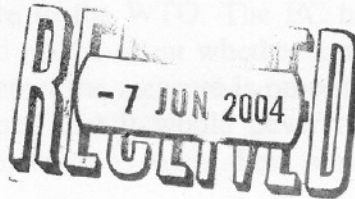


2nd June 2004

Mr. Ben Wallis
Trans Atlantic Consumer Dialogue
TACD Secretariat
24 Highbury Crescent
London N5 1RX
United Kingdom



Dear Mr. Wallis

On behalf of the Members of the 133 Ad Hoc (Services) Committee, and the European Commission, I would like to thank you for your letter of 24 March, in which you transmit the TACD's recommendation on the development of disciplines on domestic regulation under GATS Article VI: 4, and in particular the issue of a 'necessity test' in the context of such disciplines.

The GATS agreement recognizes the right of WTO Member States to regulate domestic services markets in order to meet national policy objectives. Member States are, and should always be, able to regulate their domestic services markets according to national policy preferences regarding, for example, the protection of consumers, the environment, and social and cultural values. The EU is not considering, nor would it ever accept, that these policy objectives would be relegated to trade-only considerations.

Nevertheless, certain domestic regulation affecting trade in services can constitute significant barriers to services trade. The GATS agreement recognises this and gives WTO members a mandate to develop disciplines on Domestic Regulation on the basis of its Article VI: 4. The objective of this mandate is to provide increased transparency, predictability and certainty for regulators and economic operators – criteria vital to the rule of law and fair administrative procedures.

Unfortunately the Article VI: 4 mandate continues to be subject to a lot of misunderstanding. Therefore it is important to clarify the kind of measures that are actually subject to discussion. Article VI: 4 only concerns measures related to qualification requirements and procedures, technical standards and licensing requirements - not all regulations. There is no question that regulators would have to submit 'all rules' to any such disciplines, as your letter suggests. The EU would never agree to the establishment of rules in the GATS that would mean that 'all domestic regulation has to be the least restrictive to trade'. Nothing in the GATS stipulates that this should be the criteria for future disciplines under Article VI: 4.



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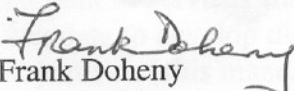
You also express your opposition to the imposition of a 'necessity', or 'proportionality' test to all regulation. We are aware that the concept of necessity has received a lot of public attention, with some justification. However, some of the discussion has greatly exaggerated the influence this would allegedly give to the WTO. The EC has always argued that any future WTO rules in this regard should not be about whether a measure is necessary or not. Our position is rather to determine whether the measure is proportionate to the objective it is designed to achieve. It must be stressed that it would never be the role of the WTO to question the validity of the policy objective as such. This remains for governments, and parliaments, to decide.

In summary, the objective of this work on domestic regulation is not to dismantle or threaten the sovereignty of WTO members in the consideration of national policies. It is rather to improve the transparency of domestic regulations for services, to the benefit of both domestic and foreign services suppliers, and to ensure that domestic measures that affect trade in services are developed and administered in a reasonable, objective and impartial manner, without unduly restricting trade.

Finally, by way of clarification, the 133 Ad-Hoc (Services) Committee is an EU Council and not an EU Commission Committee.

I hope you find the above useful.

By, and on behalf of, the Presidency of the European Union


Frank Doherty

Chairperson

133 Ad-Hoc (Services) Committee