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Til underretning for Folketingets Europaudvalg vedlægges EU's konceptpapirer vedrørende:

0. Regionale handelsaftaler
1. Offentlige udbud af serviceydelser
2. Serviceydelser relateret til informationsteknologi
3. Anti-dumping
4. Arbejdsgruppen om handel, gæld og finansiering

Materialet er sendt til WTO.

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Working Group on Trade, **Debt and Finance**	Original: English

communication from the european community

and its member states

The following communication, dated 12 July 2002, has been received from the Permanent Delegation of the European Commission.

Introduction

The European Community (EC) welcomes the establishment of a Working Group on Trade Debt and Finance under the auspices of the General Council. The EC intends to contribute to the work of this Working Group to help examine the issue and facilitate the report of the General Council to the Fifth Session of the Ministerial Conference on progress in the examination of the relationship between Trade, Debt and Finance, and possible recommendations in this resp ect. The purpose of this EC communication is to contribute to setting the methodological framework for the Working Group and

propose issues for consideration and study, on a non-exhaustive basis. The EC, however, looks forward to moving to a more substantive phase of the work in this Working Group, as soon as possible, on the basis of proposals by Members.

Scope and objective of the exercise

The Working Group on Trade, Debt and Finance (hereinafter referred to as "the Working Group") has been established pursuant to paragraph 36 of the Doha Ministerial Declaration with the task of examining (i) the relationship between trade, debt and finance and (ii) possible recommendations on steps that might be taken within the mandate and competence of the WTO to (a) enhance the capacity of the multilateral trading system to contribute to durable solut ions to the problem of external indebtedness of developing and least-developed countries, and (b) to strengthen the coherence of international trade and financial policies, with a view to safeguarding the multilateral trading system from the effects of financial and monetary instability.

The EC wishes to underline some aspects of this exercise that should guide the Working Group in its examination:

Examining the Relationship Between Trade, Debt and Finance

The EC sees this process, initially, as one of information exchange and improving understanding of the problems and opportunities. This pertains to the underlying mechanisms and issues relevant to possible recommendations on the contribution of the multilateral trading system to tackling external indebtedness, and to the coherence of trade and financial policies.

As regards the organization of work, the EC attaches importance to a fully open examination of all components of the trade-debt-finance nexus. In particular, the process of examination should not be limited to specific questions relating to WTO provisions or a few specific trade policy tools.

Issues relating to trade, debt and finance cover several policy areas and fall under the mandate of different institutions. The process of information exchange and examination of the issues should therefore invite contributions from the relevant international organizations, such as the World Bank, IMF, UNCTAD and the regional development banks. In particular, these organizations should be invited to present studies, and current and planned activities relating to indebted countries, with e ach institution focusing on its own area of competence.

Coherence of Activities to Maximise Effectiveness and Synergy

An important part of the work of the Working Group will be to look at ways to strengthen the coherence of policies of the different organizations, whose mandate relates to the trade-debt-finance nexus. In this context, the EC wishes to recall that in the Uruguay Round Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policymaking, Ministers recognised that coherence between the structural, macroeconomic, trade, financial and development aspects of economic policymaking increases the effectiveness of these policies.

One important means to improve coherence will be to ensure better synergy between different policy areas through transparency and strengthened co-operation between relevant organizations. This, however, must not blur the distinct responsibilities of these organizations, each of which must continue to act within its own mandate and competence. In this context, the EC considers that the process of examining the interrelations and of considering possible recommendations for actions for the W TO could possibly bring to light the need for complementary actions and measures that fall outside the mandate and competence of the WTO. The Working Group should take full account of such possible complementary actions and steps and work to ensure the coherence between policies falling within the mandate of other organizations and possible recommendation within the WTO framework. The activities of the Working Group should thus build on progress and experience already made under the coherence mandate.

The Working Group should also build on progress made in other fora, such as the Monterrey International Conference on Financing for Development. The EC welcomes the consensus reached at the Monterrey conference in favour of increasing the coherence and consistency of the international monetary, financial, and trading systems in support of development. In particular, the EC agrees on the need to improve the relationship between the UN and the WTO on development issues, and to strengthen th eir capacity to provide technical assistance to all countries in need of such assistance, with a view to increasing the global economic system's support for development. Similarly, within the overall objective of coherence, the EC wishes to recall the importance of coherent and co-ordinated approaches to trade related technical assistance and capacity building.

Issues for Consideration by the Working Group

Many, if not most, of the issues relevant to the trade-debt-finance nexus, and which may form the basis for consideration and possible recommendations by the Working Group are comprehensively outlined in the survey of literature compiled by the Secretariat. Without wishing to exclude consideration of any of these, or of any other issue raised by Members during the discussions, the EC wishes to underline already now a few issues that it considers of part icular relevance for the work of the Working Group.

