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COMMUNICATION FROM THE UNITED STATES

Classification in the Telecommunications Sector under the WTO-GATS Framework¹

The following communication, dated 22 February 2005, from the delegation of the United States, is being circulated to the Members of the Council for Trade in Services and the Members of the Committee on Specific Commitments.

Summary

1. This Communication addresses the European Commission's (EC) Communication (TN/S/W/27, S/CSC/W/44) of 9 February 2005 on the classification scheme used in the telecommunications sector under the GATS. In that Communication, the EC outlined its proposal to classify telecommunications services through the "comprehensive" scheme used in the Annex on Telecommunications Services to the GATS. In the EC's view, classifying telecommunications as "all services consisting of the transmission and reception of signals by any electromagnetic means", will avoid the perceived uncertainty surrounding the coverage of the existing classification scheme based on the W/120 framework.

2. While the United States appreciates the EC's efforts to clarify telecommunications commitments, and sees value in such an endeavour, the United States is concerned about the EC's proposal because of its potential to limit the scope of the telecommunications sector. More specifically, the EC's proposed classification scheme, contrary to its intended purpose, may add greater uncertainty into the sector with respect to value-added services. First, the generic nature of the scheme may leave many Members unclear about the scope of commitments in the sector. Second, it introduces uncertainty as to the coverage of telecommunications services that extend beyond mere transmission or transport of signals. These "value-added" services are an essential component of the telecommunications services sector, and the United States would consider any classification scheme that does not explicitly cover them to be difficult to accept. Third, such a classification scheme that does not explicitly cover value-added services may actually result in diminishing existing commitments, which runs counter to the purpose of negotiations. Indeed, many Members already have a "value-added" services category in their schedule of commitments.

3. The United States is seeking to improve market access commitments in the telecommunications sector, presumably a goal shared by the EC. Given the vital role that telecommunications play in the development of other services, and the economy generally,

¹ This paper is without prejudice to the US current initial offer on telecommunications. Nothing in this paper should be interpreted as a new offer in this category.

comprehensive coverage for this sector is important. The proposal outlined in this paper and attached in Annex 1 is meant to achieve this objective and address concerns with the EC's approach.

I. THE EC'S APPROACH

4. The United States appreciates the efforts of the EC to clarify telecommunications commitments and is willing to work with them and other Members to achieve this goal. However, the United States also has some reservations with particular aspects of the approach that the EC has taken in its attempt to provide such clarity. A general definition of telecommunications can help to ensure broad coverage; indeed, this is what the United States has done in its own revised offer. But, in this sector, there is also value in having specificity with regard to the content of commitments, and it is in this regard that the United States through this Communication seeks to improve upon the EC's approach.

A. CLARITY IN THE TELECOMMUNICATIONS SERVICES SECTOR

5. The United States is concerned that a generic classification of telecommunications services, standing alone, will leave many WTO Members unclear about the scope of commitments, particularly when an entire sub-sector – value-added services – has been eliminated. A greater degree of specificity as to what constitutes the sub-sectors of this category would provide more transparency and encourage Members to make new, broader commitments. Consequently, adoption of the EC's approach could result in less progress in this round of negotiations in the telecommunications services sector. Therefore, the U.S. proposes to improve upon the EC's classification scheme to make the coverage of commitments in the telecommunications sector both more comprehensive and more precise.

B. COVERAGE OF VALUE-ADDED TELECOMMUNICATIONS SERVICES

6. By focusing merely on the transmission function of telecommunications, the EC's approach does not sufficiently account for the fact that there are services in this sector that extend beyond mere transport. Most telecommunications regimes recognize that there are telecommunications services that add an element of functionality (e.g., storage, forwarding, processing and/or retrieval) to the basic transport layer. Adding this "value" to the transmission produces integrated services that are not necessarily reducible to transmission, and indeed, whose distinctiveness are defined as much by their computer-based functionality as by their transport functions. Further, many of these services are essential to the development of competitive telecommunications markets and innovative services offerings. The EC proposal leaves open questions about how these services would be covered.

7. It has been suggested by the EC that value-added telecommunications services are already covered by commitments made in the computer and related services sector, or alternatively, that they be scheduled in that sector going forward. This is not a productive suggestion. The United States, along with other WTO Members, views value-added telecommunications services as a vital sector in and of itself and not as an adjunct to computer services. Telecommunications regulatory authorities in many, if not most, WTO Members recognize these distinctions, and often implement licensing regimes accordingly. From a practical standpoint, keeping market access commitments together in a sector likely to be subject to oversight by the same regulatory authorities helps to avoid misunderstandings about which entities are held accountable for implementing such commitments. Further, agreement by all WTO Members that value-added telecommunications services are covered, or are to be covered, in the computer services sector would be necessary in order to avoid the risk of diminished coverage for these services. This would be an overly complicated process that could delay progress in negotiations for a significant time period.

