ESF2011-12

Mr. Jean-Luc Demarty
Director General,
DG Trade,
European Commission
Rue de la Loi, 200
B - 1049 - Brussels

Brussels, 9th November 2011

RE: European Services Industry Priorities on EU-MALAYSIA FTA

Dear Mr Demarty,

Now that the fifth round of talks is concluded and the base of the negotiations is well established, I am writing to convey the support of the European Services Forum for the Commission's negotiations towards the conclusion of an ambitious free trade agreement with Malaysia. Furthermore the European Services Forum provides here the interests of the European services industry which we believe the Commission should seek to achieve as outcomes from these negotiations. These interests are the result of close consultation with our members, who will also have sent comments directly to the Commission's relevant services.

We have been actively following the progress in these negotiations and there is a keen interest within the services sector for securing an ambitious agreement, not least because it is possible that this agreement will be something of a forerunner for agreements with other countries in the region of a similar development level and which are currently in the scoping exercise stages.

Given the attention that the development of the services economy has gained from the Malaysian government in recent years, we feel this is an excellent opportunity to set a strong precedent of ambitious services liberalisation that, in addition to promoting services trade opportunities in its own right, will also encourage other countries within the region to embrace ambition in their own negotiations.

Of course as with other recent deep and comprehensive Free Trade Agreements signed or negotiated by the EU, the services specific aspect is but one of many that the European services industry are interested in. In particular we note the importance of public procurement and the ability of our members to be able to bid in a non-discriminatory, highly transparent environment for public entities contracts. Within the coming years, public infrastructure and other public network and related services will be developing at a pace to match the needs of a dynamic region and will therefore be of considerable value to European service providers interested in such contracts. We are aware of the difficulties in negotiating ambitious chapters in public procurement with Malaysia, but its importance to industry and the need to secure a high level of liberalisation should not be underestimated. Alongside this, I would also like to underscore the support we give to strong legal security to intellectual property rights as well as to far reaching chapters on competition and

• Avenue de Cortenbergh, 168 • B – 1000 - Brussels • Belgium • TVA BE 863.418.279
Email: esf@esf.be • Tel : +32-2-230 75 14 • Fax : +32-2-230 61 68 • www.esf.be

regulatory disciplines and cooperation, all of which help to create a strong and vibrant business climate where internationally competitive European service suppliers can contribute.

On a final, but no less important point, now that the European Union has competence in the area of investment protection, we would expect the Commission to seek a mandate to negotiate a strong investment protection chapter that will provide legal certainty to the newly obtained market access that our companies will hopefully get.

We shall be grateful to the Commission for taking the European service industry's priorities into consideration and remain at your disposal for any further information your services would find useful. Our organization and our members reserve the right to come back to you with further specific issues.

Yours sincerely,

Richard O'Toole
Chairman – ESF Policy Committee

Cc: Peter Berz, Chief EU Negotiator for EU-Malaysia FTA, DG Trade
Leopoldo Rubinacci, Head of Unit, Services and Investment, DG Trade

Brussels, October 2011

ESF Position Paper: EU-Malaysia FTA

Executive Summary

ESF Key Priorities for better access to Malaysia's services markets:

1. Remove or reduce obligations to enter the market through joint venture.
2. Remove or reduce the restrictions on foreign capital ownership (at least up to 51%).
3. Wider levels of cross-border commitments in trade in services across all sectors.
4. Improve national treatment in all services sectors, providing the same business opportunities to non-Malaysian citizens.
5. Better enforcement of laws and regulations according to fair and transparent criteria.
6. Improved regulatory transparency including commitments to propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations.
7. Greater market access and transparency in public procurement.
8. Provide a high level of post-establishment investment protection.

PART A: Introduction & Starting Level of Negotiations

The European Services Forum welcomes the Government of Malaysia's recent focus on promoting services. Malaysia has been adopting measures specified under various plans, such as the Ninth Malaysia Plan (2006-10) and the Third Industrial Master Plan (2006-20), with a view to guiding the country towards global competitiveness and becoming a higher-value added and knowledge-based economy. Malaysia aims to increase the share of the services sector to GDP to 60% by 2020 in an effort to establish an economy less reliant on manufactured exports.

