



27 November 2017

(17-6464)

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**Council for Trade in Services
Special Session**

NEGOTIATIONS ON TRADE IN SERVICES

**REPORT BY THE CHAIRMAN, H.E. AMBASSADOR HECTOR MARCELO CIMA,
TO THE TRADE NEGOTIATIONS COMMITTEE**

1.1. The purpose of this report is to provide the Trade Negotiations Committee (TNC) with the current state of play in the services negotiations. It covers four areas: services trade facilitation, services related to e-commerce, market access, and domestic regulation. While these four topics have been discussed over the past year, only domestic regulation has been raised since my last oral report to the informal TNC/HoDs meeting of 24 October 2017.

1.2. This report is made entirely under my own responsibility. It is based on views of Members expressed in formal and informal meetings of the Special Session, as well as in consultations held throughout the year. It is also informed by the report from the Chair of the Working Party on Domestic Regulation, as discussed below.

1.3. First, on services trade facilitation, the delegation of India circulated, on 23 February 2017, a proposal in the form of a draft text for a trade facilitation agreement on services. It focused on issues such as publication and availability of information, administration of measures, fees and charges, administration of economic needs tests, recognition, cross-border flows of information, and the facilitation of the movement of persons and of consumption abroad. The proposal was discussed at a dedicated meeting of the Special Session last May.¹ As I had noted after the initial presentation of the proposal, views expressed by Members differed in various areas. Subsequently, on 27 July 2017, India circulated a revised proposal, which has not yet been discussed by Members.²

1.4. Second, regarding services elements of e-commerce, earlier discussions had highlighted that some delegations had general interest in this aspect. Subsequently, the European Union circulated, on 23 May 2017, a proposal suggesting text for rules aiming to facilitate online service transactions. It focused on the issues of electronic contracts, electronic authentication and trust services, consumer protection and unsolicited commercial electronic messages.³ That proposal was discussed at a dedicated meeting last June, where different views were exchanged on technical as well as substantive aspects.

1.5. In view of the limited time available before the Ministerial, proponents in these two areas did not seek further meetings of the Special Session to discuss their submissions after the summer break. No outcome in the form of an agreed text can be expected in Buenos Aires in these areas, and the proponents agree with this assessment, as I reported to the TNC last October.

¹ TN/S/W/63, dated 23 February, Communication from India – Trade Facilitation Agreement for Services. Discussion of the proposal in the Special Session is reflected in TN/S/M/46. The proposal had also been discussed in meetings of the Regular Session of the Council for Trade in Services and of the Working Party on Domestic Regulation.

² TN/S/W/63/Rev.1, dated 27 July 2017, Communication from India - Trade Facilitation Agreement for Services; JOB/SERV/267, dated 27 July 2017, Communication from India – Trade Facilitation Agreement for Services; Revised Draft with Tracked Changes and Comments.

³ TN/S/W/64, dated 23 May 2017, Communication from the European Union - An Enabling Environment to Facilitate Online Transactions. Discussion of the proposal in the Special Session is reflected in TN/S/M/47.

1.6. In terms of post-MC11 work on these two topics, India and the European Union have communicated their intention to re-engage on services trade facilitation and online transactions, respectively, after the Ministerial. Some Members have conveyed their openness to pursue discussions on these two topics at that time. Proponents would then have to consider the configurations through which they feel that discussions might best be advanced and work to build support in light of the views expressed by other Members.

1.7. Third, on market access, some Members have expressed interest in reinvigorating market access negotiations pursuant to the built-in mandate under Article XIX of the GATS. While I sensed an openness to consider intensifying market access discussions on the basis of proposals from Members and in keeping with the principles of pragmatism and flexibility, specific proposals to help advance these mandated negotiations post-MC11 have yet to be put forward by delegations.

1.8. Fourth, on domestic regulation, negotiations pursuant to the mandate of GATS Article VI:4 have continued in the Working Party on Domestic Regulation (WPDR) since my last report to the TNC in October. The state of play in these negotiations is described in the report by the Chairperson of the WPDR, contained in S/WPDR/21. In summarizing the current situation, I naturally draw heavily on, and append, this report.

1.9. Discussions in the Working Party in recent months have centred on a text proposing disciplines on domestic regulation, put forward by a group of proponents and contained in JOB/SERV/272/Rev.1.⁴ This proposal contains seven sections: general provisions; administration of measures; independence; transparency; technical standards; development of measures; and development.⁵

1.10. In addition to specific comments and views conveyed orally by different Members at meetings of the WPDR, India submitted a number of written comments and drafting suggestions, and the Russian Federation proposed a number of amendments and modifications to the proponent's text.⁶

1.11. Discussions last took place at the meeting of the WPDR on 7 and 8 November 2017, and divergences remain across the Membership.

