EXPLANATORY MEMORANDUM TO

THE EUROPEAN COMMUNITIES (DEFINITION OF TREATIES) (AGREEMENTS CONCLUDED UNDER ARTICLE XXI GATS) ORDER 2009

2009 No. 220

1. This explanatory memorandum has been prepared by the Department for Business, Enterprise and Regulatory Reform and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

2.1 The instrument is intended to give effect under domestic law to a series of agreements reached in the World Trade Organisation (WTO). These agreements follow the expansion of the EC to 25 Member States and will allow the enlarged EC to present a consolidated schedule of trade in services commitments at EC-25 level under the WTO's General Agreement on Trade in Services (GATS). The agreements include the withdrawal of some commitments on the part of the new Member States and compensatory adjustments in the form of commitments offered in exchange, some offered by individual Member States, others offered by the EC as a whole.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Legislative Context

4.1 It is proposed that this Order should be made under Section 1(3) of the European Communities Act 1972. This provides that Treaties entered into by the United Kingdom after 22 January 1972 shall not be regarded as Community Treaties as defined in the Act unless they are specified as such in an Order in Council. Section 1(3) of the Act, further provides that no Treaty shall be so specified unless a draft of the Order in Council has been approved by Resolution of each House of Parliament.

4.2 The Order is intended to give effect under domestic law to these agreements on the grounds that they are "mixed competence" agreements which are binding on Member States under Article 300(7) EC and to which the UK must give effect.

4.3 The agreements have been published in full in a Command paper (Cm 7430).

4.4 Procedurally, the Commission has already presented a proposal for a Decision by the Council and the Representatives of the Governments of the Member States which, when adopted, will complete the decision-making process for the conclusion and ratification of these agreements on behalf of the Community and Member States.

The proposed Decision has been the basis for an Explanatory Memorandum (number 8121/07) to the relevant Parliamentary Scrutiny Committees.

4.5 The Decision will be adopted by the Council and the Representatives of Governments of the Member States only once all Member States' parliamentary procedures for ratification of the agreements are complete.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

The Minister for Trade, Investment and Consumer Affairs has made the following statement regarding Human Rights:

In my view the provisions of the European Communities (Definition of Treaties) (Agreements concluded under Article XXI GATS) Order 2009 are compatible with the Convention rights.

7. Policy background

- ***What is being done and why***

7.1 The agreements covered by this Order represent the outcome of negotiations undertaken by the European Commission (acting on behalf of the European Communities and their Member States) with seventeen other Members of the World Trade Organisation (WTO).

7.2 All Members of the WTO maintain schedules of commitments on trade in services under the WTO General Agreement on Trade in Services (the GATS). These binding commitments guarantee a level of market access and national treatment for service providers from other WTO Members in services sectors covered by Members' schedules.

7.3 WTO Members may only vary or remove their scheduled commitments under the GATS pursuant to the process set out in Article XXI GATS. This requires the Member proposing to alter its commitments to consult with other WTO Members who consider themselves adversely affected by such changes with a view to agreeing compensation (in the form of other commitments in other services sectors).

7.4 In order to bring the GATS commitments of the new Member States of the EU (under the enlargements to EC-15 and then to EC-25) into line with the EU's existing commitments, some commitments already entered into by the new Member States in their existing schedules had to be removed.

7.5 The agreements covered by this Order are the outcome of Article XXI negotiations undertaken by the Commission on behalf of the Community and all the Member States with a view to agreeing the compensatory commitments offered by the

Community and its Member States to WTO Members affected by the proposed changes to the new Member States' scheduled commitments.

7.6 In each case, the agreement comprises (i) a joint letter outlining the negotiating process and listing the documents which have been exchanged and (ii) a substantive list of commitments withdrawn by the new Member States and commitments offered by the EC and its Member States (except for Bulgaria and Romania which were not covered in these negotiations). The content of the agreements will be incorporated into a new revised and consolidated EU schedule of commitments under the GATS which will be deposited by the EU with the WTO Secretariat. The commitments undertaken will be applied on a Most Favoured Nation (MFN) basis by the EU to all other WTO Members.

7.7 Ministers share the view of the Commission that this represents a balanced outcome to the negotiations. The agreements will allow the consolidation of a schedule of commitments covering the EC-25, including a limited number of new commitments from the UK.

7.8 The UK has agreed that – (i) in line with current legislation, no area of the telecommunications services or computer and related services sectors covered by our commitments are reserved to the public sector, (ii) we should bring forward from our current GATS offer in the Doha Round the sectoral offer in telecommunications services – which expands and re-classifies the sectors covered and (iii) we should also bring forward from our current GATS offer in the Doha Round the removal of an Economic Needs Test (ENT) in one sub-sector (integrated engineering services) of the temporary movement of highly skilled services professionals.

7.9 As a point of general trade policy, the UK has supported the Commission's view that the EC should conclude a substantive package of compensation in this case in order to demonstrate that where WTO Members withdraw trade in services commitments previously entered into, those Members ought to offer genuine compensation in the form of other trade in services commitments and that WTO commitments cannot therefore be withdrawn lightly.

7.10 Seventeen other WTO Members claimed to be adversely affected by the commitments withdrawn. There are therefore seventeen agreements. The substance of each agreement – commitments withdrawn and compensation offered by the Community and all its Member States – is identical. The agreements include provisions relating to commitments in service sectors falling under to Community competence and to sectors reserved Member State competence. Accordingly, the agreements are "mixed competence" agreements requiring ratification both by the European Community and its Member States.

- ***Consolidation***

7.2 Not applicable.

8. Consultation outcome

8.1 The agreements will not lead to any new regulatory measures. Consultation was therefore limited to consultation of the relevant Government Departments during the negotiations.

9. Guidance

9.1 The agreements will not lead to any new regulatory measures. There is therefore no need for new guidance.

10. Impact

10.1 The agreements will not lead to any new regulatory measures, so there is no impact on business, charities or voluntary bodies.

10.2 For the same reason, there is no impact on the public sector.

10.3 An Impact Assessment has therefore not been prepared for this instrument.

11. Regulating small business

11.1 The agreements will not lead to any new regulatory measures and there is therefore no impact on small business.

12. Monitoring & review

12.1 The agreements are international treaties which will lead to a consolidated schedule of EC commitments at the EC-25 level in the GATS. Any further review would result only from further negotiations in the WTO.

13. Contact

Andrew Dey at the Department for Business, Enterprise and Regulatory Reform, telephone 020 7215 5590 or email andrew.dey@berr.gsi.gov.uk can answer any queries regarding the instrument.