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COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Implementation of the Modalities for the Special Treatment for Least Developed Country Members in the Trade in Services Negotiations

The following communication, dated 30 September 2005, from the delegation of the European Communities, is being circulated to the Members of the Council for Trade in Services.

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1. The Communication from the LDC Group (Job(05)/114) of 17 June 2005 set out a number of key questions to guide discussion of the implementation of the Modalities for the Special Treatment for LDCs in the Trade in Services Negotiations. The response of the EC and its Member States (hereafter "the EC") is set out below.
 2. The EC welcomes the Communication from the LDC Group and recognises the need to ensure that the modalities are effectively and constructively operationalised. To this end the EC broadly supports the LDCs' suggested way forward in terms of information gathering and monitoring arrangements under the auspices of the Special Session of the CTS.
 3. The following addresses the questions raised by the LDC Group in the order in which they appear in the paper.
 - A. PARAGRAPHS 6 AND 9 OF THE MODALITIES: REALIZING LDC EXPORT OPPORTUNITIES IN MODE 4.
 1. **Where do initial and revised offers provide any additional and commercially meaningful commitments for LDCs, particularly in Modes 4 and 1? Members are invited to report on this.**
 4. The EC's initial offer included substantial commitments on Mode 4, which have been further extended in its revised offer.
 5. The EC's offer on Mode 4 includes commitments on Contractual Service Suppliers (CSS) and Independent Professionals (IPs), which respond to the requests of LDCs to give particular emphasis to categories of service suppliers which are not linked to commercial presence. Commitments on CSS have been offered in 21 sectors or sub-sectors, including key areas of professional and business services, which enable suitably qualified personnel to travel to the EU to provide relevant services. Commitments on IPs have been made in several important sectors, including engineering services, computer services and management consulting, where the relevant professionals can provide services on a fees basis without any company affiliation.

6. The EC has also made a significant offer on graduate trainees, who can move as intra-corporate transferees on management training programmes. The graduate trainee programme is a tool that can be used to provide for technology or know-how transfer for newly qualified managers in LDCs. Commitments on graduate trainees have been made in nearly all sectors.

7. In Mode 1, the EC's offer includes significant new commitments on maritime transport which mean that LDCs have free access to the EU for their cargo and can thereby benefit from the wider trade opportunities and direct access to distribution channels that flow from this.

8. The EC has also offered Mode 1 commitments in (among others) financial services, including data processing; computer services; postal and courier services; telecommunications; other business services, such as advertising, market research and management consulting; environmental consultancy services; and tourism and travel-related services.

9. Our extensive mode 1 commitments across a wide range of services sectors provide numerous business opportunities. In particular, the combination of commitments in computer services, telecommunications and management consulting provide fully integrated opportunities for the development of outsourcing activities and for taking advantage of the benefits of e-commerce which can play a part in the development of all sectors of the economy.

2. How are categories of natural persons supplying non-professional services being reflected in offers? If not, how can we ensure that they are reflected? Could the use of ILO-ISCO classification be helpful?

10. The EC's offer does not extend to non-professional (i.e. lower skilled) service suppliers. Generally speaking, most lower-skilled service providers do not provide services under contract or on a fees basis in the way intended by Mode 4. Lower skilled workers generally provide their services by direct recruitment on the employment market. In accordance with the Annex on Movement of Natural Persons Supplying Services under the Agreement, the EC considers that the GATS does not apply to measures affecting natural persons seeking access to its employment market.

11. The EC favours the presentation of offers and schedules according to the common approach to scheduling proposed in the Communication by the EC and others of 18 February 2005 (TN/S/W/32).

3. Have Members provided any targeted technical assistance, helping to identify sectors and modes of interest to LDCs? Members are invited to report on this.

