

ESF07/17

Mr. João Aguiar Machado  
Director  
Services & Investment, Bilateral Trade Negotiations  
DG Trade  
European Commission  
170, rue de la Loi  
B - 1049 – Brussels

Brussels, 5 June 2007

**Subject: DG Trade Questionnaire on Free Trade Agreements**

Dear Mr. Aguiar Machado,

Thank you for your letter dated March 13 requesting ESF's input to a questionnaire on the EU's new negotiations for free trade agreements. Our response is attached in separate documents for the different negotiations (enclosures 1-4). ESF's members will also respond to you directly.

ESF's comments largely draw from our assessments of the FTA partner countries' offers in the WTO context but also draw on members' information about the situation on the ground. In addition ESF is working closely with European business organizations in these countries, such as the EU Korea Chamber of Commerce.

The comments only address the questions on trade in services and investment as this is the area of ESF's interest and expertise. ESF has, however, encouraged its members to provide you with input in relation to regulatory issues that affect trade in their sectors. ESF urges you to consider the suggestions it has made in relation to the negotiations on domestic regulation in the WTO context in your approach to these matters under the FTAs (enclosure 5).

We hope our contribution will prove helpful in your conduct of these negotiations and will be in regular contact with your services to support their work.

Yours sincerely,



Pascal Kerneis  
Managing Director  
ESF

Cc: Mr. Ignacio García Bercero, Director, DG Trade – C, European Commission  
Mr. Pierre Amhilat, Director, DG Trade – G, European Commission  
Mr. Petros Sourmelis, Head of Unit, DG Trade – B1, European Commission  
Mr. Peter Klein, Head of Unit, DG Trade – G2, European Commission

## **ESF RESPONSES TO DG TRADE QUESTIONNAIRE ON FTAs**

The comments only address the questions on trade in services and investment as this is the area of ESF's interest and expertise

### **Korea**

#### **a) What are the main barriers that your sector encounters in cross-border services trade with these countries?**

Auditing by M2 is unbound and is not allowed in national law. This should be removed.

The FTA must improve on the situation at WTO level. Commitments for modes 1 & 2 (M1 & M2) must be broadened for accounting, auditing and bookkeeping services (M2 unbound); taxation (M1 & M2 unbound for reconciliation and representative services); architectural (M1 commercial presence requirement); computer & related services (not at two digit level); real estate (no commitments, offer maintains M1 unbound); courier (M1 restricted to air & sea transport); postal (Korea Postal Authority services excluded); distribution (M1 MA limited for pharmaceuticals; medical goods & others); insurance (M1 & M2 largely unbound for direct insurance, brokerage and auxiliary); banking and securities (M1 & M2 totally unbound).

#### **b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries**

Legal services: Current practice does not allow the establishment of foreign lawyers in Korea. Full liberalisation should be the goal of the FTA negotiations.

Accounting, Auditing and Bookkeeping/Taxation: The requirement that only Korean qualified accountant/tax accountants can set up practices/companies effectively bars foreign ownership of firms.

Computer & Related Services: FTA commitments should be at two-digit level.

Rental and Leasing Services: 50% equity cap for air transport equipment.

Courier: Access limited to land based operations in support of international courier operations. Requirement for a worldwide network of 50+ countries.

Telecommunications: 49% foreign equity cap. This has been raised to 100% in the US negotiations. Licensing procedures included excessive compliance requirements.

Distribution: WTO restrictions on pharmaceuticals, medical devices, fuel and used autos as well as economic needs tests should be removed. Greater clarity should be sought on the criteria for establishment outlined in Korea's revised WTO offer. Transparency is needed in process for granting store permits and land buying is restricted. Economic needs tests and labelling also present problems.

