



# Note

## Trade in Services: Issues of Interest to Developing Countries and LDCs in the Regular WTO Committee

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### Summary

The regular work of the WTO is an important aspect of the multilateral trading system (MTS). Smaller developing and least-developed countries can derive benefits from the MTS by improving their participation in the regular work of the WTO. This Note focuses on the mandate and work of the WTO Council for Trade in Services (CTS) with a view to providing summarised information and analysis that can help smaller developing and least-developed countries better understand the functioning of this key Committee and take part in its deliberations to promote their interests.

# Mandate of the WTO Committee on Trade in Services

## Mandate of the Committee on Trade in Services

The Council for Trade in Services (CTS) operates under the guidance of the General Council and is responsible for facilitating the operation of the General Agreement on Trade in Services (GATS) and for furthering its objectives.<sup>1</sup> It is open to all WTO members, and can create subsidiary bodies as required.<sup>2</sup> Presently, the Council oversees the work of four such subsidiary bodies:<sup>3</sup> (i) the Committee on Trade in Financial Services; (ii) the Committee on Specific Commitments; (iii) the Working Party on Domestic Regulation; and (iv) the Working Party on GATS Rules.

The work of the Services Council can be categorised into the following areas as highlighted under the selected main issues in a later part of this note: (i) Notifications Pursuant to Articles III:3 and V:7 of the GATS; (ii) Operationalization of the LDC Services Waiver; (iii) Work Programme on Electronic Commerce; (iv) Assessment of Barriers to Entry; and (v) Trade Facilitation Agreement for Services.

## Conducting the Mandate

On 30<sup>th</sup> May 1995, the Council had considered a draft for its Rules of Procedure (S/C/W/2) which stated that the Rules of Procedure for meetings of the General Council shall apply *mutatis mutandis* to meetings of the Council for Trade in Services.<sup>4</sup>

Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.<sup>5</sup>

In order to ensure that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies may establish or develop any necessary disciplines which shall aim to ensure they are:<sup>6</sup> (i) based on objective and transparent criteria, such as competence and the ability to supply the service; (ii) not more burdensome than necessary to ensure the quality of the service; (iii) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

<sup>1</sup> WTO. The Services Council, its Committees and other subsidiary bodies. Retrieved from. [https://www.wto.org/english/tratop\\_e/serv\\_e/s\\_coun\\_e.htm](https://www.wto.org/english/tratop_e/serv_e/s_coun_e.htm)

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> WTO Council for Trade in Services. DRAFT RULES OF PROCEDURE FOR MEETINGS OF THE COUNCIL FOR TRADE IN SERVICES. (S/C/W/2). P 1. Retrieved from.

[https://docs.wto.org/dol2fe/Pages/FE\\_Search/FE\\_S\\_S006.aspx?Query=\(+%40Symbol%3d+s%2fc%2f\\*+not+\(m+or+n+or+w\)+\)&+\(+%40Title=+report+not+interim+report+not+r eport+by+\)&Language=ENGLISH&Context=FomerScripte dSearch&languageUIChanged=true](https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S006.aspx?Query=(+%40Symbol%3d+s%2fc%2f*+not+(m+or+n+or+w)+)&+(+%40Title=+report+not+interim+report+not+r eport+by+)&Language=ENGLISH&Context=FomerScripte dSearch&languageUIChanged=true)

<sup>5</sup> GENERAL AGREEMENT ON TRADE IN SERVICES. Annex 1B. P 287. Retrieved from.

[https://www.wto.org/english/docs\\_e/legal\\_e/26-gats.pdf](https://www.wto.org/english/docs_e/legal_e/26-gats.pdf)

<sup>6</sup> Ibid. P 290.

The sections below provide an overview of selected main issues discussed under the CTS in the recent past.

## Notifications Pursuant to Articles III:3 and V:7 of the GATS

The WTO General Agreement on Trade in Services in its Uruguay Round had given importance to the role of trade in services for the growth and development of the global economy.<sup>7</sup> It had thereby sought to establish a multilateral framework of principles and rules for trade in services to aid in economic expansion under conditions of transparency and progressive liberalization.<sup>8</sup> In line with transparency requirements the GATS requires notifications pursuant to Article III:3 and V:7. In the Article III of the GATS which focuses on transparency, Section III:3 states that “Each Member shall promptly and at least annually inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by its specific commitments under this Agreement.”<sup>9</sup>

Article V of the GATS deals with economic integration and Section V:7 says that:<sup>10</sup>

(a) Members which are parties to any agreement referred to in paragraph 1 shall promptly notify any such agreement and any enlargement or any significant modification of that agreement to the

Council for Trade in Services. They shall also make available to the Council such relevant information as may be requested by it. The Council may establish a working party to examine such an agreement or enlargement or modification of that agreement and to report to the Council on its consistency with this Article.

(b) Members which are parties to any agreement referred to in paragraph 1 which is implemented on the basis of a time-frame shall report periodically to the Council for Trade in Services on its implementation. The Council may establish a working party to examine such reports if it deems such a working party necessary.

(c) Based on the reports of the working parties referred to in subparagraphs (a) and (b), the Council may make recommendations to the parties as it deems appropriate.

