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## **COMMUNICATION FROM AUSTRALIA, THE EUROPEAN COMMUNITIES, JAPAN, NEW ZEALAND, THE SEPARATE CUSTOMS TERRITORY OF TAIWAN, PENGHU, KINMEN AND MATSU AND THE UNITED STATES**

### Joint report on informal discussion on environmental services in the context of the DDA

The following communication, dated 9 February 2005, from the delegations of Australia, the European Communities, Japan, New Zealand, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu and the United States is being circulated to the Members of the Council for Trade in Services.

1. In Doha, Ministers agreed to negotiations on the liberalisation of international trade in environmental services. This recognises the contribution which increased trade in environmental services can make to support policies aiming at improving the global and local environment, by facilitating investment and transfers of environmental technologies and knowledge.

2. Since 1999, WTO Members have discussed questions related to the classification of environmental services in the CSC, and a number of Members made proposals for a revised classification of environmental services. Over recent months, the above group of Members has met several times to discuss issues related to the classification as well as the liberalisation of environmental services pursuant to the Mandate of Article XIX, and recalling paragraph 31(iii) of the Doha Declaration.

3. With this communication, the group of Members intends to inform the wider membership of the issues they discussed and invites Members to consider, in the appropriate *fora*, some of the questions which arise from the discussion.

4. Discussions centred around three broad groups of questions: cross-border provision of environmental services, the classification of environmental services, and questions related to the scheduling of commitments in environmental infrastructure services.

#### **1. Cross border provision of environmental services**

5. During the Uruguay Round, 48 Members took commitments on environmental services. However, a number of these Members left mode 1 'unbound', for lack of feasibility. The group discussed extensively the question of feasibility of cross-border provision of environmental services, and in particular the scope of commitments under mode 1. The following issues emerged from the discussions:

- (a) Full commitments for mode 1 should, in principle, not create problems in most areas of environmental services.
- (b) The provision of infrastructure services such as waste management, or waste water management, usually requires the physical presence of the services supplier in the market. However, consultancy related to such services (e.g. the design and development of a waste management plan, consulting on environmentally friendly solutions for waste water disposal) can be supplied on a cross-border basis. Therefore, it would seem that, e.g., consultancy in these subsectors can be committed for mode 1.
- (c) However, since most environmental consultancy services are closely linked with services supplied under mode 4, commitments for such consultancy services supplied under mode 1 should be accompanied by a clear definition of environmental consultancy services.
- (d) It would also be logical that commitments should be 'technology-neutral', i.e., if future technological developments allow for services to be provided on a cross-border basis, scheduling language should not prejudice this.

6. The group is developing an illustrative list of those services which it believes could be provided under Mode 1 and will continue work in this area.

## **2. Issues related to classification**

7. The group discussed in some depth the proposals for a revision of the classification of environmental services. The EC proposal (Job 7612 of 28 November 2000) served as a basis. Some revisions of this classification proposal were considered to improve the clarity and consistency.

8. The definition of 'consulting services' was an area which required some in-depth discussion. It would be logical that consultancy services in an area of environmental services (e.g. waste management solutions) may form part of that particular environmental services subsector. If not, it would be unclear where such services would be classified. However, as underlined in paragraph 5(c), a clear definition of consulting services involved might be required in order to include such services in certain subsectors of environmental services.

9. Another question related to classification concerns potential overlaps of environmental services with services such as R&D, technical analysis services, engineering, etc., which remain classified elsewhere in GATS. Even though such services can have an environmental "end-use", the group would not consider it necessary to create a specific sub-category for these services in a revised classification of environmental services. What is important is that any commitments cover the environment-related activity in the relevant service sectors in addition to 'core' environmental services, and that commitments are consistent across these sectors.

## **3. Scheduling commitments for environmental infrastructure services**

10. Environmental infrastructure services (e.g. waste management, waste water management) may be provided either by the public sector directly, under 'exclusive rights' granted by governments to one or several operators (including private sector providers), through other forms of Private Public Partnerships (PPPs), or directly from a provider to industrial or commercial customers. The group fully respects that such infrastructure services are key components of economic development, and that WTO Members have the right to regulate access to natural resources, and to safeguard public policy objectives such as universal service provision and the quality of service provided. We also recognize

that liberalization of environmental services can be supportive of sustainable development. With these principles in mind, discussions in the group are focusing on the following questions :

- (a) In which subsectors of environmental services are these forms particularly relevant? A more thorough examination of the subsectors that utilise PPPs and the various types of these partnerships would be useful in order to gain a more thorough understanding of the environmental services sectors.
- (b) For those countries wishing to make commitments in services provided through various forms of public-private partnerships, what should such commitments look like? How can Members clearly indicate the existence of exclusive rights contracts while also indicating that foreign service providers can be granted national treatment for such contracts?
- (c) Which types of activities or public-private partnerships are to be considered as government procurement under GATS Article XIII ?

#### **4. Conclusion**

11. The group believes that the above issues can be of interest to all Members. In order to contribute to the objectives of the DDA in the area of environmental services, a focused debate among all Members in the appropriate *fora* (CSC, CTS Special Session, ...) should lead to a better understanding among Members, and facilitate their negotiations and make progress on environmental services.

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