



Mr. Pascal Lamy
Member of the European Commission
Trade Commissioner
Rue de la Loi, 170
B – 1049 – Brussels

Brussels, 23 November 1999

Subject : ESF Preliminary Views on “Trade and Investment”

Dear Mr Lamy,

First of all, I would like to thank you, on behalf of Andrew Buxton, Chairman of ESF for having received the European Services Leaders Group’s delegation on 8th November and also for accepting a representative of ESF in the Commission’s delegation in Seattle.

As announced at the above-mentioned meeting, the European Services Forum has now adopted its preliminary views on “Trade and Investment”. Given that Investment has become an essential element of international trade and especially of trade in services and that all countries - developed and developing - have an inherent self-interest in enhancing investment flows, the European services industry calls on WTO members to make further market access and national treatment commitments for investment during the next GATS negotiations.

ESF urges WTO members to decide in Seattle, at the Third WTO Ministerial Conference, to open negotiations on the establishment of a multilateral framework of rules governing international investment, with the objective of securing a stable and predictable climate for investment worldwide. To this end, negotiators should study in depth the possible main disciplines for a multilateral investment agreement, by taking into account the contents of existing bilateral investment treaties with the view to identifying the rules which are most widely accepted and which would contribute to the sustainable development in all WTO members.

ESF recommends that a balance should be found between the need for liberal market access for foreign investment within a stable and predictable legal framework and the needs for sustainable development and the preservation of the right to regulate on behalf of the developing countries. This would amount to a « win-win » situation for all WTO members, which is the aim of a successful new World Trade Round.

The list of ESN Members supporting these Preliminary views is attached.

Yours sincerely,

Pascal Kerneis
Managing Director

Cc: H.D. Beseler, Director General, DGTrade; M. P. Carl, Deputy Director General, DGTrade; R. Madelin, Director, DGTrade/M

The European Services Network comprises 52 major European service companies, represented by their CEOs in the European Service Leaders Group and 35 European service federations, representing 22 services sectors. It represents the very large majority of the European service industries that have a direct interest in supplying international services.

**ESF PRELIMINARY VIEWS ON
TRADE AND INVESTMENT**

5th November 1999

Introduction

- ◇ Investment has become an essential element of international trade and especially of trade in services.
- ◇ All countries - developed and developing - have an inherent self-interest in enhancing investment flows. Investment related in-flows of funds have a positive effect on the host country's balance of payments, and on its growth and employment prospects both in the short term and in the longer period.
- ◇ International trade in services between providers and users of different countries may not only take place in the form of an exchange of services as such, but often need investment transactions in support of the provision of those specific services. International investment of manufacturers also requires liberal access of many services providers. While access to markets increasingly involves investment in some form, many companies now provide both goods and services and would not therefore be adequately covered by GATS provisions alone.
- ◇ For the purposes of this paper, investment is understood to include (foreign) direct investment characterised by a longer-term investment horizon with the aim of acquiring a lasting interest in an enterprise operating in another country (the host country), the purpose of which is to give the investor an effective voice in the management of the enterprise or a substantial interest in its business. This may be done through the establishment of an entirely new undertaking or through the purchase of, or participation in, an existing one.
- ◇ Capital movements that are mere financial transactions for (short-term) purposes or loans not directly related to an investment fall outside the scope of this paper.

Calls for liberalisation and a stable and predictable legal framework

- ◇ To liberalise international trade in services it is necessary to remove progressively all kinds of obstacles, which have a detrimental effect on free trade. This includes, inter alia, restrictive or discriminatory measures affecting investment from abroad.
- ◇ The obstacles may be related to issues of market access for investment as well as to protecting foreign investment once market access has been gained. Both aspects are presently dealt with by a fragmented collection of some 1.600 bilateral investment treaties, regional arrangements and limited multilateral instruments (e.g. the TRIMS).
- ◇ As the new World Trade Round will address further liberalisation of trade, trade related investments need to be included and it would be appropriate to take stock of all existing rules and practices affecting foreign investment in WTO member countries, irrespective of the country in which these rules exist (home or host country of the foreign investment).
- ◇ European services business believe that appropriate multilateral provisions on foreign investment will be in the interest of all WTO members irrespective of their stage of development, because these provisions could contribute to a stable, transparent and predictable situation in all markets.

¹ The European Services Network comprises 52 major European service companies, represented by their CEOs in the European Service Leaders Group and 35 European service federations, representing 22 services sectors. It represents the very large majority of the European service industries that have a direct interest in supplying international services.

WTO as the suitable forum

- ◇ The WTO appears as the only suitable multilateral forum that can take into account the interests of both developed and developing countries in their position as home and/or host countries to international investors. The WTO also has the undeniable advantage of a well-established institutional framework (incl. a dispute settlement understanding) and tried and tested basic non-discrimination principles.
- a) The GATS already covers many barriers to investment. The MFN obligation covers all services investors, whether or not sectoral commitments have been made. Where a WTO member has granted market access commitments in mode 1 (cross-border supply) and in mode 3 (commercial presence), Article XVI (footnote 8) of the GATS sets out a rule, which requires that country to allow the necessary supporting investment.
- b) At present, however, there are no provisions dealing with investment protection. The new World Trade Round presents an opportunity to open negotiations on a multilateral agreement on investment concerning both manufacturing and services. This multilateral agreement should progressively lead to commonly agreed liberal access of investment to foreign markets, full transparency of the national rules governing foreign investment and unrestricted protection of investments.

