

Ms. Cecilia Malmström
Member of the European Commission
Commissioner for Trade
European Commission
Rue de la Loi, 200
B - 1049 - Brussels

Brussels, 29 April 2016

Subject: **ESF Comments on European Commission Trade Policy Strategy**

Dear Commissioner Malmström,

The European Services Forum (ESF) warmly welcomes the new European Commission Trade Policy Strategy published on 14th October and entitled “Trade for all”. We had already the opportunity to provide you with our priorities last June in the framework of the Public Consultation on that issue. In that [Position Paper](#), we made a preliminary analysis of the importance of services in the EU and in the world trade and investment, making the case for fully embracing an offensive trade policy in all areas of interest to service businesses that are active in non-EU markets.

We would like to congratulate you and your administration for a comprehensive and ambitious strategy. Many of the issues of concerns to the European services sectors have been mentioned and the assessments and recommendations made are going in the right direction.

We welcome in particular the acknowledgement that the EU trade policy must strengthen Europe’s place in **global supply chains** and take into account the economic activities through which European businesses create value, including services, “research, design and marketing, assembly, distribution, and maintenance”, all of these later being classified as “services” in trade negotiations. Services are indeed embodied and embedded in all economic activities, and hence have to be integrated in all aspects of the EU Trade strategy. We therefore fully support your recommendations in the sections related to promoting trade in services. ESF would have welcomed a mentioning of the so-called “Mode 5” in the strategy. On the basis of the TiVA database, mode 5 services exports point to a substantial share of total merchandise trade. Indeed, the last figures available by WTO show that if we add the share of services in the value of goods exports, that reach up to 39% in the EU, to the value of the export of pure services, services account for 60.5% of total EU exports. There is a need for the trade policy to better study how to apprehend this mode.

Another important aspect of a modern trade policy that has been rightly emphasised in the Communication is the need to facilitate **digital trade**. It must be clearly recognised that there is virtually no physical trade taking place today without many digital operations, all implying ICT and electronic communications services. Free flow of data across borders is not only important but vital for the European competitiveness. Regulatory cooperation, mutual recognition and harmonisation of standards are certainly important tools to address the challenges of the digital economy. But in addition, ESF calls the European Union to also ensure that the EU trade agreements would include rules to prevent the raising up of new barriers like local server requirements.

The **temporary movement of professionals** is another issue that is dealt with in the services part of negotiations but that overcome the services sectors and is essential for all sectors of the economy to conduct business internationally. ESF applauds all the six commitments that the Commission took in that section and calls the negotiators to stand firm in getting concrete commitments from its trading partners. ESF would like to further encourage to negotiate visa facilitation aspects to promote expedite procedures for accredited skilled professionals.

Although the Commission is calling for reinforcing **international regulatory cooperation**, ESF is worried that the concrete results might be circumscribed to the goods area only, where works between standards and other regulatory agencies are already going on. ESF had already at many occasions reminded the Commission on the importance of including the services sectors in the regulatory cooperation mechanism that is proposed in the trade negotiations and we would like to emphasise this request here again. ESF strongly supports, beyond ambitious and comprehensive market access commitments in the trade deals, the concept of “living agreements”, where through on-going processes, the services sectors regulators (like in financial services, telecommunications, professional services, etc.) will have the chance to meet and understand the objectives and methodologies of their counterparts (wherever and whatever level they are), and then possibly and progressively work towards more coherence and more efficient and less burdensome regulations. The regulatory cooperation processes should help to avoid diverging regulatory developments when dealing with new services.

More than 60% of all the 99% of the European companies are in the services sectors. Hence ESF can only support the efforts to include dedicated **SME provisions** in all negotiations, including dedicated web portals to facilitate access to foreign markets, provided that they ensure a level-playing field for SMEs and larger companies that are active on the global market.

ESF agrees with the assessment that the lack of **transparency** undermines the legitimacy of EU trade policy and public trust and we commend the Commission for its openness and its initiatives in that regards. There is a need though to find a balance with the trading partners and all interlocutors between the transparency requirements and the legitimate respect of confidentiality so as to not diminish the EU negotiating positions.