The services sector has been the largest contributor to GDP, but, in comparison to manufacturing, has been relatively closed to international competition, with FDI restrictions posing the major obstacles and low labour productivity becoming a major consequence. Trade objectives have, however, started to focus on promoting services and reduce the Malaysian economies reliance on manufactured exports. With these objectives in mind, the government has identified services as a leading growth engine and has begun to liberalise unilaterally; with key export interest areas including education, healthcare, construction, professional services, ICT, and franchise operations. Foreign direct investment (FDI) has also been seen as important and there has been a relaxing of foreign investment restrictions and a streamlining of the regulatory framework since 22 April 2009.

The EU and Malaysia must aim to reach a high level of ambition in these FTA negotiations and the EU should, furthermore, seek to take advantage of Malaysia's new focus on services liberalisation as a future growth engine. An ambitious services package that goes well beyond the revised GATS offer Malaysia put forward must therefore be the objective of the negotiations and development status must not be abused in watering down commitments. The services industry would like the EU to seek not only binding of the unilateral liberalisation adopted by the current government in market access and investment, but also to secure far broader and more comprehensive liberalisation and non-discrimination commitments; particularly in the key infrastructural sectors *e.g.* finance, telecommunication, distribution, transport and *etc*... The Malaysian government has demonstrated an awareness of the importance of an open services economy; it must be encouraged to implement and bind this strategy in a comprehensive and meaningful fashion.

Further to market access and investment openness, service suppliers are sensitive to divergences in the regulatory and standards regimes of trade partners. In this context, it is important that the negotiators take every opportunity to build convergence into the FTA. Standards and standardisation activities are among Malaysia's priorities for achieving developed-nation status by 2020. This represents a unique opportunity for the EU to help Malaysia align its standards with the EU. As the largest exporter of services and with experience in standardisation, it is vital for the EU to promote its standards regime, and where possible regulatory framework, so as to establish a sound and familiar standards framework in the dynamic South

East Asian region that could act as an example to the rest of the region; but also could otherwise promote divergence that would manifest as non-tariff barriers (NTB) and technical barriers to trade (TBT).

PART B: Horizontal Issues

1. Regulation and Governance

A liberalisation agenda and FTA negotiations with the largest global consumer market present Malaysia with an excellent opportunity to reform regulations and rules that create transparency, clarity and policy predictability to the regulatory framework that facilitates trade and locks-in sustainable development that helps to encourage both manufacturing and services. ESF would like to see commitments that ensure that measures relating to services are adopted, maintained, and applied in a non-discriminatory, transparent, and efficient manner. In particular, ESF seeks commitments that would require Malaysia to: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations; (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.

The New Competition Law in Malaysia (July 2010) is a good start and it will be important that it is implemented fully and that exemptions are not abused; energy, communications and multimedia sectors have been exempted by the Act and other commercial activities may be further exempted by Ministerial order from time to time. Some bilateral/regional free-trade agreements, such as the Japan-Malaysia Economic Partnership Agreement, signed in December 2005, and the ASEAN-Australia New Zealand Free Trade Agreement, signed in February 2009, include provisions on competition.

2. A negative list approach

As in negotiations with other trading partners, ESF strongly encourages the negotiators to use the negative list approach. In FTA negotiations involving two economies with substantial services economies (with services representing 57% of Malaysian GDP), the use of a negative list should become the EU standard. 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 provisions for Mode 4 in Malaysia's GATS commitments are relatively limited and disappointing with only a very small number of senior managers and specialists covered in most cases. Malaysia's revised GATS offer also failed to improve on this area. Given that Malaysia is aiming to become a 'fully developed nation' by 2020[1], it will be important that European companies providing key services are able to bring in personnel with the exact expertise required in an expedited fashion. As such, ESF encourages negotiators to secure greater commitments from Malaysia in Mode 4 in line with EC requests.

4. Foreign Direct Investment regimes

The Malaysian government has clearly identified strengthening private investment and the attraction of FDI as a policy priority in its recent focus on economic development. Applied investment restrictions have been watered down, such as foreign equity caps for commercial presence (Mode 3). For example, on 30th June 2009 the Government announced the liberalisation of the Foreign Investment Committee (FIC) guidelines. The guidelines had originally imposed a *bumiputera*[2] equity requirement, whereby *bumiputera* had to hold a combined 30% stake in locally incorporated companies. For newly listed companies this was reduced to 12.5%. In addition, foreign equity limits were raised from 49% to 70% for stock-broking firms and unit trust management companies and from 70% to 100% for fund management companies providing wholesale services. In addition, there has been some relaxation on the acquisition of property, as some property transactions involving foreign investment no longer require approval from the FIC.

