


**“THE PERSPECTIVE OF THE EUROPEAN PRIVATE SECTOR
IN THE GATS NEGOTIATIONS”**

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Ladies and Gentlemen,

I would like first of all to thank the ASEAN Secretariat for the invitation to this Regional Seminar on Services.

It should be noted, as a preamble, that my contribution is about the expectation of the European service industries toward the service negotiations in the GATS Round, and not the expectation of the European Union authorities; ESF being only a representative of the private sector. It does not prevent however that the views defended by both sides would sometimes go along the same lines.

Given the interest shown by the organisers in the European Services Forum (ESF), a new European private network gathering the views of the European service industries for the next GATS 2000 negotiations, a description on how and why the ESF has been created seems to be appropriate (A) before entering into the details of the objectives of the European service industries for the new GATS round (B).

A. THE EUROPEAN SERVICES FORUM

A.1. DESCRIPTION OF THE FORUM

A new round of multilateral negotiations on services (GATS 2000) has officially started on 1st January 2000 in Geneva at World Trade Organization (WTO). Prior to that launch, both the European Commission and the Member States of the European Union have made clear they would welcome more contributions from business, as was successfully done during the WTO negotiations for specific services in 1997, in particular for the Basic Telecommunications Agreement and for the Financial Services Agreement.

In the light of this, the **EUROPEAN SERVICES FORUM (ESF)** was officially launched on 26 January 1999 in Brussels. ESF was created with the support of leading European firms, European services industry federations and UNICE, (the inter-professional association representing the European industry), to provide business input for the GATS negotiations. ESF works closely with the European negotiators as well as with similar counterparts in other countries, which share the same objectives.

The European Services Forum (ESF) is a network of high-level representatives from the European services sector committed to promoting actively the interests of European services and the liberalisation of services markets throughout the world in connection with the GATS 2000 negotiations.

ESF comprises now 50 major European services companies, including the major one, like Allianz, AXA, ABN-AMRO, Barclays Bank Plc., Deutsche Telekom, FranceTelecom, Alitalia, DHL, Sweden Post, PricewaterhouseCoopers, Clifford-Chance, UGC, only to mention a few. The CEOs of these companies are members of the European Service Leaders Group (ESLG). They give the political impetus to the ESF messages and are the ambassadors of ESF, spreading the messages of the European service industries around the world in their various business travels.

The preparatory work for drafting the ESF positions is undertaken within the so-called ESF Policy Committee. This committee gathers the “sherpas” (personal representatives) of the companies’ leaders and the Secretaries General of more than 35 European service sectors’ Federations. This brings the ESF membership to more than 80 members (companies and federations) covering more than 20 service sectors, from banking to tourism, via telecommunications, air and maritime transport, many business and professional services, distribution, postal and express delivery, IT services, energy services, environmental services, and last but not the least audiovisual services, etc.

A.2. WHY THE CREATION OF ESF ?

World trade in commercial services, measured on a balance of payments basis, accounted for around one fifth of world exports of goods and services. Services account for 60%, or \$ 210 billion of annual flows of foreign direct investment. The services sector is a major source of innovation, especially in electronic commerce, and provides essential infrastructure and value-added investment for trade in goods. Services are also essential to improving economies of both industrialised and developing countries.

The European Union (EU) is the world's largest exporter of commercial services, accounting for 26% of total global services' transactions and for more than 40% in term of balance of payment (Bop) (for a value of >500 bio \$ in 1997). The EU is also the world's largest importer of commercial services (around 40% Bop). The European service industries have therefore a key interest in playing a major part in the new round of multilateral negotiations. That is the reason why we think that the European Service industries should make their voice heard by the authorities. ESF plays three different roles:

a) ESF as a lobby organisation for the GATS Horizontal Issues

The GATS deals with some horizontal issues, which by nature fall within the scope of ESF. These are Emergency Safeguard Measures, Public Procurement and Subsidies. It was by trying to take position on these horizontal issues that around fifteen European service industries organisations gathered together for the first time in 1995 in Brussels and created an informal network called the “European Tradable Services Network” (ETSN). The interest was however not very high on these issues, and ETSN adopted only a position on Safeguard Measures. The European Commission wanted to obtain the views of the private sector and made pressure on some European companies to work on these questions. Around 40 companies created in 1996 the so-called “Access Group” for “Advisory Consultative Committee for European Service Sectors”. The result was not more encouraging than the one of ETSN.

The motivation was missing because the subjects were not well understood and also because it was not easy to draw the attention of the industry which was still thinking about GATS in term of sectoral negotiations.

When it became clear that the objectives for the next GATS round would be to launch a global round, involving negotiations in all services in the same time - with even possibly some trade-offs between some services sectors - the European industry understood that it was important to work together in order to exchange information and to defend global European service industries positions.

