

12 November 2012

**Regulatory Cooperation Component in the services sectors**  
**To an EU-US Economic Agreement**

**European Services Forum and Coalition of Service Industries**  
**Joint Statement**

This paper is a joint contribution by the European Services Forum (ESF) and the US Coalition of Service Industries (CSI) to the solicitation by the European Commission and the U.S. Government to submit joint views for concrete suggestions on how to make regulatory regimes more compatible across the Atlantic. Given the cross-sectoral dimension of the mission of our two organisations, this paper does not address measures to achieve greater regulatory compatibility in any specific sector. Our respective sector specific members will provide you with more detailed information. However, this joint paper is the fruit of a consultation among all our members, and shows significant support from the private service sectors from both sides of the Atlantic for a robust regulatory cooperation component in the services sectors in any EU-US Economic Agreement.

**A. The importance of the transatlantic services market**

Many statistical data and studies demonstrate the vital importance of trade and investment in services for the transatlantic economies. The volume of EU-US bilateral trade in services, with a total of \$338 billion in 2010, is by very far the highest in the world. US accounted for 23.9% of all extra-EU services exports in 2010, and the EU accounted for 31,6% of all U.S. services exports in 2010. 32% of total EU export trade (goods & services) to U.S. are services, while services export trade to EU account for 41% of U.S. total exports to the EU. 30% of all extra-EU investment stocks in 2009 were invested in the United States (+2 trillion €), and 50% of total US investment stocks were invested in the EU (\$ 1.8 trillion). In 2009, 54% of Extra-EU FDI stocks were invested into services.

Such high figures demonstrate the importance of the US market to European services companies and vice versa, highlighting the importance of services in any future trade negotiations on both sides of the Atlantic.

However, the large potential for further growth in services trade is hampered by regulatory restrictions both sides of the Atlantic. Removing these barriers could boost services trade by 10-20%, or 20-40 Billions US\$<sup>1</sup>. Such activity could have a significant impact on employment, equivalent to est. 170 000-350 000 jobs for the transatlantic economy.

ESF and US CSI call upon the European Commission and the US Administration to ensure that the importance of trade and investment in services is duly reflected in the report of the EU-US High Level Working Group on jobs and growth.

**B. The call for ambitious market access negotiations**

The above mentioned figures show that the transatlantic services market is already very much integrated. But there is a need to go further. We understand that this consultation is mainly about regulatory cooperation, but since it is the first time that our organisations have made a joint statement on this issue, we take this opportunity to express our views also on the market access component of the forthcoming transatlantic agreement. ESF and CSI strongly support

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<sup>1</sup> Patrick Messerlin - Sciences Po Paris - "Leading with services". *The dynamics of transatlantic negotiations in services - 2012*

the launch of trade negotiations between the EU and the U.S., calling for far reaching services commitments by both sides. ESF and CSI favour services negotiations on a negative list approach, which should cover market access negotiations at all possible levels. The agreement should also comprise a comprehensive market access to public procurement for services, with low thresholds and substantive coverage of all public institutions and entities. The agreement also should include high level investment protection with efficient investor-to-state dispute settlement.

### **C. The call for inclusion of regulatory cooperation in services sectors**

ESF and CSI have followed with interest the work undertaken by the Transatlantic Economic Council (TEC), notably the regulatory cooperation that is starting in many instances under the umbrella of the High Level Regulatory Cooperation Forum. A large number of bilateral regulatory dialogues are already taking place between the EU and the U.S. regulatory authorities, including in the automotive, pharmaceutical, and food and agro-industry sector, etc.

But there is no regulatory cooperation in the services sectors in that framework. This is rather surprising given that nearly all services activities are nearly all subject to tight regulations. We believe that if the High Level Working Group wishes to create a real transatlantic services market, it must establish meaningful and outcome-driven regulatory cooperation in appropriate services sectors, involving not only regulators at EU and U.S. federal level, but also regulators at sub-federal level and EU Member states level, i.e. wherever the regulators are.

#### **1. Horizontal regulatory disciplines and best practices to services sectors regulators**

First of all, services sectors' regulators should adhere to horizontal across-the-board disciplines and regulatory principles and best practices that any transatlantic agreement should set up. Indeed principles such as transparency of the regulation, prior consultation with stakeholders before adoption of revised or new rules, right of appeal, etc. are already normal practice in our countries. These regulatory practices should be systematically extended at all level of the transatlantic market. It should help in limiting future degrees of regulatory divergences and hopefully in addressing and overcoming existing regulatory barriers, including those barriers that exist in third countries, such as their preferential treatment of their state-owned enterprises (SOEs).

#### **2. Review of existing regulatory dialogues in services sectors**

Furthermore, dialogues are already taking place in many services sectors. Regulators should be urged to work together in services sectors to reduce and eliminate duplicative and inconsistent measures in existing regulations and, where felt possible and appropriate, to negotiate mutual recognition arrangements or to agree on possible equivalence regimes after proper evaluation. Regulators should be encouraged to evaluate the quantitative and qualitative benefits of a transatlantic regulatory alternative compared to the domestic-oriented regulation?

- a. The EU-US Financial Market Regulatory Dialogue (FMRD), involving all the relevant regulators from both sides, is now well established but is not leading to any binding action in the market infrastructure domain. The idea is not to suggest any specific action to regulators in areas of prudential supervision, but to invite the regulators to analyse possible fields that are related to market access issues and that might be discriminatory, and hampering business development.
- b. Similarly, we welcome the on-going US-EU Insurance regulatory cooperation in which US State insurance regulators, the recently created Federal Insurance Office and the National Association of Insurance Commissioners (NAIC) work with their European counterparts

(EIOPA - European Insurance and Occupational Pensions Authority, European Commission, etc.). But here also one could envisage including such dialogue into the framework of overall EU-US regulatory cooperation.

