

Working Party on Domestic Regulation

REPORT OF THE MEETING HELD ON 24 JANUARY 2024

NOTE BY THE SECRETARIAT¹

The Working Party on Domestic Regulation (WPDR) held a meeting on 24 January 2024 chaired by Ms. Christiane DALEIDEN from Luxembourg. The proposed agenda for the meeting was contained in document [WTO/AIR/WPDR/17](#) dated 12 January 2024. The report of the previous meeting of the Working Party, held on 29 March 2022, is contained in document [S/WPDR/M/78](#) and [S/WPDR/M/78/Corr.1](#).

Before turning to the substance of the meeting, the Chair recalled that, following the agreement by Members on a slate of names for the Chairpersons of the Council for Trade in Services (CTS) subsidiary bodies, the election of the Chairpersons for 2023 had been conducted through a written procedure and had been confirmed through a fax dated 24 April 2023. She thanked Members for the confidence that they had placed in her.

The Chair also indicated her intention to make a brief statement on the "appointment of the Chairperson for the WPDR for 2024" under "Other Business".

With this change, the agenda was adopted.

1 ITEM A ADDITIONAL SPECIFIC COMMITMENTS ON DOMESTIC REGULATION – REQUESTED BY THE EUROPEAN UNION

1.1. The Chair stated that the substantive item of the agenda was titled "Additional Specific Commitments on Domestic Regulation". This item had been requested by the delegation of the European Union.

1.2. The representative of the European Union noted that his delegation had requested an agenda item for today's WPDR meeting regarding additional specific commitments on domestic regulation. He welcomed the organization of today's meeting which provided a valuable opportunity to present to Members of the WPDR the new additional commitments related to services domestic regulation that the EU was seeking to undertake in its Schedule of specific commitments. The EU had initiated a certification procedure in line with the "Procedures for the Certification of Rectifications or Improvements to Schedules of Specific Commitments", contained in document [S/L/84](#). The EU certification request, contained in document [S/C/W/407](#), had been circulated to all Members on 20 December 2022. It had set out clearly the details of the new additional commitments to be integrated into the EU's Schedule of specific commitments.

1.3. The additional commitments, however, had not yet entered into force since the EU had received, in February 2023, objections from two Members, namely India and South Africa. India and South Africa's objections had been circulated respectively in documents [S/L/446](#) and [S/L/474](#).

1.4. A number of other Members had also initiated the same procedure to undertake additional commitments related to services domestic regulation in their Schedules and they had also received objections.

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.

1.5. The EU wished to outline the substance of the new additional commitments and to update on the state of play of their entry into force. Together with the delegations of India and South Africa, the EU would provide information on the successful outcome of their consultations.

1.6. Starting from the substance, the representative of the EU noted that the additional commitments integrated a set of disciplines on domestic regulation into the EU's Schedule of specific commitments. In the EU's draft schedule, circulated in document [S/C/W/407](#), reference had been made to two sets of disciplines. One set applied to all sectors included in the EU's Schedule except for financial services; another slightly adjusted set of disciplines applied specifically to financial services sectors included in the EU's Schedule. Both sets of disciplines provided for additional regulatory commitments and constituted improvements to the EU's existing commitments. As the EU aimed to integrate the disciplines into its Schedule, these would apply on an MFN basis, notably *vis-à-vis* all Members, irrespective of whether they had undertaken the same commitments.

