

M. Peter Mandelson
Member of the European Commission
Trade Commissioner
European Commission
Rue de la Loi, 200
B - 1049 - Brussels

Brussels, 23 December 2004

Re: ESF contribution to the Commission's Consultation on the EU/US Transatlantic Partnership

Dear Commissioner Mandelson,

Let me first thank you for the meeting we had on 20th October where we had the opportunity to explain the European services industry priorities in the international trade negotiations. I hope that the note drafted by Mr. Christopher Roberts, Chairman of the ESF Policy Committee, following that meeting on "the Development Case for liberalizing the services" was useful. Please do not hesitate to appeal to ESF in the future for any further information.

I am writing you to forward the ESF Response to the Commission's consultation on the EU/US Transatlantic Partnership (enclosure). You will find at the end of the document the list of ESF Members supporting that Response. One of the major plea is a request that the EU and the US Regulatory Authorities, at all levels, should engage in a truly dialogue as to ensure that existing and future regulations do not constitute an obstacle to trade in services between the two bigger trading partners in international trade in services in the world, so that they can maintain their competitive advantage.

A similar letter has been sent to your colleague Commissioner for External Relations and European Neighbourhood Policy, Mrs. Benita Ferrero-Waldner

Yours sincerely,



Vallance of Tummel
Chairman of the ESF

**ESF response
to the
Request for comments and proposals of
The services of the European Commission on**

“Strengthening the EU-US Economic Partnership”

Q1: What in your view are the most significant obstacles to closer EU-US economic integration?

A relative lack of regulatory cooperation and Mutual Recognition Agreements (on licensing procedures, qualifications and diplomas, standards, etc.), particularly in the services sectors which represent more than 70% GDP on both sides of the Atlantic.

Removing these hurdles will result in increased foreign direct investment between the two sides, and make intra-company activities (measured by the Foreign Affiliates Trade Statistics - FATS) more efficient. Today mutual foreign direct investment is the main driver of the transatlantic economic relationship.

The absence of a genuine EU-US open aviation area is a significant obstacle to closer EU-US economic integration. Aviation provides indispensable transportation services for people and goods. A genuine EU-US open aviation area will provide benefits for airlines, their customers and the economies on both sides of the Atlantic.

In insurance, one of the major US barriers to trade is the discriminatory credit for reinsurance laws.

Q2: What practical measures should be undertaken to remove the obstacles?

We must involve all competent administration levels in regulatory dialogue and in the negotiation of mutual recognition agreements. This includes EU institutions, EU Member States' central administrations and national sector-specific regulatory authorities, particularly in the services sector. A proper consultation of the interested sectors on both sides of the Atlantic should be made to gather support for the sector specific initiatives.

Q3: What additional measures could be taken to further transatlantic economic integration to the fullest, spur innovation, create jobs and better realise the competitive potential of our economies and enterprises?

The US must improve its WTO GATS Initial offer to increase opportunities for EU services providers doing business in the US, particularly in the professional services. Furthermore, U.S. sub-federal (state-level) regulation acts as a barrier for European firms in several sectors, most notably in insurance, where the state credit for reinsurance laws discriminate against EU re-insurers. U.S. state regulators should be involved in the negotiations to ensure that they develop pro-competitive regulations and remove the discriminatory features if the credit for reinsurance laws.

On the European side, EU Member States need to implement the Lisbon agenda as outlined in the recent Kok report. Structural reforms as to achieve the single market in services have to be undertaken at all relevant levels.

Bilateral dialogue between all levels of authorities should be established. Sector-specific agreements like the one between the EU and Japan on legal services provide a model.

Q4: The EU-US bilateral trade and economic agenda has achieved some progress, especially through the Financial Markets Regulatory Dialogue, the Guidelines for Regulatory Cooperation and Transparency, the Galileo-GPS agreement on satellite navigation and the Mutual Recognition Agreement on marine equipment. Should more of this be done? Which new areas do you suggest?

Much more of this should be done. All services sectors should be individually consulted to identify their needs. We can recommend specifically:

1) Insurance Authorities Regulatory Dialogue – since the insurance sector in the US is currently regulated at state and not federal level, there is no possibility for the US regulators to speak with one voice with their EU partners in the dialogue.