We welcome the emphasis on **public procurement** throughout the strategy. Many services sectors participate in public procurement contracts and ESF fully supports the Commission’s ambitious market access and rules in public procurement in EU DCFTAs, which should include commitments permitting EU businesses to bid for all tenders let by all public entities (central, non-central administrations and authorities, and schools, universities, hospitals, etc.).

There is however one issue in the strategy on which the position of the European Services Forum diverges from the Commission’s proposal. ESF does not share the Commission analysis on the **investment protection policy** that has been conducted so far by the European Member States and many other countries in the world. We welcomed and participated to the public debate and agree with the need for reform. But we would like to reiterate here our great concerns about the EU proposal, which to our views, will seriously diminish the protection of the investors by making very difficult the possibility to obtain redress when a badly intention public authority will take measure that could always be labelled as “legitimate policy objectives”. Given that the European services sectors are among the biggest foreign direct investors in the world, ESF had great expectations from the EU investment protection policy. We agree with the fact that the EU is best placed to lead the reform of the global investment regime, but it has unfortunately taken a path that would create more uncertainties to the investors, and that in addition bring the risk of delaying the whole trade policy agenda. We can only regret that the Commission, despite all the insurances given in negotiating mandates to “negotiate investment liberalisation and protection provisions (...) on the basis of the highest levels of liberalisation and highest standards of protection that both Parties have negotiated to date” has felt the need to radically transform the investment policy without insuring itself of the support of other trading partners.

All the proposals made by the Commission in its ambitious and forward-looking programme of multilateral and bilateral negotiation were mentioned in the ESF contribution to the public consultation last June. Allow us however to reiterate here the **European services industries priorities**, without any specific order.

ESF has been from the very beginning a fervent supporter of the **World Trade Organisation** and the Doha Development Agenda. We firmly believed that the single-undertaking approach would be beneficial for the services sectors where only modest commitments were taken in the Uruguay Round. But it is time to admit that the DDA is not able to deliver. If Member countries want to save the WTO, they need, as the Commission is suggesting, pursuing results through a more focused approach. ESF supports the ratification of the **Trade Facilitation Agreement (TFA)** concluded at the 9th WTO Ministerial Conference in Bali (2013), the expansion of the **Information Technology Agreement (ITA)** concluded at the 10th WTO Ministerial Conference in Nairobi (2015) and the conclusion of the **Environmental Goods Agreement (EGA)** with the view to then expand it to the related services. We encourage more countries to join the **Government Procurement Agreement**, welcoming New Zealand, and hopefully in a near future Australia and China. All these plurilateral initiatives, including the LDC Services Waiver, are a clear demonstration that results are possible within the WTO framework.

It is in the same “result oriented” spirit that ESF strongly supported the launch of the plurilateral Trade in Services Agreement (**TiSA**) negotiations. We regretted that it was not possible from the beginning to develop it under the WTO auspices as the WTO Ministerial Declaration of Hong-Kong allowed. To reach its full potential, TiSA will need to be brought back into the multilateral architecture of the General Agreement on Trade in Services (GATS). To achieve such a goal, TiSA will need to reach out a critical mass of countries. ESF therefore calls on the EU to do its utmost to encourage all willing WTO members to join in as soon as possible. But TiSA must not fall into the trap of long-dragging talks. Participating Countries must pursue the negotiations at a fast pace, with the view to conclude in the near future, and if possible by the end of 2016, although clearly ambitious substance must prevail over timing.

As for the bilateral agenda, the European Services Forum welcomed the previous policy towards more in-depth and comprehensive trade agreements. The agreements with **Korea**, Latin America (**Colombia**, **Peru** and **Ecuador**) and **Central American** and **Caribbean** countries are good examples of what could be done, but more recently concluded agreements with Singapore, Canada and Vietnam reflect more what business is expecting from today’s trade policy. ESF urges the European institution’s to swiftly ratify and implement these agreements. We understand the needs for legal scrutiny and translation, but this process must be speeded up to shorten the time between political conclusion and effective implementation. It goes for the EU Trade Policy credibility.

