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European services industry calls for launch of plurilateral negotiations on services as soon as possible

Following the conclusion of the G20 in Cannes in November 2011 and the 8th WTO Ministerial Conference in Geneva in December 2011 calling for alternative solutions to move the multilateral agenda, over the past several months a number of WTO Members¹ have been exploring different negotiating approaches aimed at advancing the liberalisation of trade in services.

The European Services Forum (ESF) has followed this initiative with great interest. On the occasion of the Global Services Summit that took place in Washington on 19 September 2012, ESF, together with ten other business services associations comprising the Global Services Coalition (GSC), welcomed the statement made by Governments participating to the work of the “Real Good Friends of Services” (RGFS) on 5th July, encouraged their concerted efforts in bringing services to the forefront of their trade policy agenda and called on those WTO members which had not yet participated in these preparatory meetings to join in as soon as possible in launching formal plurilateral negotiations in services by the end of this year.

ESF is pleased to see further progress in the on-going preliminary discussions in Geneva and calls for all parties concerned to ensure that the current momentum will not be lost in technicalities. The resulting agreement should be ambitious, flexible, and inclusive, with the goal of attracting the largest number of participating countries as possible.

ESF believes that using the current GATS structure is the right means of extending the agreement's outcomes to all WTO members when the content and the time are ripe. The difficulties facing the services negotiations in the context of the DDA did not arise from the request/offer, critical mass-based negotiating approach. Nor did the legal architecture of the GATS and schedules of commitments hinder progress towards reaching ambitious outcomes. Consecutive WTO accessions in the last decade, with far reaching services commitments, are good evidence of the high level potential of the GATS. The main difficulty has always been the lack of political will to conclude the Round, and the stumbling blocks were Agriculture and NAMA, not services. The current initiative is a great opportunity to overcome these obstacles and accord services negotiations the place they deserve in international trade negotiations, given that services account for more than 60% of global GDP and employment, and more than 20% of global trade.

There are many ways of negotiating and scheduling the commitments that countries undertake in trade agreements on services. ESF has, on many occasions, put the case to European institutions for using the “negative list” approach in bilateral services negotiations, arguing notably that the final result is easier for business to access and understand. Of course, in the multilateral or plurilateral framework, the implications of using the “negative list” approach need to be borne in mind, given that one of the main objective is to attract as many emerging and developing countries as possible to the negotiating table, so as to finally secure new liberalisation in those countries.

The modalities of the plurilateral negotiations should therefore provide a certain flexibility, at least for the market access component. Indeed, the GATS itself allows such flexibility and, following specifically agreed procedures, members who wish to schedule on a “negative list” basis can do so, as has been done in, for instance, the GATS Understanding on Commitments in Financial Services.

¹ Australia, Canada, Chile, Colombia, Costa Rica, European Union, Hong Kong China, Israel, Japan, Korea, Mexico, New Zealand, Norway, Pakistan, Peru, Switzerland, Taiwan, Turkey, United States of America.

Certain participating countries might prefer to list the sectors in which they are ready to liberalise, and then list the possible limitations in these sectors.

As for the aspects related to the national treatment, ESF is of the opinion that once access is given to foreign service suppliers, they should be treated no differently from domestic players. ESF would therefore strongly support a “negative listing” method for scheduling national treatment commitments across the board, at least for commercial presence through an incorporated company.

Discussions often confuse the approach to listing sectors with the level of ambition, which needs to be seen in terms of the substantive elements that are contained in the text of an agreement, its annexes, and the commitments themselves. Among the substantive elements that ESF considers as important in setting the level of ambition, the following are of key importance:

1. Horizontal minimum commitments or “standard commitments”: Participating countries’ schedules should cover substantially all services sectors and all modes of supply. Countries should agree to bind existing liberalisation to a highest extent possible and to improve actual market access with new commitments. Barriers such as foreign equity caps, joint venture requirements, and economic needs tests, should be removed, with as few exceptions as possible. For any new participants, such “standards” would constitute clear parameters of what would be expected from them as minimum requirements. ESF also considers that it would be crucial, as a way of attracting emerging and developing countries, that participating countries should make new or improved horizontal commitments regarding the temporary entry and stay of the following “presence of natural persons” categories: Intra-corporate Transferees, Business Visitors, Contractual Services Suppliers and Independent Professionals.

