

## ESF POSITION PAPER ON EU-CHINA RELATIONS

### 1. Summary

China is a rapidly growing market for European services suppliers. Our service businesses cannot afford to ignore its enormous potential in seeking to enhance their global competitiveness. ESF thus welcomes the European Commission's new focus on China and the opportunity to submit its views through the public consultation on EU-China trade relations. This submission does not seek to analyse the importance of China for the European economy as a whole. ESF fully supports the position paper of UNICE on this same subject. The European services industry does feel it however appropriate to give its particular viewpoint on EU-China relations and would like to highlight a number of points and make recommendations in areas of special relevance to its activities.

### 2. Opportunities and Threats

The rise of China as a key element of the world economy represents a tremendous opportunity for the European services industry. The size of its population; the powerful growth of the economy over the last two decades; the fact that the ratio of China's external trade to GDP is one of the largest in the world; and the importance of the services sector at 40% of GDP already and growing rapidly are all together creating an enormous market for services firms. Furthermore, for China to achieve sustainable economic development into the future, access to world class services infrastructure will be vital. The European services industry can play a major role in this process, provided that the market is effectively open to them.

The threat to the European services business posed by China's development is simply that access to its market will continue to be curtailed by a lack of respect for multilateral rules or a failure to establish business-friendly regulatory environment which values property rights, transparency and legal certainty. The European Union has substantial services trade surplus with China but the continued ability of EU services exporters to take advantage of this situation will only be guaranteed if China plays by the rules. Current Chinese services exports to Europe are not insignificant<sup>1</sup> and, given the wide freedom the EU grants to China to access its market, a level-playing field is crucial.

ESF wishes to ensure that the Commission's China strategy maximises the advantages and minimises the threats the EU-China economic relations and accordingly makes the following recommendations:

- ? Use the World Trade Organisation (WTO) to full advantage;
- ? Intensify EU-China dialogue to promote regulatory cooperation and transparency to promote an investment friendly regulatory environment;
- ? Strengthen the reaction capacity of the EU on site.

### 3. Use the WTO to full advantage

#### a) Implementation of current WTO obligations:

The World Trade Organisation provides some of the best tools to improve access to China's market. On accession, China accepted all the duties and obligations of WTO membership and the EU must ensure that these multilateral rules are respected. China made a quality schedule of commitments— for its level of development at that time – to liberalise many sectors of its services market. While some of this has been implemented, China must now implement its commitments to open the **wholesale services, insurance, telecommunications, legal**

<sup>1</sup> In 2003 EU services exports to China were worth €6,034 m while imports from China were worth €4,313 m. (Eurostat)

**services, retail sectors and tourism** during 2006. Its **banking sector** is scheduled to be opened by the end of this year, and ESF call upon the EU Commission to be vigilant and ensure that this important step is smoothly passed. Legal certainty for **express delivery services** will result from adopting postal legislation that reflects the scope of the postal monopoly at the time of WTO accession, elimination of a universal service fund tax for express operators and a relaxed licensing regime.

b) Further improvements of GATS Commitments:

The EU must also ensure that China makes real new commitments in the WTO's Doha Development Agenda (DDA) negotiations. Despite its accession commitments, China's service markets remain heavily regulated and trade in services restricted. Burdensome capital requirements and joint ventures with Chinese service providers are often required for market entry. The Chinese market should be opened to EU service providers on a non-discriminatory basis. ESF's priorities for China in the DDA are outlined in more detail in the attached assessment of China's revised GATS offer (enclosure 1). We would like also to emphasise that ESF Members will undoubtedly contribute directly to this consultation.

European service suppliers continue to face major barriers which need to be addressed either in the multilateral environment, or through any other means. In particular, we urge the Commission to increase pressure on China to:

- ? **remove limits on foreign investment** in those sectors where investment is restricted such as banking or telecoms;
- ? reduce or **eliminate the discriminatory capital requirements** for getting a license in sectors like banking and construction;
- ? eliminate or **soften the obligation to enter the market through a joint venture** and to choose a majority partner. Such a policy is not attractive for foreign services suppliers. They do not wish to share their know-how and management techniques (their core added value and their competitive advantage vis-à-vis their competitors); and they will restrict their investment if the penalty for a greater investment is to lose control of key elements of their business;
- ? **eliminate requirements for local input** which undermine companies' strategies and violate China's WTO commitments;
- ? **ease visa requirements and quotas** for the employment of foreigners, as they are an impediment for the movement of key business personnel. The EU should also facilitate visa requirements for Chinese business personnel to the EU;
- ? **remove anticompetitive regulation** which acts as barrier to the provision of services by foreign providers (e.g. prohibiting Chinese lawyers employed by foreign law firms from providing Chinese legal services); and
- ? **make the application of regulation more transparent**, such as in the regulation of the satellite sector.