In addition to the three horizontal issues which are clearly identified in the Agreement itself (see above), ESF is also working on four other horizontal issues, which are respectively i) the GATS disciplines for Domestic regulation, ii) the improvement of scheduling methods, iii) the very important subject of Temporary Movement of Key Business Personnel, and last but not least iv) Electronic Commerce.

Such a network gathering the views of more that 20 services sectors representatives is obviously in position to present common positions on the horizontal issues, which, are by nature, interesting all services companies. The substance of the position of ESF on these horizontal issues will be dealt with later in this paper (See Section B.2).

b) ESF as a Co-ordinating Centre for the European service sectors

ESF is a network and ESF is dealing with only one issue, which is the Services Trade Liberalisation, i.e. GATS and the Multilateral Negotiations. ESF was not created to speak in the place of the existing sectoral European organisations. ESF therefore will refer to the existing positions of the sectors, which will carry their messages to their own interlocutors. ESF will bring forward these messages. ESF will also facilitate the exchange of views between the various European service sectors. This will increase the awareness that many sectors are indeed encountering the same obstacles in trying to do business abroad.

To this end, ESF has initiated the collection of information by the various sectors on the trade barriers that the European companies are facing:

- when they want to set up their business in the third countries where they are interested in, or
- when they want to post some managerial staff in their foreign branches or subsidiaries,
- when they want to provide their services across the borders,
- when they want to sell their services from their home base to consumer who are not physically present in the same country, etc.

Each service sectors is now in the process of building a list of trade barriers in a list of key countries, selected by each industry depending on their respective interests.

By facilitating and co-ordinating such an on-going process to be carried out by the sectoral organisations members of ESF, with the active participation of the companies - which are the only players who can provide an up-to-date information - ESF will be then probably in position to identify some obstacles that are common to many sectors.

Those identified cross-sectoral obstacles will become therefore other horizontal issues, in the sense that it would be logical that the negotiators would try to negotiate them on a cross-sectoral basis, which would permit to avoid negotiating the same issue for each sector. Concrete cases are, for example, a minimum percentage of foreign ownership of subsidiaries or joint-ventures, or a common procedure for all sectors for a faster procedure to obtain work permits, etc.

The drafting of a list of common cross-sectoral trade barriers by ESF would then become a useful tool of negotiations. It should save time and energy of the negotiators to achieve a rapid liberalisation of the services markets by accelerating the removal of trade obstacles to a large range of service industries.

In addition, ESF is also trying to persuade – with the support of the EU negotiators – all ESF members to include all their sectoral trade barriers lists into one ESF Document. By tabling a coordinated document, the industry will be stronger within the European Union and vis-à-vis the other WTO Member States and will give to their sectoral requests a political dimension that individual sectors will not be able to achieve.

c) ESF as an interlocutor for the service sectors in third countries

As mentioned earlier, the European Union has a key interest in playing a major part in the new round of multilateral negotiations. But all other trading partners must be convinced that they have an equal interest in going along the same lines. That is the reason why one of the objectives of ESF is to be a contact point for the services sector of third countries. Participation of ESF to seminars and conferences like the one organised by the ASEAN Secretariat is part of this mission.

It is indeed obvious that when the service industries of non-European countries are sharing the same objectives towards the liberalisation of the world's service markets, ESF has an interest to share its views with them, so that the messages and input brought to the respective governments are going in the same direction, and would therefore facilitate the negotiations.

ESF, as are the European Union negotiators, is convinced that the multilateral trading system has helped many developing countries successfully to integrate into the international economy,

experience showing that countries with more open markets achieve higher levels of economic growth and development. This means that every country participating in the next GATS negotiations should be in a “win-win-situation”. All countries would benefit from them.

C1. The Weight of Trade in Services in the national economies

In the discussion on trade and sustainable development, we have nearly not heard about the trade of services. Progress in trade of services is certainly one of the key for the economic development, and a well balanced liberalisation of services markets in the framework of the next WTO/GATS negotiations will without any doubt contribute more to the sustainable development in the World, than any progress (although necessary) in any other areas.

