

Council for Trade in Services
Special Session

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COMMUNICATION FROM THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

Overall Approach to Services Negotiations

The attached communication has been received from the delegation of the European Communities and their Member States with the request that it be circulated to Members of the Council for Trade in Services.

The present paper, which is submitted in accordance with the 'roadmap' document agreed by the Council for Trade in Services (CTS) on 26 May 2000, confirms the approach which the European Communities and their Member States (EC) propose to follow in the mandated service negotiations. This paper is submitted with reference to the papers submitted by Hong Kong China, the US, Mauritius on behalf of the African Group and with the interventions presented by WTO members in the CTS special sessions, as a contribution to the discussions ahead of the stock-taking session of the CTS.

I. OBJECTIVES FOR THE NEGOTIATIONS

1. The EC overall objectives for the services negotiations remain:

- (a) **In overall terms**, to increase the number and quality of market access and national treatment commitments made by Members across services sectors and modes of supply with a view to achieving a progressively higher level of liberalisation.

The negotiations should be comprehensive and should not exclude any sector or mode of supply a priori. The negotiations should be open, affording all WTO Members the possibility of raising any issue, including those subject to review as to the possible further application of the GATS to the sector concerned.

The quality, clarity, transparency and coherence of commitments should be improved. This will require continued intensive work on classification throughout the course of the negotiations.

- (b) **To promote the development of regulatory disciplines** to underpin market access and national treatment commitments. The need for such disciplines appears increasingly important. The EC confirms its commitment to promote regulatory disciplines in accordance with Article VI:4 of the GATS. The aim is to ensure a transparent and predictable **regulatory environment** in which service suppliers, investors, users and consumers alike can enjoy legal certainty and confidence.

- (c) **to introduce pro-competitive principles**, where necessary to complement sectoral market access and national treatment commitments by discouraging anti-competitive practices, ensuring effective market access and, at the same time, recognising the legitimacy of requirements such as universal service obligations.
- (d) **To make progressive liberalisation of trade in services not only consistent with, but also supportive of, sustainable development.**

For the EC, trade policy, environmental and social policies and development cooperation should play a mutually supportive role in favour of sustainable development. The EC is of the view that services liberalisation can make a positive contribution to sustainable development.

- (e) **To ensure that WTO Members can adequately protect their national policy objectives.**

The GATS aims at progressive liberalisation of trade in services. However, it recognises explicitly the right of Members to regulate, and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives. It does not mandate privatisation or general deregulation.

- (f) **To complete the unfinished rule-making in the area of emergency safeguard measures, subsidies and government procurement.**

The unfinished rule-making, which includes emergency safeguard measures, subsidies and government procurement, should be conducted alongside the mandated negotiations. We reaffirm our commitment to conclude negotiations on these subjects within the current mandated negotiations while respecting the deadline for work on emergency safeguards.

In addition, a number of **technical issues** have been subject to inconclusive discussions in the Council for Trade in Services on interpretation or implementation of various provisions of the agreement. The EC supports a technical review of the related provisions, while agreeing that this review should not alter the existing structure and principles of the GATS.

- (g) **To conclude the work programme on electronic commerce.**

Electronic commerce provides tremendous opportunities for the development of trade and for the participation of all Members in it. Therefore the EC intends to work towards early conclusion of the work programme and to promote electronic commerce, in particular by seeking to remove market access restrictions for services that are critical for conducting electronic commerce transactions (such as telecommunications, software-related, advertising, payment and distribution services).

II. ARTICLE XIX NEGOTIATIONS

2. The core of the on-going negotiations is market access and national treatment, i.e the negotiation of progressive trade liberalisation on a sectoral and modal basis. The stock-taking session in March 2001 will have as its main task to organise the conduct of the market access negotiations. In this respect, proposals by Members for negotiations will be relevant.