[1] Malaysian National Mission policy framework including the Ninth Malaysia Plan.
[2] Ethnic Malays

Although FDI has been prioritised as important to development objectives, the government insists that local participation needs to be maintained in some areas in order to promote domestic capacities. In particular, sectors with "national interest" (*i.e.* sectors with an impact on national security and overall socio-economic wellbeing) are not to be liberalised. Even under the reform package the *bumiputera* participation requirements remain in some sectors. In particular, restrictions in service sectors have remained; such as in telecommunication, logistic, financial, environmental and professional and business services (restrictions also remain on some property purchases). As these sectors constitute the backbone of all successful economies and can only benefit from European investment and expertise, Malaysia should seize the opportunity provided by the current negotiations to liberalise and commit its equity regime comprehensively. We are very encouraged by the recent statements by the Prime Minister to fully liberalise some of these sectors and would encourage swift implementation of these intentions.

Levels of foreign direct investment between the two economies have been modest with scope for encouraging more with greater levels of protection. The EU held stocks in Malaysia to the tune of €13.6bn in 2008 and Malaysia held €3.7bn of FDI stock in the EU for the same year. Between 2004 and 2009 EU FDI outflows to Malaysia have averaged €1.7bn per year, which is similar to EU flows in some other countries in the region. However, over the same period EU investments in Singapore were around €7bn per year. Given that the Commission now has competence to negotiate investment protection, as it will with Singapore, ESF strongly encourages the Commission to seek a mandate from the Council to include an investment protection chapter with Malaysia so as to encourage new investment, particularly as Malaysia has shown an interest. A further reason to seek this is to upgrade legal security. While there are currently 15 Member State Bilateral Investment Treaties (BIT) with Malaysia, the majority are old generation with non-existing or weak investor-to-state provisions. It would therefore be an opportunity to gain a higher level of protection.

5. Better access to Public Procurement

In 2008, Malaysia's public procurement was valued at around 11.9% of GDP and is a substantial opportunity for European service suppliers. Malaysia is not a party in the Government Procurement Agreement (GPA) and, unfortunately, preferential government procurement procedures continue to be used as an instrument of industrial policy to favour locally owned businesses; with international tenders invited only when services are not available locally. Malaysia's public procurement is used as an instrument to support national objectives, such as encouraging greater participation of the *bumiputera* in the economy[3], transferring technology to local industries and creating opportunities for local service-oriented companies. In addition, government-linked companies (GLCs) play an important role in the Malaysian economy through their involvement in the provision of essential services, such as transport, energy, telecommunications, and financial services. Unfortunately, however, as in government procurement, GLCs are encouraged to purchase from locally owned businesses. This policy works not only to the detriment of foreign investors but also to the government's budget and the Malaysian population. ESF urges the negotiators to utilise leverage to push for greater access to this market, at government level as well as at local level or public enterprises level. Better treatment of European companies would be particularly beneficial for both parties because European suppliers are globally competitive.

6. Other Horizontal issues

The following list of general issues, in addition to those highlighted elsewhere, need addressing or removal:

(a) Restrictions on acquisitions of Malaysian companies;
(b) Restrictions on the purchase of land, property and real estate;
(c) Obligation to enter the market through joint venture;
(d) Limitations on capital ownership (at least 51% ownership to foreign investors is required, hence control of the company, a necessary condition to trigger real investment that would initiate transfer of know-how, management expertise and the creation of local growth and local jobs);
(e) Limitations on licenses allotted to foreign companies;
(f) Restrictions on branching;
(g) Lack of National Treatment;

[3] For supplies and services contracts between RM 100, 000 and RM 15 million, *bumiputera* suppliers receive a margin of preference between 2.5% and 10%; the margin is inversely proportional to value.