### Deliberations of the meetings held in 2017 and 2018 regarding Notifications

#### Meeting on 30<sup>th</sup> January 2017<sup>11</sup>

Concerning the notifications made pursuant to GATS Article III:3, the Chairman drew the Council's attention to the communication received from Norway, in document (S/C/N/869) where the representative of Norway explained that a year earlier her delegation had contacted all relevant Ministries to enquire as to whether there were new regulations which significantly affected trade in services covered by Norway's specific

<sup>7</sup> General Agreement on Trade in Services. WTO. Retrieved from. [https://www.wto.org/english/docs\\_e/legal\\_e/26-gats\\_01\\_e.htm#ArticleIII](https://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm#ArticleIII)

<sup>8</sup> Ibid.

<sup>9</sup> Ibid.

<sup>10</sup> Ibid.

<sup>11</sup> S/C/M/129 (17-0597)

commitments. The Ministry of Finance submitted annually to the Parliament a report (a White Paper) on developments in Norwegian and international financial markets. For 2016, selected sections of the report had been made available in English. The Norwegian representative hoped that such translations would be the norm henceforth.

Chapter 4 of the document provided a summary of implemented regulatory changes in 2015 where the most significant new measure was the adoption of the Financial Undertakings Act. It contained rules on licensing, organizational rules, general operational rules and rules on guarantees schemes and solvency failure, as well as provisions on penalties for banks, insurance companies and other financial undertakings. In total, the Ministry of Finance and The Financial Supervisory Authority of Norway (Finanstilsynet) had enacted 40 sets of financial market regulations in 2015.

Concerning the notifications made pursuant to GATS Article V:7, the Chairman drew the Council's attention to the communications received from Colombia and the Republic of Korea (S/C/N/868); Costa Rica and Colombia (S/C/N/870); and Colombia, Chile, Mexico and Peru (S/C/N/871). He suggested that the Council take note of the notifications made, and that the agreements notified be referred to the Committee on Regional Trade Agreements for consideration.

● *Meeting on 6<sup>th</sup> June 2017*<sup>12</sup>

Concerning the notifications made pursuant to GATS Article V:7, the Chairman drew the Council's attention to the communication

received from Colombia, Peru, Ecuador and the European Union (S/C/N/876). The Chairman indicated that the agenda included also consideration of the Note by the Secretariat titled "Overview of notifications made under relevant GATS provisions", which Members had agreed would be updated annually. The Note had been circulated as document JOB(09)/10/REV.7.

A representative of the Secretariat said that the Note provided a statistical account of the notifications made under relevant GATS provisions, updated to incorporate notifications submitted between January and December 2016. As indicated in the Note, during 2016, six notifications had been made pursuant to Article III:3, by four Members, and ten economic integration agreements had been notified under Article V:7(a). He highlighted that no mutual recognition agreements had been notified under Article VII:4.

● *Meeting on 28<sup>th</sup> August 2017*<sup>13</sup>

By way of general remark, the representative of Switzerland had thanked the Secretariat for the update of its annual Note titled "Overview of notifications made under relevant GATS provisions", which was a regular information-sharing practice that had been proposed by Switzerland years back. Switzerland had been a strong supporter of the transparency obligation enshrined in Article III:3 of the GATS since the entry into force of the Agreement. In that respect, Switzerland noted that in recent times, there was some lower activity under the transparency obligation. This might be connected to on-going negotiations in the area

<sup>12</sup> S/C/M/130 (17-2988)

<sup>13</sup> S/C/M/132 (17-4552)

of services trade in which many Members were involved. The representative of Switzerland was confident that, encouraged by the number of measures already notified in 2017, this trend would be reversed if delegations made a collective effort.

Concerning the notifications made pursuant to GATS Article V:7, the Chairman drew the Council's attention to the communications received from, respectively, the Republic of Moldova, in document S/C/N/888, and the Russian Federation, Armenia, Kazakhstan, the Kyrgyz Republic and Viet Nam, in document S/C/N/889.

The representative of the Republic of Moldova indicated that the Organisation for Democracy and Economic Development (GUUAM) Free Trade Agreement established a free trade area between the Republic of Moldova, the Republic of Azerbaijan, Georgia and Ukraine, within the meaning of Article XXIV of the GATT 1994 and Article V of GATS. In line with its WTO transparency commitments, her delegation had notified the FTA on 3 April 2017 to the relevant Committees. Regarding trade in services, Article 17 of the GUUAM Agreement stipulated that "the Contracting Parties shall create conditions for liberalization of the national markets of services, and on the basis of reciprocity, shall strive for gradual removal of limitations with a view of creation of conditions for free rendering of services within the territory of the free trade area".

● *Meeting on 6<sup>th</sup> November 2017*<sup>14</sup>

Concerning the notifications made pursuant to GATS Article V:7 (Economic Integration), the

Chairman drew the Council's attention to the communications received from China and Hong Kong, China, in document S/C/N/264/Add.10; Georgia, Iceland and Norway, in document S/C/N/891; Chile and Thailand, in document S/C/N/895; and Canada, of the one part, and the European Union and its Member States, of the other, in document S/C/N/896.

