Electronic Payment Services – New Clarifications in GATS Classification Issues

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In July 2012 the fourth case under the GATS has led to a Panel Report, namely in the matter “China – Electronic Payment Services”. The Panel is convincingly adopting a very broad notion of the term “services” encompassing all business models of making a payment. The actual measures introduced by China limiting market access of foreign services suppliers are not inconsistent with Article XVI of the GATS to a far extent since China did not assume respective commitments in its accession Schedule. However, several formal requirements to be observed in China are not in compliance with the national treatment principle of Article XVII of the GATS.

Quatrième différend traité sous l’empire de l’AGCS, l’affaire «Chine – Certaines mesures affectant les services de paiement de électronique» a fait l’objet en juillet 2012 d’un rapport établi par un Groupe spécial (Panel). Le Groupe spécial se base de manière convaincante sur une interprétation large de la notion de «services», qui englobe tous types de transaction avec paiement. Les mesures introduites par la Chine restreignant l’accès au marché des prestataires de service étrangers ne sont pour l’essentiel pas incompatibles avec l’article XVI AGCS dans la mesure où la Chine n’a pas respecté ses engagements. Plusieurs exigences formelles devant être respectées en Chine sont assurément incompatibles avec le principe du traitement national au sens de l’article XVII de l’AGCS.

I. Introduction

On 16 July 2012, the WTO issued the Dispute Panel Report in the case “China – Certain Measures Affecting Electronic Payment Services”; the two hundred pages Report with extensive Annexes has brought the proceedings between the United States and China, having been initiated on 15 September 2010, to the assessment stage. During the lifetime of the GATS of more than 15 years, this Panel Report only closes the fourth dispute settlement proceedings under the GATS, following the decisions “Mexico – Telecoms” (2004), “US – Gambling” (2005) and “China – Publications and Audiovisual Products” (2010). Due to

1 www.wto.org/english/news_e/news12_e/413r_e.htm.
4 Panel Report, «China – Measures Affecting Trading Rights and Distribution Services for Certain Publications and Audiovisual Enter-

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the limited number of GATS cases, the new interpretation guidelines in the field of (electronic) services are highly welcome.

The basis for the classification of services under the GATS is the so-called “Services Sectoral Classification List” (W/120 List) as prepared by the GATT Secretariat in 1991 during the course of negotiations on the GATS, in substance following the “Provisional Central Product Classification” (CPC) of the United Nations. This W/120 List is used as a guide for the classification of services by most of the WTO Members, since it encompasses a large number of manifold services.

The main problem of the W/120 List consists in the fact that it has become quite outdated over the last 20 years in a number of sectors which result in a lack of clarity as to the covered services. Therefore, efforts have been put into the development of improved classification regimes; however, a major revision of the W/120 List has not yet been adopted.

Apart from the “general obligations” (most favored nation and transparency obligation), the GATS also contains so-called “specific commitments”, namely market access, national treatment and additional commitments (Articles XVI, XVII and XVIII of the GATS). From a structural point of view, each WTO Member grants commitments under the GATS related to national treatment/market access; therefore, legal doctrine defines this approach as “positive list” model (based on the understanding that a WTO Member has to do something positively). In contrast, the GATT governing the cross-border trade in goods is based on the “negative list” model meaning that a WTO Member would have to give a “negative” notification in respect of a specific good if market access should not be granted. Obviously, the “positive list” model under the GATS has a lower liberalization effect than the “negative list” model applied under the GATT, since the WTO Members need to take positive action to accept a commitment or market access of a new service.

This situation has not substantially changed since 1995. In particular, the discussions during the Ministerial Conferences, for instance on the Doha Development Agenda (DDA), have not added substantive liberalization measures to the previously agreed commitments. Therefore, in a given dispute, on the one hand, the specific commitments granted by a WTO Member need to be evaluated in detail and, on the other hand, the services as defined in the W/120 List are to be interpreted in the light of the technological developments.

