

COLLECTIVE REQUEST FOR MODE 3

1) Introduction

Further to paragraphs 25 through 27 of the Hong Kong Ministerial Declaration, and in accordance with paragraphs 7 and 11 (b) of Annex C of the Hong Kong Ministerial Declaration, the Mission of the European Commission is pleased to present the delegation of [recipient Member] with a collective request in Mode 3 on behalf of the following interested Members: the European Community and its Member States, Hong Kong China, Japan, New Zealand, Switzerland and the USA.

This request identifies specific objectives for commitments in Mode 3, while recognizing the flexibilities provided for individual developing country Members in accordance with Article XIX.2 of the GATS. The aforementioned interested Members are also deemed to be recipients of this request.

In accordance with paragraph 7 of Annex C of the Hong Kong Ministerial Declaration, this collective request is intended to complement, and not supersede, the bilateral request-offer negotiations and the specificity of bilateral requests.

The Mission of the European Commission has the further pleasure to invite [recipient Member] to participate in a plurilateral discussion of this request, which will be organized in Geneva during the Services cluster taking place from 27 March to 7 April, 2006.

Please note that [number] other Members have received this collective request in Mode 3 from the aforementioned group of interested Members, and have also been invited to this plurilateral meeting.

The aforementioned interested Members reserve the right to modify the content of this request in the future. The list of interested Members is also subject to change.

Any comments regarding this request, including written questions of a technical nature in advance of the plurilateral meeting, may be addressed to:

<i>European Commission, Brussels:</i> Ms Zhada BIBI zhada.bibi@cec.eu.int <i>Tél : +32-2-298.68.02</i> <i>Fax : +32-2-299.24.35</i>	<i>Delegation of the European Commission to the international organisations, Geneva:</i> Mrs Nathalie CHAZE nathalie.chaze@cec.eu.int <i>Tél : +41-22-918.22.11</i> <i>Fax : +41-22-734.22.36</i> <i>or Ms. Hene LEHT</i> hene.leht@cec.eu.int <i>Tél : +41-22-918.22.34</i>
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2) Overview

The supply of services through commercial presence plays a key role in building infrastructure for economic activity and facilitating transfer of technology. Investors of exporting Members, by taking advantage of legal certainty for the new market access

opportunities provided by the importing Member, can create new opportunities for accessing stable sources of external financing, generate employment and contribute to the economic growth of the importing Member.

Significant liberalisation has taken place in domestic regulatory regimes relating to commercial presence over the past few decades, resulting in the need for GATS Mode 3 commitments to reflect, at a minimum, this new reality. It is therefore of utmost importance not only that Mode 3 commitments are drafted in a clear, transparent and precise manner and clearly indicate inconsistencies with GATS obligations, but furthermore, are improved on a sector-by-sector basis and that the sectoral Mode 3 commitments are not undermined by particularly trade restrictive Market access or National Treatment limitations inscribed in the horizontal section of Members' schedules.

3) Specific requests

As a complement to sectoral requests, [recipient Member] is requested to remove Mode 3 limitations scheduled in the horizontal section of its schedule with specific regard to the objective below:

The elimination of limitations affecting the establishment and operation of a commercial presence, including:

- Limitations on foreign equity participation
- Economic needs tests
- Limitations on the type of commercial presence (subsidiary, branch, representative office) chosen by foreign services suppliers
- Requirement of joint ventures
- Limitations on foreign exchange and profit repatriation