It is not generally appreciated that the service sectors of most developing countries in the world are larger than their manufacturing or agriculture sectors. Sectors such as finance, telecommunications and electricity are important drivers of investment. In the developed world services are now by far the largest industrial sectors, but it is also the case in the developing countries. Let me give you some concrete examples:

- a) In **India**, Services represent 45% of its GDP, compare to 25% for Agriculture or 30% for the manufacturing industry;
- b) Here in **Thailand**, Services represent 49% of its GDP, compare to 11% for Agriculture;
- c) In **Indonesia**, Services represent 41% of its GDP, compare to 16% for Agriculture;
- c) In **Singapore**, Services represent of course a large part of the economy: 65% of its GDP, compare to 35% for Industry and 0% for Agriculture;
- d) Even in Africa it is the case in most countries; let’s take for example, **Kenya** where services represents 56% of its GDP and agriculture 29. (For more details, see www.esf.be)

C2. Concrete examples of the benefits of services liberalisation

Developed economies have a more advanced service economy. But the fact that the companies of these developed countries could have access to emerging and developing service markets in a secure multilateral environment will allow them to bring along with their experience. Their services and the Foreign Direct Investment (FDI) that they will attract will be for the benefit of the local economy; the local personnel will take profit of their training, etc.

It is the intention of ESF to initiate studies on business cases per sector, which would identify the benefits that the developing countries could enjoy by opening up their service markets. Such an exercise has already been done by the Financial Leaders Group (FLG – gathering financial services companies and associations both from the EU and the US). The study of 1997 described the behaviour of a bank or insurance subsidiary or branch in a given country, showed the number of local employees, the turnover of the company reinvested in the local activity, the foreign direct investment dragged by the bank/investment company/insurance for their direct foreign customers but also and more and more for local companies, etc. It demonstrated also the fact that for the vast majority of the foreign companies, the establishment of a presence in a country is done on a long-term basis.

To get a better access in the other countries is obviously in the interest of the companies, which are not philanthropic, but it has to be emphasize that it is also very much in favor of the local economies which open up their market to the foreign companies.

ESF wants to participate to the information of the teams of negotiators, both from developed and emerging countries, and participate to the awareness by governments that the liberalisation of their services market is or will be well-founded for the interest of their own country.

In Seattle, Mr Andrew Buxton, Chairman of ESF and former Chairman of Barclays Bank, in his speech at the NGO Symposium organised by the WTO Secretariat, focused his contribution on the benefits of the services liberalisation for all WTO Countries. He quoted some very concrete examples in many sectors and many countries (see slide). Let me here mention only a few:

- a) In the **Telecommunication Sector**, since Telefónica started its mobile telephony operations in **Argentina**, the total number of customers has increased from 47.146 to 1.250.000. In **Brazil**, the privatisation has produced even more significant results. Over the period of only one year (1998-1999), there has been a rise of almost 30% in the number of fixed lines in service provided in São Paulo and the number of mobile telephone customers in the areas covered by Telefónica's subsidiaries has risen by around 100%."
- b) In the **Insurance sector**, **India** has recently approved foreign investment, which will ultimately lower prices and increase choice and enable people to insure who are currently uninsured.
- c) Still in **India**, Enron, the US Power Company is just completing the building of a **2000 KW Power Plant**, which will bring much needed reliable **electricity** power to the country (1.5 Bio US\$ investment). Of course, environment issues are very important, particularly in the power sector and must be given high prominence.
- d) In the **Banking sector**, Direct investment by British and Spanish **banks** in **Mexico** has strengthened the financial system and benefited the country in the last financial crisis.
- e) In the Distribution sector, **Royal Ahold**, a Dutch based Distribution company set up a branch in **Thailand** which employs 5300 local employees and allows the local customers to benefit from the know-how of a modern distribution system. The same company created 2300 local jobs in a Joint Venture in **Malaysia**

B) THE EXPECTATIONS OF THE EUROPEAN SERVICE INDUSTRIES TOWARDS THE NEXT GATS ROUND

One can summarise the expectations of any service industries which are willing to do business abroad towards the next GATS round of negotiations by stating that they wish that all kind of obstacles having a discriminatory effect on a foreign company vis-à-vis a local company should be abolished. It is however necessary to go into more details to prepare as best as possible the negotiations.

The European Services Forum had first established the list of the mains objectives of its action (B.1.). We have then worked on common positions as regards some horizontal issues, which are common to all services industries (B.2.). The real purpose of all the exercise of the next GATS negotiations are of course to remove as much as possible the trade barriers which have been invented in the various services sectors. It is however premature to enter into the details of the specific expectations of each of the sector. I would like therefore not to enter into the sectoral issues and requests, but all ESF members are currently working on the drafting of those sectoral trade lists of barriers, and the European Service Industries will in due time inform the negotiators of their detailed wishes.

B.1. THE MAIN OBJECTIVES OF THE EUROPEAN SERVICES FORUM

ESF is determined to support and encourage the movement to liberalise service markets throughout the world on an MFN basis and to remove trade and investment barriers for the European services sector, in particular in the fields of market access and national treatment.

Part of GATS 2000 consists of further scheduling of commitments by WTO members in specific service sectors, including those represented in ESF. But this new GATS round is also a chance to improve GATS as a whole and to strengthen the place of services in the WTO structure. These general issues should logically be taken up before the negotiations on schedules start, since they will influence how scheduling is done.