(h) Local employment requirements (when the percentage is too high, it can block foreign companies that usually start with small operations);
(i) Long and burdensome administrative procedures, including for customs clearance, licensing and goods in transit (e.g. value-added logistics performed in free trade zones);
(j) Corruption and transparency (PEMUDAH estimates the cost of corruption in inefficiencies at RM10 billion a year).

PART C: Sector Specific Issues

BUSINESS SERVICES

1. Professional Services

Malaysia's professional services sector, as one of the sectors identified for further growth in the IMP3, has been relatively closed to foreign competition by comparison with other sectors of the economy. The government has been reviewing the domestic laws and regulations in an effort to further liberalise this sector. The ASEAN Free Trade Area offers more market openings within the region, enabling Malaysian professionals to be more involved in professional services in neighbouring countries. A number of MRAs have also been signed. European service suppliers need, at a minimum, treatment on par with these other agreements, and it is highly desirable that Malaysia commits further.

i. Legal Services (CPC 861)

Malaysia has been undertaking a study of its legal services framework with a view to further liberalising the sector. The practice of Malaysian law is restricted to Malaysian citizens or permanent residents who have served an apprenticeship with a Malaysian lawyer, are competent in Bahasa Malaysian, and have been admitted to the Malaysian Bar. Under Malaysia's GATS schedule, there is no commitment for practice of third country law. Furthermore, in Mode 3, foreign lawyers can practise in Malaysia only through a corporation incorporated in the Federal Territory of Labuan, and are allowed to supply their services only to offshore corporations established in Labuan, which restricts access to a very small clientele. So far no further commitments have been made in Malaysia's bilateral and regional trade agreements.

Objectives:
(a) Allow EU lawyers/firms to provide consultancy on law of jurisdiction, including the whole territory of Malaysia, where the service supplier or its personnel are qualified lawyers.
(b) Remove Mode 3 territorial restrictions for EU legal service suppliers and recipients of services in order to permit foreign lawyers to practise anywhere in Malaysia, to employ and enter into partnership with Malaysian lawyers and to enter into the employment of a Malaysian lawyer or law firm.

ii. Accounting, Auditing and Bookkeeping Services (CPC 862) & Taxation Services (CPC 863)

Under Malaysia's GATS commitments, foreign accounting firms may provide accounting and taxation services in Malaysia, but only through a locally registered partnership with Malaysian accountants or Malaysian accounting firms where the aggregate foreign shares must not exceed 30%. The Government has been considering increasing foreign equity participation in accounting and taxation services under the Doha Round negotiations and European service suppliers would benefit from this being taken up in the FTA.

Objectives:
(a) Remove the Mode 3 obligation to enter into a limited partnership (30%) with Malaysian accountants or accounting firms.
(b) Remove the Mode 4 residence requirement for registration of professionals.

iii. Architectural Services (CPC 8671)

The Malaysian schedule does not list restrictions on the form of commercial presence but does restrict the supply of services to natural persons. Foreign architects may hold up to 30% shares (not listed in schedule) in a multi-disciplinary consultancy firm providing architectural, engineering, and/or quantity surveying services in Malaysia, which is greater than the 10% offered in the revised GATS offer but not good enough.

Objectives:

(a) Remove the requirement for authentication by a registered architect in Malaysia.
(b) Remove restrictions to commercial presence and commit Mode 3 fully *i.e.* no restrictions.
(c) Remove the Mode 4 restriction that allows foreign architects to be approved for work only if the project is wholly funded by a foreign government or implemented under bilateral agreements.
(d) Improve commitments in Urban Planning and Landscape Architectural Services (CPC 8674).

iv. Engineering Services (CPC 8672) & Integrated Engineering Services (CPC 8673)

While not specified in the GATS schedule, foreign engineering firms must form joint ventures in a specific project and obtain approval from The Board of Engineers Malaysia (BEM) before they can operate in Malaysia. Up to 30% foreign equity is allowed in a company providing multi-disciplinary practices. Only foreign professionals participating as temporary engineers are allowed on a job by job basis.

In practise the local regulations make it impossible for foreign companies to own a Malaysian company engaged in engineering consultancy, such as the ship design business.