1.7. Overall, the new additional commitments related to the transparency, clarity, predictability, and effectiveness of the procedures that businesses must comply with to obtain authorization to supply their services. They concerned licensing requirements and procedures, qualification requirements and procedures, and technical standards, namely "domestic regulation". To provide further specifics, the EU was seeking to undertake additional commitments in relation to the administration of authorization procedures. In a nutshell, the additional commitments in this area aimed to provide clarity and predictability to application processes, and to ensure that these were impartial and adequate, as well as administered independently. They addressed the submission of applications and related timeframes, the acceptance of electronic applications and authenticated copies of documents, the processing of applications and authorization fees, as well as the assessment of qualifications. Moreover, the EU was also seeking to undertake commitments that aimed to boost transparency surrounding authorization processes by describing the types of relevant information that the EU shall publish and the manner in which it shall engage with enquiries from services suppliers. The commitments also concerned the publication of draft regulations and the opportunity to comment on them. Other commitments related to supporting engagement on recognition of qualifications; ensuring the non-discrimination between men and women in the context of authorization; as well as requiring that all measures related to authorizations were based on objective and transparent criteria.

1.8. With respect to the specific case of financial services, the EU sought to undertake a set of additional commitments, similar to those that had just been described, but adapted to the specific needs of financial services regulators.

1.9. Moving to the state of play of the certification procedure that had been launched by the EU, all but two Members had supported the new additional commitments related to domestic regulation. The EU had received two objections, namely by India and South Africa, that had not been withdrawn to date.

1.10. The representative of India stated that her delegation's intervention concerned the intention by some Members to integrate disciplines on domestic regulation in their Schedules as additional commitments in pursuance of the agreement reached among them in December 2021 in the context of the Joint Initiative on Services Domestic Regulation. India noted that, in January 2023, the Members that were participating in the Joint Initiative on Services Domestic Regulation had circulated requests for certification of their updated Schedules to integrate disciplines on domestic regulation as additional commitments. Following the [S/L/84](#) procedures, objections to these certification requests had been raised by India, and consultations with these Members had been carried out between March and June 2023. During the consultations, India had conveyed its concerns regarding the contradiction between the Joint Initiative and the fundamental principles of the WTO, as well as the systemic and development implications of the Joint Initiatives, as also highlighted in General Council and WPDR meetings between 2019 and to 2022. India had also raised certain technical issues, including clarifications on a number of provisions.

1.11. With respect to the fundamental issues, the representative of India highlighted that the Joint Initiative on Services Domestic Regulation had started with the Joint Ministerial Statement issued by participating Members in December 2017. The Statement had acknowledged the valuable work undertaken in the WPDR and reaffirmed the commitment to deliver multilateral outcomes and conclude disciplines on domestic regulation pursuant to the mandate contained in GATS Article VI:4. The Reference Paper on Services Domestic Regulation also acknowledged the objective to bring in the disciplines pursuant to GATS Article VI:4.

1.12. India had argued that since the Members participating in the Joint Initiative on Services Domestic Regulation aimed to take forward the mandate contained in GATS Article VI:4, it was only appropriate to not undermine the WPDR – which was the body multilaterally mandated as per GATS Article VI:4 to perform this role.

1.13. In addition, India had articulated that the scope of undertaking additional commitments under GATS Article XVIII was broader than that of GATS Article VI:4. GATS Article XVIII mentioned qualifications, standards, or licensing matters as examples of measures subject to additional commitments. Her delegation had maintained that just because additional commitments could be a mechanism to undertake commitments pursuant to GATS Article VI:4, this should not be the reason to bypass the WPDR.

1.14. India had also underlined that it was not seeking to suggest new procedures for the modification of Members' Schedules, as set out in the [S/L/84](#) and the [S/L/80](#) procedures.

1.15. India had indicated that the additional commitments that were being undertaken by participants in the Joint Initiative on Services Domestic Regulation did not concern just a few Members in a particular sector. As stated in the Reference Paper on Services Domestic Regulation, these were general disciplines pursuant to GATS Article VI:4 under Part II of the GATS, which would be applicable horizontally across sectors for a large number of Members.

1.16. In this context, India had articulated that seeking concurrence of the WPDR on the way forward for those seeking to update their Schedules of specific commitments was required. India had also highlighted that it was necessary to confirm the understanding that the certifications did not create a precedent for incorporating outcomes in the WTO, including from the Joint Statement Initiatives. India had also stressed that the additional specific commitments being undertaken by these Members were without prejudice to the development of any necessary disciplines at the multilateral level pursuant to GATS Article VI:4.