Trade liberalization and indebtedness

Trade liberalization in relation to imports and exports tend to decrease indebtedness by encouraging growth. However, because tariff cuts can cause a decline in fiscal revenue, attention should be given to possible complementary measures such as identifying alternative sources of fiscal revenue or improvements in the tax collection systems. Building administrative capacity is, of course, a highly relevant issue in this context. The Working Gro up could usefully address this issue and request relevant organizations (in particular, the IMF, but also WCO for customs simplification measures) to provide advice on reform measures, their sequencing and application. The implementation of trade facilitation/customs reform process has also been shown to improve revenue collection and is worth analysing further. In order to enhance the understanding of the issue, specific country studies may be useful. Trade liberalization in export markets, such as prefere ntial access for developing countries and MFN based liberalization in the context of WTO negotiations, are equally important in this context. Consideration could be given to the availability of export credit instruments for developing countries. Another issue for consideration would be the possible linkages between trade protectionism and overvalued exchange rates.

Integrating trade in economic reform

In the context of economic reform, poverty and social impact assessments, the correct sequencing of liberalization measures, appropriate regulatory reforms (aimed, inter alia, at protecting access of the poor to services) and the provision of adequate flanking policy measures are key to ensure that liberalization supports sustainable development and poverty eradication. This is all the more important for highly indebted poor countries for which debt service obligations must be taken into account in designing economic reform programmes. It is therefore important that trade policy is integrated in the overall policy reform and that trade liberalization takes place in the framework of good domestic governance, ensuring an environment that is conducive to trade and investment. The PRSP process offers a good framework for integrating trade in development policies. Transparency in government procurement and adequate domestic regulation of competition are key elements of good governance. The Working Group could consider, together with relevant organizations such as the IMF, the World Bank and UNCTAD as well as bilateral development partners, how best to integrate trade into economic reform programmes and ensure WTO conformity for sustainable reform. The Integrated Framework for Trade-related Technical Assistance to the Least Developed Countries is a useful example of a mechanism that integrates trade in the domestic economic and development policies.

Addressing supply-side constraints

Domestic trade liberalization and improved access to foreign markets, combined with an environment conducive to investment, are important for the economic growth potential of developing countries. Increased export earnings and investment flows are particularly important for those developing countries that are highly indebted. However, many developing countries lack sufficient infrastructure and capacity to make use of the opportunities offered by tra de liberalization or to be able to attract productive and export oriented investment. Measures to address supply-side constraints should therefore form part of economic reform programmes. The Working Group could usefully consider supply-side capacity building in relation to economic reform programmes, and relevant organizations, such as UNCTAD and the World Bank, could be invited to present their activities in these areas.

Investment and indebtedness

Foreign Direct Investment (FDI) is an increasingly important source of foreign capital inflows for many developing countries, often overtaking the importance of Official Development Assistance (ODA) flows, to the point that in many countries of the developing world FDI has become the single most important source of capital formation. Provided the right circumstances prevail, FDI can thus be considered in many cases as the most effective way of gener ating increased export earnings and national income, and in turn will contribute to alleviating indebtedness. However, heavily indebted developing countries also frequently suffer from economic instability and uncertainty, which can make it more difficult for these countries to attract foreign investment. The Working Group could, in co-ordination with the Working Group on Trade and investment, look at factors that help to attract FDI and consider recommendations that will support increased FDI flows to high ly indebted developing countries. In this context, the multilateral framework envisaged in the WTO to secure transparent, stable and predictable conditions for long-term cross-border investment will be an important contribution to increasing FDI flows as will be measures to make customs and trade procedures more transparent and predictable. Another important element is the ability of host governments to control anti-competitive practices. The multilateral framework envisaged in the WTO to enhance the contri bution of competition policy to international trade and development is an important factor in this context.

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Negotiating Group on Rules	Original: English

SUBMISSION ON REGIONAL TRADE AGREEMENTS BY THE EUROPEAN COMMUNITIES AND THEIR MEMBER STATES

The following communication, dated 5 July 2002, has been received from the Permanent Delegation of the European Communities.

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1. Introduction

The European Communities and their Member States welcome the inclusion within the DDA of negotiations to clarify and improve the disciplines and procedures applying to regional trade agreements (RTAs) under existing WTO provisions, while taking into account their developmental aspects. While negotiations should be based on the specific proposals introduced by WTO Members, their potential scope should encompass all WTO provisions dealing with RTAs, in particular Article XXIV of the GATT 1994, the relevant provisions of the Enabling Clause and Article V of the GATS.

