



11 November 2016

(16-6231)

Page: 1/7

Working Party on GATS Rules

REPORT OF THE MEETING HELD ON 5 OCTOBER 2016

NOTE BY THE SECRETARIAT¹

The Working Party on GATS Rules (WPGR) held a meeting on 5 October 2016 chaired by Mr Gustavo Héctor Mendez of Argentina. The agenda for the meeting contained in document WTO/AIR/WPGR/6 was adopted. Ahead of the meeting, an annotated agenda by the Chairperson had been circulated in document JOB/SERV/241 dated 29 September 2016.

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

1.1. Regarding emergency safeguard measures (ESM), the Chairman recalled that the Working Party had held dedicated discussions on emergency safeguard provisions in Members' bilateral and regional trade agreements in 2014. Since then, however, no more targeted work had been undertaken.

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, recalled the proponents' previous statements regarding what had been done and the possible way forward for the discussions on emergency safeguard measures. In particular, she referred to the dedicated discussion on safeguard-type provisions in bilateral and regional trade agreements, to the proponents' proposal for draft disciplines on ESM contained in document JOB(07)/155, and to a dedicated discussion on ESM-relevant data held by the Working Party in March 2011. She also referred to the built-in mandate of GATS Article X, as confirmed by subsequent Ministerial Declarations, as being the framework for undertaking work on these matters.

1.3. In view of a possible services outcome at the 11th Ministerial Conference in 2017, the proponents wished to reaffirm their commitment to engage constructively in the services negotiations, particularly with regard to unfinished work, including on emergency safeguard measures. While the context of the overall negotiations impacted progress, particularly in technical areas such as GATS Rules, the proponents nonetheless stood ready to continue their consultations with interested Members on plausible next steps, including further dedicated discussions, for instance on statistical developments relevant for ESM. She stated that the proponents would revert to the Working Party if and when they were ready to come forward with a formal proposal.

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

1.5. 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. Concerning government procurement, the Chairman reminded delegations that, in September 2015, the EU delegation had circulated a "Proposal for Future Work on Government Procurement" (JOB/SERV/215), which suggested that Members exchange information on a voluntary basis on how they treated foreign-owned or -controlled, established service suppliers in their government procurement practices, notably with respect to national treatment. Following this introduction, he opened the floor to seek Members' views on possible future work on this subject.

2.2. The representative of the European Union informed Members that his delegation was still in the process of assessing the best way forward with respect to its proposal, and that it would revert to the Working Party if and when it was to submit a revised proposal.

2.3. The Chairman thanked the delegation of the European Union for its statement. He invited the Working Party to take note of the statement made and to revert to this item at its next meeting.

2.4. It was so agreed.

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

3.1. The Chairman acknowledged that there had been no substantive discussions on subsidies for some time. He then opened the floor for Members' comments. No delegation took the floor.

3.2. In the absence of any statement, the Chairman invited the Working Party to revert to this item at its next meeting.

3.3. It was so agreed.

4 ITEM D: FUTURE WORK AND TIMING OF THE NEXT MEETING

4.1. The Chairman opened the floor for delegations' views regarding future work and timing of the Working Party's next meeting.

4.2. Noting that some statements had been made repeatedly over the years, the representative of the United States wondered whether, in the interest of efficient use of time, there was a means to reaffirm the proponents' long-standing interests in a way that would not require the full convening of a meeting. In case some delegations had institutional or systemic concerns about skipping one or several (or temporarily suspending) meetings, his delegation was more than willing to make it clear that it remained open to, and would carefully review, any future proposals that would be made. His delegation would not see any efficiency improvements in the way of convening subsidiary body meetings as closing any doors to anyone in the future. If other delegations felt that such a change would lock any doors, which they could not re-enter in the future, they should say so. If some delegations needed more of a comfort level about them being able to return at any time to the Working Party with new ideas, his delegation was ready to provide the assurance that it would welcome and review any new proposal made.

4.3. The representative of Brazil expressed support for the statement made by the delegation of the United States. He noted that, in their interventions at the meeting, both proponents had said that they would revert to the Working Party "if and when" a revised proposal was underway. He believed that this was the key to the Working Party's future work, and that meetings should only be convened if there was substance to be discussed, for instance in the form of a new or revised proposal.

4.4. The representative of Ecuador thanked the Chairman for his Annotated Agenda and for his efforts to encourage a debate on this subject. He suggested that the Chairperson of the Council for Trade in Services (CTS) could coordinate with the Chairperson of the Working Party on GATS Rules (as well as those of the other subsidiary bodies) ahead of a services cluster to assess whether there were any issues of substance to be discussed. If a Member wished to raise any issue, a meeting of the corresponding Committee or Working Party would be organized. Otherwise, no

meeting would be convened during that cluster. This did not in any way imply that the subsidiary body would be abolished. Rather, meetings would be convened depending on the issues to be discussed. In this way, time could be used more efficiently and delegations could concentrate their efforts on negotiating issues discussed in other groups.