At its meeting scheduled for 9-10 November, the CRTA would be considering two regional trade agreements that covered trade in services. The agreements in question were the 'Free Trade Agreement between China and the Republic of Korea' and the 'Free Trade Agreement between Mexico and Panama'.

● *Meeting on 5<sup>th</sup> April 2018*<sup>15</sup>

Concerning the notifications made pursuant to GATS Article V:7 (Economic Integration), the Chairman drew the Council's attention to the communication received from Hong Kong, China and Macao, China in document S/C/N/898. He suggested that the Council take note of the notification made, and that the agreement notified be referred to the Committee on Regional Trade Agreements for consideration.

At its meeting scheduled for 5 and 6 April, the CRTA would be considering two regional trade agreements that covered trade in services. The agreements in question were the 'Economic Partnership Agreement' between Japan and Mongolia and the 'Agreement on Trade in Services' between the Republic of Korea and the Association of Southeast Asian Nations

<sup>14</sup> S/C/M/133 (17-6033)

<sup>15</sup> S/C/M/134 (18-2071)

(ASEAN).

The Secretariat presented its annual Note on notifications, which provides a statistical account of the notifications made by Members under relevant GATS provisions, updated to incorporate notifications submitted between January and December 2017 (document Job(09)/10/Rev.8).

Three observations could be made based on the Note. First, no mutual recognition agreements had been notified under Article VII:4 in 2017, a continuation of the trend noted in the previous update. Second, compared to 2016, the number of notifications submitted pursuant to Article III:3 had more than tripled. Third, 2017 had seen fewer economic integration agreements notified by Members than had been the case in 2016.

● *Meeting on 11<sup>th</sup> July 2018*<sup>16</sup>

Concerning the notifications made pursuant to GATS Article V:7 (Economic Integration), the Chairman drew the Council's attention to the communications received, respectively, from China and Georgia (in document S/C/N/900) and by Liechtenstein and Switzerland (in document S/C/N/891/Add.1). He suggested that the Council take note of the notifications made, and that the agreements notified be referred to the Committee on Regional Trade Agreements for consideration.

While on the subject of the Committee on Regional Trade Agreements (CRTA), the Chairman drew delegations' attention to the fact that, at its meeting scheduled for 19 and 20 June, the CRTA would be considering two regional trade agreements that covered trade in services

which were the 'Comprehensive Economic and Trade Agreement between Canada and the European Union'; and the 'Free Trade Agreement between Costa Rica and Colombia'.

● *Meeting on 26<sup>th</sup> November 2018*<sup>17</sup>

With regard to the notifications made pursuant to GATS Article III:3 (Transparency), the Chairman drew the Council's attention to the communications received, respectively, from Kazakhstan (contained in document S/C/N/911), the Central African Republic (in document S/C/N/915) and Hong Kong, China (in document S/C/N/917).

Concerning the notifications made pursuant to GATS Article V:7 (Economic Integration), the Chairman drew the Council's attention to the communications received, respectively, from China and Macao, China (in document S/C/N/265/Add.10) and from Turkey and Singapore (in document S/C/N/916). He suggested that the Council take note of the notifications made, and that the agreements notified be referred to the Committee on Regional Trade Agreements for consideration.

At its meeting scheduled for 19 and 20 November, the CRTA would be considering three regional trade agreements that covered services. The agreements in question were: the 'Treaty on the Eurasian Economic Union'; the 'Treaty on Accession of the Republic of Armenia to the Eurasian Economic Union' and the 'Treaty on Accession of the Kyrgyz Republic to the Eurasian Economic Union'.

The representative of the United States drew Members' attention to the notification by China

<sup>16</sup> S/C/M/135 (18-4350)

<sup>17</sup> S/C/M/136 (18-7439)

and Macao, China, which he believed represented best practice with respect to paragraph 14 of the RTA Transparency Mechanism.

He noted that the website from Enterprise Singapore was a fascinating tool, which he commended Singapore for. It had prompted the reflection that, in the future, the Council might wish to engage in a conversation of how Members' websites could be made user-friendly in a manner that allowed traders to understand trade agreements. The Singapore tool was quite interactive with respect to goods; while presenting services trade rules in such a manner was more challenging, it might still be useful for Members to have a conversation, as it would be very helpful to produce something practical and usable for service traders and to see how access under the GATS or RTAs might be promoted through websites.

## Operationalisation of the LDC Services Waiver

At a high-level meeting of the WTO Services Council on 5 February 2015, members discussed measures which would support the growth of services trade in least-developed countries (LDCs) by providing their services exports with preferential treatment.<sup>18</sup> This was an important step in implementing a key Bali decision in support of LDCs, which aims to enhance their participation in world services trade.<sup>19</sup> At the meeting, over 25 members indicated services sectors and modes of supply" from LDCs to

which they would give preferential treatment.<sup>20</sup>

At the meetings from 30<sup>th</sup> January 2017 to 6<sup>th</sup> November 2017, Members who are part of the LDC Services Waiver were asked certain questions by the LDC Group and they provided the response in each of the meetings. Below, is a list of Members who had provided responses to certain questions asked of them in the meetings.