An additional tool to encourage China to enhance transparency in national and regional regulation should be provided by the **adoption of Disciplines on Domestic Regulation**, as mandated by Article VI§4 of the GATS. ESF strongly supports a positive outcome in these current negotiations, which should allow services providers in addressing issues with the regulator in terms of transparency, and necessary consultations prior to introducing new regulations.

#### 4) **Intensify EU-China regulatory cooperation to promote an investment friendly regulatory environment**

China has taken positive steps to improve the business environment but much remains to be achieved. ESF encourages the EU to use regulatory cooperation – in addition to the strict enforcement of WTO commitments outlined above – to achieve further progress in this area. EU-China policy dialogues must develop smoothly and progressively so as to better understand each other's regulatory frameworks. The Chinese authorities must increase their efforts to establish a **stable, predictable, reliable and transparent legal and administrative framework** which fosters investment and steady business development.

Central government regulations are often implemented differently at a local or provincial level, and local regulations often supplant or contradict central rules. In addition, regulations are not always directly available to the companies concerned and it is equally difficult for the latter to keep track of any regulatory changes. It is therefore very difficult for EU business to have a clear and comprehensive understanding of the legal context in which they have to operate, particularly given current restrictions on the provision of legal services by non-Chinese lawyers. All **EU-China policy dialogues** (trade, industrial, regulatory cooperation, energy, IPR, environment, etc) should aim at achieving concrete progress in removing regulatory obstacles and facilitating two-way trade and investment. EU business should be fully and adequately consulted and involved when appropriate in these processes. In addition China will be a global standard setter in the future. It is therefore crucial to ensure convergence with EU regulatory approaches.

More importantly, the EU - together with its major developed countries trading partners - should strongly encourage China to **recognise the existing international standards** in many services sectors, such as financial services, accounting standards, etc. This will provide transparency and a level playing field for all investors.

Serious efforts must also be made to secure the removal of discrimination against foreign businesses, especially those who have made the effort to establish joint ventures with fully- or partly Chinese state-owned entities. It is particularly important to **ensure access to public procurement projects** at all levels. China being an economy with extensive state-owned activities where public procurement rules apply, it is of the utmost importance for services sectors like architectural and engineering services and construction services, but also IT and computer related services, etc. to have access to this huge potential market. ESF therefore calls on the EU to continue discussions with the Chinese authorities to persuade China to become a signatory to the WTO **Government Procurement Agreement (GPA)**.

The European service industry is also strongly in favour of pressing China for **effective enforcement of intellectual property rights (IPR)**. The music publishing and distribution industry, as well as IT and computer-related services, particularly suffer from piracy and call for joint action to combat this curse.

## 5) Strengthen the EU' capacity and reactive resources on site

The Commission needs to cooperate effectively with EU Member States, trading partners and the business community to ensure all barriers to market access are appropriately addressed. Regulatory hurdles will become increasingly important and must be dealt with vigorously. China is already the third largest trading nation in the world and – should its current rhythm of development continue – will likely become the first in the middle term. China therefore cannot be considered as a developing nation any longer and cannot be dealt with like any other emerging country. **The EU must ensure that it has at its disposal the necessary resources to implement its new strategy on China.**

ESF strongly invites the Commission to substantially strengthen the team of staff dealing with trade and regulatory issues in its delegation in Beijing and open offices in the main Chinese provinces and municipalities. Such measures are more than justified given the size of the country, the population (i.e. potential consumers) and the complexity and variety of decision-making systems. Likewise, stronger cooperation between the European Commission and the EU Member States' diplomatic missions should be established, not only to institute a **European vigilance network**, but also potentially to coordinate trade promotion policies. This would aim to ease the way for European companies to better understand Chinese services markets and find relevant information on the concrete formal requirements to open up a commercial presence in China. To this end, consideration might be given in **strengthening the section dedicated to China in the existing EU Market Access Data Base**. Potential investors in services would need a type of "single point of contact", where they could find the relevant information on how to establish in China, or at least the contact details where this information would be provided.