4.5. The representative of Nigeria wished to seek guidance from the Secretariat with respect to issues of both substance and procedure. With respect to procedural matters, he asked whether there were any rules of procedure regarding the frequency of meetings. He noted that delegates in Geneva needed to advise their capital-based experts regarding their attendance of meetings sufficiently in advance of a cluster. His delegation sought guidance from the Secretariat on these questions, as well as on how delegations could manage their time more efficiently.

4.6. A representative of the Secretariat explained that the "Rules of Procedure for Meetings of the Council for Trade in Services" (which are based on those of the General Council) applied *mutatis mutandis* to the meetings of the Working Party on GATS Rules.² The rules of procedure of the Working Party did not impose any particular requirements regarding the frequency of its meetings. They simply stated that the Working Party "shall meet as appropriate". It was therefore up to Members to decide whether they wished to meet, or not. The rules further provided that "[m]eetings ... shall be convened by the Director-General by a notice issued not less than ten calendar days prior to the date set for the meeting. ... Meetings may be convened with shorter notice for matters of significant importance or urgency at the request of a Member concurred in by the majority of the Members".

4.7. The representative of the Secretariat drew delegations' attention to the fact that the agenda item under consideration mentioned the "timing", rather than the date, of the next meeting. Delegations might not want to decide on a particular date at this stage. They might want to leave open the question of the date, and let the Chairman conduct consultations, at the appropriate time, on whether or not to convene a meeting during the next services cluster. The rules of procedure were very flexible, leaving it up to the Members to decide. The representative of the Secretariat emphasised that such a decision – to convene a meeting, or not – would not affect in any way the current structure, or existence, of the Working Party.

4.8. Noting that the meetings on trade in services were normally organised in 'clusters' (with meetings of the CTS and its subsidiary bodies being bundled – or 'clustered' – over two or three days), the representative of Nigeria asked the Secretariat whether, and how, meetings of one (or several) subsidiary bodies could be 'delinked' from a particular cluster. In his view, it was difficult, in practice, to separate the question of the timing from the question of the date of a meeting. Having said that, he agreed that in the absence of any new substance, Members might want to review the need to hold a meeting.

4.9. In response to the question raised by the delegate of Nigeria, the representative of the Secretariat explained that the scheduling of services meetings in 'clusters' dated back to the start of the GATS negotiations in 2000-01. This practice was developed for the convenience of delegates travelling from capitals so that they could attend all services meetings. When negotiations were still quite active, clusters would typically extend over a period of two weeks. However, nothing in the rules of procedure required that meetings should be held back-to-back as they currently were. He underscored that, if a subsidiary body of the CTS did not meet during one or several clusters, this would not have any consequence on the structure or existence of this body.

4.10. The representative of the European Union supported the pragmatic approach suggested by Ecuador to meet whenever was appropriate, without there being a need to have more formalized rules in this regard. The Secretariat's explanation regarding the rules of procedure showed that there was flexibility in the current system regarding the convening of meetings. His delegation trusted the Chairperson to consult with Members in order to assess whether there was a need for the Working Party to meet.

4.11. The representative of Barbados noted that this issue, among others, had been discussed at an informal meeting of the CTS on 26 July 2016 and recalled that the ACP Group had made a

² The Rules of Procedure for Meetings of the Council for Trade in Services are contained in document S/L/15. The Rules of Procedure for Meetings of the General Council are contained in document WT/L/161, page 6 ff.

statement in this context.³ She thanked the Secretariat for its explanations of the terms used in the rules of procedure, according to which the subsidiary bodies of the CTS shall meet "as appropriate". At the informal CTS meeting in July 2016, the ACP Group had indicated that they would support a proposal stating that meetings shall be convened when there was an issue to be discussed – as it might not always be necessary for all the subsidiary bodies to meet at each services cluster.

4.12. The representative of Canada wished to acknowledge the GATS built-in agenda in the areas of emergency safeguard measures, government procurement and subsidies. His delegation understood and recognised that these were issues of importance to different WTO Members, and remained willing to engage in these areas. However, as other delegations had pointed out, work in the WPGR had been at an impasse on all fronts. In his delegation's view, new initiatives would have to be put forward by the proponents in order for the work to resume. In the absence of such proposals, useful discussions or progress seemed unlikely. His delegation wished to support the previous speakers who had called for a flexible approach whereby the Working Party could reconvene when there was substance to be discussed. In his delegation's view, this would probably require a new proposal from one of the proponents.

