

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

Brussels, 8 April 2011

RE: European Services Industry Priorities on EU-MERCOSUR RTA

Dear Commissioner,

I am writing to provide you with the European Services Forum's views on the negotiations of the EU Regional Trade Agreement (RTA) with the MERCOSUR countries (Argentina, Brazil, Paraguay and Uruguay). This position is the result of analysis of the discussions since they started in 1999, taking into consideration their suspension in 2004 and also the current level of international commitments. It has been drafted in close consultation with our members; many of whom would have also sent comments directly to the Commission's relevant services.

Last June¹, I wrote to you stating that ESF was pleased with the decision by the European Union to resume trade negotiations with MERCOSUR. This region is indeed a large market with great growth potential and an increasingly important partner for the EU. A future free-trade agreement should therefore give EU services providers and investors' better access to this emerging market with a strong and regular growth rate, and we would like to call for an ambitious and balanced agreement.

Given the high profile of agriculture in these talks, allow me once again to reiterate the importance of services. First, it must be noted that on the MERCOSUR side, the non-agricultural sector makes up the majority of GDP in each of its four countries: Argentina 94%, Brazil 93.5 %, Paraguay 77.7% and Uruguay 90.5%. Secondly, the services sector makes up the majority of GDP in each country: Argentina 59.8%, Brazil 67.5%, Paraguay 60.1% and Uruguay 67.9% (2009). These figures will inevitably increase with further development and the surplus in trade in services with MERCOSUR already contributes to limit the overall trade deficit of the EU with the region.

Also to be highlighted is the increase in EU exports of services to Brazil and Argentina over the past five years before the crisis; respectively 90% and 100% annually and much more than the trade in goods and agriculture (+15%). EU investments in MERCOSUR are quite large, but the trend shows that FDI outward flows have in fact reduced over the last few years where statistics are available (2000-2005), notably due to remaining trade barriers in services sectors. We would like therefore to urge the Commission's negotiators to ensure that deeper and wider commitments in services are secured; surpassing that which was on the table in October 2004

We were rather surprised to hear that the basis for the re-launching of the negotiations were the 2004 offers, which ESF had clearly rejected at that time; being at an unacceptably low level. The starting point of the services negotiations should be at the existing WTO GATS offers (including the "Signals" of 2008) as is the case for all the other FTA negotiations that the EU is currently running. These GATS offers are not that impressive but are in some instances higher than the

¹ ESF Letter n° 10-16 of 14th June 2010

bilateral offers². Furthermore, we urge you to look to bind the current legal practice of the MERCOSUR countries in the various services sectors as a demonstration of good faith towards mutual liberalisation, which would still only reach the level of the requests which are currently on the table in the resumed WTO talks in Geneva. We would like, in addition, to call upon the negotiators to ensure that specific new liberalisation commitments in major infrastructure services sectors are taken by all players, which will effectively give added value to such an agreement compared with the hopefully soon-to-be-concluded DDA (WTO+).

This will effectively improve the legal security for our trade and investment in the region, since notably the WTO schedule of commitments for these countries – which are the current binding level for our companies - are rather low; notably Brazil's commitments on financial services and telecommunications have never been ratified.

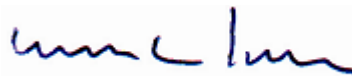
We are especially interested in telecommunications, financial and maritime transport services, where significant progress must be achieved. We are also very interested in getting concessions in other services sectors such as environmental services, professional services, computer related services and many business related services, such as those services related to agriculture and to manufacturing and to news agencies, *etc.*

Our companies will also be very interested in getting better access to public procurement in the region. With an important increase in urbanization, MERCOSUR countries will face significant challenges in providing relevant infrastructure³ for its citizens. The experience and expertise of European companies in these services would be an important asset to help fulfill this demand, provided that the public procurement market in MERCOSUR will be opened accordingly. The RTA negotiations are the correct instrument for this endeavour and ESF strongly supports better access to public procurement in the region at all levels and in all public entities for the relevant services sectors.

The attached document goes into the details of the priorities of the various services sectors, sector by sector.

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

Yours sincerely,



Christoffer Taxell
ESF Chairman

Cc: Mr. Jean-Luc Demarty – Director General, DG Trade, European Commission
Mr. Joao Aguiar-Machado – Deputy Director General, DG Trade, European Commission.

² If and when the offers in 2004 would be better, they must obviously be the starting point, but must above all be improved.

³ The demand of road, rail, ports, inland waterway and other public transport infrastructure, of energy, broadband telecommunication network and drinking water networks, *etc.* will increase exponentially in the coming decades.

ESF Position Paper EU-Mercosur RTA

Executive Summary

ESF Key Priorities for better access to MERCOSUR services markets:

1. Binding of existing levels of liberalisation and further opening of market access.
2. Improved regulatory transparency including commitments to: propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations; make publicly available the requirements that suppliers must meet in order to supply a service; and enforce laws and regulations according to fair and transparent criteria.
3. Greater transparency and market access to government procurement.
4. Wider levels of cross-border commitments in trade in services, *i.e.* full Mode 1 and 2 opening across all sectors.
5. Removal of cumbersome and negative caps and restrictions in establishing commercial presence in the region (Mode 3).
6. Adoption of EU requested categorisation in Mode 4 and ambitious level of commitment to allow temporary inward movement of key personnel in all sectors.

PART A: Mercosur as a trading partner⁴

The rapid growth of the Mercosur economies presents EU businesses with a potentially lucrative market to explore.⁵ Services represent the majority of GDP in all countries: Argentina 59.8%, Brazil 67.5%, Paraguay 60.1% and Uruguay 67.9% (2009). Total EU-Mercosur services trade stood at €20.4bn in 2009, which represented 29.2% of total Mercosur services trade (€69.8bn). In terms of extra-EU services trade, Mercosur accounted for 2.5% of exports in 2009, up from 1.9% in 2007. Within Mercosur, Brazil accounts for the largest share of EU services trade with €15.2bn, followed by Argentina €4bn (2009). The EU also runs a surplus in services trade of €3.2bn (Brazil €2.3bn, Argentina €0.5bn, Uruguay €0.4bn), which contributes towards countering the overall trade deficit with the region. While the EU enjoys a relatively healthy percentage of Mercosur services trade, all countries in the region were characterized by *Trade in Services as a % of GDP* below the world average, with Brazil posting only 4.7% (2008). Compared with the EU's 18.5%, there is evidently considerable scope for services trade to play a larger role in Mercosur's development and which an ambitious liberalisation and internal reform effort would help facilitate.