Insurance:

- restrictions on juridical form for life, non-life reinsurance;
- nationality and residence restrictions on personnel and company officers also in brokering;
- regulatory process is non-transparent; delegation of regulation to voluntary groups is problematic;
- unfair ranking system for insurance companies by regulator;

- product and pricing interference by regulators;
- cross-selling of insurance products regulation;
- strict restrictions on bancassurance;
- restrictions on data sharing should be removed as long as customer privacy is respected; restrictions on validating electronic certification;
- restrictions on asset management outsourcing;
- quasi-insurers do not have to abide by same regulations as real insurance companies;
- agent unionization legislation will cause major extra burden for the insurance companies; commission system is not based on assets under management.

#### Banking:

- form of establishment is restricted to branches
- screening procedures for new branches, ATMs, business licences etc;
- discriminatory regulations: prudential ratios, mandatory lending to SMEs, credit card rate limits, and deposits for specific purpose (i.e. housing);
- restrictions on scope: barriers to firms operating in more than one financial services subsector;
- nationality and residence restrictions;
- Lack of regulatory transparency, non-use of internationally recognised approaches, positive list regulatory system;
- restrictions on foreign exchange and on foreign banks giving bonds in local currency;
- outsourcing and data processing restrictions.

#### Securities:

- financial market supervision and enforcement not on a level playing field;
- licensing process is needs improvement;
- inspection and supervision of foreign financial companies should move towards international best practices

Transport: Requirement to incorporate in Korea to for cargo handling at ports; port regulations not available in English; airport services licensing system inefficient and overly burdensome.

**c) What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries?**

At WTO level Korea's offer on mode 4 does leaves NT for Contractual Service Suppliers (CSS) Unbound. Korea has not addressed high tax rates faced by temporary workers whose work visas grant them permanent establishment status. In the Computer & Related Services specifically, hiring junior specialists from EU should be made easier, especially when special language skills are needed.

**d) Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

- e) **Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

Transparency in regulatory and licensing systems in Korea is a major issue and will have to be expanded to ensure that EU companies can benefit fully from the free trade agreement. ESF's proposals on domestic regulation should serve as the template for the agreement.

## India

**a) What are the main barriers that your sector encounters in cross-border services trade with these countries? (GATS modes 1 & 2)**

The FTA must dramatically improve on the situation at WTO level. India has **no offer and no commitments in any of the modes** for legal services, auditing services, taxation services and postal and courier services.

Commitments for modes 1 & 2 (M1 & M2) must be broadened in research and development services (unbound for M1 & M2 research in most economic sectors); rental/ leasing services (unbound M1 & M2 for a number of sectors); telecommunications (M1 unbound for all sectors except data & messaging); insurance (M1 & M2 almost totally unbound, except for auxiliary services); banking (M1 & M2 unbound); securities (M1 & M2 unbound); and maritime transport services.

**b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries**

No offer and no commitments at WTO level: as above. This must be rectified in the FTA.

Inadequate WTO commitments: Requirements for FIPB approval should be reduced and process streamlined; accounting auditing and bookkeeping (M3 unbound); architecture, engineering, integrated engineering and urban planning and landscaping services (juridical form restriction, FIPB approval); computer and related services (juridical form restriction); R&D services (juridical form restriction, FIPB approval); real estate, rental & leasing (FIPB approval); other business services (FIPB approval); telecommunications (49% equity cap in several subsectors, FIPB approval, juridical form restrictions, licencing questions); construction (FIPB approval); distribution (no retail commitments); environmental (FIPB approval); insurance (26% equity cap, FIPB approval); banking (numerical restriction on licences, licence requirements for ATMs; equity cap of 49%); securities (FIPB approval, equity caps as low as 26%); tourism & travel agents (FIPB approval); maritime services (juridical form restrictions, FIPB approval).

In certain sectors current practice goes further than WTO commitments (e.g. in banking a process is in place to move to a 74% equity cap). In others, such as express delivery, draft legislation threatens existing market access.

**c) What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries?**

India has a good offer on mode 4 in the Doha Round negotiations, which should be tied down in the FTA negotiations. More sectors should be added however, including legal services.

**d) Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

- e) **Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

India should support transparent regulations and apply clear criteria in licensing procedures for national and foreign service providers.