Now that the Trans-Pacific Partnership is concluded, the European Union must maintain and reinforce its trade and investment in Asia Pacific. This would imply to ratify as soon as possible **EU-Canada CETA**, **EU-Singapore FTA**; **EU-Vietnam FTA** and **EU-Ecuador FTA**; to conclude ambitious, comprehensive and balanced agreement with the **United States (TTIP)** and **Japan**; to pursue the bilateral investment agreement with **China**, with a significant focus on pre-establishment commitments for services companies; to conclude the bilateral investment agreement with **Myanmar**, to launch as soon as possible negotiations for a DCFTA with **Australia** and with **New Zealand**; to review FTA with **Mexico** and **Chile**, with a particular emphasis on services and public procurement; and to launch trade and investment talks with **Philippines** and other ASEAN countries which would be willing to do so (namely **Indonesia**, **Malaysia** and **Thailand**). ESF welcomes the announcement by the Commission to explore launching negotiations on investment with **Hong Kong** and in particular with **Taiwan**, but insists that these negotiations should be run in parallel with the BIA with China, contrary to the view you expressed to the INTA Committee on 15th October 2015.

It is regrettable that too many emerging countries are not properly engaging with the EU to strengthen their commercial ties. ESF encourages the Commission to explore any opportunity to persuade **India** and the **MERCOSUR** countries to come back at the negotiating table. We welcome the recent announcements from these two respective important partners, but wait for concrete proposals and market access offers, that must encompass serious progress in services. Similarly, the EU should aim at negotiating services commitments with the African countries, which will witness a strong growth development in the coming

decades. ESF calls for a revision of the existing EPAs so as to allow these countries to become attractive to services sectors investors, which will contribute to economic development.

Finally, it is of crucial importance for the EU to build ever closer trade and investment relationship with its neighbours. We welcome the entry into force of the EU-**Ukraine** DCFTA, as well as those signed with **Georgia** and **Moldova**. We support the on-going talks on services with **Morocco** and **Tunisia**. But indeed, **Turkey** is the closest emerging economy to the EU but the trade and investment relationship is rather unsatisfactory today. ESF supports the Commission to revise the old and incomplete customs union and to negotiate better commitments notably in services and government procurement areas.

We remain at your disposal for any further information on these priorities. ESF will continue to monitor the various negotiations and will provide sector specific input all along the implementation of the Commission's trade policy strategy.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'T. Harris', with a long horizontal stroke above it.

Sir Thomas Harris
ESF Chairman

NB: You will find hereafter the list of ESF Members supporting this Position Paper

LIST OF ESF MEMBERS

SUPPORTING THIS POSITION

- Ageas Insurance
- Architects' Council of Europe –ACE
- British Telecom Plc
- BDO
- Bundesverband der Freien Berufe - BFB
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- Conseil des barreaux de la Communauté Européenne – CCBE
- Deutsche Bank AG
- Deutsche Telekom AG
- Deutsche Post DHL
- DI – Confederation of Danish Industries
- Digital Europe
- Ecommerce Europe
- EK - Confederation of Finnish Industries
- Ernst & Young
- EuroCommerce
- EuroCiett
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- European Public Telecom Network – ETNO
- European Savings Banks Group – ESBG
- European Satellite Operators Association - ESOA
- Fédération des Experts Comptables Européens – FEE
- Fédération de l'Industrie Européenne de la Construction – FIEC
- Foreign Trade Association – FTA
- HSBC Group
- IBM Europe, Middle East & Africa
- Inmarsat
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Law Society of England & Wales
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des Entreprises de France - MEDEF
- Oracle Europe, Middle East & Africa
- Orange
- PostEurop
- Prudential Plc.
- SELDIA – European Direct Selling Association
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- Tata Consulting Services - TCS
- Telenor Group
- TheCityUK
- Thomson-Reuters
- Zurich Financial Services