2. The WTO Legal Framework: the need for Clarification

There are a number of long-standing differences of interpretation associated with the GATT/WTO rules on regional trade agreements, and in particular Article XXIV of the GATT 1994. All RTAs notified to the GATT have been examined by working parties under the procedures foreseen in Article XXIV:7, while agreements notified to the WTO have been examined in the Committee on Regional Trade Agreements (CRTA). However, such have been the differences of view between GATT Contracting Parties and now WTO Members on the manner in which specific provisions should be interpreted that only in the very rarest cases has it been possible for a consensus to be established to consider a particular agreement in full conformity with GATT or WTO requirements. Negotiations undertaken in the Uruguay Round led to agreement on an Understanding on the Interpretation of Article XXIV of the GATT 1994. Although this instrument indeed provided useful clarification of certain aspec ts of Article XXIV rules, negotiators were by no means able to resolve all the outstanding differences of interpretation. This is evident from the inability to date of the CRTA to complete even a single examination among the agreements referred to it.

The WTO rules relevant for Economic Integration Agreements covering the area of trade in services are set out in Article V of the GATS. Even here, despite the fact that these rules were negotiated as recently as during the Uruguay Round and first enacted in the WTO Agreements which entered into force in 1995, the experience of examinations undertaken by the CRTA points to uncertainty among WTO Members as to how the provisions should be applied.

This situation is to the advantage of no one. Recent years have seen the conclusion of an increasing number of RTAs, yet the WTO Members who are party to them lack clear and authoritative guidance on how the relevant WTO rules should be

applied. WTO Members who are not parties to a given RTA face the risk that agreements will have negative implications for their own legitimate trade interests. Yet these same Members may also have RTAs of their own. The position of the European Com munities is clearly in favour of clarification of the WTO rules for RTAs. In developing its views on this issue, the European Communities will be guided by three parameters: its interests in guaranteeing the proper functioning and continued good health of the open, rules-based multilateral trading system for the benefit of both developing and developed countries, its market access interests in respect of third country markets and its own regional agreements. Similar considerations could be expected to app ly for all WTO Members - the clear majority - who are participants in some RTAs and not in others.

This approach has been the basis of the positions that the European Communities have already taken in the WTO Committee on Regional Trade Agreements on the issue of clarification of WTO rules relating to regional agreements.

At the same time, it is well known that the Committee on Regional Trade Agreements has not so far been able to complete even a single examination of the many RTAs that have been referred to it for examination. In part, this situation reflects differences of view adopted by individual WTO Members in that Committee in relation to the substantive nature of the relevant WTO obligations.

3. The Relationship between Regionalism and Multilateralism

Given its own experience (the European Union has itself developed as the product of an ambitious process of deep and wide-ranging regional integration), its involvement in regional agreements with other countries and its strong support for multilateral liberalisation in the GATT/WTO, including most recently in the run-up to the launch of the DDA negotiations, the European Communities have always been persuaded that regional trade agreements must be &qu ot;stepping stones" towards multilateral liberalisation, rather than "stumbling blocks" and that regionalism and multilateralism must be mutually supportive rather than contradictory. WTO rules recognise that RTAs, whether in the form of Customs Unions or FTAs in the area of trade in goods or in that of Economic Integration Agreements in the area of trade in services, can make a positive contribution to the development of trade. The European Communities believe that regional integration can provide an important contribution to stability and development and therefore supports the objective of sustaining and strengthening a properly functioning multilateral system in the long term.

The experience of the European Communities shows how regional agreements serve to open markets by pushing forward a pattern of tariff reduction and elimination in participating countries, thereby helping them prepare for further multilateral liberalisation. Regional agreements also provide the basis for much more far-reaching trade liberalisation, regulatory initiatives and elimination of non-tariff barriers to trade than have yet been possible within the WTO, enabling Members who ar e ready to "experiment" with such initiatives before there is an overall WTO consensus. The European Communities' experience shows that the positive impact of regional integration is particularly strong in cases where regional agreements provide for "deep integration" in the sense of initiatives going beyond elimination of import and export tariffs and measures having equivalent effect to provide for elimination of non-tariff barriers to trade and for regulatory harmonisation and gence, even to the extent, in some cases, of establishing common regulatory frameworks between RTA partners. Such more far-reaching economic integration within RTAs can also be of great benefit to non-parties, since it is often objectively difficult and economically meaningless to set up a bilateral or regional regulatory framework that still discriminates against non-parties to the RTA. Thus, consideration should be given as to how the WTO framework could serve to encourage and channel such more far-reac hing integration and trade liberalisation. In this context, it will be important to try to ensure that regulatory aspects of "deep" regionalism are based, to the fullest extent possible, on multilateral norms.

4. The Development Dimension

The mandate for negotiations explicitly acknowledges the importance of the development dimension of regional agreements. The European Communities consider that regional integration can play an important role in supporting economic development through the creation of additional trade and investment opportunities as well as accompanying measures and initiatives to support structural and regulatory reforms. This is true both for RTAs between developing and developed countries and for those between developing countries. Regional agreements should also ensure that trade liberalisation at the regional level contributes to sustainable development.

RTAs involving developing countries are subject to existing WTO provisions such as Article XXIV of the GATT and Article V of the GATS, although for agreements in trade in goods between developing countries, the Enabling Clause is also relevant.

