



**Transatlantic Trade & Investment Partnership
Stakeholder Presentations Event
11:00 – 14:30, 12 March 2014
Management Centre Europe
Rue de l'Aqueduc 118, 1050 Brussels**

SESSION THREE

Issues related to services, investment and public procurement

- 11:00 – 11:07 –

**European Services Forum – Pascal Kerneis, Managing Director
*TTIP: High priorities for the European services companies***

1. Introduction

Thank you to the Commission and the negotiators to give us the opportunity to express ourselves on these important TTIP negotiations.

There is already a huge amount of trade in services and investment between the two trading partners (See slides):

ESF is strongly in favour of an ambitious Transatlantic Trade and Investment Partnership (TTIP), because the two partners are already so interconnected and hence so interdependent, that the only way to continue to strengthen and improve our competitiveness is to remove the existing barriers. This will create growth and jobs.

It is true that our companies can do much business in the USA, and vice versa. But we can do better, we must do better to get out of the crisis and be able to keep a step ahead in the fierce competition with the emerging economies like China, Brazil, India, etc.

2. Market access in services

ESF is in favour of negotiating services commitments under a negative list approach, because it is more readable and transparent for the companies. But both parties must

provide full transparency of the current state of play of restrictions at all level, including in the US states level.

In closed and developed economies, National treatment should be the norm. And these negotiations could even be an opportunity to put pressure on our legislators to remove internal red tapes and improve the single market of the EU, and the single market of the US and ideally merge them to create a real transatlantic market.

ESF would like in particular to encourage the negotiators to focus on removing obstacles in:

- Maritime transport: TTIP should bring legal certainty to the existing liberalisation of international maritime transport services;
- Aviation transport (cargo and express, not passengers): To be able to own & control cargo airlines.
- National treatment for insurance and reinsurance services in all states, and financial services remaining barriers (residency requirement);
- Professional services (accountants and auditors, architects, engineers, lawyers, nurses, etc.): to ensure that all 50 states in the US are open to European suppliers;
- Temporary Mobility of service suppliers (so called “Mode 4”) commitments: Auditors, IT managers, consultants, Bankers, etc. should be able to move to both territories for a specific period of time as agreed in a contract, to move intra-company, or to a client (contract service suppliers). To achieve that the negotiators need to agree on a Transatlantic Business Visitors Card, on a quota of business visas, on a faster procedure to deliver business visas and work permits.
- Public procurement in services: EU and US suppliers should be able to bid to all tenders in both territories. Public procurement is not only for goods, but much also for services: all public entities need IT and telecommunications services, need accountant and auditors, need insurance for their buildings, etc. They need cleaning services; they need catering services, security services, environmental services, etc. And last but not least, all public works for building roads, rails, bridges and other public infrastructures are construction services and related (architects, engineers, etc.). In the US, we face many market access difficulties essentially due to the “Buy America Act”. TTIP must improve access to our companies on the US market. WE want Revised GPA+.

3. Regulatory cooperation

As I said at the beginning, our markets are already very much integrated, so if the TTIP wants to be efficient, it needs not only to remove the existing market access barriers, but it also needs to put in place a process that would avoid the raising up of new barriers in the future.

I want first to emphasise here that we fully respect the right to regulate for protecting public interest, the environment, and the safety of the consumers and the fair level of

competition in the various sectors. But we need to avoid that our regulators, when they decide to regulate further, do it in a divergent ways, and would de facto impose to the transatlantic players to abide by two set of regulations that are often burdensome and sometimes not necessary or not proportionate.

The TTIP should have a horizontal chapter on regulatory cooperation, which would contain a process to invite the regulators of both sides to consult each other before implementing a new regulation. This process should concern all public regulators for all services sectors, at all levels, wherever they are, being at the EU or US Federal level, being at EU Member States and US Sub Federal States level, being at local level.

Let me emphasise here that these dialogues should not in any case put into question the independence of the regulators. In fact, this independence is a strong request from the private sectors for years and is already enshrined in international treaties like the GATS Reference Paper on Telecommunications for instance. So, for us, it is clear that this chapter should not be subject to the Dispute Settlement Mechanism of the TTIP. We would need however to be sure that these consultations do take place, and hence we support the idea of a kind of “Transatlantic Regulatory Council”, a bit similar of the one which exist for years between the US and Canada.

Financial services must be part of that regulatory cooperation chapter. The EU and the US represent more than 70% of global financial services. But I know that we will here more on this issue later, so I stop here. Other services sectors want also regulatory cooperation in TTIP, like the accounting and auditing sector on oversight regulation, accounting standards and mutual recognition of qualifications; or like the lawyers, or the telecommunications sector.

4. Rules

I want to say few words on rules. I want notably to mention here the need for TTIP to establish rules on cross border data flows. We need to ensure through the TTIP that our respective governments will not impose new obligations like local servers requirements, etc. that would impede the development of the Digital economy.

TTIP should also look at rules on disciplines for the State-Owned Enterprises and state-controlled enterprises (with a wide definition of “state”, including all public entities), to ensure a level playing field with private companies.

5. Investment protection

Finally, let me conclude by saying few words on the Investment Protection and the TTIP. The 28 EU Member States have signed more than 1400 Bilateral Investment Treaties (BITs) since the end of the Fifties. The purpose of these Treaties is to give to the Investors trust, confidence. Investors need to be sure that they will be able to do what they have been allowed to do, to have some return on investment, and be able to reinvest or repatriate their profit.

All these 1400 BITs signed by our 28 National government, all without exception, contain an Investor-to-State Dispute Settlement mechanism, the famous ISDS. It would be unconceivable that the TTIP would contain an investment chapter without ISDS. The EU Investment Protection Policy is in its infancy, and the world is looing at us; and the investors are looing at the TTIP talks. This FTA will be the next “benchmark”. The EU Member States have built over the last decades the “BIT gold standard” with the best protection to the investors. This has made the EU the biggest receiver of investors and the biggest investor across the world. There is an obvious strong link between this BITs’ protection and the amount of the investment. If the EU wants to reassure the European investors that it is capable in providing the same protection to the investors that the one provided by the existing BITs, ISDS is a must in the TTIP.

I don’t have time here to elaborate on this issue, and I hear the critics on the ISDS, and we are certainly open to improvement to the mechanism, but No ISDS in TTIP is not an option.

Thank you for your attention.