Accordingly, the members of the European Services Forum have agreed upon a list of objectives:

1. While bilateral and regional agreements and initiatives, including the Transatlantic Economic Partnership (TEP), the ASEAN, APEC, NAFTA, Mercosur, CEC, etc., can play a useful supportive role, a firm and widely supported multilateral agreement remains the ultimate goal of services negotiations within the WTO.
2. Services and other services-related issues (such as investment and electronic commerce) should be combined in a new comprehensive round, which should be concluded by a single undertaking. The new round should be of limited duration, lasting no more than three years. A comprehensive round is indeed needed to ensure balance for all participating countries. ESF believes that the GATS negotiations will only lead to substantive results if placed within a broader, time-bound negotiating framework. The Uruguay Round has shown that only by a comprehensive approach, involving a broad range of issues, can all participants identify gains. A narrow sectoral approach can certainly not achieve the same result.
3. The services 2000 negotiations should create much better opportunities for profitable international business. To that end, they have to:
 - be ambitious in their goals for real liberalisation,
 - achieve a broad and deep coverage of services sectors in WTO members and acceding countries,
 - obtain the widest possible standstill commitments,
 - go well beyond these standstills, which characterised the Uruguay Round to a large extent, in order to remove barriers to trade and investment.
 - The remaining impediments to substantially full market access and national treatment should be liberalised progressively on an agreed transition schedule. Particular attention should be paid to those services where, contrary to the original aim, not enough progress has been made since the conclusion of the Marrakech agreement.
4. The cross-border delivery of services in electronic form is of growing importance for many services sectors. Therefore, specific attention needs to be paid in the GATS 2000 negotiations to improving commitments which facilitate the use of electronic commerce for all services sectors.
5. The GATS 2000 negotiations should ensure the development of GATS rules and disciplines regarding government procurement of services, subsidies and emergency safeguard measures. They should also improve the method of scheduling, to achieve greater liberalisation in all four modes: cross-border supply, consumption abroad, commercial presence and presence of natural persons.
6. Close monitoring of countries' ratification and implementation at all relevant levels will be necessary for both the sector agreements already signed (for financial services and telecommunications in 1997) and the new agreements which will be negotiated in the GATS 2000.

7. Countries to accede to the WTO must make strong and comprehensive commitments to services liberalisation as part of their accession process. In this regard, ESF actively supported the European Negotiators in their efforts to obtain better commitments in the services area from the Chinese Authorities, during the last weeks and days in China.
8. Pro-competitive principles to rule-making should be developed, while preserving appropriate regulatory frameworks.
9. Political and public support for trade liberalisation will require greater understanding of the benefits of trade liberalisation by all parts of the civil society, and therefore the negotiating processes by which liberalisation is to be achieved will have to be submitted to transparency rules.
10. Among the goals which should be reflected in the commitments made in national schedules the following are of major importance for the European service industries:
 - a) The right to establish and operate competitively;
 - b) Foreign investors should have the same access to domestic markets as domestic companies;
 - c) Freedom to provide, as soon as possible, cross-border services in highly international-oriented sectors;
 - d) Removal of barriers (nationality, residence requirements, etc.) to the posting of key business personnel;
 - e) Exceptions to commitments should be precise, transparent, temporary and limited to the minimum required for their purpose;
 - f) Existing investments should be grandfathered;

B.2. ESF EXPECTATIONS ON GATS HORIZONTAL ISSUES

During the Uruguay Round, it was not possible to achieve any real commitment on three horizontal issues related to the trade in services. These issues were Emergency Safeguard Measures (a), Public Procurement (b) and subsidies (c). It was nevertheless decided to include these subjects in the text of the General Agreement on Trade in Services (see Article X, XIII and XV of the GATS), and therefore to submit them to the general principles, and to pursue the negotiations on these matters after the conclusion of the Round. Only few progresses have been made in the WTO specific working groups prior to Seattle. It appears however that, in the absence of negotiating guidelines for the GATS negotiations, the work of the Working Parties, the subsidiary bodies of the Council for Trade in Services, is now well back on track, and ESF supports this move.