- c. In the area of information and communication technology (ICT), the EU and the US have already agreed upon Trade Principles for ICT Services where many issues are about sound regulatory governance (transparency of rules, open networks, data, no requirement to use local infrastructure for ICT services, independence of regulatory authorities, etc.). The principles, which both the EU and the U.S. will seek to incorporate in their trade agreements with other countries, are an excellent demonstration of the important role that regulatory cooperation can play in promoting pro-growth policies in the EU and the U.S., as well as in the broader global economy..
- d. The professional services providers, such as accountants and auditors, architects, engineers and lawyers, would also like to see the regulators of their sectors meet to exchange views on ways to achieve the best regulatory outcomes. Since the regulators already seek to protect the consumers by ensuring a high level of ethics and qualification, the divergences should therefore not be that wide. Successes in bridging the regulation of professions already exist, for example in NAFTA for accountants. The private sector representatives of the architects in the EU and in the U.S. have already worked on a mutual recognition agreement of the qualification and diplomas covering all the 27 European member states and 50 American states. The work of the High Level Working Group should be an opportunity to encourage all relevant stakeholders to pursue these efforts to find creative venues towards better regulatory cooperation also in the professional services.
- e. In sectors like express delivery, postal services, and logistic services at large, a whole range of regulation and rules, sometimes related to the goods, to the customs, to security, to lack of standardisation, to the transport services, etc. is also creating barriers between the EU and the US that should be identified by regulators and actors from both sides, so as to evaluate whether they meet their purpose, and whether less stringent and less costly processes or solutions at an international level might not reach the same objective. From an express delivery perspective, we welcome inter-agency and regulatory cooperation between the various agencies working on customs and air cargo security procedures. Current cooperation has resulted in mutual recognition of some key procedures and programs such as AEO and CTPAT. We welcome further streamlining of the programs related to the exchange of advanced data for air cargo security (ACAS) between the EU and US, developing a standard that can also be used at a global level.
- f. For interoperability of privacy frameworks, there is a need to consider opportunities for facilitating responsible global data flows by evaluating interoperability of EU and U.S. frameworks. European and U.S. companies have a substantial economic need for legitimate cross-border data flows between countries and regions with very different privacy regimes. An interoperable international privacy regime that recognizes differing privacy rules (such as the US multi-stakeholder process) to the greatest extent possible, and honors these rules, would greatly accommodate companies operating in multiple jurisdictions and would facilitate global economic growth. Topics for consideration could include guidance of how codes of conduct, sectoral adequacy, appropriate safeguards and legitimate interest may be used as a basis for transfers that would enable businesses to optimize responsible data transfers in ways that comply with EU-US Regulation. We believe that data subjects, controllers and processors would be better served by an accountability based system that requires data exporters to protect European and US data regardless of where it is located.

g. This non exhaustive and superficial review of several regulatory dialogues between the EU and the U.S. shows that sector specific initiatives already exist towards regulatory cooperation and other are possible. CSI and ESF call upon the High Level Working Group to take this information into consideration in their final report. This new EU-U.S. initiative to further improve the transatlantic economy is a wonderful opportunity to encourage all regulators in the services sectors, to work together towards better and cost efficient regulation.

## **Conclusion**

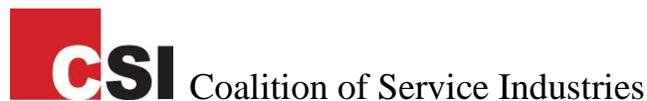
We welcome and support the commitment taken in the services section of the interim report of the HLWG stating that the United States and the EU would include binding commitments to provide transparency, impartiality and due process with regard to licensing and qualification requirements and procedures, as well as enhancing the regulatory principles included in current U.S. and EU FTAs. A necessary further step would consist of enhancing regulatory cooperation in any service sectors where it is felt relevant to improve mutual recognition and to achieve the regulatory objectives in a more effective and efficient manner.

We realize that this will not be easy task that will likely confront significant resistance. We would like to emphasise that we are not in any way aiming at reducing the independence or sovereignty of the regulators. It will necessarily be a long term process. Regulation is an ever evolving process. And regulatory cooperation is probably even a longer exercise. But it should create dynamism toward better regulation, that in turn should create more transatlantic business, hence more jobs and growth.

The final report of the High Level Working Group is the right opportunity at the right moment to give the political boost to start such a dynamic.



The European Services Forum (ESF) is a private sector trade association that represents the interests of the European services industry in International Trade Negotiations in Services. It comprises major European service companies and European service sector federations covering service sectors such as financial services, tourism, telecommunications, maritime transport, business and professional services, distribution, postal and express delivery, IT services and environmental services (see full list of members on the web-site: [www.esf.be](http://www.esf.be)).



The Coalition of Service Industries (CSI) represents the interests of the dynamic American service economy, which employs 80% of the workforce and generates 3/4 of national economic output. Since 1982, CSI has created greater public awareness of the major role services play in the U.S. economy, and it has shaped domestic and international economic policies on behalf of the services sector. The broad range and diversity of the U.S. service economy is reflected in CSI's membership, which includes major international companies from the banking, insurance, accounting, telecommunications, information technology, express delivery, audiovisual, energy, and retail industries. CSI website is [www.uscsi.org](http://www.uscsi.org).