time. No new ideas on how to carry forward the work in this area had emerged in his informal outreach with delegations prior to the meeting. Following these introductory remarks, he opened the floor for Members' observations.

3.2. Reminding Members of the negotiating mandate contained in Article XV of the GATS, the representative of Switzerland recalled his delegation's submission concerning disciplines on export subsidies (document JOB/SERV/36 of 2 December 2010), as well as Members' past discussions about what constituted a subsidy, respectively an export subsidy. Various other delegations had made submissions on subsidy-related questions. His delegation held the view that there was sufficient material on the table for Members to pursue their discussions in this area.

3.3. The Chairman 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 – OTHER BUSINESS

4.1. No matter was raised under this agenda item.

4.2. Thus the meeting was adjourned.