EU investments in the region are substantial totalling €167bn in 2008, more than EU investments in China, India and Russia combined. Notably, services continue to account for the majority of EU FDI outflows with 62% of investments being directed into services sectors between 2002 and 2005 (cumulative). With the importance of foreign investment to development well established, the region would be well served by encouraging further FDI inflows and improving security of these investments through improving the environment for service suppliers in terms of transparency, predictability and greater openness. Finally, the figures on employment are notable for highlighting the importance of the services sectors on labour markets. In Argentina services account for 75%

⁴ Statistical figures sourced from:

WorldBank - World Development Indicators (WDI): <http://data.worldbank.org/indicator>

Eurostat - EU FDI yearbook 2008

European Commission regional profile: <http://ec.europa.eu/trade/creating-opportunities/bilateral-relations/regions/mercotur/>

⁵ GDP Growth 2005-2009: Argentina (9.2%, 8.5%, 8.7%, 6.8%, 0.9%), Brazil (3.2%, 4.0%, 6.1%, 5.1%, -0.2%), Paraguay (2.9%, 4.3%, 6.8%, 5.8%, -3.8%), Uruguay (6.6%, 4.3%, 7.5%, 8.5%, 2.9%)

(2006) of employment, in Brazil 59% (2006), in Paraguay 52% (2007), and in Uruguay 67% (2007).

Trade Liberalisation

This paper is based on a starting point of the previous bilateral EU-Mercosur Association Agreement negotiation draft offers and also the DDA GATS negotiation offers (initial and revised) from 2003-2005. While these past offers, and indeed current DDA progress, should certainly *not* limit the ambition of the current FTA negotiations in any way, they are useful to use as critical templates in *some sectors* so that this paper can put forward a position of what ESF believes should be achieved from an FTA. In this respect the Mercosur countries have offered a mixed schedule of commitments in terms of ambition. However, recent negotiations with other South American trading partners have shown that it is possible to secure commitments that build a more productive, pre- and post-establishment, environment for services trade and investment through improved market access and legal security.

Argentina leads the way in terms of quality of its offered commitments, and while there remains room for improvement, it sets an initial benchmark for the group. Argentina made a good Schedule of Commitments in Services at the end of the Uruguay Round negotiations in 1994 and in 1997 signed the Reference Papers on Basic Telecommunications and Financial Services. It has offered to make horizontal mode 4 commitments facilitating the movement of natural persons that are in line with EU requests. Sectorally, Argentina made generally good offers in Professional and Business Services, although there should be deeper commitments particularly in Financial and Maritime Transport services, as well as in Environmental services. Despite this positive picture, there are reports that Argentina has become increasingly difficult to work with due to deterioration in the business climate after the Peso crisis.

Despite increasing its clout in recent WTO negotiations, **Brazil** has, overall, made a rather weak Schedule of Commitments in Services since the end of the Uruguay Round of negotiations in 1994. In addition to promises made over commitments in Telecommunication Services, which have never entered into force, commitments in Financial Services from December 1997 that were considered a move in the right direction have not been ratified and Brazil is therefore not legally bound by them, an obvious concern for foreign suppliers and investors. With this as a starting point, Brazilian offers have been limited and with some backtracking on previous Telecommunication and Financial Services positions negotiated in 1997. In addition, Legal Services are conspicuous in their absence from Brazil's offers. Positively, Brazil has taken the EU mode 4 offer on board, albeit with a few cumbersome provisions, but mode 3 restrictions remain that require foreign capital investments to be registered with the central bank.

Paraguay's offerings are very weak and add very little to its, already slim, Schedule of Commitments. Minimal horizontal mode 4 commitments have not been added and there remains no offer on Professional services and other core infrastructural service sectors. Paraguay has added a welcomed, although limited, offer in Computer and Related services, but there remains a need to provide wider commitments in both other Business services and Financial services. Finally, there has been some progress in Tourism services, but here too more could be done. Paraguay can only benefit from further liberalization that would encourage an influx of foreign capital and knowledge transfer which would in turn lead to improvements in essential infrastructure; crucial for increased economic growth.

Uruguay has offered some commitments on certain key sectors, including Professional services and Telecommunication services, which had been left out of its GATS offer. It is important that Uruguay pushes on with liberalisation in these key areas in order to encourage inward FDI. Horizontal commitments on mode 4 also require some clarification to determine how this applies to

Intra-corporate transferees (ICTs), Business Visitors and issues regarding the length of stay in Uruguay.

PART B: Horizontal Issues

1) Starting level of Negotiations

ESF supports the argument that the objective should be to bind current practices and make specific new liberalisation commitments including in the areas compiled here. This will not be easy, particularly in sectors where there are no model schedules, *e.g.* maritime transport where nothing was concluded in 1994 or even 1996.

As in negotiations with other countries or regions, the purpose of the EU-Mercosur FTA negotiations should be to ensure that EU domiciled private companies can compete in the host countries' markets with the minimum of differential treatment compared to host country domiciled companies. Therefore, as in recent negotiations with other South American countries, better market access and better legal security for trade in services and investment should be viewed as vital. The competition that this would bring widens consumer choice, lowers prices, results in better quality goods, creates jobs, and helps the host society to keep step with technological developments. This positively impacts the skills of citizens, and drives innovation in the host market.

2) A negative list approach

ESF encourages the negotiators to use the negative list approach with Mercosur, at least for the aspects related to establishment. This way of negotiating obliges the negotiators to review together all service sectors and produce greater liberalisation results and greater clarity, since it is much easier for companies to assess whether their sector is covered or not and what the limitations are.

