

**COMMUNICATION FROM THE EUROPEAN COMMUNITIES
AND THEIR MEMBER STATES^{1,2}**

GATS 2000 : Energy Services

The attached communication 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.

This sectoral proposal is additional to those submitted by the European Communities and their Member States on 22 December 2000 (S/CSS/W/33 to 41). Like them, it should be read in conjunction with the communication from the European Communities and their Member States S/CSS/W/32 of 22 December 2000.

I. INTRODUCTION

1. The energy sector represents one of the most important industrial sectors of our economy. As an example, the annual turnover of the electricity sector in the EC is around 150 € billion, while for the natural gas sector it is estimated at around 100 € billion. In addition, energy is a significant part of total expenditure for both domestic customers and for user industries. Competitive energy prices are essential for our user industries to maintain their competitiveness in the global marketplace.

2. Because of the specific characteristics of the various energy sources, the opening to competition of the energy sector in the EC has been realised in several steps and with the establishment of precise and clear rules. These rules aim at creating a balanced and competitive environment guaranteeing the pursuit of specific objectives related to energy policy, including security of supply and protection of environment, while ensuring the possibility for Member States to impose public service obligations. The latest steps in the liberalisation process have included the opening up to competition, subject to certain conditions, of the electricity and natural gas markets, which has resulted in significant price reductions for final consumers. The physical characteristics of these energy sources and the level of industrial concentration have led to the establishment of an appropriate regulatory framework, with the objective to avoid distortion of competition in the market. The process of liberalisation of the energy markets has, in particular, created new opportunities for the supply under competitive conditions of a large range of energy services, some of which were previously carried out in-house by the monopoly companies.

¹ Hereinafter "The EC".

² 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.

3. At the time of the Uruguay Round negotiations, the process of liberalisation of energy markets was still at an early stage. Accordingly, negotiators did not pay much attention to energy services, which is reflected in the absence of a specific Energy chapter in the W/120 services sectoral classification list. Also, Members did not make many commitments in energy services, some of which are included under diverse headings of W/120 (Business services, Construction services, Transport services). The lack of a comprehensive approach to the classification of energy services is particularly evident now that, after some experiences of liberalisation of energy services throughout the world, the sector is becoming more dynamic and competitive. The EC, in its communication on energy services of July 1999 (Job No. 4145), provided a first contribution for a list of energy services. Contributions and discussions in Geneva have followed since. It is necessary to pursue this important work on classification, in parallel to the sectoral negotiations, in order to provide for a clarification of the scope of energy services. During this exercise, it will be important to avoid double-listing due to the fact that some energy services are already covered elsewhere in the existing classification (professional, environmental, construction services).

4. The recent experiences of liberalisation in some energy sectors and the already well established presence of third country suppliers in other sectors like oil and gas, are showing the way for a win-win opening up of national markets to competition and to foreign suppliers. Our proposal aims at engaging WTO Members which have opened their national market to competition or which are willing to do so, to engage in negotiations to further reduce the barriers to trade in energy services. Due to the specific characteristics of the energy sector, and with particular regard to regulatory aspects and the important public policy considerations attached thereto, the EC is not proposing deregulation of this sector. The EC rather invites WTO Members to establish an appropriately transparent, objective and pro-competitive regulatory framework for this sector. Commitments in this sector should also reflect the need to ensure a balance between trade, liberalisation and the public policy objectives of regulatory measures.

5. Of the different energy sources, nuclear fuels deserve special attention. In the EC, this energy source is subject to specific rules for safety, physical protection and other reasons. Because of its specificity, nuclear trade is traditionally subject to international agreements or specific provisions in more general agreements, and can therefore not be assimilated to general energy trade.

II. SCOPE OF THIS PROPOSAL³

6. This proposal focuses on a number of sectors and sub-sectors where the EC considers that WTO Members should take commitments. However, the number and the denomination of the energy activities identified in the list may be subject to modification, to reflect further progress in the exercise of classification of energy services and the possibility to take into account specific characteristics of energy sources. It must be underlined that the following list of energy activities currently applies irrespective of the energy source concerned and includes in particular coal, electricity, gas, heat, oil, renewable and, subject to the specific conditions related to this energy sector, nuclear.

- **Services related to exploration and production**
- **Services related to the construction of energy facilities**
 - Construction
 - Installation
 - Maintenance and repair

³ 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.

- **Services related to networks**
 - Operation of transportation/transmission and distribution
 - Connection services
 - Ancillary services
- **Storage services**
- **Services for the supply of energy**
 - Wholesale sales of energy products
 - Retail sales of energy products
 - Trading
 - Brokering
- **Services for final use**
 - Energy audit
 - Energy management
 - Metering
 - Billing
- **Services related to decommissioning**
- **Other energy-related services**
 - Installation, maintenance and repair of energy equipment

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 energy services sector.

8. Overall, we believe that WTO Members should aim to reduce barriers to trade in energy services.

9. Typical obstacles to trade in energy services are represented by exclusive rights and monopolies, restrictions on legal forms of doing business, restrictions on foreign investment, unclear licensing and approval requirements, unspecified economic needs tests, residency and nationality requirements, etc.

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

11. The EC proposes that WTO Members:

Modes 1, 2 and 3: Commit all modes for the subsectors classified, taking into account the specificities and characteristics of the organisation of the energy sector of each Member.

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 proposes 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.