The European Communities are of the view that the DDA negotiations on RTAs should aim to clarify the flexibilities already provided for within the existing framework of WTO rules. This is likely to involve further consideration of the relationship between GATT Article XXIV and the Enabling Clause, as well as an examination of the extent to which WTO rules already take into account discrepancies in development levels between RTA parties.

The economic logic of regional integration indicates that all parties to such agreements should pursue a high level of reciprocal market opening and regulatory harmonisation or convergence while also pursuing an open approach to trade policy with third countries within the multilateral framework if they are to achieve the full potential benefits. This is as true for agreements among developing countries as it is for agreements between developing and developed countries or among devel oped countries alone. At the same time, it is important to recognise that the ability of many developing countries to adjust to greater competition on their domestic markets or take full advantage of additional market access opportunities can be constrained by their own individual level of development. This points to the need to examine, *inter alia*, the flexibilities available during the transitional or implementation period of RTAs, taking into account the needs of developing countries in a proper ly focused and appropriate manner so as to support their greater integration into the multilateral trading system. Aspects in respect of which such flexibilities might be appropriate include the length of the transitional period, the level of final trade coverage and the degree of asymmetry in terms of timetables for tariff reduction and elimination.

During the course of negotiations, the Negotiating Group on Rules should welcome input in an appropriate form from the WTO Committee on Trade and Development, to which the Doha Ministerial Declaration has allocated a specific role to monitor developmental aspects of the negotiations as a whole. The Negotiating Group should also be alert to the development of the work programme on Small Economies, which was also launched at Doha and which is to be undertaken under the auspices of the General Council. The Negotiating Group on Rules would have to remain, however, the forum for discussions and eventual decisions relating to this aspect of RTAs.

5. The Scope of Negotiations

Apart from this horizontal aspect of the development dimension of RTAs, which is explicitly identified in the mandate for the negotiations on RTAs, the European Communities and their Member States are of the view that among the issues that merit discussion and analysis during the course of the negotiations are the following:

Clarification of the legal framework applicable to RTAs

Agreements in the area of trade in goods

Article XXIV of the GATT 1994 and the WTO Understanding on the Interpretation of Article XXIV of the GATT 1994

- the definitions of key concepts for the application of Article XXIV, including "regulations of commerce", "restrictive regulations of commerce", "substantially all the trade", "applicable duties" and "major sector";

- clarification of the application of provisions relating to the staged implementation of RTAs, including the "exceptional circumstances" in which transitional periods for the formation of a customs union or free trade area might be legitimately expected to exceed ten years;

- closer alignment of the disciplines imposed on parties to FTAs with the disciplines imposed on parties to Customs Unions, particularly in respect of the obligations of GATT Article XXIV:5 concerning the implications of individual RTAs for non-parties;

- treatment of non-tariff measures in trade between RTA partners including rules of origin;

The GATT Decision on Differential and more Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries (the Enabling Clause)

- the relationship between the provisions of the Enabling Clause relating to regional and global agreements entered into amongst less-developed contracting parties and Article XXIV of the GATT 1994;

Agreements in the area of trade in Services

- clarification of key concepts for the application of Article V of the GATS, including "substantial sectoral coverage" and "substantially all discrimination";

- the definition of the "reasonable time frame" for the implementation of economic integration agreements;

- the appropriate combination of elimination of discriminatory measures (roll-back) and prohibition of new or more discriminatory measures (stand-still) in order to achieve the absence or elimination of substantially all discrimination (Article V:1(b)(i) and (ii));

- the appropriate methodology to ensure that the overall level of barriers and restrictions to trade in services with respect to third parties is not raised in the creation or enlargement of economic integration agreements;

Improvement of procedural aspects of the examination of RTAs in WTO bodies

- timing of notifications under relevant WTO provisions, the nature and form of information that should be supplied by RTA participants to support the examination of RTAs; timing of examination of notifications by the competent bodies;

- procedures for examination of agreements notified under the Enabling Clause.

It should be noted that this only represents an initial list of issues where the work undertaken in the CRTA points to a need for further examination now in the Negotiating Group. This is not an exhaustive list of issues that the Negotiating Group can be expected to address. The European Communities expect other WTO Members to submit their own proposals on this, and indeed the European Communities should also be expected to come forward with further proposals and ideas as the negotia tions progress.

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World Trade Organization	
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Working Party on GATS Rules	Original: English

Communication from the European Communities

and their Member States

Government Procurement of Services

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The following communication has been received from the European Communities and their Member States with the request that it be circulated to the Working Party on GATS Rules.

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introduction

Within the framework of the negotiations under the mandate given by GATS Article XIII:2, the European Communities and their Member States (hereafter "the EC") hereby submits a contribution with proposals on a framework for rules for government procurement of services that could be developed, and on the benefits that could be drawn from them.