For more information about the questions posed by the LDC Group to the Members and the answers provided by them, the documents from the following meetings can be useful references: Meeting of 30<sup>th</sup> January 2017 (S/C/M/129) (17-0597)- Respondent is Canada; Meeting of 6<sup>th</sup> June 2017 (S/C/M/130) (17-2988)- Respondent is Brazil; Meeting of 28<sup>th</sup> August 2017 (S/C/M/132) (17-4552)- Respondent is Panama; Meeting of 6<sup>th</sup> November 2017 (S/C/M/133) (17-6033)- Respondent is Liechtenstein.

After discussions about the clarification on notification from these Members, in the meetings of 5<sup>th</sup> April 2018, 11<sup>th</sup> July 2018 and 26<sup>th</sup> November 2018, discussion now turned on the steps that could be taken by the Council based on the recommendation of the Members towards enhancing the operationalisation of the Waiver. The below table provides a summary of the responses of these three meetings.

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<sup>18</sup> Members move to enact Bali decision on LDC services waiver. WTO. Retrieved from. [https://www.wto.org/english/news\\_e/news15\\_e/serv\\_05feb15\\_e.htm](https://www.wto.org/english/news_e/news15_e/serv_05feb15_e.htm)

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

**Table 1: Summary of responses related the Services Waiver**

Meetings	Discussions
<p><b>5<sup>th</sup> April 2018</b> (S/C/M/134) (18-2071)</p>	<ul style="list-style-type: none"> <li>The integration of LDCs in international services trade remained limited due to a number of constraints, including poor infrastructure, limited skills and lack of financial resources. Indeed, services trade in LDCs remained concentrated within a few economies, an unchanged pattern since 2005.</li> <li>It was important to recall that for LDCs, services trade went beyond pure economic significance, due to the major role services played in achieving social and development objectives and as a means of addressing poverty, upgrading welfare, improving universal availability and access to basic services, and in ensuring sustainable development, including its social dimension.</li> <li>The Waiver Decisions had always recognized the need for supply-side and other capacity building for LDC suppliers. In addition, more needed to be done to assist LDC suppliers to benefit from the preferences in a concrete manner, rather than any general assistance programmes that might or might not be geared towards the notifications.</li> <li>LDCs had increasingly come to the conclusion that it was more helpful to their service suppliers if donor Members, development partners and agencies could design and provide technical assistance to projects and programmes that were based in their respective countries or regions, with a view to building LDC supply capacity on the ground.</li> <li>It was time for the notifying Members and the Council to take action in line with paragraph 1.5 of the relevant Nairobi Decision. In that context, three propositions were made: (i) First, the CTS should initiate a process to review the operation of notified preferences, on the basis of information provided by notifying Members; (ii) Secondly, notifying Members might bring to the notice of the Council the technical assistance activities they had been carrying out in line with paragraph 1.5 of the Nairobi Decision; (iii) Third, the CTS might initiate a discussion on any other issue that might be required to be held to facilitate the benefits envisaged in the preferences notified.</li> </ul>
<p><b>11<sup>th</sup> July 2018</b> (S/C/M/135) (18-4350)</p>	<ul style="list-style-type: none"> <li>The Waiver authorised a departure from the MFN obligation to allow preferential treatment to be granted to LDC service suppliers. Steps should be taken to ensure that LDC suppliers actually benefitted from such preferential treatment.</li> <li>LDCs had expressed their concerns in Nairobi about the very few notifications that addressed Sections B and C of the LDC Collective Request. Preferential treatment to remove behind-the-border obstacles was key to any offer of market access.</li> <li>The LDC Group then drew Members' attention to paragraph 1.4 of the Nairobi Ministerial Decision. In that regard, they requested that notifying Members inform the CTS of any "specific technical assistance and capacity building measures to orient LDC service suppliers to preference benefits available so that such suppliers can utilize the preferences granted."</li> <li>LDCs requested the notifying Members to provide an assessment of the use of the preferences by LDC services suppliers, for instance by sharing information on the supply of services by LDC suppliers in notified sectors.</li> <li>LDCs also requested the Secretariat to support the Council review, by making a presentation on currently available data on LDC services exports in notified sectors and existing gaps in data collection and reporting by Members. Such reports would give LDCs a basis for discussions at the following meeting of the Council.</li> </ul>
<p><b>26<sup>th</sup> November 2018</b> (S/C/M/136) (18-7439)</p>	<ul style="list-style-type: none"> <li>The representative of Chad said that according to the Secretariat Note in document WT/COMTD/LDC/W/66 on 'Market Access for Products and Services of Export Interest to Least Developed Countries', dated 2 October 2018, following two years of negative growth, LDCs' trade in commercial services had begun to grow again in 2017. Exports had increased by 7% to reach US\$34.2 billion; however, imports had grown at an even higher rate of 8%, reaching US\$67.7 billion.</li> <li>Growth of commercial services exports in LDCs had been slower than the growth in developed countries (8%) and other developing economies (8%). Moreover, services trade in LDCs remained concentrated within a few economies, an unchanged pattern since 2010.</li> <li>It was important to recall that it was now close to three years since the Nairobi Decision had been taken. Moreover, Members could not forget the fact that the clock was running on expiry of the Waiver. A review of the operation of notified preferences was due, to enable LDCs to know where they stood. For this, the Council could: (i) Agree to hold the first review as a dedicated meeting of the CTS at a specific date in the second quarter of 2019 which could be considered to be a workshop that could bring together LDC government and private sector stakeholders, Members' development agencies and relevant international organizations.</li> </ul>



