

Mr. Pascal Lamy
Member of the European Commission
Trade Commissioner
Rue de la Loi, 170
B – 1049 – Brussels

Brussels, 4 May 2000

Subject : ESF Revised Paper on GATS 2000: Improvements in Scheduling Commitments

Dear Mr Lamy,

Please find enclosed the ESF Revised Paper on "GATS 2000: Improvements in Scheduling Commitments". The ESF issued its first paper on Improvements in Scheduling Commitments on 23 April 1999. This revised paper reflects developments since then, especially the failure of the Seattle ministerial meeting to launch a new trade round and the start of WTO services negotiations (GATS 2000) this year as provided in Article XIX of the GATS. The new version also takes account of comments made by the European Commission.

This revised paper concentrates on measures intended to produce better commitments from all WTO members within the existing GATS structure. Various methods are proposed in the rest of this paper, which ESF members recommend to the European negotiators. Some of these involve voluntary arrangements between WTO members (see paragraph 7). Others envisage agreed rules or guidelines within the GATS framework (see paragraphs 9-11). Others are intended to guide the European negotiators in the 'request and offer' process.

The ESF may well have more comments to make on this subject in future.

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

Yours sincerely,

Pascal KERNEIS
Managing Director

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

The European Services Forum comprises 50 major European service companies, represented by their CEOs in the European Service Leaders Group and 36 European service federations, representing 22 services sectors. It represents the very large majority of the European service industries that have a direct interest in supplying international services.

Brussels, 12 April 2000

EUROPEAN SERVICES FORUM**Revised Paper on
GATS 2000: Improvements in Scheduling Commitments**

1. The ESF issued its first paper on **Improvements in Scheduling Commitments** on 23 April 1999. This revised paper reflects developments since then, especially the failure of the Seattle ministerial meeting to launch a new trade round and the start of WTO services negotiations (GATS 2000) this year as provided in Article XIX of the GATS. The new version also takes account of comments made by the European Commission. The ESF may well have more comments to make on this subject in future.
2. The existing system of scheduling commitments in the GATS has the merit of embracing all traded services and covering investment as well as trade. But it has drawbacks too. It is complex and laborious, as it has to be done sector by sector. It is non-transparent, so that the scope of a country's commitments is often unclear. It allows many loopholes, since it permits countries:
 - to make no commitments at all in certain service sectors or sub-sectors;
 - to make commitments in some modes of supply, but not others: e.g. in commercial presence, while leaving cross-border supply 'unbound';
 - to make commitments less favourable than actual law and practice, i.e. less than standstill; this carries the risk that WTO commitments are used to justify a worsening of treatment of foreign firms.
3. Most of the commitments made in the first round of GATS agreements *at best* bind existing practices, i.e. standstill, and often fall well short of that. The aim of ESF members, as set out in paragraph 4 of the Set of Principles adopted by the ESF on 26 January 1999, is to do better than this in GATS 2000: to extend sectoral coverage, to achieve standstill where it does not yet exist and to go beyond standstill to the reduction of barriers. The ESF wants to see improved commitments both from developed countries, like the United States and Japan, and from emerging markets.
4. For ESF members, the best method of scheduling would be one requiring countries to state all the restrictions in force affecting market access and national treatment, sector by sector. Apart from these specified restrictions, the regime would be open and non-discriminatory. But this method could not be agreed for the GATS; and the events at and since Seattle suggest it is not a realistic option at this stage.
5. Services were the only subject which did not provoke controversy at Seattle. One reason for this was that the developing countries do not feel threatened by the GATS, which permits them to liberalise at their own pace. This is especially relevant to highly regulated sectors, where many countries need to strengthen their regulatory regimes as part of the process of opening markets. Despite the failure at Seattle, services negotiations have started as planned. But it would be counter-productive to propose radical reforms of the GATS structure.
6. This revised paper therefore concentrates on measures intended to produce better commitments from all WTO members within the existing GATS structure. Various methods are

proposed in the rest of this paper, which ESF members recommend to the European negotiators. Some of these involve voluntary arrangements between WTO members (see para7). Others envisage agreed rules or guidelines within the GATS framework (see paras 9-11). Others are intended to guide the European negotiators in the 'request and offer' process.

