



Committee on Specific Commitments

REPORT OF THE MEETING HELD ON 24 JUNE 2019

NOTE BY THE SECRETARIAT¹

The Committee on Specific Commitments (CSC) held a meeting on 24 June 2019 chaired by Mr. Nurbek Maksutov from the Kyrgyz Republic.

The Chairperson stated that under Other Business, he would inform the Committee of a presentation by the Secretariat on recent developments in the measurement of digital trade at the Committee's next meeting. The agenda for the meeting, contained in document WTO/AIR/CSC/9, was adopted as modified.

The Chairperson recalled that at the Committee's last formal meeting, which took place on 19 March 2019 after a two-year hiatus, delegations welcomed reinvigorating work in the Committee and recognized the importance of having technical discussions. He therefore encouraged Members to keep this momentum and continue to support future work of the Committee.

1 ITEM A - SCHEDULING ISSUES

1.1. The Chairperson recalled that the Kyrgyz Republic had presented its Communication on mode 4 related to scheduling issues (JOB/SERV/287) at the last meeting. The Communication drew Members' attention to some common scheduling issues in three main areas: economic needs tests (ENTs) or labour market tests (LMTs); categories of natural persons scheduled; and the relationship between horizontal and sector-specific entries. Delegations actively reacted to the Kyrgyz Republic's Communication. While it was a general view that the issues identified led to lack of transparency, ambiguity and uncertainty of mode 4 commitments, Members differed at how to address these issues.

1.2. In response to Members' interventions, before this meeting, the Kyrgyz Republic had circulated a room document sharing their views on the questions raised in the previous Communication.

1.3. The representative of the Kyrgyz Republic thanked all the delegations that had made interventions at the meeting of 19 March 2019 with respect to its Communication on scheduling issues under mode 4 (JOB/SERV/287). The Kyrgyz Republic particularly appreciated delegations' efforts in addressing the questions raised. The Kyrgyz Republic wished to share its own thoughts on these questions with a view to having a more in-depth discussion in the Committee.

1.4. The first question related to possible common elements to specify ENT entries, especially LMTs entries, under mode 4 in the horizontal section. According to the Scheduling Guidelines, ENT entries "should indicate the main criteria on which the test is based", and "these criteria do not relate to the quality of the services supplied, or to the ability of the supplier to supply the service". In other words, the criteria should be objective and not on a discretionary basis. A labour market test inscribed in the schedule usually meant that the entry and temporary stay of natural persons were conditional upon the situation of the local labour market, in particular, the availability of qualified nationals. Detailed information about how the relevant administration would assess the availability of qualified nationals could add clarity and transparency to LMT entries in the schedule. For instance: requirement that employers provide information to prove they had tried to recruit locally; requirement that employers publish/post the vacancy (online or in newspapers); or any prescribed minimum duration of the advertisement before procedure to employ foreigners could be started. The

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.

Kyrgyz Republic encouraged Members to share information on how LMTs are conducted in their respective jurisdictions, if LMTs existed.

1.5. The second question was about the desirability to develop common definitions of the categories of mode 4 persons and what might have been the basis for such common definitions. Alternatively, the question was also about how clarity and predictability could be enhanced for scheduled mode 4 categories and whether a checklist of key definitional elements could be developed, for instance. The Kyrgyz Republic noted that most mode 4 commitments were made by following several general categories of natural persons, including Independent Professionals, Contractual Service Suppliers, Intra-Corporate Transferees, and Business Visitors. It was desirable to develop common definitions of categories of mode 4 persons to increase clarity and transparency of commitments. Nevertheless, the Kyrgyz Republic also understood that Members wanted to maintain flexibility to accommodate their domestic regulation. Alternatively, Members could consider some key elements to be included in individual definitions in the schedule. For example, whether the natural person was employed or self-employed; whether the natural person was employed locally or in the home country; whether the natural person was engaged in the supply of services in the host country; the natural person's position in the firm (e.g. manager, executive); and degree of education or specialization.

1.6. With respect to the third question on whether it would be useful to clarify the relationship between horizontal and sector-specific commitments in the case of mode 4, the Kyrgyz Republic noted that the Scheduling Guidelines were not helpful with respect to the situation where the horizontal mode 4 entry "Unbound except for measures affecting the entry and temporary stay of natural persons in the following categories ..." was combined with the sectoral mode 4 entry "None" or "Unbound". It would add certainty to mode 4 commitments by clarifying the relationship between horizontal and sector-specific entries, either collectively or individually.

1.7. The last question concerned the desirability to use the Procedures for the Certification of Rectifications or Improvements to Schedules (S/L/84) to add clarity and accuracy to commitments under mode 4. The Kyrgyz Republic noted that the Procedures for the Certification of Rectifications or Improvements to Schedules (S/L/84) were designed for Members to bring their commitments up to date as the Procedures apply to "new commitments, improvements to existing ones, or rectifications or changes of a purely technical character that do not alter the scope or the substance of the existing commitments". Therefore, Members could apply the Procedures to add clarity and accuracy to their commitments under mode 4, including specifying ENT entries, clearly defining the categories of natural persons, or clarifying the relationship between horizontal and sector-specific commitments.