The rules are set forth in the Registration of Engineers Act 1967 ("Engineers Act"), where the BEM is the statutory authority responsible for the enforcement of the Engineers Act. Under this Act it is provided that only Professional Engineers can carry out engineering consultancy practice. Only citizens or permanent residents of Malaysia may qualify as Professional Engineers and no person shall be registered as a Professional Engineer unless they are at the time of application, and have been for a period of not less than 6 months prior to the date of application, residing in Malaysia.

The Engineers Act provides that a company may practise as an engineering consultancy practice, but it has to be registered with the BEM and in order to qualify for registration it must satisfy the following:

i. Its board must be composed by Professional Engineers; and
ii. Its shares are held by members of the board of directors solely or with any other persons who are Professional Engineers.

The BEM has further clarified the rules as follows:

i. Foreign and local engineers cannot set up a joint venture to practise as consulting engineers because foreign engineers are not allowed to be directors and shareholders of such company; and
ii. Foreign and local engineers could work in association with each other on a project by project basis, but the local consultants must be the lead consultant.

Similar limitations are imposed by the Engineers Act to those who wish to carry out multiple tasks within one company, such as providing professional engineering services, architectural consultancy services and/or quantity surveying services.

Objectives:

(a) Remove the requirement for authentication by a registered professional engineer in Malaysia.
(b) Remove director and shareholder restrictions which prevent foreign companies from owning a Malaysian company engaged in engineering consultancy.
(c) Remove restrictions to commercial presence and commit Mode 3 fully *i.e.* no restrictions.
(d) On Mode 4, ensure that temporary registration allows the duration of stay to exceed one year if the contract requires this for completion.

2. Computer and Related Services

This sector has benefited from the April 2009 unilateral liberalisation and builds on Malaysia's revised GATS offer (adding Maintenance and repair services and Other services), which was encouraging in this sector. While it is important that Mode 3, in addition to Modes 1 and 2, are committed and bound without limitation in the sub-sectors which have been liberalised, ESF would like to see this important sector opened further.

Objectives:
Malaysia should extend its commitments to the whole Computer and Related Services sector (CPC 84) on a 2-digit-level. This helps avoid uncertainty.

3. Other Business Services

It is encouraging that other business services have been included in the April 2009 liberalisation, including Technical testing and analysis services, Management consulting services and Rental/leasing services without operators. However, Malaysia must bind this liberalisation and go far further to unshackle this sector.

Objectives:
(a) Remove limitations to Mode 3 *i.e.* eliminate establishment limitations and equity caps and minimum *Bumiputera* shareholding requirements.
(b) Remove Mode 1 restrictions in advertising services.
(c) Commit a broader range of subsectors, particularly in Mode 3, but also in Modes 1 and 2 (*i.e*. security services).

POSTAL AND EXPRESS COURIER SERVICES

Malaysia's lack of commitments on postal and courier services under the Uruguay Round and the absence of offered commitments in the revised GATS offer reduces legal certainty for operators and creates a less stable environment. ESF would like to see commitments in this important infrastructural service area, especially in courier services. These commitments should also address the specific *Bumiputera* requirements of 51% equity ownership for companies holding a customs clearance licence as this affects the operations of express delivery services companies. In addition, Malaysia's licensing and other administrative requirements are excessive, particularly for foreign operators trying to obtain a trucking license.

Objectives:
(a) Express delivery services: Make full commitments in modes 1-3 for all items.
(b) Postal services:
  - 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.

(c) Make full commitments in modes 1-3 for customs brokerage and related services.
(d) Create a level playing field for foreign and domestic economic operators for fees, licenses (*e.g.* trucking licenses) and other administrative requirements.

TELECOMMUNICATION SERVICES

Malaysia's GATS commitments specified that foreign participation of up to 30% is allowed in telecommunications services, although in practice participation of up to 49% may be allowed. Competition in telecommunications (particularly in fixed-line services) is limited. The efficiency of the telecom sector is affected by, *inter alia*, the equity cap on foreign investment, the requirement that companies must have a *bumiputera* equity participation of 30%, and the uncertain and lengthy procedure for obtaining a licence. Application service provider licences are available for value-added services but operators must still use channels or lines provided by licensed operators. These issues manifest in practical terms in a lack of investment in modern technology which makes the country less attractive for operating a business in many sectors; manufacturing and services alike. This will cause Malaysia to lose ground to its ASEAN partners in terms of competitive advantage. The revised GATS offer is overall weak but it was positive in that it addressed current requirements to own network facilities in order to provide basic services by creating a new licensing category of application service provider, which allows use of licensed facilities. On the other hand it does not use the CPC approach but adopts a new method of classification.

