

DOSSIER

Sir Leon Brittan
Vice-President
European Commission
Rue de la Loi, 200
B - 1049 - Brussels

Brussels, 3rd May 1999

Subject : **ESN Position Paper on GATS Horizontal Issue:
GATS 2000 and Emergency Safeguard Measures**

Dear Sir Leon,

As you recall, the European Services Network was launched on 26 January 1999 in Brussels. The European Service Leaders Group, chaired by Mr. Andrew Buxton, Chairman of Barclays Plc, now gathers 50 CEOs of European service companies. The preparatory work of the network is undertaken within the ESN Policy Committee, which in addition of the sherpas of these major companies, comprises 30 European service federations, representing 22 services sectors.

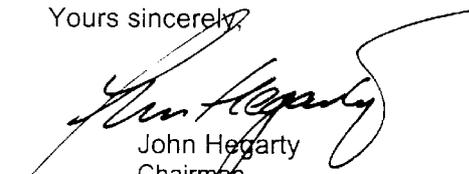
It is with a great pleasure that I enclose the first ESN Position Paper on the GATS Horizontal Issues: "GATS 2000 and Emergency Safeguard Measures".

ESN believes that a pre-defined framework for the Emergency Safeguard Measures (ESM) should take the form of a standard clause as part of the body of general GATS rules, for application in any emergency situation.

In case of an agreement on the possibility for countries to implement safeguard measures, ESN feels that a strong case can be made for supplementing the Dispute Settlement Understanding to provide for a rapid panel decision on whether an ESM meets the requirements of the basic rules agreed in the pre-defined framework, in particular whether the ESM is strictly proportional to the damage suffered by domestic industry.

The list of ESN Members supporting the Position Paper is attached.

Yours sincerely,



John Hegarty
Chairman
ESN Policy Committee

Cc: H.D. Beseler, Director General, DGI; M. P. Carl, Deputy Director General, DGI; R. Madelin, Director, DGI/M

ESN POSITION PAPER ON GATS 2000 AND EMERGENCY SAFEGUARD MEASURES

Final Version - April 23, 1999

Introduction

1. In February 1996 several organisations which were members of the ETSN, the predecessor organisation of the European Services Network, submitted to DG I an initial discussion paper on the question of 'emergency safeguard measures' (ESM) under Art. X of the GATS. The European services industry is of the view that many of the initial concerns and findings, set out in the previous paper, are still very relevant at this point in time. The present paper therefore does not replace but complements the 1996 paper, in the light of the discussions so far at Community and WTO level and in response to the Commission's request for additional industry input. The paper in question is attached hereto.

Purpose and scope of safeguard clause

2. From the overall perspective of the Community services industry it is essential that trade rules are defined and applied in such a manner as to ensure maximum transparency and predictability. Given the fact that states are likely to intervene in trade if emergencies occur which seriously affect their trade position, and taking into account that an open trading system increases the risk of such occurrences, it is therefore in the interest of the services industry to pre-define the framework for such interventions, thereby limiting the scope of arbitrary and unduly restrictive measures. From an industry perspective this is a more powerful argument in favour of a pre-defined framework for ESM than the expectation - not supported by evidence - that the existence of such a framework will have a positive effect on the level of trade commitments by states.
3. The details of any ESM will necessarily to a large extent depend on the actual circumstances of the case (type of emergency, sector concerned). This suggests that:
 - * a pre-defined ESM framework can only contain a set of general ground rules;
 - * special attention will need to be given to the proper implementation of the framework in the case of a concrete emergency situation.
4. In order to ensure (i) proper control over any ESM and (ii) non-discriminatory treatment of all services sectors, a pre-defined ESM framework should take the form of a standard clause as part of the body of general GATS rules, for application in any emergency situation. There is no convincing evidence that suggests that a better approach would be to develop the ground rules for ESM on a sector-by-sector basis. Relevant differences between sectors and indeed between emergency situations arising in a particular sector should be reflected not in the ground rules but in their application in concrete cases. This justifies an appropriate surveillance mechanism (see below).

5. A fundamental question is whether ESM should at all be contemplated with respect to foreign service providers that are established in the country concerned. Contrary to foreign-based service providers, who could temporarily suspend the export of their services to a country introducing ESM, foreign service providers established in such a country would - if also affected by such ESM - face considerably graver consequences, i.e. a discontinuation of their trade activities altogether. Given the fact that the basic rationale of ESM is to protect domestic production, a valid case can be made to restrict any ESM to foreign-based service providers only.
6. Furthermore, if a significant part of the domestic industry would consist of local establishments of foreign firms, the protection argument becomes much less convincing. An ESM in such a situation would effectively amount to protecting some non-national service providers (i.e. those locally established) against competition from other non-national service providers (i.e. those established abroad). The question therefore arises whether in such a case ESM should not be ruled out entirely.

Supervisory body

7. An essential part of an ESM regime is the implementation of the basic rules. Given the fact that safeguard measures are intended to set aside basic commitments, a strong case can be made for supplementing the Dispute Settlement Understanding to provide for a rapid panel decision on whether an ESM meets the requirements of the basic rules, in particular whether the ESM is strictly proportional to the damage suffered by domestic industry. The Panel should deal with any claim concerning an ESM on an accelerated basis, such as three months. The Panel should also be entitled to approve or disapprove an extension of the duration of an ESM after an initial relatively short period of, for instance, one year.

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LIST OF ESN MEMBERS SUPPORTING THE POSITION PAPER
ON GATS 2000 AND EMERGENCY SAFEGUARD MEASURES

INSURANCE

Allianz Aktiengesellschaft

Guardian Royal Exchange

Hibernian Insurance Company Limited

BARC Versicherungs Holdings AG

AXA Group

Comité Européen des Assurances - CEA

Bureau International des Producteurs d'Assurances & de Réassurances – BIPAR

FINANCIAL SERVICES

Barclays PLC

Commerzbank AG

ABN AMRO

National Bank of Greece

Banque Paribas

DIT Deutscher Investment-Trust

Fédération Bancaire de l'Union européenne – FBE

European Federation of Investment Funds and Companies - FEFSI

European Security Transport Association – ESTA

TELECOMMUNICATIONS

British Telecommunications plc

Telefónica

France Telecom

Deutsche Telekom AG

European Public Telecommunication Network Operators' Association - ETNO

POSTAL & EXPRESS DELIVERY SERVICES

Sweden Post

Deutsche Post AG

DHL Worldwide Network SA

The European Express Organisation – EEO

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AVIATION

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Association of European Airlines – AEA

European Community's Independent Airlines Association – ECIAA/ACE

SHIPPING

AP Møller

European Community Shipowners' Association – ECSA

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Acentro Turismo SpA

Sol Melia Hotels

Touristik Union International GmbH

Groupement des Unions Nationales des Agences et Organismes de Voyages de l'UE – ECTAA

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The European Society of Chartered Surveyors

PROFESSIONAL SERVICES - ARCHITECTS

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Kraemer Architekt BDA

Architects' Council of Europe - ACE

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Ove Arup & Partners

BESIX SA

European Federation of Engineering Consultancy Associations - EFCA

European Council of Civil Engineers – ECCE

European International Contractors - EIC

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European Film Companies Alliance – EFCA

International Federation of the phonographic industry - IFPI

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Federation of Associations of Periodical Publishers in the EC – FAEP

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