3) Movement of natural persons (Mode 4)

The movement of services providers on a temporary basis (GATS Mode 4) is absolutely essential for services companies to properly serve their customers. When a good or service is exported to an overseas market there is frequently a need to transfer skilled personnel overseas to deliver that export or offer professional advice and ongoing services relating to it. In the case of manufacturing and large public works contracts, an EU contractor tendering for a contract will need, if the tender is successful, to be able to offer the relevant package of skills on the spot. However, in the case of financial or professional services, for example, these services are frequently delivered in third-country markets through local establishments and offices, enabling the service-provider to cater not only for international corporate clients' needs throughout the world, but also for local corporate and private clients, as well as state and local governments. Our companies need to be able to send to the Mercosur countries their personnel to their subsidiaries and other commercial presences (intra-corporate transferees – ICT) as well as to their clients for temporary periods on a specific contract basis. We encourage the EU negotiators to ensure that our Mercosur partners will improve these possibilities and facilitate the granting of necessary visas and work permits in an expedited manner.

Argentina's offer of commitments in Mode 4 is the strongest of the four countries and is in line with the EU's requests. Business visitors would be able to enter the country for 90 days (renewable, with the possibility of multiple entries). Professionals and specialists carrying out professional or technical activities may apply for 15-day entries (renewable, with the possibility of multiple entries); those providing services to a natural or legal person in Argentina may stay for one year (renewable, with the possibility of multiple entries). Additionally, intra-corporate transferees and representatives of foreign enterprises may also remain in Argentina for one year (renewable, with the possibility of multiple entries). *Brazil* has adopted the categories requested by the EU in its revised GATS offer: Intra-Corporate Transferees (ICT), Business Visitors (BV) and Contractual

Service Suppliers (CSS). ESF recommends that this categorisation system also be used in its EU-Mercosur text. However, Brazil has applied cumbersome provisions which should be removed. For example, there is a requirement for executives and managers (ICT) to generate 10 new jobs within two years, there is a restriction that prevents BV from making direct sales, and CSS are required to have a contract for technical assistance or transfer of technology between the foreign company and the service consumer in Brazil. *Paraguay* and *Uruguay* have made offers which allow for the entry and temporary stay of “managers, executives, and specialists” but clarification is required to assess how this applies to the ICT, BV and CSS categorisation endorsed by the EU. Additionally there needs to be clarification around the issue of duration applying to these commitments of temporary movement.

4) Foreign Direct Investment regimes

ESF members would like to see unnecessary encumbrances on mode 3 investments removed from *Brazil's* schedule. The requirement that foreign capital invested in Brazil be registered with the Central Bank has been repeatedly objected to by the EU. It is also requested that remaining caps on level of foreign capital participation are removed to allow, at least, majority ownership in all services sectors.

5) Better access to Public Procurement

As the Mercosur countries develop it will be vital that their respective infrastructures stay apace with development and act as an enhancement rather than a hindrance to economic and social growth. European companies possess the experience and expertise that the Mercosur countries will need during a period of increased urbanization and also high projected population growth, particularly in Brazil, taking into account the upcoming Olympic Games and Soccer World Cup, and also the underdeveloped Paraguay. The pressures on key infrastructure services such as road, rail, ports, inland waterway and other public transport infrastructure, of energy, environmental, broadband telecommunication network, and drinking water networks etc will increase exponentially in the coming decades. It is therefore important to the Mercosur countries that their public procurement markets are open to European companies. The FTA negotiations are an excellent instrument for securing such openness at all levels and in all public entities.

In Brazil, while foreign companies can participate in international tenders, the law maintains a preference for goods and services produced in Brazil when bids are equal in terms of price, quality and delivery time. Given its large size, discriminatory government procurement policies are, in relative terms, a substantial barrier to EU exports. Additionally, Brazil has not signed the multilateral Agreement on Government Procurement. In Argentina the main problems are in transparency of public tenders, local content requirements and regulation in public tenders for price escalation (public contracts include the right to adjust prices based on an official index (namely, INDEC). INDEC doesn't have any index which represents the evolution of costs based on the Euro as the index available is based on the evolution of the US Dollar).

6) Other Horizontal issues

In Brazil it is nearly impossible to obtain approval to operate under a “permanent establishment” as this requires approval at presidential level. As a result, operations always have to be conducted by a fully-fledged legal entity. An agreement to apply the “OECD model tax convention” will help to improve this situation and will help to establish a sound investment framework.

PART C: Sector Specific Issues

BUSINESS SERVICES

1. Professional Services

(a) Legal Services (CPC 861)

The current offers of the four countries differ substantially. As it stands *Argentina* has produced a good offer with Modes 1-3 committed; *Brazil* and *Paraguay* have made no commitment offers, and *Uruguay* has made an improved offer over its GATS effort but still with no binding on mode 1. This is a troubling scenario due to the fact that an absence of commitments in legal services results in a lack of general legal security and thus dissuades FDI in other sectors.

Objectives: Removal of all barriers to market access and national treatment for providers of international legal services into the Mercosur countries' markets, with the following particularly applicable to Brazil, Paraguay and Uruguay.

- Full commitments for modes 1-3, *i.e.* schedule “none” under MA and NT.
- Commit to covering, at minimum, consultancy on public international law and on law of jurisdiction where the service supplier or its personnel are qualified lawyers.
- Mode 4: Commit as requested in the section on “Horizontal Commitments”.

(b) Accounting, Auditing and Bookkeeping Services (CPC 862)

Argentina has made another good offer in this sub-sector with full commitments in modes 1-3. As in legal services, however, the remaining three should upgrade their offers. *Paraguay* has made no offer and *Brazil* has made a highly disappointing offer with a mode 3 NT restriction that requires special registration for foreign accountants and a MA limitation that prohibits non-residents from participating in juridical persons controlled by Brazilian nationals. *Uruguay* has provided some improvements over its initial GATS offer with full commitments in modes 2 and 3 but with mode 1 unbound.

Objectives:

- Full commitments for modes 2-3 for Auditing Services with “none” scheduled under MA and NT.
- Full commitments for modes 1-3 for Accounting and Bookkeeping Services with “none” scheduled under MA and NT.
- Mode 4 commitments as requested under “Horizontal Commitments”.

(c) Taxation Services (CPC 863)

There are currently no offers on taxation services, with the exception of *Uruguay's* mode 2 and 3 commitments (mode 4 as under horizontal), and all countries are invited to consider making commitments in this subsector.