## Work Programme on Electronic Commerce

At the Second Ministerial Conference in May 1998, ministers, recognizing that global electronic commerce was growing and creating new opportunities for trade, adopted the Declaration on Global Electronic Commerce.<sup>21</sup> This called for the establishment of a work programme on e-commerce, which was adopted in September 1998.<sup>22</sup> Periodic reviews of the programme are conducted by the General Council based on reports from the WTO bodies responsible for implementing the programme. Ministers also regularly consider the programme at the WTO's ministerial conferences.<sup>23</sup>

### ● Meeting on 30<sup>th</sup> January 2017<sup>24</sup>

The Chairman indicated that there were several elements to be addressed under this agenda item. First, he recalled that, at the October meeting, a group of Members had proposed that the Council hold a thematic seminar on e-commerce (document RD/SERV/133/Rev.2).

The representative of Ukraine indicated that his delegation supported the convening of a thematic seminar on e-commerce as it would be a good opportunity to reduce the knowledge gap on the subject. Ukraine considered that the seminar would be more comprehensive if it covered topics such as cross-border e-commerce, harmonization of legislation, regulatory aspects, main challenges for businesses and governments, as well as online trade dispute resolution systems, including

relevant legal and technical aspects.

The representative of South Africa made some proposals to the draft agendas. His delegation viewed e-commerce from a development perspective and wished the agenda to reflect that viewpoint. His delegation considered that the proposed agenda was too broad. Firstly, references to TPP and other agreements that were not in force, and might not come into force, should not find their way into the seminar. Secondly, discussions should focus on policies Members used to build capacity in the area of e-commerce. Thirdly, on session III, "Evolving regulatory responses", his delegation recognized the serious challenges that new technologies posed on regulatory authorities. In that vein, the seminar should examine recent case law reported in some jurisdictions, which could provide insights on the implications of new technologies, platforms and business practices in areas such as tax avoidance, anti-competitive practices and labour conditions. Finally, he reiterated that the outcomes of both seminars should be seen as an exchange of views and should in no way determine steps towards negotiating rules in the WTO.

The representative of China said that given that e-commerce was a multi-dimensional issue, Members should not limit their discussion to a specific framework. Therefore, seminars and workshops could be organized under the Council for Trade in Goods and the Committee on Trade and Development, to help Members achieve a better understanding of e-commerce from all relevant perspectives.

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<sup>21</sup> Electronic Commerce. WTO. Retrieved from.  
[https://www.wto.org/english/tratop\\_e/ecom\\_e/ecom\\_e.htm](https://www.wto.org/english/tratop_e/ecom_e/ecom_e.htm)  
<sup>22</sup> Ibid.

<sup>23</sup> Ibid.  
<sup>24</sup> S/C/M/129 (17-0597)

The representative of Mexico said that discussions on e-commerce should not imply negotiations on market access in goods. Mexico viewed e-commerce as a tool that could be used to take advantage of existing market access.

The representative of the Plurinational State of Bolivia said that e-commerce should facilitate trade, discussions should focus on promoting trade in developing countries so as to enable them to participate more effectively in international trade and achieve substantive growth and development.

🕒 *Meeting on 6<sup>th</sup> June 2017*<sup>25</sup>

Brazil identified electronic signatures in the meeting as a relevant issue for e-commerce discussions and they constituted one way of ascertaining a digital identity. Digital certificates, produced by authorized and registered providers, enabled third parties to ascertain the authenticity of a signature and detect any fraud associated with it. As in the case of regular analogical identity, digital certificates enhanced the security of electronic transactions in general. They were a powerful enabler of e-commerce in different formats.

Members like European Union, China, Chile, Australia supported the issue of electronic signatures as one of the topics on which progress could be made at the WTO. The Australian delegation considered that the WTO could contribute to trade-related aspects of e-commerce to the benefit of the entire Membership. Australia encouraged Members to consider what progress on e-commerce could be made in the short term, including at MC11.

Members like India, Ukraine, Canada, New Zealand, Cuba, Singapore and Paraguay provided constructive feedbacks and proposals through which the digital experience of information sharing and trade development can be enhanced at the WTO.

🕒 *Meeting on 28<sup>th</sup> August 2017*<sup>26</sup>

The representative of China said that the exchange of information and experiences not only facilitated a better understanding of the submissions on the table, but also enriched Members' comprehension of e-commerce and its role in inclusive economic development in general, which was why her delegation supported such an exchange.