4.13. The representative of Australia agreed with other delegations that the current rules of procedure were sufficiently flexible and that no additional or more formal rules were needed on whether to convene a meeting or not. Australia also agreed that the Chairperson would be best placed to decide whether there were issues of substance that would require the Working Party to meet. As long as sufficient advance notice was provided, there was no need to formalize the procedures. Her delegation was of the view that no decision needed to be made at this time on the date of the next meeting, and trusted the judgement of the Chairperson, in consultation with Members, in this regard.

4.14. The representative of Nigeria said that his delegation supported the flexible approach outlined by the last few speakers. He agreed with the view that meetings should be convened "as appropriate", after consultations by the Chairperson with Members and the Secretariat. His delegation also agreed with the stance taken by Australia that there was no need to decide about the date of the next meeting at this time. This could be left to the judgement of the Chairperson in consultation with Members.

4.15. The representative of South Africa asked for a clarification regarding the rule of procedure mentioned by the Secretariat according to which any Member had the right to ask for a meeting as long as his request was supported by the majority of the Members.

4.16. The representative of the Secretariat explained that the majority rule applied only in case of meetings convened with a prior notice that was shorter than the mandatory ten calendar days.⁴ The "Rules of Procedure for Meetings of the Council for Trade in Services" stipulated that the CTS (and *mutatis mutandis* its subsidiary bodies) "shall meet as appropriate". In practice, this was applied in a very flexible way, by relying on the judgment of the Chair, in consultations with delegations. It was considered that the Chairperson was able to best assess the support for holding a meeting. When a meeting was requested, the Secretariat had seldom witnessed any situation in which an objection to holding the meeting was raised since, normally, a meeting would be convened if requested by a Member when there was substance to discuss. The practice had evolved over the years in a very flexible way, relying to a large extent on the judgment of the Chairperson in consultation with Members.

4.17. The representative of Barbados enquired about the currently applied practice with respect to convening meetings.

4.18. The representative of the Secretariat responded that the currently applied practice was to hold formal meetings in clusters. However, not all the subsidiary bodies necessarily had to meet at each cluster. In addition, there was also the possibility of holding informal meetings at any point in time, as deemed appropriate. Usually the decision to hold a meeting was guided by the substance

³ An informal meeting of the CTS had been convened to discuss, inter alia, Brazil's proposal (presented orally at an earlier formal meeting of the CTS) on future work of the subsidiary bodies to the Council for Trade in Services.

⁴ See document WT/L/161, p. 6, Rule 2.

of what that meeting was going to address, or the need for the meeting per se. As explained previously, the rules of procedure stipulated that formal meetings shall be convened by the Director-General by a notice issued not less than ten calendar days prior to the date set for the meeting. Informal meetings could be convened at a shorter notice. The usual practice was to rely on the Chairperson's judgement in light of his consultations with Members.

4.19. The representative of India asked whether it would be possible that a particular subsidiary body held no meeting at all in one year. She understood that the rules of procedure did not mandate any given meeting frequency. However, she wondered about the implications of not holding any meeting during one or several years, and whether this would not violate any rule.

4.20. The representative of the Secretariat indicated that there was no rule in this regard, and that Members could actually go over a whole year without convening a meeting. Pursuant to the annual reporting requirements, all the subsidiary bodies needed to report to the Council for Trade in Services at the end of every year. If there had been no meeting, the annual report would say that no meeting had been held. One further point to be clarified in this regard was how the subsidiary bodies adopted their draft annual report for transmission to the CTS. Subsidiary bodies did not need to meet in order to adopt their annual report; the latter could be adopted through a written procedure.

4.21. The representative of Colombia asked, in case a given subsidiary body did not meet during a cluster, whether a delegation could raise an issue of relevance to the work of that subsidiary body in the CTS.

4.22. The representative of the Secretariat responded that Members could raise at the CTS any issue they wished to raise. The practice had always been, however, that subsidiary bodies operated with a certain degree of autonomy and handled their own substantive business. The very purpose for establishing a subsidiary body was that that it would focus on its own agenda and then report to the CTS. However, there was no procedure or rule against the suggestion made by the representative of Colombia.

4.23. The representative of South Africa enquired, in the event a subsidiary body did not meet during an entire year or even two years, whether a Chairperson would still be elected for this subsidiary body at the beginning of each year. She wondered with whom delegations would be consulting with, in case no meeting was convened during an entire year.

4.24. The representative of the Secretariat explained that, as long as the subsidiary body existed – as did therefore the possibility of bringing substantive items onto its agenda – a Chairperson would be needed, even if the frequency of meetings of that subsidiary body was very low. He noted that the Working Group on the Relationship between Trade and Investment established at the 1996 Ministerial Conference in Singapore had remained without a Chairperson following the suspension of its work. In the case of the Working Party on GATS Rules, however, even if it was not to meet for a whole year, a Chairperson would normally be appointed. This was especially the case given the need to hold consultations with Members in order to decide whether, or not, to convene a meeting.