II. Panel Report

1. Background and history of the case

The panel proceedings concern a series of legal requirements relating to electronic payment services being maintained by China. According to the allegations of the United States, these legal requirements, alone or in combination, affect electronic payment services for payment card transactions and the suppliers of those services. In particular, the United States expressed the claim that China permits only a Chinese entity (China UnionPay, CUP) to supply electronic payment services for payment card transactions denominated and paid in Renminbi in China, i.e. service providers of other WTO Members could only supply these services for payment card transactions denominated in foreign currencies. Furthermore, the United States argued that China would require all payment card processing devices to be compatible with that entity’s system, that payment cards must bear UnionPay’s logo and that Chinese entities have guaranteed access to all merchants in China accepting payment cards while service providers of other Members need to negotiate for access to merchants. Therefore, the United States requested the Panel to decide on the non-compliance of these requirements with several sections of Articles XVI and XVII of the GATS. China rejected all of the claims.

After the consultations had failed, the United States called for the establishment of a Panel on 11 February 2011. The DSB established the Panel on 25 March 2011; the Director-General composed the Panel on 4 July 2011. After slightly more than 1 year, the Panel Report was circulated to the Members on 16 July 2012.

In a procedural context, the Panel concluded that China had failed to establish that the United States’ panel request would be inconsistent with Article 6.2 of the DSU on the grounds that it does not provide a brief summary of the legal basis which would be sufficient to clearly assess the factual and legal problems.

2. General interpretation principles

The Panel starts the considerations by outlining a few general interpretation
rules, being in line with constant jurisprudence of the dispute settlement bodies:

- According to the Panel, the general rule on burden of proof in WTO dispute settlement is that a Member claiming a violation of a provision by another Member must assert and prove its claim; once the complaining party has made a prima facie case, the burden of proof moves to the responding party, which must in turn counter or refute the claimed inconsistency (paras. 7.5/7.6 of the Report).

- The interpretation of the relevant WTO agreements must be based on Articles 31 and 32 of the Vienna Convention on the Law of Treaties (Article 3.2 of the DSU). These rules are to be considered as customary rules. According to Article XX:3 of the GATS, Schedules of Specific Commitments are an integral part of the GATS and, therefore, the Schedules must be interpreted in line with “customary rules of interpretation of public international law” as already confirmed by the Appellate Body in US – Gambling (paras. 7.8/7.9 of the Report).9

- The dispute concerns payment card transactions involving several entities, namely issuing institutions (issuers), acquiring institutions (acquirers), payment card companies, and settlement banks. The business models used in card-based electronic payment transactions are often referred to as “open-loop”, or “four-party” models, and “closed-loop”, or “three-party” models (para. 7.18 of the Report). According to the Panel, the way how electronic payment transactions are actually effected does not have a direct influence on the legal interpretation of the services. The processing of transactions, whether in connection with a four-party or a three-party model, encompasses both (1) “front-end processing” (which serves to authenticate and authorize transactions), and (2) “back-end processing” (which serves, essentially, to clear and settle transactions) (para. 7.20 of the Report). The Panel notes that the services at issue are “electronic payment services for payment card transactions” including five elements, namely (i) the processing infrastructure, network, and rules and procedures, (ii) the process and coordination of approving or declining a transaction, (iii) the delivery of transaction information among participating entities, (iv) the calculation, determination and reporting of the net financial position of relevant institutions for all transactions that have been authorized, and (v) the facilitation, management and/or other participation in the transfer of net payments owed among participating institutions (para. 7.30 of the Report). The Panel also states that the services at issue include both the instances in which these are supplied as a single service by a single service supplier, and those instances in which different elements of the “system” are applied by different service suppliers (para. 7.62 of the Report).

3. Specific Commitments of China related to the electronic payment services

The first major part of the Panel Report looks at China’s Specific Commitments Schedule: In sector 7.B, under the heading “Banking and Other Financial Serv-


pletion of transactions using payment cards (para. 7.119 of the Report).

Thereafter, Panel assesses the sub-heading “Banking services as listed below” (paras. 7.120-7.128 of the Report) in the sectoral column of China’s Schedule; insofar the Panel finds that the wording of the undertaken commitments does neither contradict the acknowledged interpretation of electronic payment services nor the meaning of the GATS Annex on Financial Services, which particularly addresses issues such as clearing, settlement and financial assets (paras. 7.139-7.162 of the Report). Based on these assessments, the Panel is of the opinion that China’s commitments cover the clearing and settlement of financial instruments which have investment attributes, grant ownership rights and yield financial returns, however, that retail payment instruments are not “financial assets” (para. 7.163 of the Report). In line with China – Publications and Audiovisual Products11 the Panel further finds that a “sector” may include “any service activity that falls within the scope of the definition of that sector”, whether or not these activities are explicitly enumerated in the definition of that sector or subsector (para. 7.179 of the Report). In addition, the mere fact that separate suppliers provide one particular component of a service should not imply that the component is to be classified as a distinct service, or that the component is not part of an integrated service (para. 7.188 of the Report).