At the meeting of the Committee on Trade in Financial Services (CTFS) held on 13 June, China had presented its domestic developments in e-payment services, including relevant regulatory practices. E-payment services were not only an indispensable link in the e-commerce ecosystem of cross-border trade in goods enabled by the Internet, but also an efficiency enabler of payment services at large, a cost reducer for social transactions, and a contributor to financial inclusion and sustainable economic growth.

At the CTFS meeting that had been held in March, China had encouraged Members to share information on the development and regulation of payment services related to e-commerce. China encouraged other Members to share their own experiences regarding e-payment services.

Members like Switzerland, Nigeria and

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<sup>25</sup> S/C/M/130 (17-2988)

<sup>26</sup> S/C/M/132 (17-4552)

European Union made some considerations regarding China's proposal.

🕒 *Meeting on 6<sup>th</sup> November 2017*<sup>27</sup>

The representative of China stated that his delegation had tabled a joint e-commerce proposal with Pakistan in the General Council, the Council for Trade in Goods, the Council for Trade in Services and the Committee on Trade and Development. China had proposed that discussions at that stage focus on the promotion and facilitation of cross-border trade in goods enabled by the Internet, together with services directly supporting such trade in goods, such as payment and logistics services.

Members like Australia, Ukraine and Switzerland acknowledged the importance and the need to intensify work in the field of e-commerce as a means to facilitate trade.

In the digital trade scenario, MSMEs would be the businesses benefiting most, as this provided their only opportunity to reach international markets. MSMEs could be the main beneficiary of digital trade as the digital world could give them the opportunity to enter new markets, and thus provide more trade and domestic employment opportunities as well as access to innovation.

🕒 *Meeting on 5<sup>th</sup> April 2018*<sup>28</sup>

The representative of India welcomed the Ministerial Decision on the Work Programme adopted at MC11 as e-commerce was one of the very few areas where Ministers had provided clear guidance.

The representative of China said that, before

MC11, Members had submitted more than 30 communications on e-commerce and had held extensive discussion on the matter. The Friends of E-commerce for Development (FED) and the MIKTA group had organized a number of seminars in Geneva to enhance Members' understanding of e-commerce, especially on its development dimension. China commended the efforts made by Members, which had contributed to the adoption of the Ministerial Decision in Buenos Aires to continue the work under the Work Programme.

China valued multilateral discussions on e-commerce, which contributed to the WTO staying relevant and helped MSMEs, women and young people from developing Members to participate in trade and benefit from the inclusiveness of the multilateral trading system. It was important to maintain the momentum created in Buenos Aires and discuss the trade aspects of e-commerce, including by reflecting innovatively on effective approaches to move forward multilateral discussions, considering Members' different stages of development and the needs of developing Members, particularly LDCs.

The Chairman indicated that two new communications had been submitted under the Work Programme by Chinese Taipei. They were contained in documents JOB/SERV/277 and JOB/SERV/278, and addressed, respectively, "Removing cyberspace trade barriers: Towards a digital trade environment with reciprocally equal access" and "How cyberspace intrudes on the physical space – Case Studies: 3D printing and the sharing economy".

<sup>27</sup> S/C/M/133 (17-6033)

<sup>28</sup> S/C/M/134 (18-2071)

Most traditional trade barriers, such as customs duties or import restrictions, applied to "atoms" as they crossed borders. But for "bits" there were various other trade barriers, which his delegation's paper referred to as "cyberspace trade barriers" (CTB). These were not necessarily discussed in the traditional WTO arena.

● *Meeting on 11<sup>th</sup> July 2018*<sup>29</sup>

The representative of China wished to brief the Council on the "Workshop on E-commerce for Development under the Multilateral Trading System" that her delegation had sponsored in China from 8 to 21 May. 25 participants, including Vice Ministers and DGs from capitals as well as Ambassadors and senior diplomats from the Geneva Missions of 15 developing Members had attended.

As a developing Member and one of the FEDs, China was willing to continue providing capacity-building within its capabilities to the vast number of developing Members in the WTO. With 30 million people yet to get out of poverty, China still faced a tangible development divide between its urban and rural areas. In spite of this, China had embraced the opportunities provided by e-commerce and since 1998, the country saw the development of e-commerce.

At the same time, China believed that every Member had its own situation and, therefore, there was no "one size fits all" solution. It was essential for Members to fully respect and accommodate each other's concerns. It would be worthwhile for Members to consider how to maintain and reinforce the momentum of multilateral discussions on trade-related aspects

of e-commerce in the CTS and other relevant WTO bodies.

The representative of Pakistan said that Pakistan was one of the Members that had benefitted from the two-week workshop organized by China earlier that month.

● *Meeting on 26<sup>th</sup> November 2018*<sup>30</sup>

The Chairman invited any delegation wishing to share information under the sub-item on 'exchange of information and experiences based on submissions by Members' to do so at that juncture.

The representative of the United States provided its response regarding the work carried out by it in this field.

The Indian delegation welcomed the MC11 Decision reaffirming the 1998 Work Programme on Electronic Commerce, which had an exploratory and non-negotiating mandate. While e-commerce had created new and exciting trade and investment opportunities, it had also posed several new infrastructure and regulatory challenges, which needed to be addressed first. These included: classification issues such as whether e-commerce should be treated as trade in goods or services; to what extent existing WTO rules applied to the digital economy; fiscal and other implications of e-commerce, including the Moratorium and the scope of "electronic transmissions"; the impact of e-commerce on competition and market structures; and, most importantly, the need to bridge the digital divide.