1.12. For one, co-sponsors of the text consider that rules on licensing and qualification requirements and procedures, and technical standards would yield greater transparency and predictability, and provide important value added to existing market access commitments. They consider that their proposal is flexible, as it would allow implementation by Members at different levels of development and regulatory capacity, as well as by means of diverse regulatory approaches. They also point out that LDCs would not be required to apply the disciplines.

1.13. Second, some Members expressed reservations of varying degrees of concern about different aspects of the proposals. Some conveyed general support, while pointing to a limited number of drafting and technical issues that they wished to see addressed. Others had more significant reservations about certain aspects of the text proposal, for example in relation to the language on the right to regulate, the development provisions, the absence of specific provisions on qualification requirements and procedures, the proposed disciplines on gender equality and necessity, or the application of the proposed disciplines to varied levels of sector-specific commitments across the Membership.

1.14. Third, some Members expressed concerns of a more fundamental nature, pointing to conceptual differences. They questioned the need for the proposed disciplines and the benefits that

⁴ Dated 7 November; Communication from Argentina; Australia; Canada; Chile; Colombia; Costa Rica; the European Union; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; the Republic of Korea; Liechtenstein; Mexico; the Republic of Moldova; New Zealand; Norway; Switzerland; Chinese Taipei, Turkey; Ukraine and Uruguay – Disciplines on Domestic Regulation. Earlier versions of this proposal are contained in: JOB/SERV/272; JOB/SERV/268/Rev.3; JOB/SERV/268/Rev.2; JOB/SERV/268/Rev.1; and JOB/SERV/268.

⁵ The section on development of measures contains two paragraphs that are supported by a sub-set of co-sponsors, namely a proposal on gender equality and a proposal for a necessity test.

⁶ India's comments and suggestions, contained in RD/SERV/145, dated 29 September 2017, relate to the text proposal from the group of co-sponsors found in JOB/SERV/268. The suggestions from the Russian Federation, contained in JOB/SERV/273, dated 3 November 2017, relate to the text proposal from the group of co-sponsors found in JOB/SERV/272.

these might bring to developing countries and LDCs. This group of Members maintained that the proposed text would be incompatible with their development aspirations and limit policy space.

1.15. In terms of the way forward in these negotiations, some Members were of the view that work on the basis of the proponents' proposal could not lead to an outcome. Others considered the time remaining to be too short to achieve an outcome at MC11 and suggested continuing discussions after the Ministerial. Proponents said that they wanted to continue work with a view to achieving an outcome at MC11, and considered it important to raise discussions at a higher political level.

1.16. Shortly prior to the circulation of this report, proponents have circulated revised texts (JOB/SERV/272/Rev.2 and Rev.3), which contain certain modifications and add five Members to the group of co-sponsors.⁷

1.17. Naturally, I remain available for consultations with any interested delegations over the coming days.

⁷ The documents, dated 24 November 2017, were circulated to the Council for Trade in Services (Special Session) and the WPDR. The additional co-sponsors include the Russian Federation, which had previously made a separate written submission, as noted earlier in this report. The others are Albania, the Former Yugoslav Republic of Macedonia, Montenegro, and Peru.

ANNEX I

**WORLD TRADE
ORGANIZATION**

S/WPDR/21
21 November 2017

Working Party on Domestic Regulation

**REPORT BY THE CHAIRPERSON OF THE WORKING PARTY ON DOMESTIC REGULATION
TO THE COUNCIL FOR TRADE IN SERVICES (SPECIAL SESSION)**

This report describes the state of play of the Working Party's discussions in fulfilment of the mandate to develop any necessary disciplines to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures do not constitute unnecessary barriers to trade in services, in accordance with GATS Article VI:4. The report is made under my responsibility as the Chairperson of the Working Party on Domestic Regulation.

1 STATE OF PLAY WITH REGARD TO THE SUBSTANTIVE DISCUSSIONS

1.1. Since the last Ministerial Conference, discussions in the Working Party have resumed on the basis of proposals submitted by several Members. An overview of communications submitted to the Working Party can be found in the Annual Reports for 2016 (S/WPDR/19) and 2017 (S/WPDR/20).

1.2. At the most recent formal meeting of the Working Party, on 7 and 8 November 2017, a revised text proposal by co-sponsors for disciplines on domestic regulation was discussed¹, along with text submissions by the Russian Federation² and India³.

1.3. The proposal by co-sponsors contains seven sections: Section 1 - General Provisions; Section 2 - Administration of Measures; Section 3 - Independence; Section 4 - Transparency; Section 5 - Technical Standards; Section 6 - Development of Measures; and Section 7 - Development. Section 6 on Development of Measures contains two paragraphs that are supported by a sub-set of co-sponsors, namely a proposal on Gender Equality and a proposal for a Necessity Test.

1.4. The Communication by India was submitted with reference to an earlier proposal by co-sponsors (JOB/SERV/268), and contains comments and textual suggestions on all sections of the co-sponsors' proposal. The Communication by the Russian Federation proposes several amendments and modifications to the most recent proposal by co-sponsors (JOB/SERV/272). The specific amendments and modifications relate to the sections on administration of measures, transparency, development of measures, and development.