4. Measures at issue

Before looking into the alleged non-compliance of certain Chinese requirements with Articles XVI and XVII of the GATS, the Panel Report needs to discuss the measures at issue, based on a detailed evaluation of several documents. The measures relate to allegedly not GATS-compliant requirements, introduced by China, namely requirements on issuers that payment cards issued in China bear the CUP logo (issuer requirements), requirements that all ATM, merchant card processing equipment and POS terminals in China accept CUP cards (“terminal equipment requirements”), requirements on acquiring institutions to post the CUP logo and be capable of accepting all payment cards bearing the CUP logo (“acquirer requirements”), requirements pertaining to card-based electronic transactions in China, Hong Kong and Macao (“Hong Kong/Macao requirements”), requirements that mandate the use of CUP and/or establish CUP as the sole supplier of electronic payment services for all domestic transactions denominated and paid in Renminbi (RMB) (“sole supplier requirements”) and prohibitions on the use of non-CUP cards for cross-region or inter-bank transactions (“cross-region/inter-bank prohibitions”) (para. 7.209 of the Report). The analysis is done by the Panel in view of the market access commitments made by China in relation to mode 1 or mode 3.

In respect of the measures at issue the Panel comes to the following conclusions (para. 7.507 of the Report):

- China imposes requirements on issuers that bank cards issued in China bear the Yin Lian/UnionPay logo, that issuers become members of the CUP network, and that the bank cards they issue in China meet certain uniform business specifications and technical standards.

- China imposes requirements that all terminals (ATM, merchant processing devices and POS terminals) in China that are part of the national bank card inter-bank processing network are capable of accepting all bank cards bearing the Yin Lian/UnionPay logo.

- China imposes requirements on acquirers to post the Yin Lian/UnionPay logo, and that acquirers join the CUP network and comply with uniform business standards and technical specification of inter-bank interoperability, and that terminal equipment operated or provided by acquirers is capable of accepting bank cards bearing the Yin Lian/UnionPay logo.

- China imposes requirements that CUP and no other electronic payment services supplier handle the clearing of certain RMB bank card transactions which involve either an RMB bank card issued in China and used in Hong Kong or Macao, or an RMB bank card issued in Hong Kong or Macao which is used in China in an RMB-denominated transaction.

- However, China does not impose requirements that mandate the use of CUP and/or establish CUP as the sole supplier of electronic payment services for all domestic RMB payment card transactions and does not impose broad prohibitions on the use of “non-CUP” cards for cross-region or inter-bank transactions.

5. Compliance with Article XVI of the GATS

In great detail the Panel Report discusses the alleged non-compliance of China’s measures at issue with Article XVI of the GATS. The Panel follows the approach chosen in “US – Gambling”12 and then confirmed in “China – Publications and Audiovisual Products”13 that the complaining party must do two things to establish a prima facie case of violation, namely establish that the report contains sufficient evidence to show that the measures at issue are not in accordance with the provisions of Article XVI of the GATS.


sponding party has undertaken relevant market access commitments in its GATS Schedule and thereafter identify how the challenged law constitutes impermissible “limitations” falling within the meaning of any subparagraph of Article XVI (para. 7.511 of the Report). Based on the respective analysis, the Panel rejects a majority of the United States’ claims:

-- According to the Panel, China’s commitments as to mode 1 do not constitute “elements” of the services encompassed under Sector 7.B(d) of its Schedule, i.e. no market access commitments are given in respect of the services at issue (paras. 7.525-7.538 of the Report). Therefore, the issuer, terminal equipment, acquirer and Hong Kong/Macao requirements are not inconsistent with Article XVI of the GATS.