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## List of ESF Members Supporting ESF Position Paper on EU-China Relations

1. Accenture
2. Architects' Council of Europe –ACE
3. Association of Commercial Televisions – ACT
4. Barclays PLC
5. British Telecommunications plc - BT
6. Bundesverband des Freien Berufe – BFB
7. Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
8. Chartered Institute of Public Relations - CIPR
9. Confederation of British Industry – CBI
10. Conseil des Barreaux de la Communauté Européenne - CCBE
11. Comité Européen des Assurances - CEA
12. European Council of the Liberal Professions – CEPLIS
13. Confédération Fiscale Européenne - CFE
14. Clifford Chance
15. Comité de Liaison des Géomètres Européens – CLGE
16. Commerzbank AG
17. Deutsche Bank AG
18. Deutsche Telekom AG
19. DHL Worldwide Network SA
20. EDS Europe, Middle East & Africa
21. Confederation of Finnish Enterprises - EK
22. Ernst & Young
23. Eurelectric - Union of the Electricity Industry
24. EuroCommerce
25. European Association of Cooperative Banks – EACB
26. European Express Association – EEA
27. European Federation of Engineering and Consultancy Association – EFCA
28. European Film GATS Steering Group
29. European International Contractors - EIC
30. European Public Telecom Network – ETNO
31. European Retail Round Table – ERRT
32. European Savings Banks Group – ESBG
33. European Satellite Operators Association – ESOA
34. Federation of European Consultancies Associations – FEACO
35. European Banking Federation – FBE
36. Federation of European Direct Selling Association - FEDSA
37. Fédération des Experts Comptables Européens – FEE
38. Fédération de l'Industrie Européenne de la Construction – FIEC
39. Federation of Professional Industry and Services Organisations in Italy - FITA
40. France Telecom
41. Free and Fair Post Initiative – FFPI
42. Goldman Sachs International
43. Herbert Smith
44. IBM Europe, Middle East & Africa
45. International Federation of the Phonographic Industry – IFPI
46. International Financial Services, London - IFSL
47. KPMG
48. La Poste
49. Law Society of England & Wales
50. Lloyd's of London
51. Metro AG
52. Mm02
53. Oracle Europe, Middle East & Africa
54. Portugal Telecom
55. PostEurop
56. Poste Italiane S.p.A.
57. PricewaterhouseCoopers
58. Prudential
59. Royal Ahold NV
60. Royal Bank of Scotland – RBS
61. Federation of Greek Industries - SEV
62. Siemens AG
63. Svenskt Näringsliv (Confederation of Swedish Enterprise) - SN
64. Telecom Italia
65. Telefónica SA
66. TNT
67. TUI A.G.
68. UNICE
69. UNICE WTO Working Group
70. Universal Music International
71. UNIQA Versicherungen AG
72. Veolia Environnement

## PRELIMINARY ASSESSMENT OF CHINA'S REVISED OFFER

### I. BACKGROUND

As part of its effort to gradually slow the rapid economic growth seen in 2004, Beijing says it will reduce somewhat its spending on infrastructure in 2005, while continuing to focus on poverty relief and through rural tax reform. Accession to the World Trade Organization helps strengthen its ability to maintain strong growth rates but at the same time puts additional pressure on the hybrid system of strong political controls and growing market influences. China has benefited from a huge expansion in computer Internet use, with 94 million users at the end of 2004. Foreign investment remains a strong element in China's remarkable economic growth. Shortages of electric power and raw materials may affect industrial output in 2005. More power generating capacity is scheduled to come on line in 2006. In its rivalry with India as an economic power, China has a lead in the absorption of technology, the rising prominence in world trade, and the alleviation of poverty; India has one important advantage in its relative mastery of the English language, but the number of competent Chinese English-speakers is growing rapidly.<sup>2</sup>

The rapidly growing services sector represents 33% of GDP in the People's Republic of China and accounts for 29% of jobs. China is the EU's 5<sup>th</sup> largest trading partner in services, with more than 10 billion euros worth of transactions in 2003.