(d) Architectural Services (CPC 8671)

Brazil has made an offer which commits on mode 3 but with the MA limitation that the foreign service supplier must join with a Brazilian supplier in a “consorcio”, whereby the Brazilian partner maintains leadership. *Paraguay* has made no offer, *Uruguay* has committed fully on modes 2 and 3, and *Argentina's* offer is good with full mode 1-3 commitments.

Objectives: The removal of the obligation to join a *Brazilian* service supplier in a “consorcio” under mode 3 and for Brazil to make full commitments without MA and NT limitations in modes 1-2. It would also be welcomed for *Paraguay* to consider making commitments in this subsector and for *Uruguay* to include mode 1.

(e) Engineering Services (CPC 8672)

Brazil has committed to mode 3 but the MA “consorcio” limitation is present. Brazil has added the Engineering Design Services (CPC 86726) subsector as requested, and also the subsector Other engineering services during the construction and installation phase (CPC 86727) in its GATS offer which we would like to be present in the bilateral offer also. *Paraguay* has again made no offer,

Uruguay has offered modes 2 and 3, and **Argentina's** offer is good with full mode 1-3 commitments.

Objectives:

- Full commitments by Paraguay and Uruguay for modes 1-3, *i.e.* schedule “none” under MA and NT.
- The removal of the “consorcio” obligation in the Brazilian mode 3 commitments for all CPC 8672 subsectors.
- Full Brazilian commitments for modes 1-2, *i.e.* schedule “none” under MA and NT.
- Mode 4 commitments as requested under “Horizontal Commitments”.

(f) Integrated Engineering Services (CPC 8673)

Argentina has committed fully in modes 1-3 in this sector. **Brazil** has committed mode 3 with the “consorcio” obligation. **Paraguay** has failed to table an offer and **Uruguay** has only table modes 2 and 3 and two sub-sectors (86733, 86739). This is an improvement over the respective GATS offers where none of the Mercosur countries had made any commitments.

Objective:

- Full commitments by all countries in modes 1-3 with no limitations in MA and NT.
- Mode 4 commitments as requested under “Horizontal Commitments”.

(g) Urban Planning and Landscape Architectural Services (CPC 8674)

Building on the weak GATS offers in this subsector the bilateral offer was an improvement with **Argentina** making full mode 1-3 commitments. **Uruguay** making mode 2 and 3 commitments and **Brazil** has offered commitments in mode 3 “consorcio” restriction in place. **Paraguay** has again made not offer in this sub-sector.

Objectives:

- The removal of the “consorcio” obligation in the Brazilian mode 3 commitment.
- Full Brazilian commitment for modes 1-2, *i.e.* schedule “none” under MA and NT.
- All other countries to make full mode 1-3 commitments.

2. Computer and Related Services

The four countries have varied offers in this sector. **Argentina** has made a good offer with Modes 1-3 committed in the following sub-sectors: Consultancy services related to the installation of computer hardware (CPC 841), Software implementation services (CPC 842), Data-processing services (CPC 843), Database services (CPC 844), and Other computer related services (CPC 845 & 849). **Brazil** has offered commitments in mode 3 on a two-digit level (CPC 84), but excluded time-stamping and digital certification services (CPC 8432, 8433, 8439, 8499). Modes 1 and 2 unfortunately remain unbound. Both **Paraguay** and **Uruguay** have made good improved bilateral offers with full mode 1-3 commitments at the two-digit level (CPC 84) with the exceptions of Time-stamping and Digital certification services (CPC 8432, 8433, 8439, 8499).

Objectives:

- All countries to make commitments at the two-digit level (CPC 84) in modes 1-3 without limitations in MA or NT.
- Mode 4 commitments as requested under “Horizontal Commitments”.

3. Other Business Services

Argentina has made a good offer with modes 1-3 committed in a number of subsectors. The **Brazilian** revised GATS offer is an improvement on its 2004 EU-Mercosur draft offer and commits mode 3 in a number of areas in addition to mode 1 in advertising and mode 2 in a few subsectors.

There are a number of strong limitations on advertising services, however with mode 1 foreign production participation limited to 1/3 of the footage and with a Portuguese language requirement. Mode 3 has a MA 49% capital limit and leadership subordination restriction and a NT requirement for producers to live in Brazil for 3 years prior to production. *Paraguay* has made only a limited offer in a few subsectors. *Uruguay* on the other hand offered a strong level of commitments in a wide number of subsectors in modes 1-3.

Objectives (in addition to offered level):

- All countries, commitments in Modes 1-3 for: (a) advertising; (b) market research and public opinion polling; (c) management consulting; (d) services related to management consulting; (e) technical testing and analysis; (m) related scientific and technical consulting services; (n) maintenance and repair of equipment;
- All countries, commitments in Modes 2,3 for: (l) security services; (o) building cleaning; grounds maintenance; and washing and cleaning services
- For Brazil to remove the Modes 1 and 3 MA and NT limitations on (a) advertising services.
- For Brazil to take Mode 1 and 2 commitments in (t) translation services.
- For all countries to consider taking commitments on Research and Development Services (CPC 85), Rental and Leasing Services without Operators (CPC 831), Placement and supply services of personnel (CPC 872), packaging services (CPC 876), printing and publishing services (CPC 88442), translation services (part of CPC 87905) and convention services (part of CPC 87909).

COMMUNICATION SERVICES

4. Postal and Courier Services

The importance of an effective and competitive postal, courier and express delivery services infrastructure should not be underestimated in terms of its impact on the economy. With only partial commitments in this sector the Mercosur countries are limiting their potential for economic growth. *Argentina* has made a decent offer with modes 1-3 committed in Courier Services (CPC 7512). *Brazil's* revised GATS offer is weak with only modes 1 and 3 committed for Multi-Modal Courier Services (CPC 75121). In its original bilateral offer there are commitments in CPC 7511, Postal services, but not in Courier services. *Paraguay* has tabled no offer on this sector. *Uruguay* has made modes 1-3 commitments on Courier Services but only with a mode 1 and 2 MA restriction that the Communication Services Regulatory Unit provides an operating license which lapses after 3 years if not renewed.

Objectives: We would like all Mercosur countries to:

- Make full market access and national commitments in modes 1-3 for express delivery services for all items.
- Make full market access and national commitments in modes 1-3 for parcels, addressed press products, handling of non-addressed items and document exchange.
- Make commitments in modes 1-3 for addressed written communications and registered or insured mail.
- Commit as scheduled in horizontal commitments for mode 4.