In addition of the horizontal issues, which are inscribed in the GATS treaty, some other horizontal subjects are coming up as important items listed in the agenda of the GATS 2000. These are the way it would be possible to improve the scheduling commitments (d), the way it would be possible to improve the disciplines in the domestic regulation (e), the way it would be possible to take profit of the next negotiations to establish good conditions for the development of the electronic commerce (f), and finally the necessary progress under the Mode 4 of the GATS, i.e. the temporary movement of the key business personnel.

a) Emergency Safeguard Measures

An Emergency Safeguard Measure is a measure that a governmental authority is authorised to take, on an exceptional basis and contrary to its WTO commitments, to try to restore a disturbed local market or a disturbed local sector by or because of the presence of the foreign participants. Such measures are easy to implement in the trade of goods. The government indicates to the custom officers to close the border for the targeted product. Identifying efficient safeguards measures in the area of services is much more delicate. That is one of the reasons why it has not

been possible to achieve an agreement on this issue during the Uruguay Round (Article X of the GATS), nor after. Discussions are still going on in Geneva. The Discussion Paper tabled by ASEAN at the initiative of Thailand on this subject has the great merit of entering into the substance of this complicated matter.

In principle, the European services industry does not feel the necessity to set up Safeguard Measures in the area of services and would prefer that the potential problems to be solved via the schedule of commitments and transitional periods. However, given the political evolution on this issue, it is now necessary to have a closer look at the possible solutions. If such a system should be proven to be necessary, in particular to get better market access commitments, ESF believes that a pre-defined framework for the Emergency Safeguard Measures (ESM) should take the form of a standard clause as part of the body of general GATS rules, for application in any emergency situation. There is no convincing evidence that suggests that a better approach would be to develop the ground rules for ESM on a sector-by-sector basis. Relevant differences between sectors and indeed between emergency situations arising in a particular sector should be reflected not in the ground rules but in their application in concrete cases. This justifies an appropriate surveillance mechanism (see below).

A fundamental question is whether safeguard measures should at all be contemplated with respect to foreign service providers that are established in the country concerned. Contrary to foreign-based service providers, who could temporarily suspend the export of their services to a country introducing such measures, foreign service providers established in such a country would face considerably graver consequences, i.e. a discontinuation of their trade activities altogether. Given the fact that the basic rationale of the safeguard measures is to protect domestic production, they should be restricted to foreign-based service providers only and, automatically, to the new entrants, but not to the existing investments.

In case of an agreement on the possibility for countries to implement safeguard measures, ESF feels that a strong case can be made for supplementing the Dispute Settlement Understanding to provide for a rapid panel decision on whether an ESM meets the requirements of the basic rules agreed in the pre-defined framework, in particular whether the ESM is strictly proportional to the damage suffered by domestic industry.

b) Public Procurement

Procurement of services by government agencies for their own purposes represents an important share of total government expenditures and thus has a significant role in domestic economies. The major objective in public procurement of services must be therefore to allow public clients to choose the most suitable service provider from the widest possible range of service suppliers in order to receive the highest quality of service.

The absence of multilateral rules for procurement is probably one of the most important non-tariff barriers affecting many services sectors, in particular the construction and engineering services. ESF believes that the GATS 2000 global talks provide the right tool to improve the situation either by deleting Art. XIII of the GATS or by extending the Government Procurement Agreement (GPA) to all GATS member states. However, I understand that the obligations of the GPA are quite onerous to implement for the developing countries, and a middle way should be found here to allow all participating countries to take commitments that they are able to implement.

ESF draw the attention on the fact that the European service industries prefers to speak about Public Procurement, which means not only the possibilities to participate to call of tenders issued by all governmental authorities, but also by any regional, federal, sub-federal and local public authorities entitled to launch a public procurement.

ESF therefore would like to urge the WTO member States to bring Public Procurement within WTO disciplines by progressively eliminating the current exemption, with the long term objective of

achieving a single set of multilateral rules on procurement based on the MFN and national treatment principles.

The proposal by the American Government for the adoption of an agreement on transparency in Government Procurement at the Seattle WTO Ministerial should be considered only as a possible first step of the above mentioned process.

c) Subsidies

This subject is rather unknown and is complicated. The Concept Paper tabled by Hong-Kong and Argentina has the merit to put on the paper the problems raised by this issue. However, one can consider that the lack of political willingness to move on this difficult issue will make any progress impossible outside a comprehensive round.

C1. The difficulty of a definition of a subsidy

The grant of a subsidy is a common activity. It arises when a government or other public body confers a financial benefit on a firm or group of firms. Detailed rules on subsidies do not exist for trade in services under the GATS, unlike for trade in goods. The issue of whether, or what sort, of substantive new disciplines on subsidies are needed in services will have to be addressed in this round.

Just as it is difficult to find accurate statistics on trade in services, it is also not easy to catalogue subsidies affecting those services. One way of gauging the importance of subsidies in services is to look at the series of WTO Trade Policy Review reports, which examine the trade policies of some 31 developed and developing countries. These reports show that four main sectors are commonly subsidised: audiovisual services, air transport services, maritime transport services, tourism and banking.

