

Mr. Karel De Gucht
Member of the European Commission
Trade Commissioner
European Commission
Rue de la Loi, 200
B - 1049 - Brussels

Brussels, 18 March 2010

RE: European Services Industry Priorities on EU-Canada CETA

Dear Commissioner,

As you know, the European Services Forum (ESF) is a network of high-level representatives of the European Services Sector committed to promoting the interests of European services and market-opening in services markets throughout the world through international trade in services negotiations.

Please find attached the European Services Industries Priorities for the EU-Canada Comprehensive Economic Trade Agreement – CETA. ESF supports the view expressed by the chief negotiators of both sides that the EU-Canada Comprehensive Economic Trade Negotiations (CETA) should aim at an agreement that should go much beyond a traditional “WTO Plus” Free Trade Agreement. In accordance with GATS Article 5, the CETA should therefore aim at real “economic integration” with substantial sectoral coverage in all services sectors and at elimination of substantially all discrimination between the parties.

Hence, ESF takes for granted that respective best GATS offers, including oral commitments at the WTO Signaling Conference on Services on 26 July 2008 in Geneva, form the basis of the services and investment CETA negotiations. Furthermore, ESF encourages EU negotiators to do their utmost in getting from their Canadian counterparts similar commitments than those into place in the context of the North American Free Trade Agreement (NAFTA), so that existing discrimination between European companies and US companies on the Canadian markets are eliminated.

ESF recommends the CETA negotiators to use the negative list approach in the services negotiations. ESF also strongly supports better access to Canadian public procurements at all levels, in all public entities, for relevant services sectors. We believe that better integration of the public procurement markets between the EU and Canada, provided that the rules are fair and transparent, will generate a win-win situation. The agreement should also look at the possibility to better move service providers as natural persons from one Province to another as well as to look for mechanism to speeding up visas and work permits delivery.

Among the more services related priorities, the European services industry calls for the removal of all equity caps that may remain in Canada; the removal of all nationality or residency requirement of members of executive boards of branches, subsidiaries and joint-ventures; the negotiations of

Mutual Recognition Agreements of diplomas and qualifications in professional services, starting with architectural services, aiming at legally binding instruments; the setting up of regulatory cooperation dialogues in services sectors like financial services, telecommunication services, etc., involving all relevant regulatory bodies; and the settling up of the case on postal services that currently threatens the eviction out of business of European express delivery companies. No agreement should be concluded prior to an acceptable resolution of this case.

The attached document goes into the details of the priorities of the various services sectors, sector by sector. ESF Members might contact you and your services directly for further sector specific details, and we reserve the right to add or amend some part of this document, should our members bring us additional information.

We shall be grateful to the Commission to take the European service industry priorities into consideration during the current trade negotiations with Canada, and remain at your disposal for any further information you and your services would find necessary.

Yours sincerely,



Pascal Kerneis
Managing Director

Cc: Mr. David O'Sullivan – Director General, DG Trade, European Commission

European Services Industries Priorities for the EU-Canada Comprehensive Economic Trade Agreement - CETA

Executive summary

ESF priorities can be summarized as follow:

1. Negotiations on services and investment through the negative list approach,
2. Removal of all equity caps that may remain in Canada,
3. Removal of all nationality or residency requirement of members of executive boards of branches, subsidiaries and joint-ventures,
4. Improvement of intra-provinces movement of workers,
5. Negotiations of Mutual Recognition Agreements of diplomas and qualifications in professional services, starting with architectural services, aiming at legally binding instruments,
6. Setting up of regulatory cooperation dialogues in services sectors like financial services, telecommunication services, etc., involving all relevant regulatory bodies,
7. Settling up of the case on postal services that currently threatens the eviction out of business of European express delivery companies,
8. Commitment of opening up and binding access to sectors like News Agencies and Advertising services,
9. Negotiations of significant access to Canadian public procurements at all levels.