1.17. With respect to technical issues, India stated that it was necessary to confirm the understanding that the additional specific commitments did not diminish the rights or alter the obligations under the GATS of the Members that were not undertaking these additional commitments, and that they did not diminish any obligations under the GATS of the Members undertaking these additional commitments.

1.18. India also sought confirmation on the understanding that the references to "Members" or "Member" included in the disciplines were to be understood as referring to the WTO Members undertaking these additional commitments; references to "other WTO Members" were to be understood as referring to "other WTO Members"; and the reference to "professional bodies of Members" was to be understood as referring to "professional bodies of WTO Members". India was of the view that, given its technical nature, such understandings should ideally be included in the updated Schedules to facilitate their reading.

1.19. India had also expressed a concern with the reference to the document number [INF/SDR/2](#) in the Schedules, as this was not a valid document in the WTO system.

1.20. In response to India's fundamental concerns and suggestions to bring these matters before the WPDR, this subject was before the WPDR at this meeting.

1.21. The representative of [South Africa](#) noted that the Reference Paper on Services Domestic Regulation (contained in document [INF/SDR/2](#)) concerned a set of disciplines that Members had undertaken, and a multilateral mandate built into GATS Article VI:4. The Members had entrusted the fulfillment of the mandate set out in GATS Article VI:4 to the WPDR.

1.22. The adoption of disciplines at the plurilateral level which pertained to a subject matter on which there was a multilateral mandate entrusted to a multilateral body and through the unilateral use of Schedules of specific commitments, contributed to the fragmentation of the WTO and eroded the multilateral nature of its rules and institutional processes. When such multilateral mandates were not respected or were deviated from without consultation or consensus with the rest of the membership, their authority was undermined.

1.23. Moreover, as per GATS Article XX, the use of Schedules was expressly limited to specific sectoral commitments – unlike the nature of the disciplines contained in the Reference Paper on Services Domestic Regulation. Article XX provided that "Each Member shall set out in a Schedule the specific commitments it undertakes under Part III of this Agreement. With respect to sectors where such commitments are undertaken, each Schedule shall specify: (a) terms, limitations and conditions on market access; (b) conditions and qualifications on national treatment; (c) undertakings relating to additional commitments [...]". To explain this, the "Guidelines for the scheduling specific commitments under the GATS" (contained in document [S/L/92](#)) distinguished between specific commitments and general rules.

1.24. The GATS contained two types of provisions. The first type consisted of general obligations, some of which applied to all services sectors, such as the MFN and transparency obligations, or Article XI on payments and transfers. The second type consisted of negotiated undertakings particular to each GATS signatory. The scope and procedure for certification of improvements to Schedules clearly reflected this distinction.

1.25. The objective of the [S/L/80](#) and [S/L/84](#) procedures was to allow Members to correct or further liberalize sectoral commitments in ways that would not disrupt the balance achieved in the request-offer negotiations and that had been adopted in binding Schedules. These procedures did not foresee the use of certification to introduce new or amend existing rules that belonged to Part II of the GATS.

1.26. In this light, the action by a number of Members to adopt the Reference Paper on Services Domestic Regulation unilaterally through Schedules constituted a misuse of Schedules, and undermined WTO multilateral mandates, as well as the rules for amendments contained in the Marrakesh Agreement. For South Africa, these implications were of systemic importance for the future credibility of the WTO as a multilateral organization entrusted with the objective of developing an integrated, viable, and durable multilateral trading system.

1.27. For these reasons and consistent with its position as reflected in document [WT/GC/W/819/Rev.1](#), South Africa had presented an objection to the certification requests submitted under the [S/L/84](#) procedures. South Africa had raised concerns in particular with respect to the legal basis and the effect of the proposed modifications to Schedules, as well as their interaction with existing rights and obligations under the GATS and the Marrakesh Agreement.