3. As an input into the forthcoming discussions on the above, the EC wish to recall their position on a number of issues:

- **Comprehensive negotiating base.** In order to reach a balanced and satisfactory outcome for all Members it is essential that the negotiations will be comprehensive regarding sectors and modes of supply.
- **Starting-point.** The starting point of negotiations should be the existing level of commitments as set out in the current schedules. In addition, modalities should be established for Members to allow them to report on their current levels of liberalisation in the sectors concerned.
- **Autonomous liberalisation.** At this stage of the negotiations, the main issue that Members have to deal with regarding the treatment of autonomous liberalisation is the question of transparency, i.e. making sure that in sectoral negotiations, Members can provide information on their current levels of liberalisation by comparison with their commitments under the GATS. Any other question relating to autonomous liberalisation, in particular the value of bindings, is a question of assessment of the overall outcome of the negotiations which can only be done at the end by individual Members. However, we remain open to considering any other appropriate modalities.
- **Standstill.** The EC is in favour of a standstill commitment, i.e the usual peace clause in previous multilateral negotiations under which Members agree not to introduce new regulations for the purpose of improving their negotiating position during the negotiations. This standstill should not, however, prevent or hinder creation or enlargement of regional integration agreements which fulfil the requirements of Article V of the GATS.
- **Request and offer process.** In the view of the EC, the request and offer process should be the main vehicle for negotiations. It is a guarantee for a transparent process, where all Members, through their requests, can raise particular issues for negotiation and where they can choose in which sectors and modes of supply to respond with offers of liberalisation commitments. A genuine request and offer process does not preclude resorting to alternative and more generic negotiating methods if and when appropriate, and in full agreement by all Members. For example, model schedules can be a useful aid to negotiations, so long as they do not replace or by-pass the request and offer process. Also cluster approaches may be useful as a negotiating tool to reach economically meaningful commitments for interrelated sectors and sub-sectors, within the request and offer process.
- **Phased-in commitments:** To some extent, this concept has already been used in the GATS context, e.g. in the telecommunications sector and for WTO accessions. In certain cases, it can be a useful way for Members to undertake commitments which they would not be able or willing to undertake with immediate effect. Also, it corresponds to the spirit and the letter of Art. IV of GATS, and the concept of progressive liberalisation mentioned in Art. XIX. In practice, this would have to be dealt with on a case-by-case basis in the sectoral negotiations, and agreed in function of the nature and substance of the commitments undertaken.
- **Treatment of Least Developed Countries:** The EC considers that it would be appropriate to reflect on how to best support least-developed countries in

participating in the negotiations. Moreover, the EC does support proposals regarding in particular flexibility in modalities for liberalisation, as provided for in Article IV of the GATS.

III. TIMING AND ORGANISATION OF THE NEGOTIATIONS

4. • Rule-making work. The EC supports rapid progress on issues related to so-called rule-making. However, the GATS does not prescribe, and it would indeed be artificial, to split the negotiations into different subject-phases, as rule-making is an intrinsic part of the negotiations and their final outcome. For instance, some classification issues, in addition to those already tabled, are likely to emerge as the negotiations proceed and may only be resolvable during the negotiations. Similarly, regarding work on domestic regulation, the establishment of disciplines on transparency and necessity are largely linked to market-access aspects, as these disciplines are designed to underpin the market access commitments.

Therefore, rule-making work and market access negotiations should be carried out in tandem.

- **Time frame.** For the EC it is premature to set a deadline for the completion of the negotiations. This does not prevent agreement on certain target "milestone" dates for the negotiations (e.g. for submission of requests and initial conditional offers, etc.). The stock-taking session should set a calendar to ensure an orderly progression of the negotiations.
 - **Organisation of the negotiations.** The stock-taking session should aim at, inter alia, discussing and agreeing on the organisation of the work, to deal with the issues which are covered in the proposals, sectoral and horizontal, that may have been lodged according to the 'roadmap decision' or may be lodged later on. Part of the organisational issues that need to be resolved will be the creation, or the reactivation of some working groups (financial services, maritime transport already exist), with due consideration to the practical implications, in particular the need for effective overall co-ordination and the negotiating capacities of Members. In addition, the mandate of certain subsidiary bodies might have to be reviewed.
 - **Role for the Council for Trade in Services.** Like others, the EC is in favour of continuing the strong guiding role that has been attributed to the CTS special session for an effective conduct of the negotiations. This role includes taking the initiative for appropriate organisational and substantive measures, making sure that work will progress according to plan, that subsidiary bodies receive appropriate guidance for the completion of their tasks, and assisting Members in reaching a successful conclusion of their negotiations.
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