Introductory remarks on CANADA:

Canada is a liberal country with open access to most of the services market, especially compared with most of the other WTO members. European services companies from many services sectors are allowed to do business in Canada, provided that they comply with various and sometimes complex and conflicting federal and provincial regulations.

Canada's economic share in services accounts for 69,6 % of the country's GDP. Moreover, the Country is the 7th biggest services trading partner to the European Union in terms of trade volume (2007), while Canada is only the 11th EU trading partner for all trade (goods and services). The total volume of trade in services in 2008 was up to €20.8 Bio, with EU exports up to €1,3 Bio and EU imports up to €9,5 Bio (balance: + €1.8 bio € for the EU – EU 27). In 2006 and 2007, the volume was respectively €18.6 Bio and €21.1 Bio, and the balances +€2 Bio and +€2.1 Bio.

In terms of foreign direct investment, the EU is a heavy investor in Canada with €31.1 Bio in 2006 outward FDI and €42.1 in 2007 (8,6% of total extra-EU total outward FDI). Canada has invested €10.6 Bio in the EU in 2006 and 10.3 in 2007. This brings Canada has the third investor in the EU behind the US and Switzerland, and the third country in which the EU is investing the most, after the USA and Switzerland. These figures are strong evidence of the already strongly integrated economies. It is worth notice that according to figures from WTO, Eurostat and Canadian Ministry of international trade, that as an average, more than 65% of EU outward FDI are invested in services sectors and more than 85% of all EU inward FDI are invested into services sectors. Hence, the importance of the negotiations on trade in services and investment that are taking place in the CETA.

In the framework of the General Agreement on Trade in Services (GATS), Canada made a quality Schedule of Commitments in Services at the end of the Uruguay Round negotiations in 1994. In

1997, Canada made a good set of commitments in the telecommunications negotiations and signed the Reference Paper on Basic Telecommunications. The Commitments in Financial Services in December 1997 are considered a good start, although much remains to be bound.

I. HORIZONTAL ISSUES

1) Important preliminary remark

ESF strongly supports the view expressed by the chief negotiators of both sides that the EU-Canada Comprehensive Economic Trade Negotiations (CETA) should aim at an agreement that should go much beyond a traditional “WTO Plus” Free Trade Agreement. In accordance with GATS Article 5, the CETA should therefore aim at real “economic integration” with substantial sectoral coverage in all services sectors and at elimination of substantially all discrimination between the parties.

ESF therefore takes for granted that respective best GATS offers, including oral commitments at the WTO Signaling Conference on Services on 26 July 2008 in Geneva, form the basis of the services and investment CETA negotiations.

Furthermore, ESF encourages EU negotiators to do their utmost in getting from their Canadian counterparts similar commitments than those into place in the context of the North American Free Trade Agreement (NAFTA), so that existing discrimination between European companies and US companies on the Canadian markets are eliminated.

2) Services Commitments with a negative list approach

ESF strongly encourage the CETA negotiators to use the negative list approach. ESF understands that the so-called positive list approach is used for the GATS negotiations as it provides a certain flexibility and reassurance to some developing and particularly least developed countries. In FTA negotiations however, and in this particular context of the CETA negotiations – engaging two developed and advanced services economies - in particular, we recommend the use of a negative list. Under this system all sectors or sub-sectors not listed are, by default, open to services suppliers of both parties under the same conditions.

The principal advantage is that it obliges the negotiators to review together all service sectors and therefore implies negotiation on all areas. The second advantage of the negative list approach is that it includes services which are just being developed or will be developed in the future. It also allows for combinations of existing services to be offered in new and creative ways. This flexibility provides greater legal certainty for companies working in dynamic industries such as information technology, financial services and telecommunications and contributes to the innovation vital for future growth. Third, negative lists produce greater clarity. It is much more straightforward for companies to assess whether their sector is covered or not and what the limitations are. Finally, the experience shows that negative list approaches yield greater results, which corresponds to the expressed ambitions by both parties in the CETA.