<sup>29</sup> S/C/M/135 (18-4350)

<sup>30</sup> S/C/M/136 (18-7439)

Against that backdrop, India had introduced its proposal "Moratorium on customs duties on electronic transmissions: Need for a re-think", contained in document WT/GC/W/747, at the meeting of the General Council held in July 2018.

## Assessment of Barriers to Entry

The Technical Barriers to Trade (TBT) Agreement aims to ensure that technical regulations, standards, and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade.<sup>31</sup> At the same time, it recognises WTO members' right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or protection of the environment.<sup>32</sup> The TBT Agreement strongly encourages members to base their measures on international standards as a means to facilitate trade and through its transparency provisions, it also aims to create a predictable trading environment.<sup>33</sup>

### Meeting on 30<sup>th</sup> January 2017<sup>34</sup>

The representative of India recalled that, when introducing India's submission on barriers to entry being faced by mode 4 service suppliers in March, his delegation had explained in detail the need for the Council to focus on those barriers. Supply of services through mode 4 was particularly important for developing countries and LDCs; it was therefore disappointing that commitments in an area of such critical interest

to these countries were shallow and fraught with market access, administrative and other barriers. India's earlier submission had highlighted the increasingly complex nature of barriers to mode 4 and shared the experience of Indian suppliers in that regard. The LDC Collective Request also referred to very similar issues.

Members such as Switzerland, Ecuador, China, Nigeria supported India's views of holding a seminar.

### Meeting on 6<sup>th</sup> June 2017<sup>35</sup>

While the United States still had some concerns with the wording of the proposal by India, consistent with the approach taken with the proposal to hold a seminar on e-commerce, his delegation would have no objection to moving the process forward to the concrete planning stage. He reserved his delegation's right to comment on the substance of the programme as it was developed, and looked forward to continued engagement by the proponent.

### Meeting on 28<sup>th</sup> August 2017<sup>36</sup>

The Chairman suggested that, in light of what had been agreed under the previous agenda item, the thematic seminar on mode 4 be addressed as part of his informal consultations.

### Meeting on 6<sup>th</sup> November 2017<sup>37</sup>

The representative of India recalled that her delegation's initial proposal for a mode 4 5.2. seminar had been circulated to Members in document RD/SERV/135. In order to take Members' concerns into account, the proposal

<sup>31</sup> Technical Barriers to Trade. WTO. Retrieved from. [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm)

<sup>32</sup> Ibid.

<sup>33</sup> Ibid.

<sup>34</sup> S/C/M/129 (17-0597)

<sup>35</sup> S/C/M/130 (17-2988)

<sup>36</sup> S/C/M/132 (17-4552)

<sup>37</sup> S/C/M/133 (17-6033)

had subsequently been significantly revised, and circulated as document RD/SERV/135/Rev.1, dated 27 February 2017. The revised proposed programme for the seminar contained two parts: the first sought to provide an overview of the scope of GATS commitments and MFN exemptions related to mode 4, the practice under Regional Trade Agreements and the economic impact of mode 4, while the second part proposed to address mode 4 in action. All interested Members could propose speakers for the event, with a view to having a good exchange of experiences on the various aspects outlined. She reiterated her delegation's readiness to engage with Members in case there were any concerns on the revised draft programme.

● *Meeting on 5<sup>th</sup> April 2018*<sup>38</sup>

With the MC11 being over, India felt that the time was ripe to hold an information-sharing seminar on mode 4.

The representatives of Turkey, Bolivian Republic of Venezuela, Bangladesh, Brazil, Cuba, Ecuador, Argentina and Peru all supported India's proposal to hold a seminar on Mode 4.

The representative of Canada noted that the mode 4 seminar proposal was now to be considered on its own, whereas beforehand it had been proposed alongside another seminar.

● *Meeting on 11<sup>th</sup> July 2018*<sup>39</sup>

The representative of India took the opportunity to request the Secretariat to update its

Background Note on mode 4, contained in document S/C/W/301, dated 15 September 2009. Mode 4 was an important mode of supply with deep inter-linkages with all other modes of supply of services. An update of the said Note by the Secretariat would therefore be very useful and timely for all Members.

The Chairman said that it was clearly not possible for the Council to agree to India's suggestion to update the Secretariat Note on mode 4 at that meeting. As with previous items, he urged India to contact delegations which had expressed some concerns or suggestions to see how to get to an understanding with them; for his part, he would discuss with India to see how to move forward on its suggestion. He then suggested that the Council take note of the statements made

## Trade Facilitation Agreement for Services

WTO members discussed a new proposal by India for an agreement to ease global services trade, with the aim of reducing bottlenecks that services and services suppliers face.<sup>40</sup> These include high fees, opaque and cumbersome procedures and complex requirements for licensing and movement of persons. The proposal builds upon the Trade Facilitation Agreement (TFA) in goods, which aims to streamline customs procedures as a means of cutting the time and cost involved in moving goods across borders.