Additionally, we call upon *Uruguay* to remove the MA restriction pertaining to the requirement for 3 year licenses in Courier Services distributed by the Communication Services Regulatory Unit for modes 1 and 3. Uruguay also has a requirement that for the supply of communication services authorisation of the Executive Branch is required. We would like this clarified, and if restrictive, removed.

Furthermore, the FTA should clarify that expedited customs' clearance procedures should be made available for all operators satisfying certain requirements and that access to these procedures should not be restricted on the basis of the weight of the shipments.

TELECOMMUNICATION SERVICES

The telecommunications sector is probably the sector that has experienced more internal transformations during the last decade. This has been reflected in regulatory challenges that have led to the transformation of the regulatory regimes in the advanced economies. The technology trends have been pushing already for a number of years, towards a reality of convergent services in the ICT sector, mainly due to the global offerings of services that are made possible by the Internet Protocols (IP-enabled services) over broadband that has come to transform, in radical ways, the frontiers of business and markets.

In addition to the migration to all-IP networks, there are other trends as the use of wireless access networks, the transition to digital TV or the popularization of optical access. These new ways of providing telecommunication services are challenging the existing regulatory schemes and defining new agendas for the Regulatory Bodies.

In the European Union, the approach for this new scenario has been pragmatic and as early as in the Regulatory Framework approved in 2002, the European Commission proposed a common generic denomination for convergent services, which were all catalogued as "electronic communication services". The services lost their "old" classification of fixed or mobile telephony, leased lines, data communication, telex, facsimile, *etc...* and started to be designated as electronic communications. This category also includes the *technical transmission* of radio and television, which is to be distinguished from the *content service* provided by media service providers/broadcasters, which continues to fall under a distinct legal framework. It would make full sense if the negotiations with Mercosur take a modern approach and **use this classification**.

At the same time, it is important that the agreement faces **the challenge of convergent services**. The reality of the telecommunications sector worldwide is that operators are transmitting television content to their customers, not only through dedicated broadcasting networks⁶, but also using IP networks⁷. This is not possible, today in Mercosur, due to old-fashioned regulations that cause market access restrictions. A possible approach could be ensuring that licence requirements are levered to warrant the feasibility of convergent services.

Other basic regulatory principles that are lacking a proper approach by Mercosur, should be reinforced in the agreement, specially regarding the independence of the Regulatory Authorities from state-owned operators - which is not the case in Uruguay - and the periodic review and lift of regulatory measures.

The use of limited spectrum caps is also an open issue in the mobile market in the Mercosur countries. This regulatory measure has been already overcome in modern markets because it limits the development of mobile broadband services.

It is also requested that for all modes the provision that the provision of satellite facilities of geostationary artificial satellites for the Fixed Satellite Service is excluded be removed.

CONSTRUCTION AND RELATED ENGINEERING SERVICES

⁶ **Broadcasting**: is defined as the uninterrupted chain of transmission required for the distribution of TV and radio programme signals, to the general public.

⁷ **IPTV services** deliver content that is split into digital packages which are then sent to the end-user device (tv set, mobile telephone,...), using a non-continuous link, which is "customer-exclusive", meaning that the packages are prepared and sent only to the customer that has requested them.

Argentina's offer set a good starting position with modes 1-3 committed in general construction work for buildings & Civil engineering (CPC 512, 513 except 5139), assembly and erection of prefabricated constructions (CPC 514 & 516), building completion and finishing work (CPC 517) and other construction services (CPC 511, 515, & 518). *Brazil* made a bilateral offer including mode 3 commitments in CPC 511-518, meeting EU requests and improving on its GATS offer. *Paraguay* has made no commitments in this sector. *Uruguay* has made an improved bilateral offer of mode 2 and 3 commitments in general construction work for buildings and civil engineering (CPC 512, 513), installation and assembly (CPC 514, 516), building completion and finishing work (CPC 517), and others (CPC 511, 515, 518).

Objectives:

- Full commitments in mode 3 for *Paraguay* in the sub-sectors CPC 511-518 with mode 4 committed under requested Horizontal commitments.

DISTRIBUTION SERVICES

Argentina offers commitments in modes 1-3 for wholesale trade (CPC 622), retail trade (CPC 631, 632, 6111 6113 & 6121) and franchising (CPC 8929). *Brazil* has made only mode 3 commitments in Wholesale trade in services (CPC 622 except 62271), Retailing services (CPC 631, 632, 6111, 6113, 6121), Franchising (CPC 8929) and Commission agents' services (CPC621). *Paraguay* and *Uruguay* made no offer in this sector in their initial GATS offers but have included sub-sectors in the EU-Mercosur offer. Paraguay has offered mode 2 & 3 wholesale trade (CPC 622 except 62271), retailing services (CPC 631, 632, 6111, 6113, 6121 except 63297) and modes 1-3 in franchising (CPC 8929). Uruguay has offered the same as Paraguay but all in modes 1-3 and also Commission agents services (CPC 621) in modes 1-3. This is an important sector because greater efficiency, improved by liberalization, ensures that the benefits of freer trade in goods result in benefits for consumers.

Objectives: For all countries we would request that the following sub-sectors are committed on in full in modes 1-3 and with mode 4 committed as referred to in the Horizontal commitments.

- (a) Commission Agents' Services (CPC 621, 6111+6113+6121)
- (b) Wholesale Trade Services (CPC 622, 6111+6113+6121)
- (c) Retailing Services (CPC 631+632, 6111+6113+6121+613)
- (d) Franchising (CPC 8929)

Additionally we would like to see scheduled commitments in distribution of motor vehicles & distribution of motor fuel.