Size of government procurement markets

The OECD estimated the size of total procurement for all levels of government at US$ 5550.6 billion in 1998, roughly equivalent to 82.3% of world exports. Services represent a substantial part of government procurement (est. 60%). The world value of government procurement of goods and services, excluding defence-related expenditure and compensation of employees, was estimated at US$ 2083 billion, equivalent to 7.1% of world GDP or 30.1% of world exports. Of this figure, OECD countries account for 86.1%. Non-OECD countries represent a mere 13.9 %, i.e. US$ 287.7 billion. The largest opportunities therefore arise in the industrialised countries. Developing countries could thus particularly benefit from the opening up of government procurement of services and gain access to these large markets.

Benefits of increased competition in government procurement

Improved conditions for import competition in government procurement play a crucial role in enabling public authorities to purchase services at the lowest cost, giving taxpayers value for money, improving the quality of government services and permitting better allocation of resources. Opening up competition to foreign services providers can also stimulate domestic industry, promote innovation and contribute to good governance. Conversely, policies to favour national or local services and/or services providers over those which are foreign have effects similar to other protectionist measures, introduce distortions that limit choice, increase prices and discourage economic efficiency. On balance, preferential price policies shift profits to domestic firms, but these benefits are ultimately offset by increasing procurement costs.

On the export side, whereas GPA signatories have access to a significant part of world government procurement markets, countries that are not GPA parties – mainly developing countries - have no guaranteed access to these markets. Companies from non GPA countries thus suffer from their lack of access to procurement covered by the GPA.

In some sectors, government procurement accounts for a small share of total domestic demand and preferential practices in procurement have therefore a limited impact on overall trade in services of these sectors. For certain sectors however, in which government procurement represents an important part of the market, the scope and effectiveness of market access granted under GATS commitments is greatly impaired by the existence of preferential practices in procurement (see the example of the construction services sector in Annex).

Recommendations for a framework for government procurement of services under gats

GATS Article XIII:1 exempts laws, regulations and requirements governing government procurement of services from the disciplines contained in GATS Articles II (Most-Favoured-Nation Treatment), XVI (Market Access) and XVII (National Treatment). GATS Article XIII:2 gives WTO Members a broad mandate to negotiate multilaterally on government procurement of services, under the GATS Agreement, which addresses international trade in services.

MFN and national treatment requirements are not sufficient to ensure equal treatment and non-discrimination in the area of government procurement. The experiences of the EC Single Market and of the GPA have shown that in order to ensure effective market opening, domestic procedural principles have to be developed.

The rules to be worked out for government procurement of services would therefore have to be complete enough to ensure competition, but they could at the same time offer flexibility to be acceptable to all and let developing countries implement national policies aimed at the development of certain services sectors, including the possibility to apply preferential prices policies.

With this objective in view, the EC proposes a framework that includes:

General rules

GATS Article III general transparency obligations apply to government procurement of services, since the Articles of the GATS that do not currently apply to laws, regulations or requirements concerning government procurement, pursuant to GATS Article XIII:1, are GATS Articles II (MFN), XVI (Market Access) and XVII (National Treatment).

The EC suggests to examine which principles should be laid down as regards:

Transparency (e.g. public accessibility of domestic legislation, transparency of procurement methods and tendering procedures, bid periods, publication of calls for tenders, decisions on pre-qualification and contract awards, challenge procedures, protection of confidential information and language, limited tendering, negotiation periods and conditions). Consistency with the work under way in the Transparency Group should be ensured, through regular contacts and exchange of informati on about work in progress between this Group and the Working Party on GATS Rules.

the criteria for assessing bids and awarding contracts (how to achieve "best value for money" in government procurement?);

the application of the Most Favoured Nation treatment;

notification and statistical reporting requirements;

appropriate flexibility for individual developing countries in line with the principles set out in GATS Articles IV and XIX:2.

Guarantees regarding the challenge procedures, as stipulated in GATS Article VI (which applies to government procurement pursuant to GATS Article XIII:1), are essential to ensure effective enforcement of agreed rules. Members are invited to reflect on whether additional provisions, specific to challenge procedures regarding decisions linked to government procurement, are necessary and should be discussed in this framework.

Sector-specific rules

Some services sectors may present peculiarities that would justify specific rules or principles on, say, registration obligations, (pre-)qualification requirements / professional qualifications / technical capability, selection and award. The EC therefore suggests to carry out a sector by sector analysis, focusing first on those sectors where government procurement is significant and where WTO Members would have interests. Sectors

that could be looked at, depending on Members interests, could include, *for instance*, computer and related services, construction services, engineering and architectural services, environmental services, catering services, building-cleaning services and travel agencies.

Commitments as regards access to, and national treatment in respect of, government procurement of services

As a further step, the EC suggests that each WTO Member should, besides the set of principles agreed, make commitments as regards access to, and national treatment in respect of, government procurement of services, with the possibility to choose which sectors to open, with – where necessary – limited restrictions on national treatment (e.g. price preferences), within the model of the current system of GATS schedules of commitments. This is under the GPA where a sector either is not listed or has to follow GPA rules.