### II. A SECTOR-BY-SECTOR ANALYSIS OF CHINA'S REVISED OFFER

#### A. Horizontal Commitments

In China, representative offices of foreign enterprises may establish but not engage in profit-making activities (except for legal; accounting, auditing & bookkeeping; taxation; and management consulting services). The establishment of branches by foreign enterprises is "unbound."

China has made a very limited offer on Mode 4 (movement of natural persons), which allows the temporary entry of senior employees and service salespeople (who may not sell directly to the general public). We would prefer that China include Business Visitors who wish to establish commercial presence and for Contractual Service Suppliers in its Revised Offer.

In addition, several ESF Members have complained about delays in getting work permits and visas. We would like to see China address this issue in the GATS negotiations

#### B. Sectoral Commitments

##### 1) PROFESSIONAL AND BUSINESS SERVICES

###### ? Legal Services: Weak offer

China's revised offer remains the same as its initial offer in this sector. Although China has opened its market to foreign legal firms opening representative offices, their business scope is limited and lawyers are required to have at least 2-3 years' experience. We would like to see this prior practice requirement removed and would like China to schedule new commitments on consultancy through lawyers qualified in China.

###### ? Accounting, Auditing and Bookkeeping Services: Decent offer

China has not tabled new proposal since its initial offer. China's Initial Offer opened Modes 1-3 for foreign firms; however, access to partnerships or incorporated accounting firms is limited to Certified Public Accountants by the Chinese authorities. We would hope to see this restriction removed in China's revised offer.

<sup>2</sup> Source: *The CIA World Factbook*, 2005. <http://www.cia.gov/cia/publications/factbook/geos/ch.html#Econ>

? **Taxation Services: Good offer**

China has tabled a rather good offer on Taxation services but no progress has been made in the revised offer. Market access is currently limited to joint ventures (foreign majority ownership is permitted), though wholly-owned subsidiaries will be allowed within 6 month's of China's WTO accession.

? **Architectural Services: Decent offer**

? **Engineering Services: Decent offer**

? **Integrated Engineering Services: Decent offer**

? **Urban Planning Services: Decent offer**

There is no change from China's initial offer. For each of the above sectors, China requires cooperation with Chinese professional organisations (except for scheme design). We would like to see this requirement removed. In addition, China has scheduled an obligation that foreign service suppliers be registered in their home country; this does not need to be scheduled (see Scheduling Guidelines adopted by Council of Trade in Services March 2001). Foreign ownership is permitted in the form of joint ventures only, though wholly owned subsidiaries will be allowed within 5 years of China's accession to the WTO.

? **Computer and Related Services: Decent offer**

China has made commitments in Modes 1-3 in its Initial Offer, though we would like to see commitments at two-digit level (CPC 84). Currently, China has scheduled commitments in Consultancy services related to the installation of computer hardware (CPC 841), Software implementation services (CPC 842), and Data processing services (CPC 843). The revised offer also includes Input preparation services (CPC 8431), Data processing and tabulation services (CPC 8432) and Time sharing services (CPC 8433). For Software implementation services (CPC 842), Mode 3 MA<sup>3</sup> restrictions have been lifted as wholly foreign-owned enterprises will be allowed.

Also, China scheduled a Mode 4 limitation requiring natural persons from abroad to be certified engineers or a bachelor's degree and have 3 years of experience.

? **Real Estate Services: Satisfactory offer**

China has scheduled commitments in Real estate services involving own or leased property (CPC 821) and Real estate services on a fee or contract basis (CPC 822). For CPC 821, China's revised version presents new Mode 3 MA commitments as wholly owned enterprises are now permitted. For CPC 822, similar commitments have been made. Real estate services on a fee or contract basis are now permitted in the form of wholly foreign-owned enterprises.

? **Other Business Services: Decent offer**

In **advertising services (CPC 871)**, China has made a limitation on market access requiring firms to work through advertising agents registered in China. ESF would like to see this restriction removed but notes that, for mode 3, China will allow wholly foreign-owned subsidiaries.