The further development of the Malaysian ICT market is critically depending on sufficient spectrum resources to provide ICT services to all its citizens. In this regard Malaysia should commit itself to comply with administrative and regulatory principles of transparency and non-discrimination when assigning spectrum – in line with international best practices - notably the principles set out in the agreed EU-US Trade Principles for Information and Communication Technology Services:

"Use of Spectrum: Governments should maximize the availability and use of spectrum by working to ensure that it is managed effectively and efficiently, and, where appropriate, in accordance with applicable International Telecommunication Union Radio communication Sector (ITU-R) recommendations. The allocation of spectrum for commercial purposes should be carried out in an objective, timely, transparent, and non-discriminatory manner, with the aim of fostering competition and innovation. Governments are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users."

Objectives:

(a) Commit to compliance with administrative and regulatory principles of transparency and non-discrimination when assigning spectrum – in line with international best practices.
(b) Remove the requirement that basic services can only be provided on a facilities-basis for all Modes.
(c) Remove for all Modes the provision that value-added services must be provided from channels or lines obtained only from licensed network operators.
(d) For basic services remove Mode 3 restriction that stipulates that operation can only be done through acquisition of shares of existing licensed public telecommunications operators.
(e) Remove all foreign equity caps.
(f) Remove obligations that force Joint ventures or share acquisitions with Malaysian individuals/corporations/operators to gain commercial presence in value-added services (and Telex and telegraph services).
(g) Remove prohibition on resale for value-added services companies.
(h) Commit fully to the reference paper of the Basic Telecommunications negotiations.

CONSTRUCTION AND RELATED ENGINEERING SERVICES

Scheduled commitments in this sector are weak. The revised GATS offer would have allowed for foreign-owned and non-locally incorporated construction companies to carry out construction projects in Malaysia, however the circumstances where this is possible are very restricted and national treatment is virtually entirely unbound. Essentially such projects must either be foreign-funded or require expertise not held by Malaysian firms.

Objectives:

(a) Remove Mode 3 representational/regional office and joint-venture requirements, as well as 30% aggregate foreign shareholding ceiling.
(b) Extend commitments to other related sub-sectors.

DISTRIBUTION SERVICES

Distribution services are vital for the competitiveness of a country and it is extremely disappointing that Malaysia not only made no commitments in the Uruguay Round but also offered no commitments in its revised GATS offer. The applied situation is restrictive. All applications involving foreign investment, including opening of new branches, relocation, expansion of existing branches/outlets, and buying over/taking over of outlets of other operators, require approval from the Committee on Distributive Trade. All applicants must also obtain approval from the Committee before purchasing any land, premises or assets to operate distribution services. The restrictions on store size, which are linked to the population area, ignore basic business principles and introduce discrimination towards foreign operators.

Furthermore, companies must be locally incorporated, with 30% of equity reserved for *bumiputera*. Minimum capital investment requirements vary according to the type of distribution service. An equity restriction of 30% applies to foreign investors in direct selling business. Department stores, supermarkets, and shopping malls must reserve 30% of the shelf space for products made by Malaysian SMEs. These restrictions and reservations have been under review by the government and we urge the EU to utilise this FTA to bring about ambitious reform and commitments.

Objectives:

(a) Commit fully *i.e.* with no restrictions and caps, in Modes 1-3 on Commission agents' services, Wholesale trade services, Retailing services and Franchising.
(b) Ensure that the relevant regulatory framework be non-discriminatory vis-à-vis foreign operators.

ENVIRONMENTAL SERVICES

Malaysia's lack of commitments (or offered commitments) in this sector and the various sub-sectors is very disappointing in the view of ESF. Areas such as Waste and water management services, Services related to new energy *etc..* are engines for new growth and should be opened up by Malaysia if it wishes to reach developed nation status in the near future.

Objectives:

Malaysia must consider full commitments in all sub-sectors of environmental services, as defined in the European classification proposal in the framework of the GATS negotiations.