This would offer WTO Members, in particular developing countries, maximum flexibility to modulate the level of openness and liberalisation of their government procurement markets to their development needs and their national policy objectives. The possibility to open up government procurement markets progressively would allow time for WTO Members to establish the relevant regulatory framework where necessary. This would also mean that a Member taking no commitment as regards access to, and national treatment in respect of, government procurement markets, would have actually no additional obligation in these regards as compared to the present situation.

ANNEX

The example of the construction services sector

This annex is provided purely as an illustrative case. The Construction Services sector has been chosen as an example since government procurement has an important impact on this sector, but a similar case could be made for other services sectors.

- **The UNCTAD X Plan of Action states that UNCTAD should help developing countries in identifying the priority services sectors where liberalisation should take place and the main trade barriers that developing countries face in those sectors, especially those which limit developing country ability to export their services. Under this Plan of Action, the UNCTAD Secretariat produced a note on the "regulation and liberalisation of the constructi on services sector and its contribution to the development of developing countries", with a view to prepare the experts meeting of 23-25 October 2000 devoted to that subject.**

The outcome of these discussions underlines that the construction services sector in developing countries is a fundamental economic activity which permeates all sectors, draws on a large part of capital formation and provides the essential support for developing a national economy. Construction services are an important tool for development because of their role in building social and industrial infrastructure. They are an instrument for employment creation, a key infrastructure service and a tool for upgrading welfare. Companies from developing countries have increasingly entered into ad-hoc co-operation agreements with companies of developed countries, focused around specific projects. This provides opportunities for acquisition of experience and access to technology for developing country firms. Representatives of developing countries at the October 2000 UNCTAD experts meeting observed that in order to support the development of developing country firms' capacities, fair competition in the international markets for construction services should be ensured.

The above-mentioned UNCTAD papers also note that some developing countries have been exporting construction services successfully and have attained a certain competitive advantage, although they have had limited success in penetrating the markets of developed countries. Tightening credit conditions and accumulated debt are forcing companies, as in developed countries, to look for opportunities outside their domestic market, often through subcontracting. Representatives of developing cou ntries at the October 2000 UNCTAD experts meeting underlined

that government procurement practices are limiting exports of construction services from developing countries.

Construction services procured by government at all levels are indeed estimated to account for as much as half of the total demand for construction services. GATS Art. XIII:1 provisions thus exclude much of the trade in this sector from GATS disciplines. Government procurement practices, which discriminate in favour of domestic suppliers, have therefore a significant impact on trade in this sector.

Developing countries have not wished to participate in the GPA. This is based on the general perception that by opening their government procurement to international tendering they will permit foreign firms to capture a significant part of their domestic business, whilst it should be considered that the construction services so obtained would be provided at more competitive prices, thus stimulating development and growth elsewhere in the economy, and that on other markets, export opportu nities would be provided to their domestic construction industry.

UNCTAD thus recommends that specific commitments in the construction sector could be complemented by pro-competitive provisions addressed to measures either peculiar to the construction sector, or which were judged to have a negative impact on trade within the sector, such as transparency in government procurement policies. UNCTAD concludes that given the significance of government procurement in influencing trade in construction services, a sector-specific approach to this issue could b e considered.

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	(02-3918)

Council for Trade in Services **Special Services**	Original: English

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

AND THEIR MEMBER STATES/

GATS 2000: Computer and Related Services (CPC 84)

Addendum

The following communication has been received from the delegation of the European Communities and their Member States with the request that it be circulated to the Members of the Council for Trade in Services. This paper supplements the Community's proposal on Business Services (S/CSS/W/34).

Computer and related services are fundamental for economic activity and permeate all sectors. They are a tool for economic development because of their role in building infrastructure. The rapid growth of the computer services market has led to employment creation (of skilled jobs), in both developing economies and developed countries.

Technological developments mean that computer and related services are a rapidly evolving sector. These advances are fed through to other services sectors:: users of computer and related services are provided with greater computing power, ease of use, flexibility and efficiency in the fulfilment of their information technology needs. As such, computer related services constitute a cornerstone of the infrastructure of electronic commerce as explained in the EC Communication on the e-comme rce work programme.

Sub-sectors of CPC prov. Chapter 84 cover the basic functions used to provide all complex computer and related services: software development and implementation, data processing and storage, and related consultancy. Technological developments lead to increased speed and capacity, and to more and more elaborate computer and related services, such as web or domain hosting and data mining services for instance, consisting of a combination of services that can include some or all of the sub-sector of CPC 84 or, as may be the case for some of them, falling into sub-sector 849.