**ESF provided responses only for ASEAN countries where priorities have been identified.**

### **ASEAN: Indonesia**

**a) What are the main barriers that your sector encounters in cross-border services trade with these countries?**

The FTA must dramatically improve on the situation at WTO level. Indonesia has **no offer and no commitments in any of the modes** for: accounting, auditing and bookkeeping services; taxation; specialised engineering services; real estate; rental and leasing services without operators; most other business services including advertising; postal and courier services; distribution services; environmental services; and all transport sectors besides maritime.

Commitments for modes 1 & 2 (M1 & M2) must be broadened for architectural, engineering and urban planning services (M1 mostly unbound, M2 mostly unbound for national treatment (NT)); computer & related services (M1 & M2 unbound for government funded projects for market access (MA) and for all NT); research and development services (very weak offer); other business services such as project management and technical testing (M1 & M2 unbound for government projects in MA and all of NT-); telecommunications services (M1 & M2 unbound NT for local, long distance, international, data, mobile, internet, paging voicemail and payphones; MA limitation for international and internet access); construction (unbound for M2 NT); insurance (M1 unbound for life & non-life, several sub-sectors M2 NT unbound); securities (M1 unbound); maritime services (M1 requirement for Indonesian “general agent”); energy (M1 & M2 largely unbound).

**b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries**

No offer and no commitments at WTO level: as above. This must be rectified in the FTA.

Inadequate WTO commitments: Horizontal equity cap of 49% and 20% withholding tax. In sectors: legal (unbound); architectural, engineering and urban planning (joint venture (JV) or joint operation (JO)); computer and related (JO through representative office); R & D (most excluded; JO for interdisciplinary R&D); other business services (JO where committed); telecommunications (numerical restrictions, JO/JV restrictions, equity caps, capital requirements); construction (progress in WTO offer on 49% cap, but coverage limited); banking (new licences unbound, current offer would move to 51% ownership from 49%); tourism (capital requirements, numerical limits); maritime (owner’s representatives limitation; should follow model schedule) and energy (JO through representative office).

In some cases current practice goes beyond WTO commitments. This is the case notably in the financial services sectors where foreign equity caps have been allowed for up to 99% ownership in banking and up to 80% in insurance. However, while current legislation affecting express delivery services allows for full foreign ownership, draft new postal legislation would states that local ownership must be higher than foreign ownership. Neither do foreign investors receive national treatment in terms of documentation requirements in areas such as distribution services.

- c) **What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries?**

In the horizontal section of Indonesia's offer the commitments relating to intra-corporate transferees are weak, requiring an economic needs test. Non-committed sectors are as in question a). Sectoral problems arise in legal services in particular (limitations on percentage of foreign employees).

- d) **Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

- e) **Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

Companies face barriers in terms of general procedures and sometimes customs procedures that are burdensome, long, expensive and often very non-transparent.

## ASEAN: Malaysia

- a) What are the main barriers that your sector encounters in cross-border services trade with these countries? (GATS modes 1 & 2)**

The FTA must dramatically improve on the situation at WTO level. Malaysia has **no offer and no commitments in any of the modes** for the key sectors of postal and courier services, distribution services and environmental services

Commitments for modes 1 & 2 (M1 & M2) must be broadened in computer & related services (need commitments at two digit level); advertising services (commercial presence required for M1 market access (MA), national treatment (NT) unbound); banking (M1 & M2 unbound for certain sub-sectors, others strictly regulated); direct insurance (approval process required); securities (approval processes, commercial presence requirements).

- b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries? (GATS mode 3)**

No offer and no commitments at WTO level: as above. This must be rectified in the FTA.

Inadequate WTO commitments: legal services (restrictions on subject matter, geographical limitations); accounting, auditing and bookkeeping (30% equity cap); taxation (30% equity cap); architecture, engineering, urban planning (10% equity cap, JV requirement); computer and related services (need commitments at two digit level); other business services (joint venture requirement, 30% equity cap); telecommunications (30/49% equity caps); construction (JV & 30% cap for establishment, non-established companies limited access); banking (30% cap, NT restrictions); securities (apart from Labuan region, 30% cap & JV); tourism (30% cap, JV); maritime services (30% cap; JV).