I. Groups of Countries Adopting Stricter Scheduling Methods.

7. Certain WTO members could voluntarily adopt stricter methods of scheduling and undertake to make commitments of a certain standard. This approach has already been adopted in financial services, where the EC and other OECD countries concluded an 'Understanding' to this effect. Similar understandings could be concluded in other sectors. While developing countries might hesitate to join such groups, they would still have value in getting OECD countries to schedule better commitments, especially in Cross-Border Supply (Mode 1) – see para 14 below.

II. Model Schedule of Commitments

8. The WTO Secretariat could be asked to draw up 'model schedules of commitments' for sectors being negotiated in GATS 2000, as they did in the basic telecoms negotiations. These would go beyond the existing Scheduling Guidelines. The use of model schedules would improve the clarity of sectoral commitments. They would enable other members to assess them and compare one set of commitments with others. This would facilitate the 'request and offer' process, when that gets underway.

III. Rules or Guidelines on Scheduling.

9. An advance on model schedules would be for all WTO members to adopt common rules or guidelines on scheduling, either for the GATS as a whole or for individual sectors. Binding rules would be best, but non-binding guidelines could be considered, especially if individual members were prepared voluntarily to incorporate them in their schedules.

10. Rules or guidelines could be used to strengthen the key GATS principles of **progressive liberalisation**, as follows:-

- Members' commitments should improve on the commitments they made (if any) in the last round of sectoral negotiations.
- Bound commitments should be no more restrictive than current practice, i.e., standstill. (Where practice does not match GATS bindings, firms will always fear being cut back to bound levels, without redress. While firms already present can be protected by grandfathering, there is a deterrent to new entry.)
- Where WTO members have not yet bound standstill, a transition period with a fixed timetable should be allowed to reconcile binding with actual practice.
- Members introducing new services regimes in stages should be encouraged to bind each stage in the GATS as it applies.
- Commitments introduced progressively should specify timetables. (The Chinese commitments made as part of WTO accession provide an example of this.)

11. Similar rules or guidelines could apply to **economic needs tests**, widely used as a barrier to entry by developing countries and even by some OECD members (e.g. Australia in banking). These might specify:-

- Economic needs tests should be clearly defined, with objective criteria.
- Such tests should be subject to periodic review by the WTO.

IV. Scheduling in the Different Modes of Supply:

A. Mode 1, Cross-border Supply

12. In some service sectors, cross-border supply is the principal method of doing business. In others, cross-border supply is the simplest method, but faces major barriers as compared to the establishment of a commercial presence. Many countries are prepared to allow foreign service suppliers (firms and people) to operate locally, so that they can regulate them on their territory. But they deny cross-border supply because they cannot control standards beyond their borders.
13. In the GATS as a whole, there are far more 'commercial presence' than 'cross-border' commitments, even by OECD countries. A substantial increase in 'cross-border' commitments, especially in sectors that rely on this mode of supply, should be a high priority in GATS 2000. The first step should be to seek improvements over the last round and to encourage WTO members that have so far opened their services markets mainly to commercial presence to remove barriers to cross-border supply also. Mutual recognition agreements should be encouraged, to remove countries' inhibitions with regard to cross-border supply. These can be negotiated among smaller groups outside the WTO and then extended to other countries which meet the same standards, under Article VII of the GATS.
14. In many sectors, the growth of electronic commerce increases the importance of cross-border commitments. E-commerce greatly facilitates the supply of service products cross-border, without requiring establishment. This should be a major target for improved commitments from OECD countries. While developing countries will also benefit, the great increase in electronic supply of services will be within OECD. (See also the separate ESF papers on **Electronic Commerce**, where the idea is raised of linked scheduling in a 'cluster' of service sectors involved in the conduct of e-commerce).

