

# TACD

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Dirk Bruinsma  
Director General  
Ministry of Economic Affairs  
Bezuidenhoutseweg, 30  
2500 EC The Hague  
The Netherlands

July 21, 2004

Dear Mr Bruinsma,

We are writing to you following the response from your predecessor as Chair of the 133 Ad-Hoc (Services) Committee, Frank Doheny. We'd like to thank the Committee for this response of June 2<sup>nd</sup> to our letter of March 24th. We were rather surprised at its tone, given that TACD's GATS recommendations had been previously received by both U.S. and EU trade officials as informed and helpful.

Perhaps the brief paragraph we sent needs to be put in context. Below we provide you with our full recommendations on the GATS and attached are the detailed background documents which have informed our deliberations on the issue. We would be interested in any comments you may have about these materials.

The 133 Ad-Hoc (Services) Committee appears to believe that "measures relating to qualification requirements and procedures, technical standards and licensing requirements" is a narrowly-drawn category. We disagree. Given that the EC indicated at the Working Party on Domestic Regulations meeting in December 2003 that it believes licensing covers permits as well, we would like you to outline for us the areas of service sector regulations which will be left untouched by Article VI.4 disciplines, especially if the disciplines on domestic regulation are applied across the board to all service sectors.

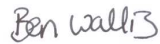
As noted in your letter, the GATS agreement recognizes the right of WTO Member States to regulate domestic services markets in order to meet national policy objectives – in the agreements' non-binding preamble. However, the binding terms of the agreement place a series of constraints on federal and sub-federal governments. The Article VI.4 negotiations will deepen those constraints and subject important regulations and consumer protections to potential challenge as barriers to trade.

To judge by the results of the WTO Lomé case and the recent preliminary ruling against the United States with regard to internet gambling, government negotiators themselves have great difficulty exempting sensitive sectors from GATS rules. Federal and sub-federal regulatory measures which are not anticipated to be caught up in the WTO dispute resolution system frequently are.

While informed parties may disagree on the degree to which GATS rules will impact domestic regulations, consumer groups, local government officials and other concerned parties deserve a frank and thoughtful dialogue with trade negotiators about the status of these negotiations and potential impacts of current and pending GATS rules on important public and private service sectors.

With that expectation, we look forward to further communications with you and your colleagues on this matter.

Sincerely,



Ben Wallis, TACD Coordinator  
On behalf of the TACD Steering Committee

Anna Bartolini, Italian member of the EU Consumer Committee  
Benedicte Federspiel, Chief Consultant, Forbrugerrådet (Danish Consumer Council)  
Jean Ann Fox, Director, Consumer Protection, Consumer Federation of America  
Rhoda Karpatkin, President Emeritus, Consumers' Union  
Felix Cohen, General Director, Consumentenbond (Dutch Consumers Association)  
Ed Mierzwinski, Director, Consumer Program, Public Interest Research Group  
Jim Murray, Director, BEUC (European Consumers Organisation)  
Lori Wallach, Director, Global Trade Watch, Public Citizen

Cc: Mr Mogens Peter Carl, Director General DG TRADE  
Mr Mauro Petriccione, Director DG TRADE  
Mr Frank Doheny, Chair of the Article 133 Committee January – June 2004

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## Trade Working Group Recommendations on Trade in Services

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The WTO Service negotiations raise serious concerns for consumers. Any agreement must establish the rights of governments to maintain and improve consumer protections and other regulatory measures based on valid public policies, and competition policies that assure the new market entrants have the chance to contribute to lower prices, increased choice, better quality and more information.

To this end, TACD recommends the following:

- The right of governments to provide and regulate basic services in the consumer interest should be broadly asserted in a new article included in the body of the agreement.
- The right of governments to provide access to basic services must be recognised in the agreement. The right of governments to assure the provision of critical services - health, education, telecommunications, water and energy utilities - should be protected by revising the governmental exemption in the agreement to make it self-defining. The rights of governments to provide universal access and affordability should be assured.
- The imposition through the GATS of “necessity tests” or requirements to only implement measures that are “the least trade restrictive” should be rejected. Existing WTO regulatory disciplines are sufficient. The EU principle of proportionality may not be appropriate in the WTO context.
- The GATS articles on market access and national treatment should be amended to clearly state that they do not apply to non-discriminatory domestic regulations.
- Key GATS documents should be made public. Consumer groups and other civil society groups need to be consulted on a regular basis on the GATS, particularly in regards to the negotiations on domestic regulation and professional standards.
- The “bottom up” architecture of the GATS should be maintained and the needs of developing countries should be given special consideration in the negotiations. For example, the US and EU should provide funding for capacity building.
- US and EU governments should support a full, complete and independent assessment of the impacts of the current GATS regime and the implications of the proposed GATS 2000 rules on domestic social, environmental and economic laws, policies and programs drawing on the expertise of citizens groups in member countries.

TACD Secretariat, 24 Highbury Crescent, London N5 1RX, UK

Tel : (+44) 207 226 6663 Fax : (+44) 207 354 0607 email : [tacd@consint.org](mailto:tacd@consint.org) Website : [www.tacd.org](http://www.tacd.org)

The Steering Committee/Le comité directeur : EU/UE : Anna Bartolini, Felix Cohen, Benedicte Federspiel, Jim Murray  
US/Etats-Unis : Jean Ann Fox, Rhoda Karpatkin, Ed Mierzwinski, Lori Wallach