

COMMUNICATION FROM THE UNITED STATES

Energy Services

The attached communication has been received from the delegation of the United States with the request that it be circulated to Members of the Council for Trade in Services.

I. ENERGY SERVICES AND TRADE NEGOTIATIONS: BACKGROUND

1. The United States presents this proposal on negotiation of energy services for consideration by all Members. It is intended to stimulate discussion of this important sector in the world economy.

A. CLASSIFICATION OF ENERGY SERVICES

2. Energy services are those services involved in the exploration, development, extraction, production, generation, transportation, transmission, distribution, marketing, consumption, management, and efficiency of energy, energy products, and fuels.

B. IMPORTANCE OF ENERGY SERVICES

3. Competitive provision of energy services helps ensure that energy consumers have access to efficiently produced, market-priced, reliable energy. The availability of varied sources of energy at competitive prices, including access to supplies transmitted cross-border, contributes to a nation's ability to compete in the world marketplace. Competitive conditions in a nation's energy services markets enhance the competitiveness of domestic energy consumers as well as incentives for foreign investors to invest in both energy services and energy-consuming sectors. They also can benefit residential consumers and social services, as well as employment, through the beneficial impact on energy-dependent services and manufacturing sectors.

C. ENERGY SERVICES IN THE URUGUAY ROUND

4. Previous trade negotiations resulted in relatively few commitments for energy services for several, interrelated reasons:

- At the time of the Uruguay Round, much of the energy industry was characterized by state-owned enterprises operating mostly within home markets as vertically integrated companies with monopoly positions. Most service functions were performed “in-house” by energy companies that controlled the whole production and distribution chain.

- Because most energy services were conducted “in house” by the integrated, or monopoly, energy provider, W/120, which many Members used as a guide for scheduling their Uruguay Round commitments, contained no separate division for energy services. Notwithstanding this, in many cases energy services appear to be included in the general categories of W/120.
- Services negotiators in the Uruguay Round focused primarily on sectors where discrete services were readily identifiable, trade was already significant, business interest in trade liberalization was strong, and consumer benefits were apparent, and so paid little attention to the energy services sector. Changing market conditions have, to a great extent, created a new paradigm for energy services in trade negotiations such that a focus on liberalization in this sector is now appropriate.

D. LEGITIMATE AND CONTINUING ROLE FOR REGULATION OF RESOURCES

5. The U.S. market offers access to service suppliers for a number of energy services. At the same time, we regulate, and will continue to regulate, these and related sectors in the public interest, at the national and subnational levels.

6. For instance, we maintain a number of regulations intended to ensure that energy resources are developed in a manner appropriate for addressing the challenges that this sector faces and consistent with objectives such as environmental protection, conservation of natural resources, and sustainable development. These include regulations requiring the use of technology in order to achieve environmental or conservation goals, or requiring the reporting and disclosure of information regarding environmental effects of sectoral activities.

E. MEASURES RESTRICTING THE PROVISION OF ENERGY SERVICES IN FOREIGN MARKETS

7. In their foreign operations, energy services providers face a variety of barriers that fall within two key categories – limits on market access and national treatment, and restrictive or discriminatory regulations.

- Market access and national treatment restrictions are similar to those faced by many services providers and include lack of a right of establishment, an inability to provide cross-border service, and discriminatory treatment between foreign and domestic service providers, among others.
- Regulatory frameworks can often be opaque, discriminatory, and arbitrary. Without a regulatory network that provides a basis for fair competition, energy services companies are often at a disadvantage to a favoured competitor, as in the case of procurement practices. As in the case of basic telecommunications and financial services, market access and national treatment commitments, while necessary, may not be sufficient to assure liberalization for energy services.
- Energy service providers often face barriers to entering needed personnel and equipment.
- Both market access, national treatment, and regulatory issues must therefore be addressed in the services negotiations. Market access and national treatment commitments may well be meaningless without regulatory reform. At the same time, it does little good for trade liberalization as a practical matter to create a pro-competitive regulatory environment unless market access and national treatment restrictions are eliminated.

II. NEGOTIATING OBJECTIVES: A PROPOSAL FOR ENERGY SERVICES

Introduction: GATS Market Access and National Treatment Disciplines

8. GATS market access and national treatment disciplines are relevant to the energy services sector, just like any other service sector.

- Our interests lie in areas of energy services that are open to private participation. In these areas, we seek commitments to market access, national treatment, and regulatory disciplines that allow competitive access by foreign and domestic service suppliers alike, while maintaining governmental abilities to address non-trade public policy goals as noted above.
- We realize that many countries are in different phases of regulatory development and that, as a result, competition for energy services varies significantly from one country to another. In this context, we understand that varying levels of competition may result in differences as members undertake their commitments in this sector.

Ownership of public resources

9. In a large number of countries, including our own, many natural resources are held in trust for the public. The United States recognizes this, and is not proposing to address issues of ownership of natural resources.

A. Address classification of energy services

10. The Index of energy activities would incorporate all energy services and energy-related service activities provided for within W/120, as well as those energy activities identified as not falling within the GATS. This discussion is ongoing in the Committee on Specific Commitments.

11. Many energy services are classified in W/120 under “Business” services (Division I), which typically includes such unregulated activities as computer and related services and management consulting services.

