

**Council for Trade in Services
Special Session**

COMMUNICATION FROM THE EUROPEAN COMMUNITIES

Review of Progress in Environmental 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 the Environmental Services sector.

2. In addition to bilateral request-offer negotiations in this sector, pursuant to paragraph 7 of annex C, a group of 11 developed and developing Members (Australia, Canada, EC, Japan, Korea, New Zealand, Norway, Singapore, Switzerland, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, the United States) co-sponsored a request on environmental services. It was addressed to 21 recipient Members, of which none are a LDC, on 28 February 2006. The collective request is attached to this report. All co-sponsors have also deemed themselves recipients of the request.

3. The request recalls that environmental services, as well as goods, were singled out for liberalization in paragraph 31 (iii) of the Doha Declaration with a view to enhancing the mutual supportiveness of trade and environment. The request proposes two options for scheduling commitments in this sector. The request covers all environmental services subsectors and modes of supply.

4. The European Communities are circulating this report as a coordinator of the collective request on environmental 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

5. Six bilateral market access clusters and four plurilateral meetings were held between April 2006 and September 2007. At the plurilateral meetings, participants provided responses and indications as to how existing commitments and potential answers might relate to this collective request. Regrettably, two recipients have not been attending the meetings and have not provided any response to date. The last two plurilateral meetings allowed to explore possibilities to offer bindings of current market openness or, if necessary, to create new market openness with a view to meet the request.

6. While several recipients have provided indications on possible improvements in this sector, co-sponsors note that many improvements outlined remain very limited in their scope. In particular

there has so far been little progress in infrastructure-related environmental services. Plurilateral discussions also show that the gap between the existing level of market openness in this sector and recipients' potential future offers would remain very large, which is a source of concern and disappointment for co-sponsors for this largely under-committed sector.

7. Only five out of 21 recipients have existing commitments in this sector, among which three have offered to improve commitments in initial and/or revised offers. There are also six recipients that have offered new commitments in this sector in initial and/or revised offers. Only one recipient has indicated that it would make improvements enabling it to meet almost all aspects of the request. Six recipients have indicated that they were unlikely to make any new or improved commitment for environmental services. Five recipients have highlighted that they would not reflect their existing level of openness. While a few recipients have mentioned specific difficulties related to legislation, several have noted that there are no legislative barriers in this sector.

8. Nine out of eleven co-sponsors of the request have existing commitments, while the two remaining co-sponsors have offered new commitments in the sector. Six co-sponsors already tabled improved commitments in initial and/or revised offers. Eight co-sponsors have pointed at possibilities for improvements in future offers.

Coverage of the request

9. Few recipients have provided detailed indications on the scope of the commitments they are considering. Three recipients have indicated the possibility of making commitments in waste water management/sewage services (CPC 9406) and two of them also indicated flexibilities for the categories of protection of ambient air and climate/cleaning services of exhaust gases (CPC 9404) and noise and vibration abatement services (CPC 9405). Two recipients have indicated that commitments for infrastructure-related services (CPC 9401 to CPC 9403), if any, would be limited to business-to-business services only.

Mode 1

10. One recipient is considering mode 1 while another referred to the possibility to undertake commitments covering advisory services. A number of recipients pointed at the fact that they were in practice open for this mode of supply. Among the co-sponsors that do not have full mode 1 commitments across all services, one co-sponsor would be in a position to offer none in this mode of supply, and another one is considering further improvements.

Mode 2

11. While there was no mention of legislative impediment by recipients, there was no other specific indication of improvements for this mode of supply.

Mode 3

12. Six recipients have currently scheduled a cap below 51% (at sectoral or horizontal level). Only one recipient has indicated its intention to improve it by increasing the foreign ownership cap above 51%. One recipient has indicated that new commitments in this sector would most likely include a 30% foreign ownership cap. Four recipients pointed that, although they had no or very few barriers in place in this sector, they were likely not to reflect the existing level of openness in future offers. One recipient indicated that they could remove the economic needs test they currently have listed for CPC 9402 and 9403. No co-sponsor has equity caps in place for this sector.

Mode 4

13. Recipients did not signal specific flexibility for improving their mode 4 commitments. Three co-sponsors have provided indications that they were seeking to improve mode 4 commitments in this sector by covering additional mode 4 categories or professions.

ATTACHMENT

Collective Request in Environmental Services

Background and Objectives

Environmental goods and services were singled out for liberalization in paragraph 31 (iii) of the Doha Declaration. The requesting Members note that liberalized environmental services market benefits both exporters and importers of these services as well as environment and development

It is understood that liberalization in these sectors will not impair the ability of governments to impose performance and quality controls on environmental services and to otherwise ensure that service suppliers are fully qualified and carry out their tasks in an environmentally sound manner. In addition, as under current obligations, each WTO Member can establish, maintain, and enforce its own levels of protection, *inter alia*, for consumers, health, safety, and the environment.