<sup>38</sup> S/C/M/134 (18-2071)

<sup>39</sup> S/C/M/135 (18-4350)

<sup>40</sup> WTO members debate new proposals to ease global flow of services. WTO. Retrieved from.

[https://www.wto.org/english/news\\_e/news16\\_e/serv\\_05oct16\\_e.htm](https://www.wto.org/english/news_e/news16_e/serv_05oct16_e.htm)

► *Meeting on 6<sup>th</sup> June 2017*<sup>41</sup>

The Representative of India had introduced a draft legal text for an Agreement on Trade Facilitation for Services (TFS) for discussion. In the presentation of its proposal in the WPDR, India had explained the key provisions of the draft TFS and highlighted the rationale behind the various proposals, indicating the relevant sources. India's presentation had been circulated in document RD/SERV/137.

Members worked on reviewing the proposal by India.

► *Meeting on 28<sup>th</sup> August 2017*<sup>42</sup>

At the March meeting, Members had engaged in an extensive discussion of India's proposal. In addition to making a number of general comments, delegations had also posed several detailed questions and raised specific observations. When the TFS proposal had been discussed next, in the CTS Special Session on 3 May, India had provided a number of responses to the various issues raised by Members. India's responses had been later circulated in document RD/SERV/139.

Members presented their questions, suggestions and approvals in the meeting.

## Way Forward in 2019: Important Issues for Developing Countries

During 2019, the committee will hold a dedicated meeting to review the Nairobi Decision at a specific date in the second quarter of 2019, possibly between April and May. Besides this, work will continue on the important issues covered above.

### Notifications Pursuant to Articles III:3 and V:7 of the GATS

As part of the transparency obligation under Article III:3 of the GATS, it is important for all the Members to notify legislative developments pursuant to this Article for the development of a transparent and well-functioning multilateral trading system.

There can be further consideration by the CRTA of the upcoming regional trade agreements that covered trade in services.

Emphasis may also be put on other Members to conduct best practices with respect to paragraph 14 of the RTA Transparency Mechanism which has been exemplified by China and Macao, China.

### Operationalization of the LDC Services Waiver

There will be focus as to how LDCs exports of commercial services can be increased. There should be activities undertaken by the Members to expand the concentration of services trade in

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<sup>41</sup> S/C/M/130 (17-2988)

<sup>42</sup> S/C/M/132 (17-4552)

LDCs. To do this, the Council must address the constraints which LDCs face such as poor infrastructure, limited skills and lack of financial resources etc. Also, more is needed to be done to assist LDC suppliers to benefit from the preferences in a concrete manner.

Further, in line with paragraph 1.6 of the Nairobi Decision, Members needed to explore steps that could be taken towards enhancing the operationalization of the Waiver. In this respect, the Council in the second quarter of 2019 could probably hold a workshop that would bring together LDC government and private sector stakeholders, Members' development agencies and relevant international organizations. Bangladesh will focus on the Council to take action in line with paragraph 1.5 of the relevant Nairobi Decision. LDCs have given a lot of emphasis on these two paragraphs since it will allow them to comprehend the benefits available from the notified preferences and how they could be utilized. Given this situation, the Secretariat would need to look in more detail at how best to respond to the request for information from LDCs.

### **Work Programme on Electronic Commerce**

Focus will be on the LDC Group discussing the particular opportunities and challenges faced by them as they sought to integrate into the new digital economy. Attention may also be given to the challenges and opportunities faced by MSMEs in becoming the main beneficiary of digital trade and how they could be given the opportunity to enter new markets. Members might also discuss strategies of incorporating the rising demand of digital economy with the present resources available at a national level

and how this resource capacity can be increased to facilitate greater digital inclusion in economic development work. Private-public method of partnerships can be a greater facilitating tool in this regard as was pointed in the 26<sup>th</sup> November 2018 meeting.

China is emerging as a leading nation in e-commerce activities and tying it to the demands of economic development. It can provide examples from its own case studies to the LDC Group as to how to move forward in this respect.

### **Assessment of Barriers to Entry**

This proposal of India has seen a wide support among the Members. The main task however lies in going beyond organizing the Seminar for Mode 4 and look for ways in which it can be updated and tailored to individual Members' needs.

### **Trade Facilitation Agreement for Services**

India may need to clarify questions regarding its proposal on Trade Facilitation Agreement for Services so that language does not become confusing to the Members as had been pointed out by Thailand and the Dominican Republic. It needs to become tailored to the needs of Members like Ecuador which believes that TFS would create new obligations that could generate an additional burden on Members who had undertaken commitments in many service sectors. Ukraine cautioned India to proceed with the liberalisation of this mode of supply very carefully and this might be taken up by India in the next year.





## **CUTS International, Geneva**

CUTS International, Geneva is a non-profit NGO that catalyses the pro-trade, pro-equity voices of the Global South in international trade and development debates in Geneva. We and our sister CUTS organizations in India, Kenya, Zambia, Vietnam, Ghana and Washington have made our footprints in the realm of economic governance across the developing world.

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