

**Council for Trade in Services
Special Session**

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Review of Progress in Energy Services

The following communication, dated 5 December 2007, from the delegation of the European Communities as coordinator of a collective request in this sector, is being communicated to Members of the Council for Trade in Services.

I. INTRODUCTION

1. At this juncture of the Doha Round negotiations, it is valuable in terms of transparency and substance to convey to Members the sense of demandeurs of the state of play in Energy Services.
2. In addition to bilateral request-offer negotiations in this area, pursuant to paragraph 7 of Annex C, a group of eleven developed and developing Members (Australia, Canada, EC, Iceland, Japan, Korea, Norway, Kingdom of Saudi Arabia, Singapore, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, US) co-sponsored the collective request on Energy services. It was addressed to 23 recipient Members, of which none are a LDC on 28 February 2006. All of the co-sponsors have also deemed themselves recipients of the collective request, which is attached to this report.
3. The request covers all modes of supply and a wide range of energy-related services. Because energy services constitute a closely interrelated set of activities, commitments with the widest possible sectoral coverage are requested, with at least a list of sub-sectors to be found under business services, construction and related engineering services and distribution services. For these services, it is requested to schedule new or improved commitments in the four modes of supply with the removal or substantial reduction of the most current limitations existing in these activities.
4. A thriving energy sector - including energy services - is a basic element of economic well-being. The availability of varied sources of energy at competitive prices contributes to a nation's ability to compete in the world marketplace. There is a high correlation between rising or more efficient energy usage and economic growth, increased life expectancy, and higher standards of living. All co-sponsors support the advancement of this collective request to ensure that that the ongoing negotiations result in a high level of liberalisation for the supply of services relevant for a Member's energy sector.
5. The European Communities are circulating this report as a coordinator of the collective request on Energy services. This state-of-play only represents the general views of the co-sponsors of the request. The co-sponsors welcome the engagement of recipients and hope that future discussions will allow further progress towards meeting the objectives of the plurilateral request.

II. OVERVIEW OF PLURILATERAL DISCUSSIONS

6. Six bilateral market access clusters and four plurilateral meetings on Energy services were held between April 2006 and September 2007. At the plurilateral meetings, participants provided responses and indications as to how their existing commitments and potential offers might respond to the specific elements of the request. During those meetings recipients also raised questions in order to

better understand the request and how the co-sponsors themselves have addressed sensitivities related to commitments in this sector.

7. Despite their importance, Energy services remain a widely under-committed sector. In addition, there remains a significant gap between the existing level of market openness in many Members' energy services sector and their level of commitments. Therefore, co-sponsors are disappointed in both the level of offers tabled so far and the indications provided by recipients in the plurilateral meetings concerning potential improved offers.

8. Three recipients have not been attending the meetings and have not provided any information to date concerning their response to the request. An additional three recipients have not yet given any indication of intention to meet the request. Six recipients have clearly indicated that they had no intention or possibilities to make further improvements to their offers. Four recipients have indicated that they were positively considering improving their offers, whereas seven others have hinted at ongoing domestic consultations on the request.

9. Six recipients have mentioned specific difficulties related to their constitution or legislation, or to specific domestic sensitivities, in particular regarding energy-related distribution services. Although a number of recipients indicated that many activities were actually open to foreign service providers, they expressed no intention to reflect this current level of openness in improved offers.

Coverage

10. Only one recipient covers all the sub-sectors mentioned by the request, and only three additional recipients have less than 3 sub-sectors missing in their existing commitments or offers. However, only four recipients have indicated their intention to improve their sectoral coverage. Seven co-sponsors cover all the activities requested, and the others are contemplating extending their coverage to the few activities not yet covered.

Mode 1

11. In the sectors covered by their schedules or offers, only seven recipients substantially meet the request. Only two recipients have pointed at a potential extension of their Mode 1 commitments. One recipient excluded Mode 1 commitments in energy-related construction and distribution services, two of them in services incidental to mining because of legal impediments or domestic sensitivities, and two others raised concerns about feasibility, consumer protection and taxation issues. Out of the five co-sponsors that have maintained Mode 1 limitations in sub-sectors covered where Mode 1 commitments appear feasible, four are examining the possibility to improve their offers.

Mode 2

12. Intentions were broadly similar to those mentioned for Mode 1. Apart from commitments resulting from extension of sectoral coverage, there was no other specific indication of improvements for this mode of supply.

Mode 3

13. In the sometimes very few sub-sectors covered by their schedules or offers, only six recipients do not maintain any of the limitations targeted by the collective request. Most of the recipients have scheduled limitations on foreign ownership: three of them affirmed that they would maintain them, while the others did not give any indication of potential removal of this limitation. One recipient indicated that it would think over removing a cap which was not applied in practice in energy-related construction services. With respect to the other limitations, one recipient indicated that an Economic Needs Test in the energy distribution sector might be removed. Out of the six co-sponsors that

maintain Mode 3 restrictions in at least one of the sub-sectors covered, only one has scheduled and will maintain a foreign ownership cap, allowing foreign majority though.