-- China is obligated to give electronic payment services suppliers of other Members access to its market through commercial presence, so that they may engage in local currency (Renminbi) business in China, but (in line with “Mexico – Telecoms”) a foreign service supplier may be subject to specific limitations as set out in the Member’s Schedule (paras. 7.575 and 7.618 of the Report). In addition, the Panel concludes that China’s Schedule also contains a national treatment commitment for the cross-border supply of electronic payment services (mode 1) subject to certain qualifications requirements related to local currency business. But notwithstanding the fact that China has undertaken market access commitments in Sector 7.B(d) of its Schedule in respect of the services at issue and that the commitments are not subject to a limitation on the number of service suppliers in the form of monopolies the Panel finds that the applicable market access requirements do not impose a limitation (due to insufficient evidence by the United States that China maintains CUP as an across-the-board monopoly supplier for the processing of all domestic Renminbi payment card transactions) that falls within the scope of Article XVI:2(a) of the GATS. The same assessment applies in respect of terminal equipment requirements as well as acquirer requirements (paras. 7.634 and 7.635 of the Report). The Panel is also of the opinion that a prima facie case in respect of the alleged non-compliance of the requirements with Article XVI:1 of the GATS is not established.

However, the Hong Kong/Macao requirements are inconsistent with Article XVI:2(a) of the GATS because, contrary to China’s Sector 7.B(d) mode 3 market access commitments, they maintain a limitation on the number of service suppliers in the form of a monopoly. The specific transactions in respect of which the Panel determines that CUP is the sole supplier involve Renminbi payment cards which are issued in China and used in Hong Kong and Macao, as well as Renminbi payment cards which are issued in Hong Kong and Macao and used in China, i.e. CUP is granted a GATS-inconsistent monopoly for the clearing of these types of Renminbi payment card transactions. But the Hong Kong/Macao issuer, terminal equipment and acquirer requirements, when considered jointly, do not give rise to a separate and independent claim for breach of Article XVI:2(a) of the GATS according to the Panel (paras. 7.624 and 7.636 of the Report).

6. Compliance with Article XVII of the GATS

As far as the compliance of China’s measures at stake with Article XVII of the GATS is concerned, the Panel bases its findings on the assumption that China has made a commitment on national treatment concerning mode 3 with regard to electronic payment services provided by suppliers of other WTO Members (para. 7.678 of the Report) leading to the following conclusions:

-- The issuer requirements are inconsistent with Article XVII:1 of the GATS, because contrary to China’s Sector 7.B(d) mode 1 and mode 3 national treatment commitments, these requirements fail to accord to services and service suppliers of any other Member treatment no less favorable than China accords to its own like services and service suppliers (paras. 7.690-7.716 of the Report). The Panel finds that through these requirements China modifies the conditions of competition in favor of CUP.

-- The same assessment applies in respect of the terminal equipment requirements (paras. 7.717-7.727 of the Report) and the acquirer requirements (paras. 7.728-7.741 of the Report).

-- The Hong Kong/Macao requirements are not inconsistent with Article XVII:1 of the GATS, as China has not made any Sector 7.B(d) mode 1 national treatment commitment in respect of these requirements. A separate assessment on whether the issuer, terminal equipment, acquirer and Hong Kong/Macao, when considered jointly, are also inconsistent
with Article XVII: 1 of the GATS is declined by the Panel (paras. 7.746–7.748 of the Report).

III. Evaluation of the Panel Report
1. Interpretation of term “services”

The foundation of each GATS dispute settlement proceeding is the interpretation of the term “services” in the given context. Article I:3(b) of the GATS states very generally that “services” include any service in any sector (except governmental authority services)\(^1\). Since no definition of the term “services” is available due to the fact that the contracting parties could not agree thereon, the notion of “services” is subject to interpretation.

Often services are defined as commercial activities outside extraction and production which are not embodied directly in tradable, tangible products\(^1\). The characteristics of many services like invisibility, intangibility, and the lack of transportability led to an enumerative approach as chosen by the mentioned W/120 List using different services sectors\(^2\). But the practical approach of classifying services in sectors and subsectors does not really solve the definition problem\(^3\).


16 In this sense already A. G. B. FISHER, Capital and the Growth of Knowledge, Economic Journal, Vol. 43, 1933, 379 et seq.


18 WEBER / BURRI (n. 6), 31.

Furthermore, the W/120 List is based on the “knowledge” available in 1991; new services not existing at that time, in particular electronic services and services using the Internet as infrastructure, are not properly dealt with in this classification\(^3\). If a new service would be treated as a new item, a revision of the W/120 List should be taken into account; if a new service is looked at as a change of an existing service, the respective category must be interpreted in a (very) broad way which makes the foreseeability of the treatment of a service doubtful\(^9\). The only other alternative could consist in an extended use of the often available subsector “other services”.