We note the important interplay between the liberalization of environmental services and the liberalization of related services, such as construction, engineering, technical testing and analysis, and management consulting. Finally, this plurilateral request doesn't address in any way water for human use (i.e. the collection, purification and distribution of natural water).

Request

Sector Coverage

In the WTO Services Sectoral Classification List (WTO Document W/120), the environmental services sector is defined as being comprised of four sub-sectors of activity: 6.A Sewage services; 6.B. Refuse-disposal services; 6.C. Sanitation and similar services; and 6.D Other Environmental Services. However, the CPC contains several additional sub-sectors of activity for environmental services, namely, Cleaning Services of exhaust gases (CPC 9404), Noise abatement services (CPC 9405), Nature and landscape protection services (CPC 9406) and Other environmental services not elsewhere classified (CPC 9409).

We request that recipients of this request undertake commitments across all environmental services sub-sectors using the corresponding provisional UN CPC 94 classifications (9401, 9402, 9403, 9404, 9405, 9406, and 9409).

With respect to use of headings, a Member may schedule either on the basis of existing sub-headings for environmental services contained in the W/120 and UN CPCs or may use a revised classification which some Members have felt better reflects the commercial reality of environmental services markets. Irrespective of choice of sub-heading, CPC 9401, 9402, 9403, 9404, 9405, 9406 and 9409 should be explicitly listed in a Member's commitments.

9401 – Sewage Services: Please schedule commitments explicitly referencing the Provisional UN CPC code. Some Members have used the revised heading, "Wastewater management".

9402 and 9403 – Refuse Disposal Services (9402) and Sanitation and Similar Services (9403): Please schedule commitments explicitly referencing the Provisional UN CPC codes. Some Members have turned the headings into subheadings and have used a combined heading entitled "Solid/Hazardous Waste Management" for this sector.

9404 – Cleaning Services of Exhaust Gases: Please schedule commitments under either the W/120 heading 6.D. Other or use the revised heading "Protection of Ambient Air and Climate" which some Members have used for purposes of clarity.

9405 – Noise Abatement Services: Please schedule commitments under either the W/120 heading 6.D. Other or use the revised heading, "Noise and Vibration Abatement", which some Members are using in order to recognize the linkages between noise and vibration abatement services (e.g. vibration can cause noise, and noise can cause vibration).

9406 – Nature and Landscape Protection Services: Please schedule commitments under either the W/120 heading 6.D. Other or divide these commitments into two headings, "Remediation and clean up of soil and water" and "Protection of biodiversity and landscape", which some Members have used for purposes of clarity.

9409 – Other Environmental Protection Services n.e.c.: Please schedule commitments using either the W/120 heading 6.D. Other or the revised heading "Other Environmental and Ancillary Services". Commitments for this sub-sector include acidifying deposition ("acid rain") monitoring, controlling and damage assessment services.

Level of commitment

Mode 1 Commitments: We request that recipients of this request schedule "none", where possible.

Previously, some Members scheduled this mode as unbound due to lack of technical feasibility. There is a broad convergence of views that there are advisory and monitoring services that can take place via this mode of delivery. For example, a wastewater treatment plant can be operated and monitored remotely from a second country, air pollution levels in one country can be monitored from a second country and the design and development of a waste management plan can be provided through telecopy or the Internet.

Mode 2 Commitments: We request that recipients of this request undertake full commitments in Mode 2 for all subsectors.

Mode 3 Commitments: As environmental services are predominantly supplied via Mode 3, we request that recipients of this request undertake ambitious commitments under Mode 3 and remove barriers to commercial presence (e.g. foreign equity limitations, Joint Operation requirements, restrictions or requirements on types of legal entity for foreigners, such as Joint Venture). At a minimum, we request that recipients expeditiously phase out barriers to commercial presence.

We note that the supply of services at central or local level may be subject to public monopoly and exclusive rights. To the extent that a Member awards exclusive rights contracts to environmental service suppliers, foreign service suppliers should be able to participate in the supply of the service. We underline that contracts that are executed pursuant to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or with a view to use in the supply of services for commercial resale are not addressed by this request.

It should be noted that commercial presence by itself necessarily leads to employment of local personnel and transfer of technology and know-how.

Mode 4 Commitments: We encourage recipients of this request to schedule Mode 4 commitments to ensure mobility of service suppliers involved in the supply of environmental services. As a result of the evolution of environmental services, specialised knowledge and skills are very important in this sector. Members may schedule the commitments either under the sector headings or under the horizontal commitments.¹

¹ For this element, the United States is not a requesting Member, but shall be deemed to be a recipient.