In **management consulting services (CPC 865)**, China has limited foreign participation to joint ventures; ESF welcomes China's commitment, in its revised offer, to lift those restrictions in the near future so that China will receive the full benefit of foreign expertise in this field.

China has also made Mode 1 commitments in **technical testing and analysis (CPC 8676)** and **freight inspection covered by CPC 749**. China also intends to take Mode 3 commitments (China will allow wholly foreign-owned subsidiaries in the near future).

China has scheduled commitments in **Services incidental to agriculture, forestry, hunting and fishing (CPC 881, 882)** for Modes 1-3, though only via joint ventures.

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<sup>3</sup> MA stands for Market Access.

China has also made Modes 1-3 commitments in **Related scientific technical consulting services (CPC 8675, 86751, 86752)**, though these are limited to petroleum exploitation in cooperation with Chinese partners. We would like to see these limitations removed with full commitments. China has also made a commitment in “**onshore oil field services**,” though only in cooperation with China National Petroleum Corp. and in designated areas approved by the Chinese government. All data records, samples, vouchers and other original information acquired during the implementation of petroleum operations shall remain property of CNPC.

ESF appreciates that China has added **building cleaning services** (CPC 874) to its initial offer, as well as Market research services (CPC 86401) – but only limited to investigation services designed to secure information on the prospects and performance of an organization’s products and with Mode 3 MA restrictions – and services related to management consulting - but only limited to project management services other than for construction and with Mode 3 MA restrictions – to its revised offer as per the EC request. Under similar conditions, China has also committed on Placement and supply services of personnel (CPC 872 excluding CPC 87209). ESF would like **security services** (CPC 87302-87309) to be added to its offer.

In addition, ESF appreciates China’s scheduling commitments in **photographic, packaging**, printing of packaging materials on a fee or contract basis, **convention, translation and interpretation services** and hope these facilitate real new business opportunities.

## **2) POSTAL AND COURIER SERVICES: Weak offer**

China has tabled a limited Initial Offer which only includes **courier services** (CPC 75121) and no new commitments have been taken in the revised offer. China currently allows foreign majority ownership via joint ventures, with wholly owned subsidiaries allowed from 2007. Given the fact that China is preparing new postal legislation, it is unclear how this new legislation will impact commitments taken during the WTO negotiations.

We would welcome commitments that:

- ? Confirm the establishment of an independent regulator;
- ? Provide a clear definition of the letter mail monopoly limited by weight and a price criterion that would exclude express delivery services from being part of the monopoly, in order to avoid a roll back compared to the terms of China’s accession to the WTO in 2001;
- ? Avoid the possibility for China Post to use its monopoly profits to the extent that this would result in competitive distortion;
- ? Confirms that the entrustment and licensing procedures do not result in step back compared to China’s accession agreement to the WTO in 2001, nor in mechanism whereby express delivery carriers can be required to contribute to financing the universal postal services in China.

## **3) TELECOMMUNICATIONS SERVICES: Weak offer**

No new commitments have been taken in the revised offer. China has capped foreign equity at 50% for value added services, and 49% for basic services. We would like these restrictions to be lifted along with obligations to set up joint ventures. China has decided to remove geographic restrictions from its schedule of commitments, which is very welcome. However, by deepening its commitments in telecoms, China can expect greater investment along with increased efficiency and economic growth.

## **4) AUDIO-VISUAL:**

China’s revised offer is disappointing as it does not include any commitments for sound recording services. Commitments on mode 3 should be made to lift foreign equity restrictions to allow European record companies to engage in the development, recording and distribution of the music of Chinese performers.

## **5) CONSTRUCTION: Disappointing offer**

No new significant commitments have been taken in the revised offer although wholly foreign-owned enterprises are permitted, China limits these enterprises to only four types of construction

projects, 1) those financed by foreign investment and/or grants, 2) construction projects financed by loans of international financial institutions and awarded through international tender, 3) Chinese-foreign joint construction projects with foreign investment of less than 50%, 4) Chinese invested construction projects which are difficult to be implemented by Chinese enterprises alone (with approval of provincial government).

These limitations serve little aside from reducing the competitiveness of the Chinese construction industry and should be removed.