B. **Negotiate the broadest possible market access and national treatment commitments** for the services subcategories included in the Index of Energy Activities, consistent with the public interest objectives discussed above.

12. Energy services providers should have the opportunity to provide and distribute their services on a non-discriminatory basis through all four modes provided under the GATS.

13. Commitments for energy services should also incorporate a variety of principles aimed at ensuring the greatest possible market opening for energy services, including:

- Technological neutrality. Technology in energy services continues to evolve at a rapid pace. To ensure that energy services providers can use the best available technology, such as in site preparation and development, market access commitments should be made without regard for the technology used to provide energy services, except as noted above.
- Temporary entry of equipment/tools of the trade. Energy services providers often rely on specialized equipment to perform their service. Should negotiations on goods commence, we would strongly urge governments to consider eliminating tariffs on energy related goods. While not fully resolving the issues surrounding the need to temporarily enter equipment and tools of the trade, such an initiative could significantly help facilitate such activities and

would enhance greatly the costs savings and benefits associated with energy services liberalization. We also urge consideration of other means to ensure that energy services providers can enter equipment and tools of the trade that are necessary to provide a service on which a market access commitment is made.

- Temporary entry of business persons and specialists. Energy services companies employ many people with highly specialized skills and should have the right to the temporary entry of essential personnel necessary to provide a covered service.
- Unrestricted movement of electronic information and transactions. Many energy services today rely on electronic information flows and transactions, including geologic data analysis, trading and brokering, and energy efficiency services. Any negotiation should ensure the free movement of these information exchanges and transactions.

C. CONSIDER A REFERENCE PAPER

14. Regulations and technical requirements may create significant impediments to market entry and competition. At the same time, however, regulation of the energy sector is essential to the achievement of public interest goals as discussed above, including the assurance of an open, competitive energy services market.

15. In the negotiations on basic telecommunications, WTO Members recognized the need for specific additional commitments related to a highly regulated sector that was undergoing deregulation and often was characterized by large incumbent suppliers.

16. All of the foregoing considerations pertain to energy services. With these considerations in mind, a similar paper on energy services might be developed that would address, for instance:

- Transparency in the formulation, promulgation and implementation of rules, regulations, and technical standards.
- Non-discriminatory third-party access to and interconnection with energy networks and grids, where they are dominated by government entities or dominant suppliers.
- An independent regulatory system separate from and not accountable to any supplier of energy services.
- Nondiscriminatory, objective and timely procedures for the transportation and transmission of energy.
- Requirements that parties maintain appropriate measures for the purpose of preventing certain anticompetitive practices in these sectors.

Annex A

Index for Classification of Energy Services **Draft - For Discussion Purposes Only**

The purpose of this index is to identify W/120 and corresponding Provisional CPC categories that contain energy services. This exercise does not prejudice the questions of whether all possible energy service activities are listed or which of these activities fall within the scope of the GATS.

Reference to energy source (e.g., oil, natural gas, hydroelectric, geothermal, solar, wind, tidal, wave energy, and coal) in this Index is technology neutral unless otherwise specified.

W/120 Classification	Prov. CPC Provisional CPC Heading Numbers
1.A Professional Services	8612, 8619 Legal advisory and representation services in statutory procedures of quasi-judicial tribunals, boards, etc.; and Other legal advisory and information services.
	8671 Architectural services
	8672 Engineering services
	8673 Integrated engineering services
1.B. Computer and Related Services	84 Computer and Related Services
1.C. Research and Development Services	851 Research and experimental development services on natural sciences and engineering
1.E. Rental and Leasing Services, without Operator	83107, 83109 Rental and leasing services without operators relating to construction machinery and equipment or other machinery and equipment, without operator (note: rental of equipment <i>with</i> operator is classified under construction services, CPC 518).
1.F. Other Business Services	865 Management consulting services
	866 Services related to management consulting
	8676 Technical testing and analysis services
	883 Services incidental to mining
	884, 885 Services incidental to manufacturing

	887	Services incidental to energy distribution
	8675	Related scientific and technical consulting services
	886	Maintenance and repair of equipment
	8790	Other Business Services
3. Construction and Related Engineering Services	511	Pre-erection work at construction sites
	512	Construction work for buildings
	513	Construction work for civil engineering
	515	Special trade construction work
	516	Installation work
	518	Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator
4. Distribution Services	621	Commission agents' services
	622	Wholesale trade services
	632	Non-food retailing services
	6111, 6113,	Sales of motor vehicles, motorcycles and snowmobiles, and related parts and accessories
	6121	
	613 ¹	Retail sales of motor fuel
5. Educational Services	924, 929	Adult education and other education services
6. Environmental Services ²	940	Sewage and refuse disposal, sanitation and other environmental protection services
7.B. Financial Services ²	8112	Financial leasing services
	8113	Other credit granting services
	81199	Intermediation services not elsewhere classified
	8132	Services related to securities markets
	81339	Other services auxiliary to financial intermediation not elsewhere classified
11. Transportation Services including	7112	Freight transportation by railway
	7123	Freight transportation by road
	713	Transport services via pipeline

¹ CPC 613, retail sales of motor fuel, was omitted from W/120.

² The relationship between environmental and financial services and energy activities is still under discussion.