12. The EC has provided targeted technical assistance to a number of LDCs. We are able to do this in response to requests made by LDCs through EC Country and Regional Delegations and through certain other facilities, such as those for the African, Caribbean and Pacific (ACP) States and the Asia Trust Fund. However, in practice few requests for services sector assessments and similar technical assistance are received through these channels. The EC would welcome further requests for assistance and urges LDCs to discuss the possibilities with its Country and Regional delegations.

13. In order to directly address the need for targeted technical assistance in services, the EC began in 2004 to work with the International Trade Centre, providing funding for its Trade in Services Programme which works with the private sector and governments to carry out trade assessments and provide advice on negotiating strategy based on those assessments. In 2004 five developing countries received support under this programme, two of which were LDCs. In 2005 a total of 11 countries, all LDCs, are expected to receive EC funded assistance under this programme amounting to €300,000.

14. The EC also provides broader development assistance relating to trade in services. This includes supply-side assistance and support for regulatory systems and infrastructure development. For example, the EC is assisting one LDC to develop its financial system and another to develop its ports as part of a national transport policy to improve access to markets. Assistance of this type can amount to several million euros for individual projects.

15. A number of EC Member States have also provided relevant assistance. These include capacity building projects and impact assessments, often in collaboration with organisations such as UNCTAD, the World Bank, the International Centre for Trade and Sustainable Development, and often with a strong focus on LDCs.

4. Irrespective of any specific requests, what do Members consider as comprehensive and meaningful (market access and national treatment) commitments? What are the commitments they can make for LDCs in Mode 4?

16. The EC would like to see commitments made by all Members that increase trade and promote development. As indicated above the EC believes that its offer on Mode 4 takes account of the interests of LDCs.

5. How can negotiations for future disciplines on domestic regulation adequately incorporate LDCs interests, particularly with respect to effectively underpinning Mode 4 commitments?

17. We are ready to consider all proposals by LDCs for future disciplines on domestic regulation, for example relating to the mutual recognition of qualifications, but are conscious that progress may be difficult to achieve where this depends on agreement among a wide range of competent authorities. We are also prepared to consider appropriate flexibilities for LDCs in respect of any disciplines that may be agreed.

6. How can Members implement a notification mechanism, that effectively induces specific information on the above aspects?

18. The EC would be ready to take part in a notification mechanism, administered by the WTO Secretariat under the auspices of the Special Session of the CTS, which required Members to report regularly on activities and measures undertaken in pursuit of the LDC modalities.

B. PARAGRAPH 7 OF THE MODALITIES: APPROPRIATE MECHANISMS FOR EFFECTIVE ACCESS FOR LDC EXPORTS.

1. Key to paragraph 7 is the development of an appropriate mechanism with a view to achieving full implementation of Article IV:3 of the GATS (e.g. LDC participation in services trade). Such mechanisms can take various forms, including preferential mechanisms, that effectively ensure market access for LDC exports. Quotas or automatic recognition serve as examples in this context.

Is each of the above elements being implemented? If so how? What more can be done to better implement them?

19. In keeping with Article IV of the GATS, the EC believes that “special priority” should be given to LDCs in terms of commitments in sectors and modes of supply that reflect their particular interests. The EC has attempted to do this in its offers and is ready to consider further specific requests that may be made.

20. The EC considers that quotas for LDCs are unlikely to be an effective option. To introduce quotas for LDCs would appear to contradict the principle of MFN treatment enshrined in the GATS.

2. How have requests to LDCs taken particular account of the serious difficulty LDCs have in accepting commitments. Notwithstanding the bilateral and closed information nature that requests take, the LDC group invites Members to report the requests they made to LDCs and how they took account of LDC specific development concerns in this context.

21. The EC invited LDCs to make commitments in only two sectors out of a list of 5, plus horizontal commitments in Mode 4. The list of sectors focused on key infrastructure services which can make an important contribution to development. However, the EC acknowledges that such sectors generally need to be liberalized carefully and progressively over time, taking account of the regulatory environment and other factors.

3. Have initial and revised offers by Members improved existing commitments or offered new commitments in sectors/modes of export interest to LDCs? Members are invited to report on their offers, and which parts of them effectively implement Article IV and the LDC modalities in this context.