2) Professional Services Authorities Regulatory Dialogue.

Exercises such as the architectural sector's negotiation of a MRA on qualifications for architects should be encouraged in other sectors and officially recognised by the competent authorities from both sides at all levels (i.e. federal and sub-federal level; EU and member states).

Q5: What measures would be appropriate to promote good corporate governance and reliable financial information in the transatlantic market?

The EU and the US should work to promote confidence and transparency in Transatlantic capital markets.

- ?? Avoid over-regulating companies in the name of good governance.
- ?? Work toward common regulatory principles for capital markets to facilitate equivalence and recognition by Transatlantic authorities.
- ?? Promote use of international accounting standards and speed up convergence between IFRS and US GAAPs.

Q6: Can you suggest essential steps that should be taken to ease transatlantic direct and indirect investment?

Remove existing investment barriers that have been acknowledged repeatedly, rather than only identifying them. For example, foreign investment screening procedures in the high-technology sector must be removed.

In addition, currently, foreign investment in US airlines is limited to 25% whereas EU airlines must be majority owned by EU citizens. Liberalization of investment is crucial, as it will allow EU and US airlines to access each other's domestic aviation market in a transparent and competitive manner. There is no justification for the airline sector to be among the few and last ones to tolerate ancient investment restrictions. Ownership and control restrictions in airlines on both sides of the Atlantic must therefore be removed.

Mergers, acquisitions and takeovers of US businesses by foreign companies have to undergo increasing hurdles to receive approval by the Committee on Foreign Investment in the United States (CFIUS). It determines whether the foreign interest exercising control may take action to threaten national security. In the end, any business sector could be affected. There is no judicial review of decisions and the process can no longer be considered a simple clearance that one assumes will be obtained. The costs involved, the conditions imposed and the insecurity with regards to the final outcome of the process chill foreign investment.

Q7: Do you have any proposals on how to protect the environment, consumer interests and health and safety as well as labour standards, while simultaneously promoting further economic integration?

Promoting these interests should involve not only the EU and the US, but also the rest of the world. There are already specialised bodies such as the United Nations bodies, the WTO, ILO, World Bank and IMF, where the US and EU can cooperate with other countries on issues of multilateral governance.

Q8: To what extent do new border and transport security measures have an impact on trade, investment and travel? If they do have a negative impact, what remedies would you propose?

Enhanced security measures are now definitively part of the business world. However, border and transport security measures should not be unilateral and should not negatively impact trade by becoming Technical Barriers to Trade.

Increased border and transport security does have an impact on the mobility of business personnel. Obtaining visas and passports is more costly and lengthy to the detriment of Intra Corporate Transferees, Business Visitors and Contract Service Suppliers. When determining what kind of measures should be in place, any measure should be threat based and commensurate with the level of risk identified. There should not be a "one size fits all" approach to addressing risk; rather it should be done via a multi-layered security programme which clearly mitigates any potential negative impact on business. Again, dialogue between authorities (US and National EU Immigration authorities) and flexibility via mutual understanding can be a part of the solution.

Q9: Does the administration of export controls and transfers of know how in the US and the EU work satisfactorily in balancing the objectives of trade and security? If not, what measures should be taken jointly to improve the situation?

This is one of the areas where there is substantial room for improvement. In order to handle export controls and transfers at operational level there is a need for clear and common definitions of export controls and transfers of know how, at least on both sides of the Atlantic. The lack of precise and consistent definitions constitutes an important obstacle to the consecution of a clear framework in which these operations take place. The US should avoid adopting extra-territorial measures for products that have been legally exported to the EU.

US and EU governments should expeditiously open a dialogue with industry to foster an in-depth analysis of the rationale of export control in the information age, with regards to international security without hampering legitimate trade.

Q10: What additional steps, if any, should be taken jointly to protect Intellectual Property Rights?

Q11: Do you experience problems when tendering for public contracts in the US? If so, what should be done to remedy these problems?

Q12: What should be done to further liberalise transatlantic trade in services, including professional qualifications?