The GATS does not contain an explicit system of subsidy rules like those for trade in goods. However, it does contain a powerful set of general obligations and specific commitments that do, in many cases, constrain the use of subsidies.

C2. The purpose of the negotiations

The GATS covers all government measures affecting trade in services. Since a subsidy is a government measure that can alter the conditions of competition in trade in services, it is clearly within the scope of the GATS.

There is evidence that subsidy practices are economically and commercially significant in certain sectors. ESF believes therefore that efforts should be done during the current GATS round to deal with these discriminatory practices.

New rules should probably be introduced on a sectoral basis, but further thought should be given to that problem. However, recent examples in telecoms and financial services show how much can be done on a sectoral basis. One can therefore wonder in which other areas of services would a sectoral approach be adequate. The approach adopted in the WTO Telecoms Agreement, where pro-competitive principles were added as "additional commitments" in individual countries schedules is easier than amending the GATS. ESF believes that new rules on subsidies should rather be introduced as additional commitments in individual GATS schedules.

d) Improvement of scheduling commitments

The existing system of scheduling commitments in the GATS has the merit of embracing all traded services and covering investment as well as trade. But it has many drawbacks too. It is complex,

allows too many loopholes and creates no real dynamic for liberalisation. For example, it permits countries:

- to make no commitments at all in certain service sectors or sub-sectors;
- to make commitments in some modes of supply, but not others: e.g. in commercial presence, while leaving cross-border supply and consumption abroad ‘unbound’;
- to make commitments less favourable than actual law and practice, i.e. less than standstill; this carries the risk that WTO commitments are used to justify a worsening of treatment of foreign firms.

As a result of these drawbacks, most of the commitments made in the first round of GATS agreements at best bind existing practices, i.e. standstill, and often fall well short of that. The aim of then European service industries is to do better than this in GATS 2000: to extend sectoral coverage, to achieve standstill where it does not yet exist and to go beyond standstill to the reduction of barriers.

The best method of scheduling for this purpose would be one requiring countries to state all the restrictions in force affecting market access and national treatment, sector by sector. This would give much greater clarity and certainty to private business and would focus attention on the barriers to be negotiated away. It remains the objective of ESF members to achieve effective scheduling on these lines. We understand however that many developing countries would have difficulties to follow that line.

This ESF revised paper in April therefore concentrated on measures intended to produce better commitments from all WTO members within the existing GATS structure. Various methods are proposed: Some of these involve voluntary arrangements between WTO members. Others envisage agreed rules or guidelines within the GATS framework. Others are intended to guide the European negotiators in the ‘request and offer’ process.

D1 Groups of Countries Adopting Stricter Scheduling Methods

Certain WTO members could voluntarily adopt stricter methods of scheduling and undertake to make commitments of a certain standard. This approach has already been adopted in financial services, where the EC and other OECD countries concluded an ‘Understanding’ to this effect. Similar understandings could be concluded in other sectors. While developing countries might hesitate to join such groups, they would still have value in getting OECD countries to schedule better commitments, especially in Cross-Border Supply (Mode 1).

D2 Rules or Guidelines on Scheduling

An advance on model schedules would be for all WTO members to adopt common rules or guidelines on scheduling, either for the GATS as a whole or for individual sectors. Binding rules would be best, but non-binding guidelines could be considered, especially if individual members were prepared voluntarily to incorporate them in their schedules.

ESF therefore believes that Rules or guidelines could be used to strengthen the key GATS principles of **progressive liberalisation**, as follows:-

- Members’ commitments should improve on the commitments they made (if any) in the last round of sectoral negotiations.
- Bound commitments should be no more restrictive than current practice, i.e., standstill. (Where practice does not match GATS bindings, firms will always fear being cut back to bound levels, without redress. While firms already present can be protected by grandfathering, there is a deterrent to new entry.)

- Where WTO members have not yet bound standstill, a transition period with a fixed timetable should be allowed to reconcile binding with actual practice.
- Members introducing new services regimes in stages should be encouraged to bind each stage in the GATS as it applies.
- Commitments introduced progressively should specify timetables. (The Chinese commitments made as part of WTO accession provide an example of this.)

Similar rules or guidelines could apply to **economic needs tests**, widely used as a barrier to entry by developing countries and even by some OECD members (e.g. Australia in banking). These might specify:-

- Economic needs tests should be clearly defined, with objective criteria.
- Such tests should be subject to periodic review by the WTO.

e) **Disciplines in the domestic regulation**

The GATS has developed disciplines on domestic regulation as part of the 1994 Marrakech agreements. One of the key issues of the GATS round for WTO Members will be to respect and develop these disciplines.