In a number of individual cases the 30% cap has been exceeded (e.g. cap is 49% for investment banks) but companies need greater certainty. [Branching for banking is extremely restricted.](#)

- c) What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries? (GATS mode 4)**

Malaysia has a limited offer on mode 4 in the Doha Round negotiations, which should be expanded to allow greater flexibility.

- d) Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

- e) Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

- Lack of transparency of laws and regulations, and the way they are implemented;
- Confusing approvals procedures for licensing and other authorisation processes, with different and sometimes contradictory layers of government (federal, state level, local level). Policy is fixed at federal and state level, but implementation is run at local level, where one can sometimes wait 6 months to receive a letter of acknowledgement which would allow the beginning of commercial operations);
- Lack of a level playing field resulting in privileged access for “top level investors”, i.e. strong presence of corruption.

## ASEAN: Thailand

- a) What are the main barriers that your sector encounters in cross-border services trade with these countries? (GATS modes 1 & 2)**

The FTA must dramatically improve on the situation at WTO level. Thailand has **no offer and no commitments in any of the modes** for taxation services, integrated engineering services; research and development services; real estate services and postal and courier; services.

Thailand's revised WTO offer systematically avoids commitments in mode 1 throughout. In sectors where this is not the case, such as telecommunications, strict restrictions are in place there is limited coverage. This cannot persist under an FTA. Mode 2 is largely open but coverage should be broadened in computer & related services (need commitments at two digit level); telecommunications (requirement for use of a gateway in Thailand to provide basic services; limited sectoral coverage), services auxiliary to insurance (unbound).

- b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries? (GATS mode 3)**

No offer and no commitments at WTO level: as above. This must be rectified in the FTA.

Inadequate WTO commitments: Horizontal equity cap of 49% remains; telecommunications (20%=40% equity caps, limited coverage); construction (key subsectors excluded) distribution (no commitments in retail & wholesale); insurance (25% equity cap); banking (branching restrictions, 25% equity cap); securities (49% cap); tourism & travel agency (certain sub-sectors excluded).

In some sectors current practice goes beyond WTO commitments (e.g. equity cap in banking has been lifted) ESF has considerable concerns about the attitude to foreign investment shown by the current government. In express delivery services there is a 49% equity cap.

- c) What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries? (GATS mode 4)**

Malaysia has a limited offer on mode 4 in the Doha Round negotiations, which should be expanded to allow greater flexibility.

- d) Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

- e) Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

Transparency in regulatory processes and licensing procedures must be improved.

## ASEAN: The Philippines

**a) What are the main barriers that your sector encounters in cross-border services trade with these countries? (GATS modes 1 & 2)**

The Philippines will need to make a serious improvement on its commitments and offer in the WTO context in any FTA. For example, it is glaring that the Philippines has **no offer and no commitments in any of the modes** in any sub-sectors under professional services or in other business services aside from computer and related services, especially given its increasing importance in the business process outsourcing market. The Philippines further has no offer or commitments in postal services.

Commitments must be broadened for the following sub-sectors: computer & related services (limited sub-sectoral coverage); courier services (classification unclear postal v. courier; mode 1 (M1) commercial presence requirement); telecommunications services (basic telecommunications unbound for M1 & M2, limited coverage of value-added, M1 commercial presence requirement); distribution services (wholesale, retail & franchising excluded; M1 commercial presence requirement for Commission agents); environmental services (very limited sub-sectoral coverage); banking and securities (M1 commercial presence requirement for all sectors except for financial advisory services); insurance (M1 & 2 largely restricted to companies authorized before 1994; strict limitations on reinsurance); tourism (limited sub-sectoral coverage); transport (M2 restriction on marine maintenance & repair); energy (no commitments for energy trading).

**b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries? (GATS mode 3)**

No offer and no commitments at WTO level: as above. This must be addressed in the FTA.

