Mr. Karel De Gucht
Commissioner for Trade
European Commission
BE-1049 Brussels
Belgium

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24 September 2012

Ref: Open letter: Call for open discussion of impact of WTO rules on EU enhanced financial regulation

Dear Commissioner De Gucht,

The undersigned organisations represent different dimensions of civil society interests within the European Union. In cooperation with our colleagues and counterparts from other parts of the world, we write to you to draw your attention to the potential inconsistencies between WTO's GATS rules on financial services and current as well as future financial reforms underway at the domestic, European and international level with a view to stabilising the financial system, protecting tax payers and providing better protection to consumers of financial services.

We call upon the European Commission, as representative of the European Union at the WTO and initiator of a large number of financial regulation proposals, to support at the upcoming October 2012 Committee on Trade in Financial Services meeting an Ecuadorian proposal to discuss "progress in respect of macro prudential regulation and its relationship with GATS rules". It is critical for all WTO Member States to have full confidence that the policy space to adopt macro prudential rules and financial regulation exists in GATS agreements. Clarity is essential so that there is no chilling effect in countries' financial reforms for fear of being subjected to a WTO Dispute Panel interpreting the meaning of GATS rules. This clarity would also give assurance to those countries who are considering making more commitments in financial services in the ongoing Doha Round negotiations.

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Please find in the annex a more detailed analysis of the need to discuss the policy space provided by GATS rules and commitments, in the context of macro-prudential financial reforms. It would be useful if the European Commission would discuss in a transparent and open way how each of its own financial reform proposals are compatible with GATS rules in the financial services sector, with the best interests of the real economy in mind. Given the fact that many financial reform initiatives are still under discussion or have yet to be proposed, a detailed explanation of the available policy space would provide the necessary assurance for policy makers in the EU and around the world.

Our organisations are happy to discuss further with your services the details of our concerns.

Yours sincerely,

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Managing Director,
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Thierry Philipponnat
Secretary General,
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A copy of this letter has been sent to European Commissioner for Internal Market and Services Michel Barnier

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The impact of WTO rules on enhanced financial regulation: the civil society perspective

The global financial crisis highlighted the need for robust regulation of the financial sector to ensure financial stability and to avoid future crises. However, the rules of the World Trade Organisation's (WTO) General Agreement on Trade in Services (GATS) and related WTO financial services rules could pose obstacles to efforts to enhance regulation underway both on the domestic, European and international level.

The European Commission and global organisations such as the G-20 and IMF have issued proposals for European and international regulatory improvements. In this context, numerous government officials, leading economists, financial experts and trade lawyers are concerned that some WTO rules could undermine signatory countries' financial regulations and limit their policy space for improvements.

These experts note, for instance, that the provisions of the WTO's General Agreement on Trade in Services (GATS) prohibit commonly recommended financial policies, including bans on risky financial services, size limits on banks, 'firewalls' between banking and investment services and capital controls as well as other capital management mechanisms.

The United Nations Commission of Experts on International Financial and Monetary Reforms, chaired by Nobel-prize winning economist Joseph Stiglitz and comprised of a host of distinguished academics, including former finance ministers and central bank heads from around the world, issued this warning in the aftermath of the global financial crisis:

> "Agreements that restrict a country's ability to revise its regulatory regime – including not only domestic prudential but, crucially, capital account regulations – obviously have to be altered, in light of what has been learned about deficiencies in this crisis. In particular, there is concern that existing agreements under the WTO's Financial Services Agreement might, were they enforced, impede countries from revising their regulatory structures in ways that would promote growth, equity, and stability."[1]

The 2011 UNCTAD Trade and Development Report includes similar concerns.

More than 100 countries, including dozens of developing countries, have GATS financial services commitments. Countries that did not schedule exceptions – and now seek to regulate in committed sectors using mechanisms prohibited by GATS rules – could (1) face a WTO challenge, (2) choose not to institute a needed regulatory tool to avoid a threatened challenge, or (3) be required to negotiate compensation terms with affected member states to alter their commitments, which may be unfeasible, especially for developing countries.

In the context of the European Union, we see a risk that the financial regulation programme of the European Commission might face challenges with WTO rules and other international trade agreements and therefore impede Europe's efforts to engage in the necessary steps to respond to the financial crisis and to G20 commitments.

In June 2012, WTO member state Ecuador tabled an important proposal the goal of which is to provide all governments with greater certainty that the WTO rules governing financial services provide sufficient policy space for needed financial regulation and do not deter improved coherence between the WTO and other international bodies promoting financial regulation. Ecuador specifically proposed that WTO members undertake a discussion at the WTO's Committee on Trade in Financial Services (CTFS) about the current scholarship and opinion at the international level with respect to macro-prudential regulation and its relationship to the GATS rules.

This latest initiative comes as a follow up to an effort led by Ecuador in advance of the 2011 WTO Ministerial Conference. Then Ecuador proposed to insert language into the Ministerial Declaration to launch a review of the regulatory implications of the GATS rules relating to financial services. Argentina, Brazil, China, India, South Africa, Turkey and scores of other countries supported this proposal. But it was blocked by the United States, the European Union and Canada. The countries opposed to the review said that it was not necessary because the current WTO rules provide sufficient policy space for countries to maintain or establish robust financial regulation.

Ecuador's proposal is aimed at giving WTO member countries confidence about their regulatory policy space. Ecuador's proposal will be discussed at the next quarterly meeting of the CTFS, which will take place the first week of October 2012.

We cannot afford to wait until the next financial crisis to ensure that countries' WTO commitments do not interfere with financial regulation.

Note:

[1] Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System, 21 September 2009

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