B. Mode 2: Consumption Abroad.

15. Where consumers move to the place where the service is offered for sale, consumption abroad is the relevant means of supply. Hitherto, where countries have made commitments, consumption abroad has attracted very few barriers, since countries have limited capacity to enforce regulations outside their frontiers. It may therefore be possible to simplify scheduling and show liberalisation in this mode ahead of others. Countries could be encouraged to bind 'no limitations' in consumption abroad, where this involves the actual movement of consumers.
16. In certain sectors, the question has been raised about whether services offered for sale electronically, e.g. on the Internet, are 'consumed abroad' rather than 'supplied cross-border'. This question will be considered further in the forthcoming ESF Position Paper on Electronic Commerce.

C. Mode 3: Commercial Presence

17. The right to establish is important for almost all service sectors and essential for some of them, which cannot realistically be supplied across borders. This is the mode of supply where the most progress is likely to be made in those developing countries which remain hesitant over cross-border supply. ESF members are familiar with the barriers to services investment, many of which focus on foreign ownership.
18. The objectives of ESF members in ownership and establishment will vary between sectors. They are likely to focus on the following three aims:
 - The ability to establish in the form of their choice, whether as a subsidiary, a branch or some other legal form;

- The ability to have 100 per cent ownership of a local services firm;
- The ability to have majority ownership and managerial control.

While European services firms in foreign markets may be content with minority holdings for a time, managerial control, 100 per cent ownership and full freedom of establishment will always be major objectives.

19. These objectives will only be obtained through the process of progressive liberalisation, where some countries have much further to go than others. But at the least all WTO members should be urged to improve on what they offered in previous rounds. For example:
- Countries admitting joint ventures only should allow subsidiaries also;
 - Those admitting subsidiaries only should allow branches also;
 - Countries admitting foreign minority shares only to move to at least 51%;
 - Those admitting majority holdings to allow wholly owned foreign firms.

This approach could be used across sectors, where countries have the same regime for foreign ownership. It would achieve a degree of liberalisation and help countries get the most advantage out of the presence of foreign firms.

D. Mode 4: Presence of Natural Persons

20. This mode is important for a wide range of services, where the presence of qualified expatriate personnel is essential to successful business, which benefits the host country as well as the firm. But often such persons face barriers restricting their entry, even for short periods, or confining specific business to nationals or residents. (See the separate ESF paper on **Temporary Movement of Key Business Personnel**.)
21. ESF members want not only to send their own people abroad but to have the chance to bring into Europe business personnel from other countries where they are active. They therefore have a common interest with many developing countries, for whom progress in this area is a high priority.
22. Hitherto scheduling in this mode has lagged behind the other three. Many countries just leave sectors "unbound, except as indicated in the horizontal section". More precise commitments are required to allow qualified foreign experts and managers to enter and to practise and pass on their skills. Instead of 'horizontal' limits, more precise sectoral objectives are needed to identify those areas where movement of persons can be of special value.

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**LIST OF ESF MEMBERS SUPPORTING THE ESF REVISED PAPER
ON GATS 2000: IMPROVEMENT IN SCHEDULING COMMITMENTS**

INSURANCE

Allianz AG
AXA Group
BARC Versicherungs Holdings AG
Norwich Union
Comité Européen des Assurances - CEA
Bureau International des Producteurs d'Assurances & de Réassurances - BIPAR

FINANCIAL SERVICES

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Barclays PLC
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DIT Deutscher Investment-Trust
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European Savings Banks Group - ESBG
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European Community's Independent Airlines Association - IACA/ACE

SHIPPING

AP Møller
European Community Shipowners' Association - ECSA

TOURISM

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Confédération des Associations Nationales de l'Hôtellerie et de la Restauration de la CE - HOTREC
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Association of Commercial Televisions in Europe -ACTE
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