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RE **General Agreement on Trade in Services (GATS) within the framework of the World Trade Organization (WTO)**  
Contribution towards EU coordination with regard to the forthcoming negotiations on educational services

ENCLOSURE - 1 -

I would like to make the following comments regarding the definition of the German negotiating position:

Since the European Union and its member states are among the most liberalized states, they are interested in achieving at least the same level of obligation on the part of other WTO member states.

Concrete demands based on the categories of the Trade in Services Agreement which are to be met by specific states have resulted neither from an expert hearing of the Bund-Länder Commission for Educational Planning and Research Promotion (BLK) of January 24, 2002 (cf. enclosed statement by the BLK Secretariat) nor from surveys conducted by the University Rectors' Conference (HRK), the German Academic Exchange Service (DAAD), or the German Chambers of Commerce abroad. A survey conducted by the *Berufliche Fortbildungszentren der Bayerischen Wirtschaft*, Nuremberg (bfz), on behalf of the BMBF has produced indications of bureaucratic and legal obstacles. However, it is not possible to specify these obstacles by the time the negotiations begin to the extent that demands directed at other member states could be derived. Should you consider the attempt – perhaps required by the end of the year – to arrive at such a specification to be expedient, I would be grateful to be informed accordingly.

Furthermore, during the negotiations, I would ask you:

1. To ensure clarification of the concept of "a service supplied in the exercise of governmental authority"

2. To ensure agreement that government financing of educational institutions is not prohibited as an anticompetitive subsidy or that such financing results in claims for subsidies by foreign providers
  
3. To ensure that quality assurance of higher education institutions and recognition of the degrees awarded by them continues to be a regulatory responsibility of the member states.

Ad 1. Pursuant to Article I.3(b) of the agreement, "a service supplied in the exercise of governmental authority" is excluded from the application of the agreement. The definition of such a service in Article I.3(c) as "any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers" presupposes the definition of a market in which there is competition. In this connection it seems doubtful whether the existence of individual private schools or higher education institutions with limited space, range of provision and capacity leads to a situation where the services of all public schools and higher education institutions are provided on a competitive basis. In this connection I refer to the working paper of the OECD of November 2001. The paper supports a definition on a not-for-profit basis and quotes the WTO Secretariat, which noted that the new round of negotiations provides a good opportunity to "make it clear that the coexistence of governmental and private services in the same industry does not mean that they are in competition in the sense of Article I.3(c) and therefore does not invalidate the exclusion from the GATS of the public sector".

Ad 2. As regards the financing of educational institutions, I assume that Art. XV of the agreement, being a special provision, excludes any claim by foreign service suppliers within the framework of the treatment of residents under Art. XVII, and I would ask you to ensure clarification on this matter.

In this connection I also ask to be informed and involved early on, when negotiations on the disciplines under Art. XV or the abolition of the reservations made by the European Union and its member states with regard to the horizontal obligations concerning subsidies are forthcoming. For the education sector the possibility reserved by the European Union to confine the right to subsidies by the Community or the member states to legal persons established in the territory of a member state or in a specific part of a member state should be retained.

Ad 3. Article VII of the agreement deals with questions of the recognition of education or experience acquired in a specific country, etc., for the purpose of fulfilment, in whole or in part, of the standards or criteria for authorization, licensing or certification of service suppliers. At the same time it needs to be ensured that quality assurance of higher education institutions and the recognition of the degrees awarded by them remain within the regulatory authority of the member states.

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