1.28. South Africa had raised its objection with a view to engaging with the concerned Members and addressing the legal and systemic implications. This required addressing two sets of issues, namely the effects on multilateral mandates (such as that contained in GATS Article IV:4), as well as the effects emanating from the misuse of the Schedule, GATS Article XVIII, and the undermining of rules under the Marrakesh Agreement.

1.29. The representative of South Africa considered that the issues it had raised should be addressed in multilateral bodies, since these affected the membership's rights. The return to the multilateral mandated forum of the WPDR could be an opportunity to address part of these issues, to engage in a meaningful discussion in good faith on the proposal to adopt the disciplines contained in the Reference Paper on Services Domestic Regulation pursuant to the GATS Article VI:4 mandate, as well as to enable all Members to shape the content of such proposed disciplines and the way these would eventually be adopted. This included taking multilateral decisions on the means for adopting the disciplines proposed in the Reference Paper.

1.30. The representative of South Africa noted that in earlier cases pertaining to the 4th Protocol to the GATS Schedules of specific commitments concerning basic telecommunications and the reference paper (document [S/L/20](#)) and the 5th Protocol to the GATS Schedules of specific commitments and lists of exemptions from GATS Article II on financial services (document [S/L/45](#)), the negotiations

had been multilaterally mandated, overseen by formally mandated institutional processes, and adopted in Schedules in accordance with multilateral decisions. Moreover, these Protocols contained obligations and commitments specific only to one sector and did not purport to adopt general rules of application – unlike the Reference Paper on Services Domestic Regulation.

1.31. For South Africa, while a process towards finding an agreed solution pertaining to the disciplines proposed in the Reference Paper on Services Domestic Regulation would be welcome, it was important to underline that, first, this should not be considered as a final fulfilment of the mandate contained GATS Article VI:4; secondly, it did not set a precedent for future use of Schedules of specific commitments; and, thirdly, it did not set a precedent in the event that multilateral mandates were not respected or deviated from by some Members in the future and did not oblige the rest of the membership to devise solutions to legitimize such deviations.

1.32. The representative of the European Union noted that his delegation did not agree with some of the views expressed and discussions of a more generic nature were not the objective of the present meeting that the EU had requested.

1.33. In accordance with the [S/L/84](#) procedures, the EU had entered into consultations with South Africa and India. During these consultations, the EU, India, and South Africa, together had developed a way forward that addressed the concerns that had been communicated to the EU, while preserving the substance of the additional commitments included in the EU's certification request.

1.34. The agreed way forward was as follows: First, the EU will submit a Corrigendum to its original certification request making the format related change. Namely, the intended improvements related to services domestic regulation will be reflected as an attachment to the EU's draft schedule, notably as "Disciplines on Services Domestic Regulation" and "Alternative Disciplines on Services Domestic Regulation for Financial Services". The original request of the EU had already made reference to a document in which the two sets of disciplines were contained. No changes to the text of the disciplines that had been referenced in the original certification request will be made. The representative of the EU noted that the corrected draft schedule will be circulated to all Members in both a clean and track change format, for ease of reference.

1.35. In a nutshell, instead of having in the Schedule a reference to a document containing the disciplines, the EU will insert the disciplines directly in the Schedule. This will facilitate the reading of the Schedule.

1.36. Secondly, in the cover page of its Corrigendum, the EU will also include a set of understandings which are to be read in conjunction with the new additional specific commitments and are intended to provide context to them. The understandings respond to the concerns raised by India and South Africa and provided clarifications sought by them. The four understandings that had been reached with India and South Africa will be reflected in the cover page of the Corrigendum. They read as follows:

