

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES  
AND THEIR MEMBER STATES<sup>1/2</sup>**

GATS 2000: Professional Services

The attached communication<sup>3</sup> has been received from the delegation of the European Communities and their Member States with the request that it be circulated to Members of the Council for Trade in Services.

**I. INTRODUCTION**

1. Professional services are of particular importance for economic development through their relevance for the build-up of infrastructure (architecture, engineering), and the role they play in the creation of an investment- and business-friendly institutional framework (legal and accounting services). Especially for developing countries, granting liberal market access for these services is indispensable for attracting Foreign Direct Investment, and for promoting the transfer of knowledge.

2. The opportunities provided through e-commerce make cross-border provision of certain professional services practical and technically easier than before.

3. However, in order to ensure the quality of these services, professions under this sector are usually very regulated, either by the state or through self-regulating professional bodies. It is acknowledged that mutual recognition of diplomas or qualifications is an important way to facilitate international trade in certain professional services.

4. A number of restrictions and regulations (other than qualification and licensing requirements), and their discriminatory application to foreign service suppliers by countries, constitute unnecessary barriers to trade and should be tackled through negotiated specific commitments. In this respect, the EC commitments for professional services are relatively comprehensive, covering most professional services sub-sectors, and generally binding the level of market access and national treatment, though some restrictions remain.

5. Our proposal aims at reducing unnecessary trade distortive barriers without affecting the quality of service, protection of consumers, public safety, as well as safeguarding the rule of law.

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<sup>1</sup> Hereinafter "The EC".

<sup>2</sup> The EC reserve their right to modify this proposal at any time. This proposal does not prejudice EC's position on other services sectors, nor any possible future offer on this or other sectors. This proposal has to be read together with the general approach of the EC to the services negotiations.

<sup>3</sup> This document should be read in conjunction with S/CSS/W/32.

## II. SCOPE OF THIS PROPOSAL<sup>4</sup>

6. This proposal includes the following sub-sectors:
- Legal Services (legal advice on home country and international public law)
  - Accounting, auditing and bookkeeping services
  - Taxation services (excluding representation in Court/Tribunals)
  - Architectural services
  - Engineering services
  - Integrated engineering services
  - Urban planning and landscape architectural services
  - Other (related scientific and technical consulting services).

## III. PROPOSAL

7. The Council for Trade in Services in Special Session should initiate a debate, whether in the Council or in a subsidiary body established for the purpose, on broad aims for negotiations in the professional services sector.

8. For example, nationality requirement is often an inappropriate tool to control professional competence. Such requirement can however be justified by the official duty carried out by certain service providers in pursuance of public interest. Residency requirements (which practically exclude any cross-border provision of the service) are only acceptable for reasons of consumer protection and accountability of the service provider. Members should consider whenever possible, replacing such residency requirements, by less trade restrictive requirements serving the same policy objective. If residency requirements are upheld, they should be reduced to a minimum and the least trade restrictive form should be chosen (i.e. require only limited or indirect form of local presence, such as appointment of a representative agent, allow establishment of a temporary presence, etc.). The use of firm names is often restricted, depriving companies of benefiting from the “reputation” of their internationally known brand name, instead having to use local names.

9. This list is not exhaustive, and other restrictions are also maintained by WTO Members.

- (a) Mode 1: The extent to which residency requirements could be replaced by other less trade restrictive measures (i.e. appointment of representative agent, liability insurance, etc.). It should be the aim that residency requirements would be acceptable only for the purpose of consumer protection and, where they are maintained, because other less trade restrictive measures would not be applicable. In such cases, the period of the residency required as a prior condition to meet the obligation should be reduced to the minimum.

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<sup>4</sup> The coverage of this proposal is without prejudice to EC's final positions on classification issues and to EC's classification of their existing commitments. CPCs mentioned refer to Provisional CPC classification.

- (b) Mode 2: Whether any restriction would be justified. In our view, it is hard to see any justification.
- (c) Mode 3: Whether any restrictions would be justified. Minimise restrictions on forms of establishment (partnerships, sole proprietorship, and incorporation). Eliminate restrictions on partnership with, or hiring of, local partners of the same profession within the same area of competence. Eliminate unjustified restrictions on membership in professional associations.
- (d) Mode 4: The EC schedule includes, inter alia, temporary movement of intra-corporate transferees as well as contractual service suppliers (i.e. the service is supplied, on the basis of a contract, by an employee of a company not established in the Member's territory). The EC propose that, on this basis, further discussions are held on how to improve and facilitate the temporary movement of natural persons for the provision of specific services.

10. Since one of the main characteristics of all professional services is their high level of regulation in almost all countries, exceptions to full commitments are more likely than in other services sectors. Exceptions may be accepted for: proof of professional qualification, consideration of security issues, consumer protection, etc. The EC do not favour unrestricted deregulation of these sectors as a result of liberalisation within the framework of GATS, given the important public service function many of these professions fulfil.

11. Most MFN exemptions of members in this sector are based on reciprocal recognition of professional qualifications. It is usually not necessary to schedule these as MFN exemptions, as any such agreements would be covered by GATS Article VII. In such cases, the agreements should be notified and MFN exemptions should be eliminated.

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