1.8. The representative of Turkey thanked the Kyrgyz Republic again, not only for their efforts to invigorate the discussions in the Committee but also for drawing attention to one of the most neglected areas of work in services trade. Mode 4 was the least committed mode by Members and the ambiguity in scheduling sometimes rendered mode 4 commitments less meaningful and unenforceable.

1.9. She then shared information on LMTs in Turkey. There were no LMTs for the categories of natural persons on which Turkey had undertaken commitments. With respect to other categories to which LMTs were applied, the procedures were established by the Ministry of Family, Labour and Social Security. In the current system, the Ministry directed employers first to the "Turkish Employment Agency (İş-Kur)" which was responsible for unemployment registration. Information on qualifications and job requests of the unemployed was published on the website of the agency. If an employer wanted to apply for a work permit for a possible foreign worker, he/she needed to first check the website of the Turkish Employment Agency to ensure that no Turkish applicant would fulfil the employment requirements. Should negotiations on market access start in the Special Session of the CTS, Turkey would be ready to discuss its LMT system, including how to incorporate it into the schedule in the most transparent and legally predictable way.

1.10. With respect to the question on common definitions of categories of Mode 4 persons, Turkey's past negotiation experience showed that it would be very difficult for Members to reach a common understanding on this issue. Nevertheless, Turkey recognized the merits for each Member to properly define the categories in its commitments. Turkey therefore shared the view of the Kyrgyz Republic that the key elements be included in schedules to make commitments more meaningful.

1.11. One of the most significant issues raised by the Kyrgyz Republic was the relationship between the horizontal and sectoral commitments. This committee could work further to establish an "Understanding" among Members to make Mode 4 commitments clearer, more meaningful and more reader-friendly. Turkey noted the difficulty of establishing such an understanding, given the significant divide among the membership.

1.12. Turkey thanked the Kyrgyz Republic again for bringing up these issues, believing that they formed a solid ground for the future agenda of the Committee.

1.13. The representative of India reiterated her delegation's appreciation for the Kyrgyz Republic's useful proposal on "Scheduling issues under mode 4", as contained in document JOB/SERV/287. Transparent ENT entries, agreed definitions of committed mode 4 categories, and a clear relationship between horizontal and sector-specific commitments were pertinent issues in relation to the scheduling of mode 4 commitments and should have been addressed long time ago. India also appreciated the Kyrgyz Republic's responses to Members' interventions and the Communication from the Chairman to facilitate this meeting.

1.14. The criteria for administering ENTs should be transparent and objective and not on a discretionary basis. It would be useful to publish information with regard to such criteria and details of requirements, procedures and/or guidelines for the administration of such tests. India welcomed the suggestion by the delegation of the European Union at the last meeting that there should be no ENTs for the category of Intra-Corporate Transferees (ICTs).

1.15. India noted some Members' statement at the last meeting that it would be difficult to develop agreed definitions for the commonly scheduled mode 4 categories at the multilateral level, given different domestic legislations. However, India believed that developing key definitional elements or some common criteria for committed categories of mode 4 might still be workable. For instance, as suggested by the Kyrgyz Republic, it would be extremely useful to specify the degree of education or specialisation. As mentioned at the last meeting, service suppliers from India faced difficulties due to the subjective and arbitrary assessment of an applicant's qualifications, especially in the case of the "specialist", a sub-category of ICTs.

1.16. India noted the view shared by many Members at the last meeting that it would be extremely helpful to clarify the relationship between horizontal and sector-specific commitments in mode 4.

1.17. India also noted the suggestion that the Procedures for the Certification of Rectifications or Improvements to Schedules (S/L/84) be used to address the above scheduling issues under mode 4. India was also open to other suggestions.

1.18. The representative of Nigeria stated that the Kyrgyz Republic's paper on Scheduling issues under mode 4 (JOB/SERV/287) shed light on the shallow nature of most WTO Members' mode 4 horizontal commitments and various related scheduling problems. As with the Kyrgyz Republic, mode 4 was the most important mode of export interest for developing countries. Remittance from citizens working abroad under mode 4 constituted a significant proportion of the GDP of developing countries like Nigeria. It was therefore of critical importance for Nigeria that mode 4 commitments were clear and unambiguous as this would enhance predictability to services trade under mode 4 and exports expansion. Nigeria therefore welcomed discussions in this committee that sought to clarify and improve the accuracy of Members' mode 4 commitments.