4.25. The representative of Nigeria underlined that, in the absence of substantive discussions, delegations could still have a useful discussion on procedural matters. He also wished to stress the Chairperson's and Members' shared responsibility to ensure engagement and productive discussions in the different subsidiary bodies. While the Chairperson was responsible for being active and for engaging with delegations, Members had the responsibility to keep the Chairperson busy. Based on the question posed by the delegate of South Africa and the Secretariat's response, he concurred that the Working Party needed a Chairperson. His delegation did not think that the Working Party on GATS Rules should take the same route as the Working Party on the Relationship between Trade and Investment. He agreed with other delegations who spoke before him that Members needed to reflect on how to reinvigorate the work in the subsidiary bodies of the CTS and how to organize meetings in a more efficient and productive manner. He suggested that the Secretariat could organize a briefing session on the rules of procedure and related matters for delegations that may not be familiar with these issues.

4.26. The representative of the Dominican Republic observed that, in the absence of new substance to be discussed, if delegations considered it useful to have discussions on procedural aspects, a meeting of the Working Party could still be scheduled during the next cluster. His delegation was looking for formal guidance from the Secretariat regarding the aspects that needed to be taken into account – including new issues that could be taken up by the Working Party, and their interaction with other items on the agenda.

4.27. In light of the foregoing, the representative of Côte d'Ivoire asked whether he had understood correctly that, in order to hold a meeting of the Working Party, two conditions needed to be fulfilled: first, that there be substance to be discussed; and second, that Members needed to be consulted in advance to see whether there was a majority in favour of holding the meeting. His delegation was of the view that, as long as there was a new proposal, such new proposal constituted the essential condition for the Working Party to meet – without subjecting the holding of a meeting to a majority of Members being in favour.

4.28. The representative of the Secretariat explained that the question of a majority decision came into play only in the case of emergency meetings that had to be convened at short notice – i.e., by a notice issued less than ten calendar days prior to the date set for the meeting. Except in this particular case, the rules of procedure did not stipulate any majority requirement in order to convene a meeting. The practice had always been to rely on the judgment of the Chairperson based on his/her consultations with delegations.

4.29. The representative of New Zealand thanked the Secretariat for providing an overview of some of the procedural elements relating to the convening of meetings. His delegation supported the existing practice of relying on the judgement of the Chairperson and did not see any problem with following such flexible approach.

4.30. In light of the discussion, the Chairman proposed to consult informally with Members ahead of the next cluster on the scheduling of the next meeting of the Working Party.

4.31. The representative of Barbados recalled that the question of the streamlining of the work of the CTS' subsidiary bodies had been the subject of a wider discussion at an informal meeting of the CTS held in July 2016. At the time, the ACP Group had requested that the proposal that had triggered this discussion be circulated in writing. She reiterated the request of the ACP Group that, in light of the complexity involved and the possibility that the proposal could have far-reaching consequences across WTO bodies, the proposal be circulated in writing. The same proposal was now being introduced on the agenda of the Working Party via this agenda item. Many questions had been raised with respect to the implications of such a proposal and consideration had to be given to such questions. To that end, the proposal needed to be put in writing. Meanwhile, her delegation could go along with the Chairman's suggestion to consult with Members to determine whether a meeting of the Working Party should be convened in the next cluster. The same process of prior informal consultations by the Chairperson could be followed for the subsequent meeting of the Working Party – at least until all issues related to the proposal on streamlining the CTS subsidiary bodies had been clarified.

4.32. The representative of Brazil thanked the delegation of Barbados for renewing its request made on behalf of the ACP Group. He explained that the suggestion made by his delegation at the CTS meeting in June 2016 had simply been an invitation for all Members to reflect on the best way to allocate time and resources in a more efficient manner, as called for in paragraph 29 of the Nairobi Ministerial Declaration adopted in December 2015. His delegation had discussed internally whether or not to put its 'invitation to reflect' in writing, and had concluded not to do so. His delegation fully supported the suggestion that the scheduling of meetings be driven by the substance to be discussed.

4.33. The representative of Turkey noted that the lengthy debate under this agenda item indicated the lack of clarity on some of the issues at stake. Since there was no agreement on changing the procedures on the convening of meetings, his delegation suggested that the Working Party on GATS Rules met during the next cluster even if was to be only a short meeting.

4.34. The representative of Nigeria emphasised the importance of discussing the issues of both substance and procedure relating to the proposal to streamline the work of certain subsidiary bodies of the CTS.

4.35. The Chairman thanked the delegations for their statements and suggested to consult informally with Members ahead of the next cluster of meetings (scheduled to take place in the last quarter of 2016) regarding the timing of the next meeting.

4.36. It was so agreed.

5 ITEM E – OTHER BUSINESS

5.1. No issues were raised under this agenda item.

5.2. The meeting was adjourned.