3) Movement of natural persons (mode 4)

ESF members draw that attention on the fact that European citizens working for European companies in Canada find it difficult to move from one Province to another and would like to see this issue addressed in the negotiations. This is because a person’s work permit for one Canadian province is often simply not accepted in other provinces. The fact that, on one side, the EU has recently adopted the “Blue Card” directive for movement of third country nationals within the EU and, on the other side, Canada has recently adopted a revision of the “Agreement on Internal Trade”

that is ensuring labour mobility within Canada, should provide sufficient basis for mutual benefit on this important issue of mobility of workers in the two parties.

With the view of achieving a more comprehensive agreement going beyond a traditional trade agreement, the agreement should also look for mechanism to speeding up visas and work permits delivery.

4) Foreign direct investment regimes

ESF members call for the removal of the required approval by the responsible minister for all direct acquisition of Canadian businesses above a certain amount of asset. As a question of principle, ESF also calls for the removal of all remaining equity caps that prevent EU Businesses to fully control their investments in Canada. Similarly, ESF looks for the complete removal, at least on a progressive basis, of nationality or residency requirements that still exist in many Canadian provinces in many sectors for the companies' directors or members of the board. These requirements seriously hamper investments or proper business management of EU operations in Canada.

5) Better access to Public Procurement

ESF strongly supports better access to Canadian public procurements at all levels, in all public entities, for relevant services sectors (architects, engineers, construction services, transport services, waste management services, water distribution services, education services, IT and Computer restated services, financial services, etc.). Even if some further progress need to be made in practice, the EU internal market public procurement directives have clearly demonstrated that open and transparent government procurement regimes are for the benefit of all, i.e. the buyers/public entities that have larger choice at better price, the suppliers that have a bigger market to compete in, the tax payers who can see a better use of their money, and public services consumers that are better served. Better integration of the public procurement markets between the EU and Canada, provided that the rules are fair and transparent, will generate a win-win situation.

II. SERVICES SECTOR SPECIFIC ISSUES

1) Professional Services

a) Legal services

In the Canada GATS offer, Foreign Legal Consultants can only provide advisory services on foreign and public international law (CPC 861) but not on country law where they graduated. This should be allowed and bound in the CETA, so that lawyers from EU countries can provide advice on the legislation of their home country.

All kind of commercial presences should be permitted and committed for European law firms through the CETA (capital ownership of law firms, etc.) and not only taking the form of a sole proprietorship or partnership.

b) Accounting Services:

A number of Canadian provincial governments have enacted legislation preventing accountants from describing themselves as 'chartered' unless they belong to just one such body, the Canadian Institute of Chartered Accountants.

In the Accounting sector, there is a specific problem since one has to be certified in order to be allowed to operate in Canada. This means that European accounting firms have to be recognized by a specific Canadian institution. The accounting services sector would like to see this removed.

c) **Architectural Services:**

The architectural services sector holds two main concerns in the Negotiations with Canada:

- Architects would welcome any measures that facilitate **Mutual recognition agreements**. The members of the Union Internationale des Architectes (UIA) have agreed on a profession to profession agreement or Ethical Code. This UIA Accord on Recommended International Standards of Professionalism in Architectural Practice, adopted in 1999, is to provide practical guidance for negotiating entities in order to ease the negotiations for any such recognition agreements. The European and Canadian private sectors architects competent bodies have already started to negotiate an MRA that would cover all EU 27 members states and all 13 Canadian Provinces and Territories. On the EU side, the directive on professional qualifications has already paved the way for mobility of architects within the EU. However, an agreement between private sectors organisations will not make the MRA binding. ESF calls the CETA negotiators to ensure that the necessary mechanism will be put in place in the agreement so as to ensure the implementation of an MRA on qualifications and diplomas for the architects between the two parties, once agreement will be reached between the private sectors representatives. Other professional services professions, notably engineers, are expecting progress on this MRA and hoping that it will be a precedent that they might follow.