1.19. The representative of the Kyrgyz Republic thanked the delegates for their interventions and high interest in the topic. The goal of the Kyrgyz Republic was to bring these issues to Members' attention. The WTO bodies should serve as a discussion platform to enable Members to express their opinions and exchange views. This would improve Members' knowledge of the magnitude and nature of the problems and help find solutions for the future. In conclusion, he expressed gratitude again to Members for their interest and support. He would report back to his capital and get back to interested Members at the next meeting.

1.20. The Chairperson recalled suggestions made at the last meeting that the Committee should look into other scheduling issues as well, including classification of computer and telecom services, cross-border delivery of services, and updating schedules as originally indicated in the commitments. He invited Members to consider how the Committee should proceed with these important issues and

whether the Secretariat could provide any assistance for this purpose, for example, to compile those obviously outdated specific commitments.

1.21. No delegation further sought the floor. The Chair suggested that the Committee take note of the statements made and revert to this agenda item at the next meeting. The new Chairperson would consult with Members on how the Committee should move forward under this agenda item.

1.22. It was so agreed.

2 ITEM B - CLASSIFICATION ISSUES

2.1. The Chairperson recalled that while there were no interventions under this agenda item *per se*, interest in having discussions on classification issues related to online transactions (e.g. platform-based services) had been expressed in his consultations as well as at the last meeting. Past discussion in the Committee already pointed to the inadequacy of the current classification in reflecting services market realities. He invited Members to consider whether it was desirable for the Committee to consider classification issues on so-called "digital services", and if so, how to proceed.

2.2. The representative of the Russian Federation thanked the Chairperson for reminding Members of classification challenges in reflecting market realities in services. She recalled that the Committee did tremendous work on classification in various sectors in the past when it met on a regular basis. In this regard, Russia would like to ask the Secretariat to provide a briefing session devoted to the past exercises on W/120 and the main approaches of DSB to the interpretation of sectoral entries in services schedules. It would be extremely useful to get an updated picture of the main challenges and recent progress with respect to the GATS classification issues. According to Russia, fragmented approach to the classification of new services could be unproductive. Each new service required comprehensive discussion, especially in the case of new telecom, computer and cross-border delivery services. The briefing session would be helpful for the discussion concerning the incorporation of domestic regulation disciplines into the schedule. The growing interest in e-commerce discussions also required a clear understanding of original schedules.

2.3. The representative of China thanked the Chairperson for his efforts to stimulate discussions in the Committee and the Kyrgyz delegation for their valuable inputs. Regarding the classification issue, he supported the suggestion by the Russian delegation for a possible briefing session by the Secretariat to cover the latest developments of classifications, the emerging new services and their relationship with W/120.

2.4. The representative of the United States thanked the Kyrgyz Republic for their paper and for raising those issues. The CSC was an important committee to examine some of the issues. He cautioned about the suggestions on classification issues and on so-called "digital services". He wondered whether a new term was introduced or it was simply a new way to delivering an existing service. Existing commitments should not be undermined simply because they were delivered via digital means. Members should be careful on how to approach this. With respect to the suggestion for a briefing session by the Secretariat, he requested for more clarity before agreeing to have such a session.

2.5. The representative of the European Union echoed the request of the United States for more clarity with respect to the content and the purpose of Russia's proposal, though he understood the interest to have a presentation on the different exercises that took place in this Committee over the last 15 years. He recalled different initiatives to revisit classification and lots of work under previous Chairs. Regarding new services, it was up to Members to interpret and not an issue for presentation.

2.6. The Chairperson proposed that the Committee take note of the statements made and revert to this agenda item at the next meeting. He suggested that the new Chairperson hold consultations on Russia's proposal.

2.7. It was so agreed.

3 ITEM C – OTHER BUSINESS

3.1. The Chairperson recalled the previous agreement that the Committee should be informed of the latest developments on the statistics of services trade. The Secretariat was ready to give a presentation on recent developments with respect to the measurement of digital trade at the next meeting of the Committee. The presentation would cover the conceptual work developed by the international statistical community on digital trade, with a particular focus on services and related classification issues.

3.2. The representative of the European Union sought clarity on the statement made by the Chairperson.

3.3. The representative of the Secretariat recalled the agreement adopted at the Committee's meeting of 16 November 2010 that the Committee should be informed on a regular basis of changes and developments in services classification and in statistical systems relating to international services trade.

4 ITEM D – APPOINTMENT OF THE CHAIRPERSON FOR THE COMMITTEE

4.1. The Chairperson noted that the Chairperson of the Council for Trade in Services had recently concluded his consultations on the slate of names for the Chairpersons of the various bodies. According to the result of the consultations, he proposed that the Committee elect Mr. Tamas Vattai from Hungary as its new Chairperson by acclamation.

4.2. The newly elected Chairperson suggested that the Committee take note of all the statements made. With respect to the timing of the next meeting, he would hold consultations and inform Members accordingly in due course.

4.3. The meeting was adjourned.