22. The EC's initial and revised offers make substantial improvements on existing commitments across a wide range of sectors and in all modes of supply. As indicated above, these new commitments cover areas of export interest to LDCs in Modes 4 and 1. They are also relevant to other aspects of Article IV and the LDC Modalities, for example commitments in advertising, publicity, distribution services and maritime transport help to provide access to distribution channels and information networks and indeed to technology.

23. The EC considers that commitments by LDCs also have an important role to play in the operationalisation of Article IV. In particular, domestic capacity building and access to technology can be strengthened by attracting companies with relevant expertise from developed countries.

4. What other types of mechanisms could be utilised to implement each of these elements? When can Members begin to develop these mechanisms?

24. The EC encourages all Members to make commitments in areas of particular interest to LDCs. This may be taken forward in the bilateral negotiations and through complementary benchmarking approaches.

5. How can Members implement a notification mechanism, that effectively induces specific information on the above aspects?

25. The Special Session of the CTS could invite the WTO Secretariat to introduce such a mechanism.

- C. PARAGRAPH 8 OF THE MODALITIES: MEASURES AIMED AT INCREASING LDC PARTICIPATION IN TRADE IN SERVICES.
1. **Strengthening programmes to promote investment in LDCs, with a view to building their domestic services capacity and enhancing their efficiency and export competitiveness.**
 2. **Reinforcing export/import promotion programmes**
 3. **Promoting the development of LDCs' infrastructure and services exports through: a) training, b) technology transfer, c) enterprise level actions and schemes, d) intergovernmental cooperation programmes and, e) (where feasible) financial resources**

26. The EC seeks to develop domestic services and trade capacity through its Country and Regional Strategy Programmes which take an integrated approach to trade and development to ensure that trade takes place within clear development objectives determined by the partner countries and regions themselves. The EC tends therefore to tailor its programmes to the specific needs of individual countries rather than through a general strategy for LDCs as a group. Depending on the priorities of the country concerned, there may be a focus on such areas as infrastructure development, support for SMEs, financial sector reform, regulatory or environmental conditions etc. The EC's Country and Regional Strategy Papers may be seen on the EC's website.

27. The EC is conscious that not all of its Country and Regional Programmes cover services or trade related investment issues. There is room for increased awareness both amongst EC delegations and their negotiating partners of the role that services and investment can play in development and of the particular strategies that might be incorporated into Country and Regional Programmes to promote this objective.

28. The EC also promotes investment through certain special facilities such as PROINVEST which works with investment agencies, chambers of commerce, financial institutions and other agencies in the ACP countries to build capacity and promote technology transfer and partnerships with enterprises in developed countries.

29. A number of EC Member States have investment and trade promotion programmes which, for example, encourage partnerships between enterprises to facilitate technology transfer or between investment agencies to exchange best practice.

30. The EC also offers a range of investment financing instruments through the European Investment Bank both to domestic enterprises in LDCs and to EU companies.

31. Apart from financial and technical assistance the EC seeks to promote an investment climate that encourages responsible investment by EU companies. EU Member States encourage their companies to follow the OECD Guidelines on Investment and Multinational Enterprises, a benchmark for good investment practice. As signatories, most EC Governments have set up National Contact Points that are responsible for the implementation of the Guidelines. Some Member States link their export credit mechanism to the OECD guidelines.

4. Improving the access of LDCs' services and service suppliers to distribution channels and information networks, especially in sectors and modes of supply of interest to LDCs.

What are Members doing in this context, what are their experiences, relevance of competition etc.

32. The EC's initial and revised offers make relevant market access commitments as already indicated (e.g. in advertising, publicity, consultancy services, distribution services etc). In so far as LDCs experience difficulties in taking advantage of these commitments, the EC is keen to explore all possibilities for enhancing the competitiveness of LDCs, for example through supply-side measures that may be possible under its various development assistance programmes.