ENVIRONMENTAL SERVICES

None of the Mercosur countries made commitments on environmental services in their initial GATS offers. Given the importance of environmental services at a time when cities are growing in size and density the EU proposal for classification of environmental services below is encouraged. *Argentina* has made mode 1-3 commitment offers environmental services (CPC 9404, 9405, 9406, 9409). *Brazil* has offered mode 3 commitments, with MA licence provision, in Sewage Services (CPC 9401), refuse disposal services (CPC 9402), sanitation and similar services (CPC 9403), Cleaning services of exhaust gases (CPC 9404) and noise abatement services (CPC 9405). *Paraguay* offers mode 3 commitments in sewage services (CPC 9401), refuse disposal services (CPC 9402), sanitation and similar services (CPC 9403), Cleaning services of exhaust gases (CPC 9404) and noise abatement services (CPC 9405). Mode 3 is subject to municipality legislation and the town council and services of public interest are subject to monopoly of exclusive rights. *Uruguay* offers mode 3 commitments in sewage services (CPC 9401), refuse disposal services

(CPC 9402) and sanitation and similar services (CPC 9403) with a municipality legislation provision. Uruguay also offers full modes 2 and 3 in remediation and cleanup of soil and water.

Objectives:

- (a) Water for human use & wastewater management
 - Mode 3 commitments and mode 4 horizontal commitments.
- (b) Solid/hazardous waste management
- (c) Protection of ambient air and climate
- (d) Remediation and cleanup of soil & water
- (e) Noise and vibration abatement
- (f) Protection of biodiversity and landscape
- (g) Other environmental & ancillary services
 - Full mode 1 (where possible), 2 and 3 commitments for sub-sectors (b)-(g) and mode 4 horizontal commitments.

FINANCIAL SERVICES

In all Mercosur countries we would like to see commitments in line with the Understanding on Commitments in Financial Services. *Argentina* has partially covered these commitments with a decent offer but we would like to see fuller commitments. *Brazil* has produced a weak offer that has not taken commitments in accordance with the WTO Understanding on Commitments in Financial Services. Both *Paraguay* and *Uruguay* have tabled limited offers that we would like to see widened in both Insurance and Banking divisions. It is particularly important that financial services are committed on as the positive impact will be felt in the whole economy, particularly as the economy becomes more developed and complex in its need for financial products. Additionally, the reason parallelism in Modal commitments matters is because the nature of modern financial services markets means that a single piece of business can involve all four.

Objectives:

I. General

- In *all Mercosur countries* we would like to see commitments in line with the Understanding on Commitments in Financial Services.
- In the processing of financial data, financial institutions should be permitted to freely transfer information outside of the local jurisdiction for processing. They should also permit financial institutions to perform certain functions, such as trade and transaction processing, in their home jurisdiction rather than require that those activities be conducted by a local affiliate.
- On mode 3 MA *Uruguay* has a criteria for granting authorization based on “current state of the market”, which amounts to an economic needs test that we ask to be eliminated.

II. Insurance

With *Argentina*, we would like to see new mode 1 and 2 commitments on intermediation of reinsurance and mode 3 commitments in the entire sub-sector. Services auxiliary to insurance are unbound and we would like these fully committed on in all modes. Additionally, we would like to see the current market access practices relating to mode 1 reinsurance bound i.e. those in place before resolution No. 35,615 was enacted. The Argentine Superintendence of Insurance (SSN) enacted resolution No 35,615, on February 21st. This resolution will dramatically affect the reinsurance regulatory framework so that from September 1st, 2011, cross-border reinsurance operations (mode 1) will effectively be prohibited.

At present, Argentine cedants may reinsure with:

1. Argentine reinsurance companies or Argentine subsidiaries or branches of foreign reinsurers, with a capital in Argentina of at least AR\$ 20,000,000 (i.e., approximately USD 5,000,000). At present, since there is basically no such company, cedants reinsure through any of the options below.
2. Foreign reinsurers underwriting risks from their home office, provided they are registered with SSN.
3. Foreign reinsurers underwriting risks from their home office, not registered with SSN, provided a reinsurance broker registered with ASI intermediates in the pertinent reinsurance contract.
4. Argentine insurance companies, up to certain limits and subjects to certain formal requirements.

From September 1st, 2011 Argentine cedants will only be able to enter into reinsurance contracts under point 1. Foreign reinsurers that have not set up an Argentine reinsurance subsidiary or branch will only be able to underwrite risks from Argentine cedants when there is no local capacity and subject to the approval of SSN (granted case by case) and to the registration of such foreign reinsurers with SSN. This is a backward step for the Argentinean financial services infrastructure and we strongly urge SSN to reconsider the adoption of this resolution.

Brazil is one of the few countries to take part in the negotiations on the Fifth protocol pertaining to financial services yet to ratify. First of all, it is strongly recommended that it be ratified. More specifically on insurance, we recommend the following actions be taken:

- Make full commitments on MAT insurance in modes 1 and 2.
- Make full commitments on reinsurance and retrocession for modes 1-3. (this was accepted by Brazil in 1995 and 1998 but has not been implemented).
- Make full commitments on reinsurance and retrocession (Agencies and Brokerage Services) for modes 1-3.

In addition, on 6th December 2010, the Brazilian insurance regulator, the Superintendencia de Seguros Privados (SUSEP), published two resolutions amending local reinsurance regulations. These regulations were not subjected to public consultation in advance and will dramatically restrict the ability of private reinsurers – especially foreign reinsurers – to do business in Brazil. Subsequently, on 25th March less than a week before the regulations came into force, the Brazilian Finance Minister Mantega signed a new Resolution 232 which would replace Resolution 224. The European Services Forum urge the negotiators to prevent any backtrack in the current situation for insurers and re-insurers.

1. CNSP Resolution 225, effective from March 31st, 2011, amends Article 15 of CNSP Resolution no. 168, to now state that: “The insurance company shall contract with local reinsurers at least forty percent of each assignment of reinsurance in automatic or facultative treaties”. It will become mandatory for 40% of any cession to be placed locally with reinsurers in Brazil. This contrasts the current situation whereby local reinsurers only have “right of first refusal”. In addition, Article 39 of CNSP Resolution no. 168, has been amended to the effect that where local reinsurers in Brazil have the largest proportional share of a risk, they may provide a claims control clause in the reinsurance contract. This rule applies to both treaty and facultative reinsurance contracts.
2. CNSP Resolution 232, with effect from March 31st, adds a new clause to Article 14 of CNSP Resolution no. 168, of 17th December, 2007, which forbids local insurers and reinsurers from transferring more than twenty percent (20%) of the premium corresponding to each coverage to any company affiliated to, or belonging in, the same financial conglomerate headquartered abroad. This rule does not apply to guarantee, export credit, rural credit, internal credit and nuclear risk segments. Previously, CNSP Resolution 224 had forbidden all international placements made to companies in the same group. However, in contrast to Resolution 224 this Resolution has retrospective application, applying to existing policies at their renewal or as of

March 31, 2012, whichever event occurs first. It is understood that the Resolution was put forward as a concession to criticism raised at CNSP Resolution 224, however as a result of its retroactive application it may be worse than the original Resolution.