1. For greater certainty, the present certification does not create a precedent for incorporating outcomes in the WTO, including from the Joint Statement Initiatives.
2. The additional specific commitments do not diminish the rights nor alter the obligations under the General Agreement on Trade in Services of WTO Members that are not undertaking these additional specific commitments. Furthermore, they do not diminish any obligation under General Agreement on Trade in Services of WTO Members that undertake these additional specific commitments.
3. The additional specific commitments are without prejudice to the development of any necessary disciplines pursuant to paragraph 4 of Article VI of General Agreement on Trade in Services.
4. Reference to "Members" or "Member" included in the disciplines are to be understood as referring to the WTO Member undertaking these additional specific commitments. Reference to "other Members" are to be understood as referring to "other WTO Members". The reference to "professional bodies of Members" is understood as referring to "professional bodies of WTO Members".

1.37. The EU thanked India and South Africa for their engagement in finding a solution for the way forward.

1.38. It was the EU's understanding that other WTO Members that were also already engaged in the [S/L/84](#) procedures or that wished to initiate such procedures to undertake additional commitments on domestic regulation could also incorporate the outlined elements in their respective certification requests.

1.39. For the EU, the additional commitments on domestic regulation could also serve as a basis for future multilateral work on domestic regulation if there was an interest by Members to continue the negotiations pursuant to the GATS Article VI:4 mandate.

1.40. The representative of [South Africa](#) confirmed that it was ready to lift its objections to the Schedules of Members that would issue a Corrigendum in line with the solution explained by the EU.

1.41. The representative of [India](#) took note of the presentation made by the EU and the exchanges between India, South Africa and the EU. India also took note of the four clarifications presented by the EU to address India's concerns. These clarifications should be read in conjunction with the new additional commitments and provided context to them. These clarifications would be reflected in the cover note of the EU's revised certification request that would be issued in the form of a Corrigendum.

1.42. The representative of India also noted the EU's readiness to remove the reference to the [INF/SDR/2](#) document and instead include the additional commitments directly in the Schedule. She concurred that other Members interested in undertaking additional commitments related to domestic regulation may proceed with certification in line with the way forward indicated at this WPDR meeting. She further confirmed that certification requests revised in accordance with the outlined way, including the four clarifications and the revised Schedules, addressed India's concerns. Accordingly, India will be ready to accept the certification requests revised in the presented manner. On that basis, India confirmed that it will lift its objections. The representative of India registered her understanding that the WPDR official record would reflect all statements delivered, all exchanges, as well as the four clarifications to be integrated in the revised certification request.

1.43. The [Chair](#) thanked the European Union for the presentation of the additional commitments on domestic regulation that it wished to incorporate in its Schedule of specific commitments and of the state of play of its certification request, pursuant to [S/L/84](#) procedures. She was certain that the EU presentation of the additional specific commitments on domestic regulation had been appreciated by the Working Party and had its blessing. The news regarding the successful outcome of the consultations between India, South Africa and the EU that will lead to the withdrawal of objections under the [S/L/84](#) procedure was also welcome. She saw Members concurring that proceeding with the approach that the EU had outlined could be a way forward for any Member interested taking on additional commitments related to domestic regulation, by making changes to its original certification request under [S/L/84](#). The Chair recalled that this outlined way forward consisted of a Corrigendum to the original certification request with the four understandings set out in the cover page of the request, as read out by the Ambassador of the European Union, and the domestic regulation disciplines attached to the Schedule of specific commitments. The delegations of India and South Africa had indicated that, on that basis, they will withdraw their objections on any corrected [S/L/84](#) certification requests, bringing the certification procedures to a conclusion.

1.44. The Working Party took note of the statements made.

2 ITEM B: OTHER BUSINESS

2.1. The [Chair](#) recalled that the appointment of the Chairperson of the WPDR should normally take place at the end of the first meeting of the year. However, since the slate of names for the Chairpersons of the CTS subsidiary bodies for 2024 had not been confirmed to date, it was not possible to appoint the 2024 Chair at the present meeting. Once the slate of names was confirmed, Members would be informed, including on further arrangements concerning the appointment and hand-over of the Chairpersonship.