- The Architectural Services sector asks for anonymity in architectural projects' competition in Canada. This subject is related to public procurement. Among the European architects the feeling predominates that American architects are often favoured in Canadian competitions. Therefore, the European architects stress the importance of anonymity of the architectural projects that are in competition in a call of tender, such as already existing in Europe.

2) **Business Services**

Canada GATS Offer remains relatively disappointing. CETA negotiations should aim at opening and significantly binding further a large number of business services that are important component of modern economies.

- Computer services remain committed at a three-digit level (rather than a more open 2-digit level like the EU offer).
- Canada has still not committed on many sub sectors in Research and Development (R&D) services. These services are important for real integration of the economies.
- Real estate services still restricted by commercial presence, residency and citizenship requirements on a provincial level, hence preventing any cross-border provision of these services.
- Canada has made no important commitments in any of the "Other Business Services" including advertising, management consulting (still committed at a 5-digit level, rather than a 3-digit level, as requested), placement and supply services of personnel, security services, related scientific and technical consulting services, photographic services and printing and publishing services, etc. Canada should at least take full commitments in **advertising services**. Also, as a great country in agriculture, fishery and mining, Canada should undertake in the CETA to open without restriction the **services incidental to agriculture**, hunting and forestry, to **fishing**, to **mining** and to **manufacturing**.

3) Postal & Courier Services (Outbound international Postal Services)

In Canada, conveyance of domestic letters weighing up to 500g has always been reserved for the exclusive benefit of Canada Post as the *Canada Post Corporation Act (CPCA* - national postal law) provides for Canada Post to have the exclusive privilege of collecting, conveying and delivering letter mail in Canada.

Until 2004, the outbound international mail market has been a successful and competitive industry operating in Canada for more than two decades. Private companies predominantly from Canada and Europe that participate in the outbound international market have developed and grown an industry that provides commercial customers with a suite of competitive services (i.e. printing, mail design and preparation, sorting and foreign delivery). Customers have included Canadian and foreign businesses, as well as numerous federal government departments. Canada Post even participated as a shareholder in some of these competing private companies.

European competitors operating within the Canadian outbound international industry have operated openly, fairly and competitively for more than two decades. Maintaining this competitive industry will in no way diminish Canada Post domestic exclusive privilege, nor will it hinder Canada Post's ability to provide Canadians with universal postal service. It hasn't for more than twenty years during a time when Canada Post realised consistent profits and acknowledged the legitimacy of this industry. Nothing will change if the status quo is maintained for this industry.

In 2004, Canada Post initiated legal proceedings against some outbound international mail companies in an effort to broaden the exclusive privilege provisions of the *CPCA* to include both domestic and international mail. Canada Post was successful following a decision by the Ontario Superior Court, a decision that did not accept any evidence of competition over the past twenty years. The court decision was an interpretation of the wording of the *CPCA* and did not consider the intent of the Canadian Parliament regarding this legislation. While there are numerous Canadian companies involved in the outbound international mail market, legal complaints by Canada Post have, for the most part, been focused against those companies with some level of foreign/European ownership interest.

Despite maintaining open and competitive business operations in the Canadian market for more than twenty years, without the necessary legislative amendment, the future of this industry in Canada is seriously threatened. The actions of Canada Post have already led to the cease and/or withdrawal of some of the competing private companies and even to commercial customers moving their mail needs and requirements outside of Canada.

Efforts to change one sentence in the *Canadian Post Corporation Act*, which would thereby exclude outbound international mail from Canada Post's exclusive privilege (which again has been the practice for more than two decades), would provide the required business certainty for this sector and do nothing more than maintain the status quo for this long standing industry. Such efforts have been supported by a large group of organizations and associations in Canada representing both small and large industries. As well, a majority of Parliamentarians also support these required changes.