Inadequate WTO commitments: computer & related services (limited sub-sectoral coverage; paid-up capital requirements); communications (horizontal 40% equity cap for public utilities, classification in courier, burdensome entry requirements in telecom, limited adoption of the Reference Paper); construction (extremely limited sub-sectoral coverage; equity caps); distribution (no coverage of retail; wholesale or franchising; limitations in commission agents services); environmental services (very limited sub-sectoral coverage; geographical limitations; 40% equity cap); financial (horizontal economic needs tests; non-conventional classification; *banking incl. some securities sub-sectors* – 70% minimum for total bank assets held by Philippines citizens, no new licences, branching restrictions, capital requirements, equity caps, board of directors restrictions, authorization requirements for key activities; *securities* – juridical form restrictions, equity cap, board of directors restriction, authorization requirements; *insurance* - equity caps, board of directors requirements); tourism (limited sub-sectoral coverage); maritime (equity caps for public utilities; no government owned cargo on foreign flag vessels); energy (licensing requirements, equity caps, capital requirements).

ESF is aware of a number of cases where current practice goes beyond WTO commitments, such as the seven year window expiring in June 2007 that allows 100% ownership in banking. However, foreign ownership of more than 30% of bank assets is not permitted.

**c) What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries? (GATS mode 4)**

The Philippines must loosen its approach to mode 4 in the context of the FTA. The horizontal condition that foreigners can only provide services when no Philippines citizen can be found is very problematic and applies across most sectors. Specific sectoral restrictions apply in basic telecoms (M4 unbound); commission agent's services (minimum investment requirement, export criteria); environmental services (strict conditions including reciprocity requirement, insurance (technical positions only); specialty restaurants (numerical limitations); maritime (supernumeraries limited to 6 months); energy (unbound or with strict restrictions including reciprocity).

**d) Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

**e) Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

Transparency in regulatory processes and licensing procedures must be improved.

### **ASEAN: Singapore**

**a) What are the main barriers that your sector encounters in cross-border services trade with these countries? (GATS modes 1 & 2 (M1 &2))**

Singapore has a quality schedule of commitments at WTO level but there are areas that an FTA could improve. For example, Vietnam has **no offer and no commitments in any of the modes** for legal services, integrated engineering services, advertising services, postal and news agency services.

Commitments could be broadened for the following sub-sectors: accounting auditing and bookkeeping (M1 residency requirements, limited sub-sectoral coverage); taxation services (M1 residency requirement in CPC 86309); computer & related services (limited sub-sectoral coverage, commitments equivalent to two-digit level needed); real estate services (limited sub-sectoral coverage, geographical limitations); rental & leasing services (limited sub-sectoral coverage); courier services (M1 unbound); telecommunications (numerical restrictions); distribution services (limited sub-sectoral commitments – retail excluded); environmental services (limited sub-sectoral services); insurance (M1 unbound in direct insurance, restriction on M2 provision of some compulsory non-life, M1 unbound & M2 restrictions on intermediation); banking (M1 MA unbound in deposits lending and payment; M1 unbound for broking, most clearing & settlement, restrictions on information transfer); securities (M1 MA unbound for trading, most of issuing, M1 unbound for asset management, commercial presence required for M1 advisory); maritime auxiliary services (limited sub-sectoral coverage, EU operators must receive at a minimum treatment guaranteed in Singapore's other bilateral shipping agreements).

**b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries? (GATS mode 3)**

No offer and no commitments at WTO level: as above. This should be rectified in the FTA.