#### **6) DISTRIBUTION SERVICES: Not Enough**

No new significant commitments have been taken in the revised offer. China has excluded salt and tobacco from its commitments in Commission Agents' Services and Wholesale Trade Services. This limitation ought to be lifted.

In addition, China has limited the activities of chain stores with more than 30 outlets; foreign majority ownership is forbidden for such chains that sell books newspapers, magazines, pharmaceuticals, pesticides, mulching films, processed oil and a number of other goods. Again, this reduces the competitiveness of the Chinese distribution sector and should be removed.

We welcome China's Modes 1-3 commitments in Franchising and Wholesale or Retail Trade Services Away from a Fixed Location.

#### **7) ENVIRONMENTAL SERVICES: Weak Offer**

Foreign suppliers may only provide services in the form of a joint venture with a Chinese enterprise. This sector is particularly important given China's rapid industrial growth whereas China's revised offer remains the same as its initial offer in this sector. ESF would like China to allow wholly-owned subsidiaries in this sector.

#### **8) FINANCIAL SERVICES: Weak Offer**

##### **? Insurance and Insurance Related Services: Weak offer**

China's Initial Offer maintains Mode 2 market access limitations for foreign brokerages. The statutory insurance business is closed to foreign insurance companies. Foreign life insurers are only allowed through 50% ownership joint-ventures. In addition, foreign insurers are only permitted to operate in a limited amount of the business.

ESF would have liked China to further open its insurance market but the revised offer remains almost the same as the initial in that sector. Despite Chinese officials' assertions that China's offer is very ambitious, our experience has been that China's insurance sector is largely a closed market. As an emerging economy, China has much to gain from a competitive insurance market and should schedule commitments accordingly.

##### **? Banking and Other Financial Services: Weak offer**

China has neglected to commit in several important sub-sectors as set out in the GATS Annex on Financial Services in its Initial Offer. China does, however, allow foreign financial institutions to set up branches on its soil. According to its revised offer, criteria for authorisation to deal in China's financial sector are strictly prudential and not subject to economic needs tests or quantitative limits. However, China does require foreign banks to have US\$20 billion in total assets before doing business in the People's Republic.

##### **? Securities: Nothing new – weak offer**

No progress has been made in the Revised Offer. The Schedule of Commitments should be committed according to subsectors in the GATS Annex on Financial Services, including trading, underwriting, asset managements and advisory services ("capital markets-related services"). China should undertake Additional Commitments in Mode 1 MA as to impose lesser licensing requirements in certain circumstances, such as when the client is "sophisticated". As for mode 3, the capital ownership caps within Joint Ventures (various caps depending on the services provided) are a real deterrent for foreign firms and seriously slow down the development of that important sector for the Chinese economy to enter into developed economy.

9) **TOURISM, TRAVEL-RELATED SERVICES AND RECREATIONAL, CULTURAL AND SPORTING SERVICES:  
Not enough**

? China has tabled a relatively good offer in **hotel services**, with wholly-owned subsidiaries permitted soon (but no deadline is given). However, as a point of clarification, ESF asks them to include all foreign owned hotels and restaurants in its Mode 4 commitments for foreign managers, specialists, chefs and senior executives

? The scope of foreign suppliers in **travel agency and tour operator** services is limited to holiday resorts and major cities. In addition, foreign service suppliers are required to have annual turnover of more than US\$40m. ESF would like these limitations to be removed.

? The revised offer includes new but limited commitments in sporting and other recreational services (CPC 96411, 96412 and 96413 excluding golf). Mode 3 MA restrictions have been partly lifted: wholly foreign-owned enterprises are to be allowed but economic needs test will be required.

**10) TRANSPORT SERVICES:**

? **Maritime:**

The revised offer does not include any new commitments.

? **Air Transport:**

China permits joint venture **aircraft repair and maintenance services**, though the Chinese side must maintain controlling interest. Foreign **Computer Reservation System (CRS) services** may be provided in partnership with Chinese CRS, with direct access and use of foreign CRS in China subject to the approval of the General Administration of Civil Aviation of China (CAAC). Foreign CRS services suppliers are also permitted, in the revised offer, to establish joint venture enterprises in China but the Chinese side must maintain controlling interest. Economic needs tests are also required. These market access restrictions ought to be removed.

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