It should also be noted that in 2008, an independent Strategic Review Advisory Panel, established by the federal government, conducted a full review of a number of competitive and operational issues relating to Canada Post, including the issues surrounding the outbound international mail industry. In 2009, this Advisory Panel presented its report to the government and unanimously recommended that the outbound international mail market be allowed to continue to operate in Canada. At the same time the Advisory Panel recommended the maintaining of Canada Post's exclusive privilege except for this one change, a clear recognition that the outbound international mail market would in no way diminish Canada Post's domestic exclusive privilege.

Despite draft legislation being introduced twice over the past three years that would correct this problem, delays within the Canadian legislative process have continued to stall efforts to pass this necessary legislation. Most recently, Bill C-44 died on the Order Paper in the Canadian Parliament following the December 2009 prorogation of Parliament. Furthermore, pending court proceedings continue and threaten to put these international mail companies out of business entirely. The current state of affairs has resulted in significant uncertainty in the marketplace and unfair competition in favour of Canada Post.

There is plenty of room in Canada for both Canada Post and private international mail companies to compete, as is the case in most other countries around the world and which has been the case in Canada for more than two decades. This matter is about nothing more than common sense, fairness and open competition.

The European Mail services providers and the European Services Forum ask the Canadian government to take the necessary steps to once and for all correct this problem by finally again introducing legislation that would maintain the status quo and provide outbound international mail providers with the certainty to operate and grow their businesses in Canada. Moreover, in light of the significant stakeholder support for this simple change, the Canadian government should pursue efforts with Canada Post to have all pending legal orders and proceedings dismissed against international mail operators. No final agreement on the CETA should be reached before this particular case is effectively solved and closed.

4) Telecommunications Services

Canada must remove the ceilings on foreign equity participation (direct, indirect and by shareholder. Residency requirement must be removed or seriously reduced (as of today according to our intelligence, at least 80% of the members of the board of directors of facilities-based telecommunications service suppliers must be Canadian). ESF welcomes the recent announcement by Canadian authorities to open up to venture capital and FDI in the satellites and telecommunications sector and encourage them to bind the new reform into the EU-Canada FTA as a strong invitation to EU investors from that sector to participate to the development of the digital economy strategy.

5) Distribution Services

Canada should commit on all modes of distribution (wholesale trade, retailing, agent's services and franchising services) of products that are generally considered as not sensitive, like food products, beverage, books, newspapers and other printed material, etc.

6) Environmental Services

ESF calls Canada to consider commitments in all sub sectors of environmental services, as defined in the European classification proposal in the framework of the GATS negotiations, reflecting a more up-to-date definition of those services. Commitments in that sector are particularly relevant in relation with the concurrent Public Procurement negotiations going on in the CETA.

7) Financial Services

ESF urges the negotiators to establish parity among international players in the Canadian financial services market, including with companies from the USA, which still benefit some preferential access. The current practice should be bound in the agreement, so as to dramatically improve the rather disappointing Revised GATS Offer from Canada in Financial Services.

Full service bank branches should be allowed to accept deposit without any limits from any depositors. Discriminatory citizenship/residency requirement for at least one half of the directors of federally regulated institutions should be removed, as well as the requirement according to which federally regulated financial institutions having capital in excess of \$1 Billion must have 35% of

their voting shares dispersed among many shareholders and must be listed on a Canadian stock exchange within three years of having reached that threshold.

Commercial presence requirements in many provinces to supply cross-border asset management, advisory and auxiliary financial services should be removed, as well as the residency requirements or limits imposed to the Mutual Funds which offer securities.

An optimal approach to market integration between the EU and Canada should be based on the consistent pursuit of mutual recognition and regulatory convergence in financial services, in particular in asset management and securities. It would lower the transaction costs and raise the volume of securities trading.