This development has two important consequences for the way that Computer and Related Services are scheduled under GATS:

- there is potential for misunderstanding amongst Members as to whether the scope of the commitments made under CPC 84 covers these technically evolved services; and
    - the distinctions made in Members schedules between the sub-sectors of CPC 84 are becoming less and less meaningful.

In the light of this, the European Community and its Member States therefore makes the following proposals for the Services negotiations.

Scope of coverage of CPC 84

The EC considers that it is in the interest of WTO Members to reach a clear understanding on the scope of coverage of CPC 84. Members should seek to accommodate continually evolving IT services made possible by advances in information technology. So, for example, the EC considers that Members should reach a common understanding on a definition of computer and related services, the

application of which would identify which of the so-called « ne w » computer and related services (e.g. systems integration services and web-hosting) are in fact no more than combinations of existing services covered under CPC 84.

Certain analogies can be drawn with the exercise undertaken for Financial Services during the Uruguay Round, which resulted in the list of financial services included in the Annex on Financial Services. It should be stressed, however, that the EC is not seeking a re-classification of computer services but rather to clarify the existing scope of coverage of CPC 84. Neither is the EC suggesting that an Annex on Computer Services be negotiated.

Any work should be done in such a way as not to render any understanding obsolete within a short space of time as the technology continues to evolve. In addition, care should be exercised to ensure that the outcome does not result in other service sectors (particularly non-« Business Services ») being considered as falling within the scope of CPC 84.

Furthermore, the common understanding on a definition of computer and related services that is being sought after would help clarifying within which category (computer and related services, or a neighbouring sector such as telecommunications) some services fall. In this matter, flexibility was shown during the Uruguay Round for computer reservations systems (CRS). It is recalled that – at that point in time – CRS was so closely linked with the selling of air transport service s considered under the Annex on Air Transport to be an air transport service. Another example occurs in the area of financial services, where the Annex on Financial services considers financial data processing (which might otherwise be covered under CPC 843) to be a financial service, and it is not excluded that such situations could arise in the future.

Scheduling of commitments

Members should make commitments in Computer and related Services at the highest possible level (i.e. the two-digit level - Provisional CPC Division 84). This would minimise the risk of confusion in seeking to determine whether a particular Computer and Related Service has been committed when the service actually offered involves services covered in a number of different sub-sectors, and so help to better reflect technological developments and commer cial realities in this sector.

Services in this sub-sector are often delivered electronically. However, it is difficult to determine whether the electronic delivery of a service constitutes delivery under Mode 1 or Mode 2. One way to address this issue is for Members to ensure that commitments under both Modes are consistent.

World Trade Organization	
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submission from the European Communities

concerning the AGREEMENT ON IMPLEMENTATION OF

ARTICLE VI OF GATT 1994 (ANTI-DUMPING AGREEMENT)

The following communication, dated 5 July 2002, has been received from the Permanent Delegation of the European Commission.

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1. INTRODUCTION

1.1 The mandate

In Doha, Ministers decided that the Agreement on implementation of Article VI of GATT 1994 (the Anti-Dumping Agreement, hereinafter referred to as "the ADA") was in need of reform. Consequently, the 4th Ministerial Conference decided that:

> "28. In the light of experience and of the increasing application of these instruments by Members, we agree to negotiations aimed at clarifying and improving disciplines under the Agreement[s] on Implementation of Article VI of the GATT 1994 […], while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the init ase of the negotiations, participants will indicate the provisions, including disciplines on trade distorting practices, that they seek to clarify and improve in the subsequent phase. […]".

> ines under the Agreement[s] on Implementation of Article VI of the GATT 1994 […], while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives, and taking into account the needs of developing and least-developed participants. In the init

By this first paper, the EC intends to share its experience since the entry into force of the ADA in 1995. The EC hopes that this analysis can help to identify possible areas and subjects for negotiations. This paper is without prejudice to further submissions that may be put forward in the course of the negotiations.

1.2 Experience since 1995

The current ADA, negotiated in the Uruguay Round, represents a significant step forward as compared to the Tokyo Round Anti-Dumping Agreement. Overall, and in conjunction with the Dispute Settlement System, it has contributed considerably to clarifying and improving disciplines.

However, this should not detract from the fact that times have changed in the world of anti-dumping since the conclusion of the Uruguay Round:

- An ever increasing number of WTO Members, both developed and developing countries, have been resorting to the ADA: on the basis of recent WTO statistics, it can be concluded that at least 65 countries have incorporated anti-dumping provisions into their national law. The divide, which existed at the times of the Uruguay Round, between a few developed country users and the rest of the world has faded. Anti-dumping is now a "global" instrument and every country is now both a potential user and a potential target of anti-dumping action.

- The upsurge of investigations and measures world-wide has highlighted considerable divergences between WTO Members in the interpretation and application of the current rules. This has also resulted in an increase in disputes under the WTO Dispute Settlement System: Although panels and the Appellate Body have contributed to greater clarity in the interpretation of the ADA, there are still areas which would benefit from clarification and improved enforcement.