A similar problem with highly developing information technology products has occurred in respect of the Information Technology Agreement (ITA) adopted during the Singapore Ministerial Conference of December 1996. Since the product descriptions in its Appendices do not cover newly developed IT products, the question has arisen whether the interpretation of the Appendices should be done in a historical or teleological manner. The Panel in “EC – Tariff Treatment of Certain Information Technology Products”\(^1\) decided in 2010 in favor of the East Asian complainants with the argument that the list of IT products would soon be completely outdated in case of a historical approach and that the liberalization objective of WTO Members should embody new IT products having a similar function than the previously listed IT products, thereby applying a teleological understanding of existing documents\(^2\).

19 WEBER / BURRI (n. 6), 13 et seq.

20 WEBER / BURRI (n. 6), 32.


22 For a further discussion see Shin-Yi PENG, Taxing Innovation?, The Evolving Coverage

The Panel in the hereby discussed dispute settlement proceeding is following a somehow similar approach. The term “electronic payment services” is convincingly interpreted in a broad way, encompassing terms such as “payment”, “money” and “transmission” and all kinds of activities which “manage”, “facilitate” or “enable” the act of making a payment. The applied business approach, for example the application of the “four-party” model or the “three-party” model is not decisive for the qualification of the service. The relevant elements being used in exercising the electronic payment services do also not have a direct influence on the legal interpretation of the service. If a service activity falls within the scope of the definition of a sector, then the activity does not explicitly have to be enumerated in the definition, and the mere fact that separate suppliers provide one particular component of a service does not imply that the service is to be classified as a distinct service. Such kind of argumentation, chosen by the Panel at stake, thereby following the previous practice of the DSB, is adequate and merits to be supported.

2. Importance of national treatment obligation

The considerations of the Panel show that the national treatment obligation is well suited to be interpreted in a strict way. Whether domestic services suppliers and foreign services providers are treated in a comparable manner can be more or less clearly established since the necessary comparison relies on the respective description of the market participants’ legal position (in electronic payment transactions). If a foreign services provider is obliged to comply with more formal requirements, administrative burdens, reporting obligations, ne-
3. Problem of positive list model of the GATS (Commitment Schedules)

As already mentioned, the positive list model has the (general) disadvantage that it is not liberalization-friendly. A market access by a foreign services supplier is only possible if the concerned WTO Member has given a specific commitment to that effect. From a political perspective, commitments are usually granted in areas where the market entry by foreign services suppliers does not seem to have negative consequences for the domestic markets; thereby, national governments evaluate according to economic and/or social considerations. In case of doubt, a WTO Member will abstain from giving a commitment and wait in order to see how economic relations develop; this is particularly the case with new (for instance electronic) services.

During the last 15 years, cross-border market access for services suppliers has not become substantially easier, i.e. the GATS has not fulfilled the promises expected during the Uruguay Round. In particular, the contracting Members did not live up to the principle of progressive liberalization being an important pillar of the GATS. In view of this fact and the given difficulties with services classifications, a liberalization-friendly interpretation of WTO Members’ Schedules of Commitment should be taken into account by the Panel and the Appellate Body in the context of submitted cases. Consequently, as generally acknowledged in relation to the term “services” the actually committed services would have to be looked at from a teleological perspective encompassing the given needs of an adapted technological environment. The Panel at stake has not been (very) courageous in this respect.

The “easiest” way of broadening market access commitments consists in lowering the level of prima facie evidence. The Panel has correctly stated the general rules on burden of proof. As far as the degree of sufficient evidence (in the given case for example that China maintains CUP as an across-the-board monopoly supplier for the processing of all domestic Renminbi payment card transactions) is concerned, the Panel remains quite strict and does not allow for a leeway if the factual situation cannot easily be established.

4. China electronic payment services in the light of the previous disputes related to services

Looking at the previous dispute resolution proceedings under the GATS it can be said that “Mexico – Telecoms” does not directly relate to electronic services and, therefore, the respective Panel Report cannot give much guidance in the discussed context. In “US – Gambling”, however, the Panel as well as the Appellate Body has stated the opinion that GATS rules are applicable to electronically traded services and hence to digital trade; consequently, the GATS rules and particularly the WTO Members’ commitments fully apply to cross-border Internet-based services transactions. However, the equal treatment of electronically and non-electronically services has not been explicitly confirmed, this important question remained unanswered.