8) Insurance

European insurance companies that operate in Canada face a quite heavily regulated market. Even though European insurance companies are able to operate in Canada, they are submitted to multiple Canadian jurisdictions and obliged to duplication of reporting in different formats. Moreover, these companies are required to put up local Capital. This means that they are required to put money into local (Canadian) banks which constitutes a great disadvantage to the European insurance companies. Due to this regulatory reporting, business in Canada becomes burdensome and inefficient to the European insurance companies. Differences between requirements of the Federal regulator and the Provincial regulators as well as differences between the provincial regulators complicate the access to information on a timely basis. CETA negotiations should remove the local capital requirement and acknowledge the headquarters capital, and should aim at easing the reporting procedures.

The requirement for a Chief Agent to be ordinarily resident in Canada seriously complicates establishing a commercial presence in Canada and should be removed.

The European insurance companies would like to see mutual recognition of insurance regulation as per the IAIS standard.

Many automobile insurers have voiced their astonishment with the anticompetitive nature of several of the provincially run automobile insurance schemes (monopolies) and urge the negotiators to end this unique situation in all OECD countries. Private sectors insurance companies have over time and countries demonstrated that they can run all aspects of automobile insurance schemes. Monopolies should be progressively ended when relevant and harmonized regulation over the country is put into place.

9) News Agency Services

Canada should take full commitments in such an uncontroversial sector in a democratic country.

10) Energy Related Services

Given that Canada is an important trader of electricity, oil, and natural gas, CETA negotiations should aim at liberalising the energy related services between the two blocs.

ESF MEMBERSHIP

The European Services Forum comprises major European service companies, represented by their CEOs or Board Members in the European Service Leaders Group and European service federations, representing 20 services sectors. It represents the very large majority of the European service industries that have a direct interest in supplying international services.

1. Architects' Council of Europe –ACE
2. British Telecom Plc
3. Bundesverband der Freien Berufe – BFB
4. Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
5. BUSINESSEUROPE
6. BUSINESSEUROPE WTO Working Group
7. Conseil des barreaux de la Communauté Européenne – CCBE
8. Comité Européen des Assurances - C.E.A.
9. Confédération Fiscale Européenne - CFE
10. Clifford Chance
11. Conseil des Notariats de l'Union Européenne – CNUE
12. Commerzbank AG
13. Deutsche Bank AG
14. Deutsche Telekom AG
15. DHL Worldwide Network SA
16. DI – Confederation of Danish Industries
17. EK - Confederation of Finnish Industries
18. Ernst & Young
19. EuroCommerce
20. European Association of Cooperative Banks – EACB
21. European Banking Federation – FBE
22. European Broadcasting Union – EBU
23. European Community Shipowners' Associations – ECSA
24. European Express Association – EEA
25. European Federation of Engineering and Consultancy Associations – EFCA
26. European International Constructors - EIC
27. European Public Telecom Network – ETNO
28. European Savings Banks Group – ESBG
29. European Satellite Operators Association - ESOA
30. Fédération des Experts Comptables Européens – FEE
31. Fédération de l'Industrie Européenne de la Construction – FIEC
32. Foreign Trade Association - FTA
33. France Telecom
34. Goldman Sachs International
35. IBM Europe, Middle East & Africa
36. International Financial Services, London – IFSL
37. Irish Business and Employers Confederation
38. KPMG
39. Law Society of England & Wales
40. Lloyd's of London
41. Mouvement des entreprises de France – MEDEF
42. Oracle Europe, Middle East & Africa
43. PostEurop
44. Royal Bank of Scotland – RBS
45. Siemens AG.
46. Standard Chartered Bank
47. Svenskt Näringsliv (Confederation of Swedish Enterprise)
48. Telefónica SA
49. Telenor Group
50. Thomson-Reuters
51. TNT
52. Trägerverein Zenit e.V
53. TUI A.G.
54. Veolia Environnement
55. Vodafone
56. Zurich Financial Services