FINANCIAL SERVICES

In line with the objective of developing a diversified and efficient financial services sector, under the Financial Sector Master Plan (FSMP), Malaysia announced measures in April 2009 to relax restriction on foreign companies. Despite the encouraging signs, much more needs to be achieved. Off-shore regimes and geographical limitations applied to foreign companies are archaic regulatory tools. Malaysia should remove current restrictions on branching, abolish non-prudential authorisation requirements and most importantly eliminate the restrictive foreign equity caps. Off-shore regimes and geographical limitations to do business applied to foreign companies should also be removed. The country should undertake liberalisation measures in the auxiliary financial services of both banking and insurance. Additionally, Marine, Aviation and Transport (MAT) insurance should be liberalised (Mode 1 and 3) and the legislation for the provision and transfer of data and information should be modified.

i. Insurance

Objectives:

(a) Remove restrictions on Mode 3 foreign equity caps.
(b) Remove restrictions on branching and abolish non-prudential authorisation requirements.
(c) Remove restrictions on the provision of reinsurance in Modes 1-2 and abolish preferential treatment of licensed reinsurers.
(d) Remove restrictions on the provision of Marine, Aviation and Transport (MAT) insurance in Modes 1-2.
(e) Reform legislation to allow for data and information transfer.
(f) Provide liberalisation measures for market access insurance for insurance intermediaries.

ii. Banking

Objectives:

(a) Remove restrictions on Mode 3 foreign equity caps.
(b) Remove restrictions on branching and abolish non-prudential authorisation requirements.
(c) Remove limitations relating to off-shore and geographical specifics that apply to foreign companies.
(d) Liberalise the auxiliary services in Marine, Aviation and Transport (MAT) insurance in Modes 1-3.
(e) Reform legislation to allow for data and information transfer.

iii. Securities and Asset Management

Objectives:

(a) Bind existing applied levels of liberalisation.
(b) For Mode 1, foreign suppliers should be exempted from authorisation requirements in certain circumstances, such as: where the investor is sophisticated (defined in local law) and need not be covered by securities laws in certain circumstances; where supplier well regulated in home jurisdiction;

where account is taken of how actively services are marketed in local jurisdiction; and whether there is a local intermediary.

- Ultimately regulation should be based on considerations relating to the goals of investor protection, efficient capital markets and the appropriate balance between the two.

(c) Mode 2 should be open to Malaysian consumers who travel abroad.
(d) In Mode 3, companies should be permitted to establish or acquire commercial presence without equity ceilings and choose the corporate form with no discrimination.
(e) 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 Malaysia 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

Malaysia's tourism sector is one of the promoted services sectors under the Third Industrial Master Plan 2006-2020. In particular, the National Tourism Policy (2004-10) aims to develop the tourism industry into one of the country's main sources of income. Malaysia has been adopting measures to further promote the tourism industry, *inter alia*, by removing or reducing foreign equity restrictions, providing tax incentives, and offering loans at low interest rates. From April 2009, 100% foreign equity is allowed in: theme parks, convention and exhibition centres (seating capacity above 5,000); travel agencies and tour operators (for inbound travel only); and hotel and restaurant services (for 4 and 5 star hotels). Tax incentives have been granted to enterprises engaged in "priority sectors", including hotel accommodation and other tourist projects, and the development of "wellness" zones in Port Dickson, Negery Sembilan.

Objectives:
(a) Bind existing level of liberalisation
(b) Further remove the limitations in mode 3 in Hotels, Restaurants and Beverages as well as in Tour operator and travel agents services.

MARITIME TRANSPORT SERVICES

Objectives:
As per the model schedule on maritime transport (developed in Uruguay Round GATS):
(a) Mode 1 Market access without restrictions for foreign shipping companies.
(b) Mode 3 establishment: unrestricted, 100% ownership of commercial representation (own shipping agency, all tasks). Mode 3 is separated in two parts, 3(b) being the aforementioned commercial representation/shipping agency, 3(a) relating to establishment as a shipping company and for registration of vessels; this is of less relevance, also as unlikely to match reciprocal given all sorts of restrictions.

Background sources other than membership:

EU Malaysia Chamber of Commerce and Industry: Trade Issues and Recommendations 2011

EU Malaysia Chamber of Commerce and Industry: Trade Issues and Recommendations 2010

WTO Malaysia Trade Policy Review 2010