8. In the current round of negotiations, WTO Members are combining commitments made in the Uruguay Round on value-added ("enhanced") telecommunications services and those made in the Basic Telecommunications negotiations, which covered basic telecommunications services. In putting together the results of these two negotiations, it is important to ensure that commitments scheduled in each category are not omitted.

9. The EC's approach, however, by relegating value-added services to an "optional" footnote, and then limiting the specific services in that footnote, has the potential to diminish commitments, since the focus purely on transmission could be interpreted as only including basic telecommunications. Unfortunately, the EC has not been able to adequately explain how their proposal avoids such potential roll-backs. The United States is interested in building upon these previous negotiations to make coverage in this sector as comprehensive as possible, and looks forward to working with Members to achieve this objective. Since the existing classification scheme is based on the W/120 framework, and the GATS Telecommunications Annex provides a broad definition of telecommunications, it is important to work with both provisions to formulate adequate coverage of this sector.

II. A POSSIBLE SOLUTION

10. As mentioned previously, the United States sees the value in what the EC is trying to do through its revised classification scheme. However, for the reasons identified above, the United States is also concerned that if adopted, the EC's approach could have a negative impact on this round of negotiations. Therefore, the United States would like to propose an alternative to the EC's classification scheme (See Annex 1).

11. In this approach, the United States suggests clarifying that value-added services are covered in this sector by adding to the EC's definition, as follows: "All services consisting of the transmission and reception of signals by any electromagnetic means, *alone or in combination with enhancing, storing, forwarding, retrieving, or processing functions added to the transmission and reception of signals.*"

12. For purposes of greater continuity between the old and new classifications, the United States would also recommend that Members include the W/120 categories in their schedules.

13. As suggested by the EC, the Reference Paper would apply to the basic telecommunications category, as committed to under the negotiations on Basic Telecommunications.

14. Further, the United States shares the objective of maintaining the Chairman's Note on scheduling telecommunications, and believes that it would be useful to consider extending the application of relevant provisions to all telecommunications categories. For example, the important principle of technology neutrality with respect to market access should also apply to the value-added sector and include services provided through IP-based networks. Incorporated into the attached proposed approach is additional language for Members' consideration that provides a way to achieve the precision on technology neutrality and scope of market access commitments desired by the EC.

III. IMPLEMENTATION

15. Those who wish to use the approach outlined above will find in Annex 1 an example of a schedule that is modified to follow the classification proposed.

16. The United States agrees with the EC that all WTO Members are free to continue to use the existing W/120 framework to schedule commitments.

17. The United States also strongly believes that if efforts to address the problems with the EC approach highlighted here fail, it would be preferable for all Members to continue to use the existing W/120 framework to schedule commitments, rather than schedule under a new classification system.

ANNEX 1

Sample Schedule²

Modes of supply:

1) Cross-border 2) Consumption Abroad 3) Commercial Presence 4) Presence of Natural Persons

Sector	Market Access	National Treatment	Additional Commitments
<p>2.C Telecommunications</p> <p>All services consisting of the transmission and reception of signals by any electromagnetic means, alone or in combination with enhancing, storing, forwarding, retrieving, or processing functions added to the transmission and reception of signals.</p> <p>These services may be provided on a facilities basis or non-facilities basis, and encompass local, long-distance, or international services, for public or non-public use, and may be provided through any means of technology.</p> <p>[exclusion for radio and television broadcasting]</p> <p>Basic Services³</p> <p>These services include, but are not limited to:</p> <p>a) Voice telephone services b) Packet-switched data transmission services c) Circuit-switched data transmission services d) Telex services</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in horizontal commitments</p>	<p>1) None</p> <p>2) None</p> <p>3) None</p> <p>4) Unbound, except as indicated in horizontal commitments</p>	<p>Member X undertakes the obligations contained in the reference paper attached hereto for the following basic telecommunications services, (list consistent with 1997 commitments, as appropriate):</p> <p>a) Voice telephone services b) Packet-switched data transmission services c) Circuit-switched data transmission services d) Telex services e) Telegraph services f) Facsimile services g) Private leased circuit services o) Other</p>

² This sample is only for illustrative purposes and is without prejudice to any revisions that the United States may make to its existing offer in the telecommunications sector of the United States.

³ These services are scheduled in accordance with the Notes for Scheduling Basic Telecom Services Commitments (S/GBT/W/2/Rev.1) and Market Access Limitations on Spectrum Availability (S/GBT/W/3).

Modes of supply:

1) Cross-border 2) Consumption Abroad 3) Commercial Presence 4) Presence of Natural Persons

Sector	Market Access	National Treatment	Additional Commitments
<p>e) Telegraph services f) Facsimile services g) Private leased circuit services o) Other</p> <p>Value-added Services</p> <p>These services include, but are not limited to:</p> <p>h) Electronic mail i) Voice mail j) On-line information and database retrieval k) Electronic data interchange l) Enhanced/value-added facsimile services, including store and forward, store and retrieve m) Code and protocol conversion n) On-line information and/or data processing (including transaction processing) o) Other</p>			