Mode 4

14. Most of respondents indicated that Mode 4 commitments were not approached on a sectoral basis, but rather at horizontal level. Amongst the four recipients considering improvements in their offers, one referred to legal impediments to cover an additional category of natural persons. Two co-sponsors indicated that further improvements in their offers on Mode 4 were envisaged, whereas three others indicated that their offer would not be modified in this respect.

15. In comparison, the level of the co-sponsors' commitments or offers is far above the vast majority of those of the recipients. Where they exist, limitations in the different modes of supply are limited to specific sub-sectors. Nine co-sponsors have indicated potential improvements in future offers and one co-sponsor has indicated that it had fully met the request.

ATTACHMENT

Collective Request in Energy Services

I. OVERALL OBJECTIVES OF THE REQUEST IN ENERGY SERVICES

A thriving energy sector - including energy services - is today a basic element of economic well-being. The availability of varied sources of energy at competitive prices contributes to a nation's ability to compete in the world marketplace. There is a high correlation between rising or more efficient energy usage and economic growth, increased life expectancy, and higher standards of living. Moreover, modern energy services provide the means to develop energy resources in an environmentally sound manner and in ways that promote responsible and efficient development and use of energy resources.

For these reasons, ensuring that the ongoing negotiations result in a high level of liberalization for the supply of services relevant for a Member's energy sector, we make the present request to addressee Members. The request is being made with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors.

This request is neutral with respect to energy source, technology, and whether offered onshore or offshore. Concurrently, the GATS explicitly recognizes the right of WTO Members to regulate services and to introduce new regulations to meet national policy objectives. It is stressed that the regulatory measures, which are important in the Energy sector, must be clearly defined, transparent and non-discriminatory. Please note that the request does not extend to the ownership of energy resources, which remains under the full sovereignty and sovereign rights of each Member, and is outside of the scope of GATS negotiations.

The following objectives are not intended to be a complete listing of the individual requesting Members' sectoral priorities for energy services, and leave open the possibility for other bilateral requests related to energy services.

II. SECTORAL COVERAGE

We are requesting that commitments be taken with the widest possible sectoral coverage with at least the following services.

Because energy services constitute a closely interrelated set of activities, the absence of commitments in some of these services from a country's offer undermines the value of its other energy services commitments.

The order in which services are presented does not reflect their relative importance.

<u>W/120</u>	<u>CPC</u>	<u>Description</u>
1.A.e-f	8672-8673	Engineering and integrated engineering services
1.F.c-d	865-866	Management consulting services and services related to management consulting
1.F.e	8676 (partial)	Technical testing and analysis services (excluding services related to medical devices, food and food products)

1.F.h	883 5115	Services incidental to mining Site preparation work for mining
1.F.m	8675 (partial)	Related scientific and technical consulting services
1.F.n	8861-8866 (partial)	Maintenance and repair of: fabricated metal products, machinery and equipment, and electrical machinery (excluding maritime vessels, aircraft or other transport equipment)
3.B	5134-5136	Construction work for civil engineering: for long distance pipelines, for local pipelines, for constructions for mining
3.E	518	Renting services related to equipment for construction or demolition of buildings or civil engineering works with operator
4.B	62271	Wholesale trade services of solid, liquid and gaseous fuels and related products (excluding electricity and town gas)
4.C	63297	Retailing services of fuel oil, bottled gas, coal, and woods

III. SPECIFIC COMMITMENTS

In order to achieve a progressively higher level of liberalization of trade in energy services, for the services listed in Part I above, we are requesting addressee Members to schedule new or improved commitments with respect to the objectives listed below.

Mode 1 : Since a number of energy services may be and are currently often provided through cross-border mode of supply, for those services we request :

- Substantial reduction of market access limitations
- Removal of existing requirements of commercial presence

Mode 2 : We request commitments whenever technically feasible.

Mode 3 : Commercial presence being an essential mode of supply for most energy service activities, we make the following request :

- Removal or substantial reduction of foreign equity limitations
- Substantial elimination of joint ventures and joint operations requirements for foreign service suppliers
- Removal or substantial reduction of economic needs tests
- Elimination of discriminatory licensing procedures

Mode 4¹ :

- Make commitments in accordance with paragraph 1(d) of Annex C of the Hong Kong Ministerial Declaration
 - No general exclusion of energy services from horizontal Mode 4 commitments
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¹ For this element, the United States is not a requesting Member, but shall be deemed a recipient