Inadequate WTO commitments: Horizontal M3 national treatment (NT) restrictions on citizenship, residency and employment passes for managers/directors of foreign firms. Elsewhere: architecture (residence requirement for directors); engineering (limited sub-sectoral coverage, residence requirement for directors); computer & related services (limited sub-sectoral coverage, commitments equivalent to two-digit level needed); real estate (limited sub-sectoral coverage, geographical limitations); courier services (M3 unbound); telecommunications (numerical restrictions, equity cap); distribution (limited sub-sectoral commitments – retail excluded); environmental services (limited sub-sectoral services); insurance (49% equity cap & licensing unbound in direct insurance, juridical form restrictions for reinsurance and intermediation); banking (no new banks or finance companies allowed, equity caps, currency restrictions, clearing & settlement effectively closed); securities (juridical form restriction for futures, restrictions on derivatives, minimum value to provide issuing services); tour operators & travel agencies (juridical form restriction); maritime auxiliary services (limited sub-sectoral coverage, EU operators must receive at a minimum treatment guaranteed in Singapore's other bilateral shipping agreements).

In practice Singapore has no barriers to express delivery services.

- c) **What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries? (GATS mode 4)**

Singapore's commitments in the WTO are very limited and do not cover contractual service suppliers or business visitors. National treatment is completely unbound in most sectors. In practice the requirements for temporary entry are as burdensome as those for permanent entry. Intra-corporate transferee regulations should also be liberalised.

- d) **Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

- e) **Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

Transparency in regulatory processes and licensing procedures must be improved.

## ASEAN: Vietnam

**a) What are the main barriers that your sector encounters in cross-border services trade with these countries? (GATS modes 1 & 2)**

Vietnam has a quality schedule of commitments at WTO level but there are areas that an FTA could improve. For example, Vietnam has **no offer and no commitments in any of the modes** for real estate services, some areas of other business services, sanitation services; postal services or tour guides services.

Commitments could be broadened for the following sub-sectors: urban planning and technical testing and analysis (mode 1 (M1) national treatment limitations); computer & related services (two digit level commitments should not be difficult for Vietnam); telecommunications (mode 1 very limited, only through arrangement with Vietnamese operators); distribution (M1 limitation on products only for personal use); environmental services (M1 largely unbound), insurance (M1 limited for e.g. life insurance); banking (M1 unbound for most sub-sectors); securities (M1 unbound for most sub-sectors); entertainment & electronic games (M1 unbound) and maritime transport (M1 unbound except for international freight).

**b) What are the main barriers that your sector encounters in establishing a commercial presence in the primary, secondary or tertiary sector in these countries? (GATS mode 3)**

No offer and no commitments at WTO level: as above. This should be rectified in the FTA.

Inadequate WTO commitments: courier services (five year phase in for 100% ownership, definition of reserved area very broad); telecommunications (equity limits of 49% for facilities based services; 65% for non-facilities based after phase in); distribution (temporary limits on products permitted to be sold, outlets after first outlet on ENT basis); environmental services (temporary 51% cap, restriction on domestic refuse collection); insurance (life insurance branching not permitted); banking (phase in for full ownership; restrictions on purchase of Vietnamese banks, ATMs prohibited); securities (5 year phase-in for full ownership; branching restricted to a number of sub-sectors); tourism (8 year restriction that services only to be provided on the basis of investment in hotel construction; travel agencies – JV obligatory; ) entertainment & electronic games (5-years unbound then 49% equity cap); maritime (under other forms – transitional 51% cap; restriction on types of services provided; transitional numerical restriction; under auxiliary – 50-51% caps.).

**c) What are the main barriers that your sector encounters with regard to the temporary movement of natural persons for business purposes in the primary, secondary or tertiary sector in these countries? (GATS mode 4)**

Vietnam's commitments in the WTO are acceptable but definitions do not conform to standard approach and independent professionals are excluded.

**d) Do you observe any self-imposed constraints relating to environmental and social aspects of sustainable development, in the context of investment or services trade, which it would be to your advantage to see generalised or codified in these countries? And if so, which?**

Many companies apply the OECD guidelines on multinational enterprises. This question is best answered however on a sectoral or company-specific basis.

- e) **Do you encounter problems due to lack of transparency e.g. lack of publication of legislation or other documents relevant for your trade behaviour? Please also refer to the detailed questions under section C) below regarding transparency.**

Transparency in regulatory processes and licensing procedures must be improved.