It is requested that the implementation of Resolutions Nos. 225 and 232 be suspended pending further consultation between industry, the public and the relevant authorities so that a detailed analysis could be produced to subsequently facilitate the generation of regulations which are optimal to the overall financial services framework. In addition, we would like to see current Model 1 commitments relating to affiliated reinsurance bound.

For *Paraguay* it is important that commitments be taken in line with the Understanding on Commitments in Financial Services. The following areas are of note: full commitments in MAT insurance services for modes 1-2 – noting that mode 2 is offered already - ; in the sub-sector insurance intermediation, take full commitments in intermediation of reinsurance and of MAT insurance in modes 1 and 2, and full commitments in the whole sub-sector for mode 3; in the sub-sector services auxiliary to insurance take full commitments in modes 1-3. Mode 4 should be committed as in the Horizontal section.

In addition to *Uruguay's* improved bilateral offer we recommend the following.

- Life and non-life insurance should be committed fully in mode 3.
- For insurance intermediation, such as brokerage and agency, take full commitments in modes 1 and 2 for intermediation of reinsurance and of MAT insurance and in mode 3 for the whole sub-sector.
- Commit as referred to in the section “Horizontal commitments” in mode 4.
- Remove MA restrictions in mode 3.

III. Banking

Argentina

- Financial operations by the Government and State-owned enterprises are excluded from the conditions specified in its schedule. We ask for clarification as to what this restriction adds in relation to article 1 of the Annex on Financial Services.
- Foreign banks' branches should be allowed to use parent's capital to meet prudential requirements.

Brazil

- Mode 3: Remove the requirement of a case-by-case authorisation by Presidential decree (subject to unspecified criteria) for the establishment of a commercial presence.
- Mode 2: Take full commitments.
- Take full commitments in modes 1,2 and 3 for provision and transfer of financial information, Mode 2 and 3 full commitments in credit, charge and debit cards, pension fund Management.
- Make full commitments in mode 1 on advisory services.

From a regulatory perspective there are also some barriers which restrict European banks wanting to do business in Brazil. They include:

- Thin-capitalisation rules that greatly increase funding costs. Debt-limitation with related parties of twice the value of the net worth of the Brazilian bank makes international banks far less competitive than they were before.
- Due to the lack of clear guidance and the lack of regulatory supervision, the scope of permissible rep office activity is not clearly defined.
- Some operations can only be done with state banks thus reducing banking competition. One example is escrow deposits.

- Severe tax limitations apply to the payment of services rendered by companies of the same group located outside Brazil to the Brazilian subsidiary of the international bank.
- Temporary entry and working permits are difficult to obtain (*i.e.* “bureaucratic harassment”) for personnel of foreign firms.

Paraguay

- Take full commitments in modes 1, 2 and 3 for the provision and transfer of financial information and advisory and other auxiliary financial services,
- Take full commitments in modes 2 and 3 for all the other sub-sectors of the classification of the Annex on Financial Services, and commit as referred to in the section “Horizontal commitments” in mode 4.

Uruguay should remove mode 3 quantitative limitations on new bank authorisations, take full commitments on Modes 1-3 for provision and transfer of financial information, and advisory and other auxiliary financial services. Other sub-sectors should be committed on Modes 2-3.

IV. Securities, Asset Management & Advisory Services

ESF seeks robust commitments in the trading, underwriting, asset management, and advisory sub-sectors that build on the negotiating framework that WTO Members have established for financial services. This sector is vital in facilitating investment and access to capital. Draft 2004 bilateral offers in these sub-sectors were characterised by restrictions in mode 3 and a lack of commitments in the offer modes, particularly mode 1.

Mode 1: Full Market Access and National Treatment commitments so that suppliers and consumers of capital markets-related services may transact business on a cross-border basis, free from quantitative restrictions, economic needs tests, or discrimination based on nationality. Subject to the Additional Commitments described in the next paragraph, such commitments would not prevent the trading partner from imposing authorisation requirements⁸ on cross-border suppliers consistent with those imposed on domestic suppliers.

Additional commitments should be sought to exempt EU based suppliers under certain circumstances (particularly when dealing with sophisticated investors) from authorisation and commercial presence requirements. Mercosur may continue to apply conduct of business rules and market conduct rules⁹ to these suppliers. Such commitments would promote effective cross-border access to capital markets-related services. As briefly described below¹⁰, many WTO Members

⁸ “Authorization requirements” refer to standards that a supplier must meet in order to be authorized or licensed to do business in a market, such as standards that address the supplier’s knowledge, resources, skills, and risk management procedures.

⁹ “Conduct of business rules” include rules relating to disclosure of information (including risk warnings) to customers, disclosure of information about the supplier, execution of orders, and the protection of customer assets. “Market conduct rules” relate to fraud, insider dealing, and market manipulation.

¹⁰ As described in a February 2004 report of the International Organization of Securities Commissions (IOSCO) - Technical Committee of the International Organization of Securities Commissions, “Regulation of Remote Cross-Border Financial Intermediaries,” February 2004, *available at* <http://www.iosco.org/library/pubdocs/pdf/IOSCOPD162.pdf> - many Members already provide exemptions from authorization requirements under domestic law for cross-border suppliers, taking into account one or more of the following factors:

- whether the investor is sophisticated (as defined in local law), thereby recognizing that the securities laws need not protect sophisticated investors in certain circumstances or to the same extent as other investors;
- whether the foreign supplier is well regulated in its home jurisdiction (*i.e.*, unilateral or mutual recognition of other regulators);
- whether the foreign supplier solicits customers, or actively markets its services, in the local jurisdiction; and
- whether the securities transaction is “intermediated by” (*i.e.*, conducted through) a locally authorized supplier.

currently exempt foreign suppliers providing services on a cross border basis from authorisation requirements, taking into account one or more factors, including investor sophistication.