1.5. Co-sponsors consider their proposal to be realistic and balanced. For these delegations, transparent and predictable rules on licensing and qualification requirements and procedures, and technical standards are important to help service suppliers realize existing market access commitments. They believe that the proposed disciplines, together with flexibilities embedded in many of the provisions, would allow implementation by Members at different levels of development

¹ JOB/SERV/272/Rev.1, dated 7 November 2017; Communication from Argentina; Australia; Canada; Chile; Colombia; Costa Rica; the European Union; Hong Kong, China; Iceland; Israel; Japan; Kazakhstan; the Republic of Korea; Liechtenstein; Mexico; the Republic of Moldova; New Zealand; Norway; Switzerland; Chinese Taipei, Turkey; Ukraine and Uruguay – Disciplines on Domestic Regulation.

² JOB/SERV/273, dated 3 November 2017; Communication from the Russian Federation - Proposed amendments and modifications to communication JOB/SERV/272.

³ RD/SERV/145, dated 29 September 2017; Communication from India – India's comments on Communication JOB/SERV/268 – Disciplines on Domestic Regulation.

and regulatory capacity, and following diverse regulatory approaches. Further flexibility would be provided in their view through a proposed development chapter which allows for transition periods for specified provisions for developing country Members. Least-developed country Members would not be required to apply the disciplines, and would be able to avail themselves of transition periods upon their graduation from LDC status.

1.6. Many delegations engaged on the proposal by co-sponsors. Some delegations expressed varying degrees of general support, pointing to a limited number of drafting and technical issues that they wished to see addressed.

1.7. Some delegations raised issues on a wider range of the proposed disciplines. Certain provisions were regarded as being too ambitious, while other provisions were considered as not being sufficiently ambitious. Views on the need of including certain provisions in the disciplines differed among delegations. A range of specific issues were identified by individual delegations. These issues include: the structure and building blocks of the text; the relationship between individual provisions and existing obligations in Article VI; language concerning the right to regulate; the scope of application; the link of the disciplines to varying levels of market access commitments across the membership; the absence of definitions; the meaning and scope of the term authorization; the drafting of flexibility language in specific provisions; the absence of specific provisions relating to qualification requirements and procedures; the scope of, and need for a section on independence; the mechanisms for replying to enquiries by services suppliers; the obligation to provide information on draft laws and regulation of general application and the opportunity to comment; the role of international standards as benchmarks; the relationship of the section on development of measures with Article VI:4; the meaning and scope of the proposed discipline to base measures on objective and transparent criteria; the need for inclusion of disciplines on gender equality and necessity; and concerns on various provisions of the development section. Some delegations pointed out that a better understanding of some of the proposed sections of the text, and the terminology used therein, was required.⁴

1.8. Some Members pointed to fundamental conceptual differences with co-sponsors, and questioned the need for the proposed disciplines and the benefits they would bring to developing countries and LDCs. In their view, the proposed disciplines would benefit services exporting countries, but not importing countries; most developing countries and LDCs, however, were net services importers. These delegations also believe that some of the proposed provisions fall outside of the mandate of GATS Article VI:4. They are of the view that the proposed disciplines would impose a model of regulation that would be incompatible with their development aspirations and would unduly limit their policy space.

2 STATE OF PLAY WITH REGARD TO THE WAY FORWARD

2.1. Following the substantive discussion during the meeting of 7-8 November 2017, I had requested delegations to indicate what work they wished to carry out in the WPDR before the last General Council on 30 November.

2.2. Co-sponsors and some other Members expressed their wish to continue work on domestic regulation disciplines with a view of achieving an outcome at MC11. Many of these Members called for a negotiating text to be produced by the Chair to provide an input to the discussion. Some Members calling for a negotiating text expressed the view that the discussion should take place at a higher level to address higher level political questions.

2.3. Other Members did not see a prospect for an outcome in the short term. Some of these Members referred to the limited time that was available to bridge differences, while others were of the view that work on basis of the proposal by co-sponsors could not lead to an outcome. Consequently these Members did not believe that the production of a negotiating text by the Chair would be useful. Some of these delegations suggested continuing discussions on domestic regulation after MC11.

⁴ In addition to questions and answers provided by many delegations in the context of the formal meetings, the African Group provided "Questions on Domestic Regulation", set out in document JOB/SERV/269, dated 27 September 2017. Co-sponsors of disciplines on Domestic Regulation circulated a communication entitled "Responses to Questions on Domestic Regulation" in document JOB/SERV/270, dated 12 October 2017.

2.4. In light of the disagreement on how to proceed in the coming weeks I did not see scope to prepare a negotiating text under my own responsibility. I emphasized that I would remain available for consultations with any delegation wishing to pursue the discussions in the coming weeks. It is my understanding that co-sponsors are continuing to reach out to other delegations with a view to increasing support for their proposal.
