



Council of the
European Union

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ADD 1 DCL 1

WTO 53
SERVICES 11
FDI 4
OC 96

DECLASSIFICATION

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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NOTE

From : General Secretariat of the Council
To : Delegations

Subject : Draft Directives for the negotiation of a plurilateral agreement on trade in services

Delegations will find attached the final version of the draft Directives for the negotiation of a plurilateral agreement on trade in services, which will be submitted for adoption at the Agriculture and Fisheries Council on 18 March 2013.

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DIRECTIVES FOR THE NEGOTIATION OF A PLURILATERAL AGREEMENT ON TRADE IN SERVICES

A. NATURE AND SCOPE OF THE AGREEMENT

On substance, the agreement should achieve essentially the same objectives as set out in the Council Conclusions of October 1999 (12092/99 WTO 131), i.e. the agreement should be comprehensive, ambitious, should aim at reducing existing imbalances and be fully consistent with World Trade Organisation (WTO) rights and obligations, notably with regard to the WTO General Agreement on Trade in Services (GATS). The negotiations should be conducted and concluded with due regard to rights and obligations under the WTO, taking into account the elements for political guidance of the 8th WTO Ministerial Conference by respecting the principles of transparency and inclusiveness.

In detail, the agreement should seek to bind, in general, the autonomous level of liberalisation of the parties and provide for opportunities through negotiations for improved market access. The agreement should also be comprehensive and comply with the requirements of GATS Article V in terms of sectoral and mode of supply coverage. New and enhanced regulatory disciplines based on proposals by the parties should be developed during the negotiations.

The agreement should take account of the fact that not all WTO-members are participating in the negotiations. To prevent an automatic and unconditional multilateralisation of the agreement based on the effect of the most-favoured-nation principle laid down in GATS Article II:1, the plurilateral services agreement needs to fulfil the conditions of an Economic Integration Agreement pursuant to GATS Article V, i.e. have a substantial sectoral coverage and provide for the elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures. The agreement shall be built on the GATS to ensure a smooth future incorporation of the plurilateral services agreement into the GATS and it shall incorporate GATS core articles. The agreement shall provide for market access (GATS Article XVI) for services sectors in the same way as commitments are undertaken, under GATS. It could go beyond GATS by providing for a horizontal discipline for national treatment (GATS Article XVII) that would be applied in principle to all

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sectors and modes of supply, subject to exemptions. In line with the Council Conclusions of 1999, by applying this horizontal formula subject to exemptions, the negotiations would be more efficient and would maximise the results. The agreement should have an overall architecture conducive to its future multilateralisation and set out the mechanisms and conditions of accession and future multilateralisation. To ensure that the parties observe mutually agreed rules and commitments, the agreement shall include an effective dispute settlement mechanism. Due regard shall be given to the dispute settlement mechanism provided for in the WTO Agreement. The European Union will ensure that the Union and its Member States maintain the possibility to preserve and develop their capacity to define and implement cultural and audiovisual policies for the purposes of preserving their cultural diversity. The high quality of the EU's public utilities should be preserved in accordance with the TFEU and in particular Protocol N° 26 on Services of General Interest, and taking into account the EU's commitments in this area, including the GATS.

B. PROPOSED CONTENT OF THE AGREEMENT

1. The agreement should confirm the common objective of progressively liberalising trade in services as a means of promoting economic growth and increasing participation of developing and least developed countries in world trade.
2. In line with GATS Article V, the agreement should cover substantially all sectors and modes of supply and provide for the absence or elimination of existing discriminatory measures and/or the prohibition of new or more discriminatory measures. This should be without prejudice to the possible exclusion of a limited number of services sectors from the liberalisation commitments. As in the GATS, the EU shall not take commitments on audiovisual. The Agreement shall not cover services supplied in the exercise of governmental authority.
3. The agreement shall confirm the right of the EU and its Member States to regulate and to introduce new regulations on the supply of services within their territories in order to meet public policy objectives.

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4. The Commission should also ensure that nothing in the agreement prevents the parties from applying their national laws, regulations and requirements regarding entry and stay, provided that, in doing so, they do not nullify or impair the benefits accruing from the agreement. EU and Member States' laws, regulations and requirements regarding work and labour conditions shall continue to apply.
5. As regards the architecture of the future agreement, the agreement shall be built on GATS to ensure a smooth future incorporation of the plurilateral services agreement into the GATS. It shall incorporate at minimum GATS core articles, i.e. Article I (scope and definition), Article XIV and Article XIV bis (general and security exceptions), Article XVI (market access), Article XVII (national treatment) and Article XXVIII (definitions).
6. Furthermore, the agreement shall provide for market access (GATS Article XVI) for services sectors in the same way as commitments are undertaken, under the GATS. It could go beyond GATS by providing for a horizontal discipline for national treatment (as defined in GATS Article XVII) that could be applied in principle to all sectors and modes of supply, subject to exemptions identified by the parties. Exempted discriminatory measures should be subject to a standstill¹ and/or a ratchet clause². Exemptions to the standstill and/or ratchet clause would have to be identified by the parties.
7. The agreement shall contain new or enhanced regulatory disciplines as compared to GATS based on proposals by the parties. To that end, the negotiations should aim at including *inter alia* regulatory disciplines concerning transparency, domestic regulation, state-owned enterprises, telecommunication services, computer related services, e-commerce, cross-border data transfers, financial services, postal and courier services, international maritime transport services, government procurement for services and subsidies.

¹ This means that exempted measures should in principle reflect the autonomous level of liberalisation.

² This means that any future removal of a discriminatory measure would be captured.

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8. The agreement shall include an effective dispute settlement mechanism to ensure that the parties observe mutually agreed rules. Due regard shall be given to the dispute settlement mechanism provided for in the WTO Agreement.
9. The agreement should have an overall architecture conducive to its future multilateralisation and the mechanism and conditions for this multilateralisation should be defined. In the same vein, the agreement should contain an accession clause to ensure that more WTO members sharing the objectives of the agreement could become a party.
10. The negotiation position of the EU should take due account of any new elements pertaining to these negotiating directives resulting from the Sustainability Impact Assessment (SIA).

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