In “China – Publications and Audiovisual Products” the Panel Report addressed the technological neutrality and the definition of “like services”, without, however, stating a clear opinion on the two issues, but apparently by slightly deviating from the narrow view given by the Panel in “US – Gambling” on the intramodal technological neutrality of market access commitments.

A reason for a certain reluctance to express a clear opinion could consist in the fact that social and cultural aspects play an important role as soon as media are concerned.

The most recent “China – Electronic Payment Services” proceeding has not only shown that China seems to be a sensitive country as far as market access related to services is concerned, but that progress on liberalizing serv-
ices markets is difficult to achieve. Notwithstanding the fact that the Panel again confirmed a broad interpretation of the term “services” in all its facets and also related to the financial services market segments, the positive list model does not allow a far-reaching liberalization of services markets, in particular if the WTO Member’s Schedule of Commitment is relatively narrowly worded. Nevertheless, the lesson can be drawn from “China – Electronic Payment Services” that the principle of technological neutrality (in the given case related to the technical form of business effectuation) seems to be now generally acknowledged and that the equal treatment principle (national treatment) can be a sharp sword.

Summary

In the case „China – Electronic Payment Services“ the WTO-Panel adopted a broad notion of the term „services“ in July 2012. All business models leading to the execution of an electronic payment are covered by the term „services“. This confirmation of the previous dispute settlement practice in the only fourth case under the GATS in a period of more than 15 years is very important for the further understanding of services’ liberalization and brings the GATS in line with the interpretation of the Information Technology Agreement 1996. Furthermore, the principle of technological neutrality seems to be now generally acknowledged.

From the Panel Report the equally important lesson can be drawn that national regulators have to be careful in granting to domestic services suppliers a better treatment than to foreign services providers, not at least due to the fact that a discrimination can usually be quite easily established. However, the Panel Report also shows that the positive list model of the GATS being based on active commitments of Member States to grant market access is not liberalization-friendly in a fast changing technological environment, particularly if the level of prima facie evidence to be fulfilled by the complainant party is kept relatively high; therefore, in view of the standstill situation in the WTO negotiations the question arises whether a liberalization of the strict historic list approach could not be achieved by a teleological interpretation of the market access committed services.

Zusammenfassung


Vom Panelbericht kann auch die ebenso wichtige Erkenntnis gewonnen werden, dass nationale Regulatoren aufpassen müssen, wenn sie einheimischen Dienstleistungserbringer eine günstigere Behandlung gewähren als ausländischen Dienstleistungserbringern, nicht zuletzt, weil eine Diskriminierung normalerweise relativ einfach nachgewiesen werden kann. Allerdings zeigt der Panelbericht auch, dass das Modell der Positivliste des GATS, das auf aktiven Verpflichtungen der Mitgliedstaaten für das Verschaffen von Marktzugang beruht, in einem sich rasch verändernden technologischen Umfeld nicht liberalisierungsfreundlich ist, insbesondere, wenn das Beweismass für einen Prima-facie-Beweis, das von der beschwerdeführenden Partei erreicht werden muss, relativ hoch gehalten wird. Angesichts des Stillstands bei den WTO-Verhandlungen stellt sich deshalb die Frage, ob eine Flexibilisierung des strengen historischen Listenansatzes nicht durch eine teleologische Auslegung des verbindlichen Marktzugangs für Dienstleistungen erreicht werden könnte.

Résumé


En particulier, le rapport du Groupe spécial permet également de relever que les régulateurs nationaux doivent être vigilants lorsqu’ils accordent un traitement plus favorable aux prestataires de service nationaux au détriment des prestataires de service étrangers, ne serait-ce qu’au motif qu’il est relativement aisé de prouver une discrimination. Le rapport du Groupe spécial relève également que le modèle de liste positive de l’AGCS, comportant les engagements que les États membres doivent mettre activement en œuvre pour permettre l’accès à leur marché, n’est pas favorable à une libéralisation compte tenu des mutations constantes du contexte technologique, en particulier lorsque les exigences en matière de preuve prima facie sont relativement éle-
vées pour la partie plaignante. Les négo-
ciations de l’OMC étant au point mort, on
doit se demander si une certaine flexibi-
lisation du système de liste originalement
prévu pourrait être obtenue grâce à une
interprétation téléologique de la notion
d’accès au marché pour les services.