− Successful co-operation in anti-dumping investigations binds considerable and increasing human and financial resources from the economic operators concerned. This is not satisfactory for anyone.

− Moreover, experience and dispute settlement reports have shown that procedural rights of economic operators are not always appropriately taken into account by investigating authorities. Improvements in transparency and rights of parties are desirable.

− The accelerating globalization of the economy calls for an examination of whether greater attention should be paid to securing enforcement of anti-dumping measures.

− Continuous rounds of trade negotiations have led to significant trade liberalization. The pace of liberalization is however not identical in all countries. Some of those WTO Members which have liberalized or are in the process of liberalizing their foreign trade regime seem to have chosen increased recourse to the anti-dumping instrument in order to be able to address unfair and injurious trade practices.

On the basis of the above, negotiations could usefully and constructively aim at the following, with consequent benefits to all Members, "users" and "targets" alike:

- To strengthen the current disciplines,
- To preserve the effectiveness of the anti-dumping instrument and its objectives,
- To simplify and clarify certain provisions,
- To take into account the needs of developing countries.

Changes in the above-mentioned areas would often result in improved transparency in investigations as well as increased predictability. Thus, economic operators could benefit from more legal certainty.

2. STRENGTHENING THE DISCIPLINES

By way of example, the EC illustrates in this first submission a number of areas which could be discussed under this heading and offers to share its experience on these issues with other Members. The EC would be ready to engage in discussions on the issues outlined below as well as other issues that may be presented by Members in this context.

- Disclosure and access to non-confidential documents
  are key procedural rights for interested parties, in particular exporters and domestic industries. Yet, disclosure is often insufficient, and non-confidential summaries often do not allow for a proper understanding of the matter. A reflection on ways to improve this situation would be to the benefit of all Members.

- In the experience of the EC, a mandatory lesser duty rule leads to stronger disciplines. It significantly limits the level of the measures to what is strictly necessary for removing injury to the domestic industry.

- A public interest test (in terms of an examination of the impact on economic operators), even if discretionary in nature, provides for a wider and more complete analysis of the situation on the domestic importing market. Linked with appropriate substantive and procedural provisions the public interest test could be a useful additional condition before measures can be imposed.

- Provisions governing the settlement of disputes lead to long delays before disputes are settled and measures modified. The very initiation of an investigation can already put a heavy burden on exporters, importers and ultimately the domestic user industry. Consequently, a reflection could be made as to whether and under which conditions initiations of investigations could be made subject to a swift dispute settlement mechanism, taking into due account the relevant prov isions and practice under the Understanding on the Settlement of Disputes.

- A strengthening of the disciplines could also, by definition, reduce the costs of investigations. Indeed, a major problem of today's anti-dumping practice, identified in particular by developing countries, is the cost which firms incur when they want to co-operate effectively in such proceedings. It could be explored whether a further and beneficial improvement could be achieved by screening all procedural aspects with a view to identifying those areas where changes can bring about a reduction in the cost of co-operation while at the same time maintaining the quality of the investigation. Areas such as simplifying and standardising information collection, particularly at the initial stages of the investigations, could be a further issue to be discussed under this heading.

3. PRESERVING THE EFFECTIVENESS OF THE INSTRUMENT

Anti-dumping measures are the result of complex, intensive and costly investigations. However, anti-dumping measures may be circumvented. Circumvention is now an easy option in a globalized economy and securing enforcement is sometimes difficult. It is also recalled that one of the Ministerial Decisions and Declarations attached to the Final Act of the Uruguay Round has identified circumvention as unfinished business of that round of multilateral trade negotiations. Consequently, the EC would be open to engage in meaningful discussions on appropriate ways to preserve the effectiveness of the anti-dumping instrument.

4. CLARIFYING AND SIMPLIFYING

Improvements to the ADA can be brought about by a clarification or simplification of certain provisions in the light of the findings set out in various Panel and Appellate Body reports. It is important that those Members who asked for the inclusion of this item on the agenda specify their objectives soon.

5. THE DEVELOPMENT DIMENSION

The "implementation" proposals made in the run-up to Doha will also be an important issue to be addressed. The EC is committed to engaging in meaningful discussions on these issues. It should also be noted that many of the parameters put forward in this paper have found their inspiration in the "implementation" topics proposed by developing countries.

A special and clearly defined developing country package should be prepared once clear, effective and updated rules for all WTO Members have been discussed. Only such a two-step approach will allow the identification of those areas where, on top of the general rules, the special needs of developing countries call for additional action. In this respect, it should be noted that many of the parameters and proposals supra **Fejl! Ukendt argument for parameter.** and 3 will serve the interests of developing countries because they will significantly reduce the possibility to abuse the anti-dumping instrument. In addition, other specific proposals could be discussed, on the basis of submissions by developing country Members.

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