Services offers already made or “signalled” during the DDA negotiations should not be ignored. Indeed, as a minimum engagement, participating countries should significantly improve upon their revised DDA offers. Most countries participating in the discussions on a plurilateral initiative were also co-sponsors of most of the DDA collective requests that were tabled after the Hong Kong WTO Ministerial Conference in 2005, and also deem themselves recipients of these. The collective requests seek ambitious liberalisation in key sectors (telecommunications, computer and related services, distribution, postal and courier, maritime transport, air transport, energy, environment, construction, architecture and engineering, legal, accountancy, financial services). In addition, many of the participating countries have contributed to the Signalling Conference on services that was held by Ministers during the WTO Ministerial Conference on 26 July 2008. These countries should integrate their “signals” to their negotiating proposals.

2. A “Standstill” clause and a “Ratchet” provision: Binding existing levels of openness (with few negotiated exceptions) and automatically binding new autonomous reforms in open sectors (with few negotiated exceptions) in, for instance, all national treatment commitments would provide the agreement with a really high level of ambition.
3. Scope for including “new services”: ESF considers that another substantive element of importance in the agreement would be the possibility of automatically binding newly developed services, which would be added to the sectoral coverage of existing commitments. There is already a precedent in the WTO Understanding on Commitments in Financial Services (Paragraph B.7) which could be transcribed in the new agreement.
4. Negotiations on market access to public procurement: ESF has long advocated that public procurement is not only relevant to goods, but also – and very much - to services. Many services sectors participate in public procurement contracts; including construction and related services (architecture, engineering, urban planning, etc.), ICT services, environmental services (water,

waste, etc.), energy services, catering services, cleaning services, business services (also often related to maintenance contracts of goods/machinery, etc.), auditing and accounting, transport and logistics services, financial and insurance services, etc. The new plurilateral services agreement should ensure that participating countries, (both GPA - Government Procurement Agreement - Members as well as non-GPA Members) take public procurement commitments with as wide a sectoral and modal coverage as possible.

5. Adoption of new regulatory disciplines for a modern economy: For state owned enterprises, the purpose will simply be to establish a level playing field between state owned businesses and private firms, and hence subject them to the same regulatory obligations of accounting transparency, non-cross-subsidisation between different departments, respect of state aid rules, etc. Another important subject for ESF is cross-border data flow: given the growing importance of the digital economy, participating countries should negotiate new commitments and trade rules to facilitate this form of international commerce, with the minimum possible interference in daily business.
6. Additional commitments in some sectors and sub-sectors on related regulatory issues: An obvious example is the Reference Paper on regulatory principles for basic telecommunications. It provides for additional legal obligations by WTO Members who listed this Reference Paper in the fourth column of their schedule and attached it to the Schedule. These additional legal obligations cover transparency, interconnection, licensing, allocation and use of the scarce resources, and even institutional arrangements such as the establishment of independent regulators/regulatory authority. It is conceivable that the participating countries to the plurilateral services negotiations would like to negotiate other Reference Papers (or the like) in sectors such as postal and courier, logistics services, environmental services, energy related services, etc.

The ESF calls upon the European Union to take the lead in these plurilateral negotiations on services and to champion the various objectives listed here above in discussions with other participating countries.

Given the strong interest of the services industry in these negotiations, and the imperative need for the negotiators to take into account the priorities of the final beneficiaries of the negotiating outcomes, the ESF urges the participating countries to establish a formal industry consultation during the talks.

ESF hopes that negotiations will soon prove effective and will continue to monitor closely their progress towards an international services agreement.



European Services Forum *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).*