

Sir Leon Brittan  
Vice-President  
European Commission  
Rue de la Loi, 200  
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## DOSSIER

Brussels, 3<sup>rd</sup> May 1999

Subject : **ESN Position Paper on GATS Horizontal Issue:  
GATS 2000: Improvements in Scheduling Commitments**

Dear Sir Leon,

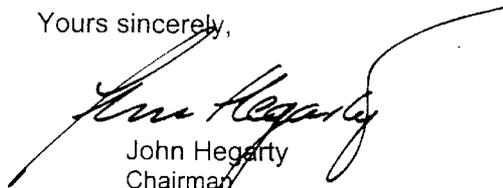
Please find enclosed the ESN Position Paper on "GATS 2000: Improvements in Scheduling Commitments".

ESN believes that GATS 2000 should extend sectoral coverage, achieve standstill where it does not yet exist and go beyond standstill to the reduction of barriers. The best method of scheduling for this purpose would be one requiring countries to state all the restrictions in force affecting market access and national treatment, sector by sector. This would give much greater clarity and certainty to private business and would focus attention on the barriers to be negotiated away. It remains the objective of ESN members to achieve effective scheduling on these lines, already drawn up during the Uruguay Round. It is worth testing current attitudes to it in the WTO. With the passage of time and experience with the GATS, developing countries may have become more open to this approach.

If the resistance persists to restructuring the GATS in this way, other indirect and less ambitious ways should be sought of achieving the same result over time. Various methods are proposed in the enclosed Position Paper, which ESN members recommend to the European negotiators. These are initial ideas only. The ESN may well wish to return to this topic.

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

The European Services Network comprises 50 major European service companies, represented by their CEOs in the European Service Leaders Group and 30 European service federations, representing 22 services sectors.

## ESN POSITION PAPER ON

### GATS 2000: IMPROVEMENTS IN SCHEDULING COMMITMENTS

Final Version - April 23, 1999

1. 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 many drawbacks too. It is complex, allows too many loopholes and creates no real dynamic for liberalisation. For example, 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 and consumption abroad '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.
  2. As a result of these drawbacks, 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 ESN members, as set out in paragraph 4 of the Set of Principles adopted 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.
  3. The best method of scheduling for this purpose 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. This would give much greater clarity and certainty to private business and would focus attention on the barriers to be negotiated away. But despite the support of EC countries, it could not be agreed for the GATS in the Uruguay Round.
  4. It remains the objective of ESN members to achieve effective scheduling on these lines, to promote the removal of barriers. It is worth testing current attitudes to it in the WTO. With the passage of time and experience with the GATS, developing countries may have become more open to this approach.
  5. If the resistance persists to restructuring the GATS in this way, other indirect and less ambitious ways should be sought of achieving the same result over time. Various methods are proposed in the rest of this paper, which ESN members recommend to the European negotiators. These are initial ideas only. The ESN may well wish to return to this topic.
- 1. Model Schedule of Commitments.**
6. 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, now under revision. Such model schedules would improve the clarity of sectoral commitments and help other members to review and assess them. They would facilitate the 'request and offer' process, especially in sectors which do not have their own negotiating groups.

## II. Non-binding Principles on Scheduling.

7. An advance on model schedules would be for all WTO members to adopt non-binding principles on scheduling, either for the GATS as a whole or for individual sectors. These principles would only bind individual members where they explicitly recognised them in their schedules. This is an adaptation of the approach used in telecoms as regards pro-competitive regulation and recommended for regulation in other sectors. But it could also be used to improve scheduling.
8. Illustrative principles could include:
  - No bindings worse than current practice;
  - Limitations no more onerous than needed for intended purpose;
  - Commitments introduced progressively should contain timetables.

While countries would not be obliged to schedule according to the principles, they would set standards and examples.

## III. Groups of Countries Adopting Stricter Scheduling Methods.

9. Certain WTO members or groups of members could voluntarily adopt the stricter method of scheduling, whereby all existing restrictions are specified. The use of this stricter method could spread by persuasion and example. This approach has already been adopted in financial services, where the EC and other OECD countries concluded an 'Understanding' to schedule commitments in this way. Similar understandings could be concluded in other sectors; and other countries could be encouraged to join them. For example, the EC could invite its Mercosur partners to adopt this method; and the OECD could bring in all its members, including Korea and Mexico, and spread the practice to regional groupings where its members are present.

## IV. Scheduling in Different Modes of Supply:

### A. Mode 1, Cross-border Supply, and Mode 2, Consumption Abroad.

10. In some service sectors, like telecoms and air and sea transport **cross-border** is the principal mode of supply. In others, cross-border supply or consumption abroad are the simplest methods, but face major barriers as compared to the establishment of a commercial presence. Many countries feel able to regulate service suppliers (firms and people) on their territory, but worry because they have no control over those beyond their borders.
11. The first step should be to seek improvements over the last round. Those countries that bound commercial presence only in the first GATS round should be encouraged to include cross-border trade and consumption abroad this time. Mutual recognition agreements should be encouraged, to remove countries' inhibitions. 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.
12. **Consumption Abroad** is the principal means of supply for sectors such as tourism, education and health services where people must travel to benefit from the services on offer. The tourism sector appears very open, with the largest number of countries making WTO commitments. Likewise, the consumption abroad of health and education services attracts few barriers. 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.

13. In other sectors, however, such as financial services it is not always easy to distinguish consumption abroad from cross-border supply. This particularly applies to services supplied electronically. Electronic commerce greatly expands the range of service products which can be consumed abroad or supplied cross-border, without requiring establishment. There are thus greater advantages available to countries which liberalise their regimes in these modes as well as in commercial presence.

#### **B. Mode 3: Commercial Presence**

14. The right to establish is important for almost all service sectors and essential for some of them, such as construction, distribution, environmental or energy services. ESN members are familiar with the barriers to services investment, many of which focus on foreign ownership. While European firms in foreign markets may be content with minority holdings for a time, they will only be fully active if they have managerial control and in some cases 100% ownership. ESN members therefore regard majority foreign ownership as a major objective in commercial presence.

15. This may not be attainable in the next Round. But at the least countries 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.

#### **C. Mode 4: Presence of Natural Persons**

16. This mode is especially important for professional services – lawyers, accountants, architects etc. In other services too the presence of qualified expatriate personnel is essential to successful business, which benefits the host country as well as the firm. Often such persons face barriers restricting their entry or confining specific business to nationals or residents.

17. Hitherto scheduling in this mode has lagged behind the other three and needs to catch up. Many countries just leave sectors “unbound, except as indicated in the horizontal section”. More precise commitments are needed to allow qualified foreign experts and managers to enter and practise their skills. Wherever possible, commitments should cover spouses of qualified personnel, who should also be allowed to seek employment.

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**LIST OF ESN MEMBERS SUPPORTING THE POSITION PAPER**  
**ON GATS 2000: IMPROVEMENTS IN SCHEDULING COMMITMENTS**

**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*

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*European Security Transport Association – ESTA*

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**BESIX SA**

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