Multilateral investment rules should, however, not preclude the ability of host countries to regulate the exercise of any economic activity including services on their territory. But such domestic regulation should be made in a transparent and non-discriminatory way and in full respect of the MFN and national treatment principles.

Multilateral investment rules of this nature will undoubtedly contribute to the concept of sustainable development. Indeed, developing countries that adhere to such rules will benefit from attracting increased investment flows within a secure and stable environment.

Preliminary ESN Recommendations

In the light of the above, the European services industry:

- ◇ calls on WTO members to make further market access and national treatment commitments for investment during the next GATS negotiations ;
- ◇ urges WTO members to decide in Seattle, at the Third WTO Ministerial Conference, to open negotiations on the establishment of a multilateral framework of rules governing international investment, with the objective of securing a stable and predictable climate for investment worldwide. To this end, negotiators should study in depth the possible main disciplines for a multilateral investment agreement, by taking into account the contents of existing bilateral investment treaties with the view to identifying the rules which are most widely accepted and which would contribute to the sustainable development in all WTO members;
- ◇ recommends that a balance should be found between the need for liberal market access for foreign investment within a stable and predictable legal framework and the needs for sustainable development and the preservation of the right to regulate on behalf of the developing countries. This would amount to a «win-win» situation for all WTO members, which is the aim of a successful new World Trade Round.

Contacts :

Jürgen Huppenbauer

European Committee of Insurance (CEA)

Tel: +49 (30) 20.20.51.60 - Fax: +49 (30) 20.20.66.08- Email: juergen.huppenbauer@ber.gdv.org

Pascal KERNEIS, Director

European Services Network (ESN)

Tel: +322 230.75.14 - Fax: +322 230.61.68 - Email: esn@esnet.be

**LIST OF ESF MEMBERS SUPPORTING THE
PRELIMINARY VIEWS ON TRADE AND INVESTMENT**

<p><u>INSURANCE</u> Allianz AG AXA Group BARC Versicherungs Holdings AG Hibernian Insurance Company Ltd Norwich Union Comité Européen des Assurances - CEA Bureau International des Producteurs d'Assurances & de Réassurances – BIPAR</p> <p><u>FINANCIAL SERVICES</u> ABN AMRO Banque Paribas Barclays PLC Commerzbank AG DIT Deutscher Investment-Trust National Bank of Greece Fédération Bancaire de l'Union européenne – FBE European Savings Banks Group – ESBG European Association of Cooperative Banks - EACB European Federation of Investment Funds and Companies - FEFSI</p> <p><u>TELECOMMUNICATIONS</u> British Telecommunications plc Deutsche Telekom AG France Telecom Telefónica European Public Telecommunication Network Operators' Association - ETNO</p> <p><u>POSTAL & EXPRESS DELIVERY SERVICES</u> Deutsche Post AG DHL Worldwide Network SA La Poste Sweden Post TNT Post Group European Express Organisation – EEO</p> <p><u>AVIATION</u> Alitalia Association of European Airlines – AEA European Community's Independent Airlines Association – IACA/ACE</p> <p><u>SHIPPING</u> AP Møller European Community Shipowners' Association – ECSA</p> <p><u>TOURISM</u> Sol Melia Hotels Touristik Union International GmbH Confédération des Associations Nationales de l'Hôtellerie et de la Restauration de la CE - HOTREC Groupement des Unions Nationales des Agences et Organismes de Voyages de l'UE – ECTAA</p> <p><u>DISTRIBUTION/RETAIL</u> Marks & Spencer plc Metro AG Royal Ahold NV EuroCommerce</p>	<p><u>PROFESSIONAL SERVICES - LAWYERS</u> Clifford Chance Thomas / Deloitte</p> <p><u>PROFESSIONAL SERVICES – MANAGEMENT CONSULTANTS</u> Andersen Consulting</p> <p><u>PROFESSIONAL SERVICES – ACCOUNTANTS</u> Arthur Andersen PricewaterhouseCoopers</p> <p><u>PROFESSIONAL SERVICES - SURVEYORS</u> The European Society of Chartered Surveyors</p> <p><u>PROFESSIONAL SERVICES - ARCHITECTS</u> JDR Asociados Kraemer Architekt BDA Architects' Council of Europe – ACE</p> <p><u>PROFESSIONAL SERVICES – LIBERAL PROFESSIONS</u> European Council of the Liberal Professions - CEPLIS</p> <p><u>ENGINEERING & CONSTRUCTION</u> BESIX SA Ove Arup & Partners European Federation of Engineering Consultancy Associations - EFCA European International Contractors - EIC Fédération de l'Industrie Européenne de la Construction – FIEC</p> <p><u>COMPUTER & IT SERVICES</u> Sema Group plc</p> <p><u>AUDIO VISUAL</u> EMI Europe Association of Commercial Televisions in Europe -ACTE International Federation of the phonographic industry – IFPI</p> <p><u>PUBLISHING, INCLUDING MUSIC PUBLISHING</u> Bertelsmann European Publishers Council</p> <p><u>ADVERTISING & MARKETING</u> European Advertising Tripartite - EAT European Marketing Confederation - EMC</p> <p><u>ENERGY SERVICES</u> Fortum Corporation Eurelectric</p> <p><u>CONTRACT CATERERS</u> Van Hecke BV</p> <p><u>ENVIRONMENTAL SERVICES / UTILITIES</u> Suez-Lyonnaise des Eaux Vivendi</p> <p><u>GENERAL</u> Daimler-Chrysler Services (DEBIS) UNICE</p>
--	---