Mode 2: Full Market Access and National Treatment commitments allowing Mercosur consumers to travel outside their territory to obtain capital markets-related services.

Mode 3: Full Market Access and National Treatment commitments allowing EU based service suppliers to establish and operate enterprises in the trading partner's territory, free from quantitative restrictions, economic needs tests, restrictions on corporate form, limits on foreign ownership, and measures that discriminate based on nationality. Such commitments would not prevent a Member from imposing authorisation requirements.

Mode 4: Commitments as in the "horizontal section" permitting temporary entry of key personnel. It is also important to review the impact of regulatory requirements that can act as barriers to foreign businesses. For example, in securities operations the requirement that Officers ("directores") and members of the fiscal committee ("conselheiros fiscais") must be resident in Brazil.

Transparent Regulation: Commitments are required that ensure that all measures relating to financial services are adopted, maintained, and applied in a non-discriminatory, transparent, and efficient manner. In particular, ESF seeks commitments that would require Mercosur countries to: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations, where practicable; (ii) make publicly available the requirements that suppliers must meet in order to supply a service; and (iii) enforce laws and regulations according to fair and transparent criteria.

TOURISM AND TRAVEL RELATED SERVICE

Argentina produced a good offer with modes 1-3 committed for hotels and restaurants (including catering) (CPC 641 & 643), travel agency and tour operator services (CPC 7471), tourist guide services (CPC 7472) and other tourism and travel related services. *Brazil's* offer has opened hotels and restaurants, including catering, to commercial presence (mode 3). However, many developing countries have already fully opened this sector. We welcome Brazil's inclusion of Travel Agencies and Tour Operator Services and Tourist Guide Services, but we'd like to see Brazil expand its commitments in this sector beyond mode 3. We appreciate that *Paraguay* has made new commitments in this sector in modes 1-3 in hotels and restaurants (CPC 641- 643), travel agency and tour operator services (CPC 7471 excluding mode 3) and tourist guide services (CPC 7472). *Uruguay's* good offer has full mode 1-3 commitments in Hotel and restaurant, travel agencies and tour operators, and tourist guide services.

Objectives:

In *Brazil* we would like to see coverage extended to include beverage serving services (CPC 643) and for full commitments to be taken in mode 2 for CPC 641 and 642. Mode 3 national treatment limitations with regard to tax credit incentives should be removed. Additionally, full mode 1-3 commitments should be scheduled in Travel Agencies and Tour Operator Services (CPC 7471) and Tourist Guide Services (CPC 7472). From *Paraguay* we would like to see mode 3 for Travel Agency and Tour Operator Services committed.

TRANSPORT SERVICES

Overall offered commitments in transport services are relatively weak for a sector crucial for growth.

Objectives:

In Maritime Services ESF and its member shipowners' association ECSA are staunch supporters of the negotiations. The Mercosur area is a long standing, important and increasingly attractive market for European shipping in its different forms which range from (container) liner shipping to dry bulk

and tanker trades, as well as more specialised areas. ESF would support an unconditional commitment to the (WTO developed) model schedule, with emphasis on Mode 1 and Mode 3b, but not excluding Mode 3a and Mode 4. Many EU liner companies, but also some more specialized carriers, have their fully owned commercial presence in Mercosur countries (Mode 3b). Among the key issues which need addressing are the existing bilateral cargo sharing agreements between the Mercosur countries that prohibit EU shipping companies from carrying cargoes in the bilateral trades, *e.g.* Brazilian cargoes to Argentina. There may also be a new tendency by at least one of the Mercosur countries to prohibit the on-carriage of international cargoes from one member state to the other. However, there exist EU shipping companies with fully owned subsidiary shipping companies and vessels registered in Brazil.

In Air Transport, the following sub-sectors are important for full commitments: modes 1-3 in selling and marketing, Computer Reservation Systems; modes 2 and 3 in maintenance and repair of aircraft and parts thereof, Groundhandling services; and mode 3 in Airport management services.

In Road Transport, Freight transportation (CPC 7123) take full mode 3 commitments, in Maintenance and Repair of Road Transport Equipment (CPC 6112) take full mode 1-3 commitments, and in all mode 4 commit as referred in section on Horizontal commitments.

In Services Auxiliary to all Modes of Transport, take full commitments in modes 2 and 3 for Storage and Warehouse Services (CPC 742), take full commitments in modes 1-3 for Freight Transport agency/Freight Forwarding Services (CPC 748) and Pre-Shipment Inspection (part of CPC 749), and in all mode 4 commit as referred in section on Horizontal commitments.

LIST OF ESF MEMBERS SUPPORTING THE ABOVE POSITION

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. Comité Européen des Assurances - C.E.A.
8. Confédération Fiscale Européennes - CFE
9. Commerzbank AG
10. Deutsche Bank AG
11. Deutsche Telekom AG
12. Deutsche Post DHL
13. DI – Confederation of Danish Industries
14. EK - Confederation of Finnish Industries
15. Ernst & Young
16. EuroCommerce
17. European Association of Cooperative Banks – EACB
18. European Banking Federation – FBE
19. European Broadcasting Union - EBU
20. European Community Shipowners' Associations – ECSA
21. European Express Association – EEA
22. European Federation of Engineering and Consultancy Associations – EFCA
23. European Public Telecom Network – ETNO
24. European Savings Banks Group – ESBG
25. European Satellite Operators Association - ESOA
26. Fédération des Experts Comptables Européens – FEE
27. Fédération de l'Industrie Européenne de la Construction – FIEC
28. Foreign Trade Association - FTA
29. France Telecom
30. Goldman Sachs International
31. IBM Europe, Middle East & Africa
32. Irish Business and Employers Confederation
33. KPMG
34. Law Society of England & Wales
35. Lloyd's of London
36. Mouvement des entreprises de France – MEDEF
37. Oracle Europe, Middle East & Africa
38. Siemens AG.
39. Standard Chartered Bank
40. Svenskt Näringsliv (Confederation of Swedish Enterprise)
41. Telefónica SA
42. Telenor Group
43. The CityUK
44. Thomson-Reuters
45. Trägerverein Zenit e.V
46. TUI A.G.
47. Veolia Environnement
48. Visa Inc.
49. Vodafone
50. Zurich Financial Services