GATS recognizes the right of member governments to regulate their domestic services. Many services are regulated by governments to ensure consumer protection and guarantee the supply of services to consumers. These fundamentals are not disputed by the European private sector, although there are different ways of ensuring such fundamental goals through regulation. Some of these ways will be more restrictive on competition than others. Regulations must be justified by an objective and clearly identified need, which could not be satisfied without the regulation in question.

In addition to the provisions on National Treatment and Market Access, the GATS establishes in Article VI, basic principles on domestic regulation. These principles imply that domestic regulations which apply to foreign service suppliers in Member countries must be reasonable, objective and impartial.

The private sector's concern is to identify aspects of domestic regulation that particularly affect international trade in services, discriminate between foreigners or between nationals and foreigners, and limit product availability. ESF adopted in 1999 a paper on the pro-competitive regulatory principles. The idea is not at all to ask for deregulation but for better regulation. One of the suggestions is, when possible, to set up disciplines whereby the WTO Member States would accept to implement Pro-competitive regulatory principles which are based on the same objectives than the Article VI:

- to avoid unreasonable or disproportionate burdens on foreign and domestic companies, limiting market liberalization ;
- to maintain and develop fair and objective rules ensuring fair competition among all services suppliers.

ESF is now in the process of developing a further paper on this issue of Domestic Regulation, which is a key aspect for any success of the current GATS negotiations. The work will focus on the horizontal questions like transparency and necessity. On this respect the Paper tabled by the European Commission in Geneva in the Working Party on Domestic Regulation seems to be a good basis, on which ESF will comment.

E1. **The importance of transparency**

Transparency is an essential element of any Domestic Regulation. The European private sector requests governments to be transparent in their decision processes in order to identify new (or

existing) restrictions, to avoid protectionist decisions, to adopt the least trade restrictive option in their new regulation, when necessary, and to achieve market liberalisation.

Minimum transparency requirements should be adopted by all WTO Members, like publication of the legislation, regulation or whatever level decree which affect a category of service supplier, an English version should be available, the publication in a web-site would contribute to a greater and easier access to every interested persons, the Authority in charge and/or the name of an official responsible for this regulation should be published and easily accessible for any request of information.

When possible, National and Foreign companies should have the ability to react in advance to domestic rules and request therefore to be consulted. By following unfair and non-transparent principles, some regulatory bodies restrict consumers' access to new products at lower cost offered by foreign service suppliers. Indeed, unjustified delays by regulatory authorities in the approval of new services can limit or delay the availability of new services.

E2. Clear need of Licensing or any kind of Requirements

Licensing requirements should not be introduced unless they are justified by an objective and clearly identified need, which cannot be satisfied otherwise. Moreover, complex, time-consuming, arbitrary or discriminatory licensing requirements constitute barriers to market access and must be avoided. Independent regulatory authorities are necessary in some sectors in order to develop objective and transparent decision mechanisms.

f) Establish good conditions for the development of Electronic Commerce

International trade in services, particularly cross-border trade, is conducted to a large and increasing extent through electronic means. Computer technology has made many services tradable. Electronic commerce and the Internet have thus added a new technological means of facilitating trade, adding digitized information flows to physical flows, much as ships increased trade over merely land-based movement of goods.

The General Agreement on Trade in Services (GATS) covers all services except services supplied in the exercise of governmental authority. The European Services Forum believes that the supply of services by electronic means can take place in any of the four modes set out in the GATS framework. Accordingly, the supply of services by electronic technology is covered by the GATS in the same way as all other means of delivery. Countries' commitments in the GATS apply to transactions whether by digital, or traditional, forms of communication.

The European services industries rejects the idea that there is a class of services that can be labelled electronic commerce and thus be negotiated separately. There may be services products that result from wholly new technological applications or inventions that might be identified as electronic commerce, but these are more appropriately labelled “information technology services”, or services within specific sectors. Barriers to these new forms of services can be negotiated by sector or in a separate information technology's services sector.

On the other hand, it is also necessary to recognise the relationship between electronic commerce and specific industry sectors. Electronic commerce as a means of delivery cannot reach its full potential without significant commitments in virtually every industry sector. The ability to provide services across borders is a necessary prerequisite for the robust development and growth of electronic commerce. If service provision across borders is not permitted, then the ability to deliver those services electronically will be constrained and fragmented in national markets.

That is the reason why ESF in its last paper on E-commerce and GATS insists on five items:

1. Specific focus should be given to sectors that are critical to initiating and completing an e-commerce transaction, including all forms of commercial communications (advertising,

sales promotion, direct marketing etc), computer, data processing and software services, telecommunication services, certain transport and delivery services, certain financial services and some distribution services. As a result, there may be an “*e-commerce cluster*” that could be used as a conceptual framework, (i.e., as a checklist for negotiators) to enhance the economic and political rationale for quicker and more substantive liberalisation of the transactional infrastructure for the conduct of all electronic commerce.

