
Committee on Regional Trade Agreements

THE EUROPEAN COMMUNITIES-HUNGARY EUROPE AGREEMENT, SERVICES THE EUROPEAN COMMUNITIES-POLAND EUROPE AGREEMENT, SERVICES; AND THE EUROPEAN COMMUNITIES-SLOVAK REPUBLIC EUROPE AGREEMENT, SERVICES

Joint Communication from the Parties

Addendum

This document reproduces questions addressed to the Parties and the joint responses provided by them. The questions and replies set out below are organized in accordance with documents WT/REG50/1-2 (EC-Hungary); WT/REG51/1-2 (EC-Poland); and WT/REG52/1-2 (EC-Slovak Republic).

I. BACKGROUND INFORMATION ON THE AGREEMENT

2. General Description of the Structure of the Agreement

1. The EC refers to the “Understanding on the Interpretation of Article XXIV of the GATT 1994”. However, as indicated by a few Members during the last examination meeting, there is no established interpretation of a “reasonable time-frame” in the GATS. Interpretation should be made in light of the spirit of the “progressive liberalisation” considering that the next round of negotiations will take place in less than two years. Our Delegation would register that Japan’s understanding of a “reasonable time frame” for GATS Article V.1(b) is five years.

The EC and its partners note that Japan feels that five years should be considered reasonable. They would urge Japan, however, to take into account the enormity of the task facing the EC and its partners as they put into action a wide-ranging process of co-ordination, approximation and harmonisation. The scope of the Europe Agreements is very broad, going well beyond the field of goods and services, and the logistics of putting in place the necessary legislation mean that a short deadline would not be realistic. In addition, consideration must be given to economic and political factors. Even with the rapid growth seen in the economies of the partner countries, the disparities between the Member States of the EC and the Europe Agreement partners meant that some scope was required for tailoring the rate of progress to the conditions in the partner countries. The ten year time frame will permit this.

In the view of the EC and its partners, ten years is a reasonable period given the task in hand - it is better for an agreement to be realistic in its ambitions and time scale than to set a short deadline that cannot be met. The structure of the Agreements themselves, it should be noted, is in any case based on the principle of a maximum transitional period. For many aspects of the provisions on establishment and operation, the deadline is shorter than ten years, while the overall timetable of the Agreement consists of the ten year maximum transitional period.

II. PROVISIONS AFFECTING TRADE IN SERVICES

3. Restrictions Remaining in Force

2. It is indicated that “the Association Council has the option of making recommendations for the improvement of establishment and operation in these sectors”

- (i) **Do the Agreements include any particular provisions which authorise the Association Council to do so?**
- (ii) **How is the Association Council formed and organised?**
- (iii) **Are the recommendations legally binding?**
- (iv) **If so, shouldn't they become integral parts of the Agreements?**

(i) Article 45.5 in the EC/Slovak Republic Agreement, Article 44.6 of the EC/Hungary Agreement and Article 44.5 of the EC/Poland Agreement require the Association Council to examine regularly the possibility of accelerating the provisions on establishment and the inclusion of any excluded areas.

Article 52.2 of the EC/Slovak Agreement, Article 51.2 of the EC/Hungary Agreement and Article 51.2 of the EC/Poland Agreement give the Association Council the ability to recommend ways of improving establishment and operations in air transport, inland-waterways transport and maritime cabotage transport.

Article 57. 6 of the EC/Slovak Agreement, Article 56.6 of the EC/Hungary Agreement and Article 56.6 of the EC/Poland Agreement require the Association Council to examine ways of creating the conditions necessary for improving freedom to provide air and inland transport services.

(ii) The Association Council consists of members of the Council of the European Communities (government ministers from the 15 EU Member States), members of the European Commission and Members appointed by the governments of Hungary, Poland and the Slovak Republic respectively. It is presided in turn by a representative of the Council of the EC and by a member of the Government of the partner country.

(iii) Where the Association Council is empowered to take decisions by the Agreement, the decisions are binding on the Parties which shall take the measures necessary to implement the decisions taken. Recommendations by the Association Council also require implementation by other bodies, but are not directly binding since the implementing measures are likely to need further discussion and legislation.

(iv) The Europe Agreements set out frameworks for the development of relations in a wide range of areas. Where implementing action is taken pursuant to the Agreements, it can be said to have its roots in the Agreements.

3. On a more concrete point concerning the Agreement between the EC and Hungary, it is described that “the Association Council is charged with a regular examination of whether these services [legal services, organisation of gambling, betting, lotteries, etc.] can be brought into the scope of the Agreement.”

- (i) Is there any provision authorising the Council to do so?**
- (ii) Will the result of the examination be legally binding?**

(i) Please see the answer above – Article 45.5 in the EC/Slovak Republic Agreement, Article 44.6 of the EC/Hungary Agreement and Article 44.5 of the EC/Poland Agreement require the Association Council to regularly examine whether excluded sectors can be brought into the scope of the relevant provisions of the Agreement. The Council is authorised to amend the agreement.

(ii) Under the above-mentioned articles, amendments to the annexes which set out the sectoral coverage and exclusions may be made by decision of the Association Council and thus are legally binding.

7. Safeguards

4. In the second sentence of question 12 of documents WT/REG50/2, WT/REG51/2 and WT/REG52/2 it is stated that the safeguard measures “could take the form of temporary limitations on the establishment of foreign companies and nationals”. Can we understand that the measure is only applied in mode 3 of any sector?

Yes - this safeguard provision amounts to permitting the partner countries to introduce measures which derogate from the provisions on establishment. The measures permitted amount to the possibility of a limited delay in implementation of the establishment provisions.

5. It would be appreciated if the EC can give further clarification on the condition for the application of the measure, for example, the criteria for applying the safeguard measure and the form of the measure.

The basic criteria are set out in the three agreements. The three partner countries may introduce measures which derogate from the provisions on establishment if certain industries:

- are undergoing restructuring; or
- are facing serious difficulties, particularly where these entail serious social problems; or
- face the elimination or a drastic reduction of the total market share held by domestic companies or nationals in a given sector; or
- are newly emerging industries in the country concerned.

These criteria are designed to reflect the considerable structural and economic changes underway in the three partner countries and to ensure that the implementation of the agreement does not give rise to social problems, untoward hardship or long-term damage to the partner economies caused by too rapid progress. The interpretation of the criteria would be, in the final analysis, a political question decided on the basis of the circumstances in the particular sector of the economy concerned at the time the problem arose.