As already mentioned in response to Questions 1 and 4 further liberalisation of transatlantic trade in services is to negotiate Mutual Recognition Agreements (MRAs) in the relevant services sectors, and in particular in the professional services sectors: Legal services, architectural services, engineering services, accounting and auditing services, medical services, etc. In other sectors, MRAs should be negotiated to speed up authorisation and licensing procedures (insurance, banks, distribution, etc.).

Of course, this assumes that market access already exists. If not, it should be granted through bilateral agreements or the WTO GATS Negotiations.

Q13: Do you think that a further reduction or elimination of tariffs between the EU and US is important? If so, which or in which sectors?

Q14: Do you have any comment on the possible impact that strengthening EU-US bilateral integration might have on the multilateral trading system and the interests of developing countries?

The strengthening of the EU-US bilateral integration will contribute to overall world economic growth. Greater shared interest between these trading giants is also likely to move the multilateral agenda forward as other countries are likely to follow their lead.

However, if developing countries do not understand that progress in the WTO and multilateral system means increased opportunities for them, they will be left behind, with trade negotiations limited to preferred access between the richest world trading partners. Hence, ESF continues to support multilateral trade liberalisation as its top priority.

Q15: How can we enhance transparency and public participation in the transatlantic economic dialogue?

Ensuring broad participation of European stakeholders is key to the success of a revitalized transatlantic economic dialogue. The exchange of views on transatlantic issues should be constant and on going, to ensure that the dialogue is kept alive at all moments.

This consultation is a big step in enhancing transparency and public participation. The conclusions of this consultation ought to be shared with the public, or at least interested stakeholders.

You will find herewith, as an integral part of this paper, the list of ESF members that support the text of this Response.

List of ESF Members Supporting the
ESF response to the Request for comments and proposals of
The services of the European Commission on
“Strengthening the EU-US Economic Partnership”

1. Accenture
2. Architects' Council of Europe –ACE
3. Association of Commercial Televisions - ACT
4. Arup Group Ltd.
5. AXA
6. Barclays Plc.
7. British Telecommunications Plc.
8. Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
9. Confederation of British Industry – CBI
10. Comité Européen des Assurances - CEA
11. European Council of the Liberal Professions – CEPLIS
12. Confédération Fiscale Européenne - CFE
13. Clifford Chance
14. Comité de Liaison des Géomètres Européens – CLGE
15. Commerzbank AG
16. Deutsche Telekom AG
17. DHL Worldwide Network SA
18. EDS Europe, Middle East & Africa
19. Ernst & Young
20. Espacio y Entorno (Architect)
21. Eurelectric - Union of the Electricity Industry
22. EuroCommerce
23. European Association of Cooperative Banks – EACB
24. European Banking Federation – FBE
25. European Community Shipowners' Association – ESCA
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. Federation of European Consultancies Associations - FEACO
34. Fédération des Experts Comptables Européens – FEE
35. Federation Européenne des Fonds et Sociétés d'Investissement - FEFSI
36. Fédération de l'Industrie européenne de la Construction – FIEC
37. Federation of Professional Industry and Services Organisations in Italy - FITA
38. France Telecom
39. Free and Fair Post Initiative - FFPI
40. Gide Loyrette Nouel
41. Herbert Smith
42. IBM Europe, Middle East & Africa
43. International Federation of the Phonographic Industry – IFPI
44. International Financial Services, London - IFSL
45. KPMG
46. La Poste
47. Lloyd's of London
48. Marks & Spencer plc
49. Metro AG
50. Microsoft Europe, Middle East & Africa
51. MmO2
52. National Bank of Greece
53. Oracle Europe, Middle East & Africa
54. Portugal Telecom
55. PostEurop
56. Poste Italiane S.p.A.
57. PricewaterhouseCoopers
58. Prudential Plc.
59. PT - Palvelutyönantajat ry - Employers' Confederation of Service Industries, Finland
60. Royal Ahold NV
61. Royal Bank of Scotland
62. Siemens AG.
63. Svenskt Näringsliv (Confederation of Swedish Enterprise)
64. Telecom Italia
65. Telefónica SA
66. TPG
67. TUI A.G.
68. UNICE
69. UNICE WTO Working Group
70. Universal Music International
71. UNIQA Versicherungen AG
72. Veolia Environnement
73. Vodafone
74. White & Case LLP
75. Züblin