2. However, this “transactional infrastructure” approach is not sufficient by itself. In addition to the e-commerce cluster it is essential that individual services sectors look at the implications of cross-border trade in electronic commerce and develop their own sector-specific scheduling strategy to ensure that their own e-commerce objectives are met. Existing commitments across many GATS sectors are very modest and could be strengthened significantly. However, by definition, different sectors will have different strategies as regards electronic commerce and its relevance to that sector.
3. Improved commitments to open trade in cross border services (mode one) and consumption abroad (mode two) are also important if electronic commerce is to achieve its full development.
4. The Agreement on Basic Telecommunication should be fully implemented and developed further.
5. Finally, WTO members should agree not to raise new barriers to e-commerce which would undermine negotiated GATS commitments during the course of the new Services negotiations.

As regard the **WTO Work Programme on E-Commerce**, and in light of the lack of progress on certain elements of the Work Programme on Electronic Commerce (i.e. classification and any moratorium on customs duties), substantive progress on these issues may not be evident until market access discussions reach a more advanced stage.

ESF members were disappointed that at the last meeting of the WTO General Council on 3 May 2000 no decision was taken on the work programme. The work programme on electronic commerce is a high priority for European business. WTO Members should quickly settle the organisational issues surrounding the work programme and press ahead with its valuable work.

ESF made suggestions about the Elements, which should be included in a future e-commerce work programme.

The Internet and e-commerce have already proven to be powerful engines for economic growth, wealth creation and societal benefit in many countries. Tearing down existing barriers to electronic commerce and preventing the erection of new barriers should be a common goal of businesses and governments around the world.

G. The Temporary Movement of Key Business Personnel

The European Services Network (ESN) recommends that the temporary movement of specialist, technical or managerial personnel (referred to hereafter as “key business personnel”) between WTO member states should be placed, as a matter of priority, on the agenda of the GATS negotiations. The objective of this recommendation is the reduction of government measures which impede or prevent key business personnel from timely movement between, and temporary presence in, WTO member states.

Companies engaged in international commerce encounter a common barrier to the conduct of business activity: difficulty in moving key personnel with specialist, technical or managerial skills across borders. The re-structuring and consolidation of many business sectors is exacerbating the

problems which businesses face in this regard. Barriers to the movement of key business personnel can significantly increase costs, prevent the effective distribution and use of corporate human resources (including the transfer of knowledge and expertise to locally-based personnel), and delay and impede delivery of services to customers. Problems associated with movement of key business personnel have become more acute as companies have expanded their international activities and foreign presence. Indeed, the issue of mobility of key business personnel is closely connected with the establishment and operation of a commercial presence overseas.

In a nutshell, the inability to have the right person in the right place at the right time prevents businesses from meeting deadlines and results in underused employees, unhappy customers and foregone business opportunities.

The ESF looks to the new round of GATS negotiations to place the following items on its agenda:

- **Agreement on common definitions of key business personnel**

Commitments as to the fourth mode of supply often include definitions of key business personnel which are neither clear nor consistent from one member to another. As a result they are often subject to arbitrary and discriminatory application by regulatory authorities. In future, a precise definition of key business personnel should be agreed by the WTO.

- **Agreement on transparent process**

The process of movement of key business personnel would be aided by the production, by each signatory, of a simple explanation of visa and work permit requirements and the publication on an annual basis of statistics relating to the numbers of temporary working visas granted.

- **Common terms for intra-company transfers**

Commitments are often limited by pre-employment criteria, economic needs tests, numerical quotas and lack specific time duration. GATS signatories should agree on common terms for key business personnel under intra-company transfers. ESF considers the economic needs tests, which are non transparent and discriminatory, as equivalent to no commitment because they do not provide the certainty of other WTO Commitments.

- **Mode 4 Commitments should be tabled in the sectoral commitments**

Instead of most of the current commitments under Mode 4, which are in the Horizontal section of the GATS commitments, ESF believes that much more positive results in the key mode of liberalisation would be achieved if these commitments would be part of the sectoral negotiations, where the commitment would apply to specific personnel. Another important step forward would be to schedule the duration of the temporary movement. This would increase the transparency of the commitments and should ease the examination of the company requests in the Immigration Offices.

CONCLUSION

In conclusion, Chairman, ladies and gentlemen, I would like

- 1) to invite all of you who wish to get more information on ESF Position papers to have a look at our web-site: www.esf.be.
- 2) to invite all of you to the international conference that ESF organises on 27 Monday 2000 on the GATS negotiations in Brussels. More details will be given in due time to the ASEAN Secretariat who will be the contact point.

Thank you very much for your attention.