

Brussels, 7<sup>th</sup> November 2005

**ESF Preliminary Comments on the  
Second Draft Ministerial Text on Services Negotiations**

(Drafted by the WTO CTS SS Chairman – JOB(05)/262/Rev1 dated 3<sup>rd</sup> November 2005)

**EXECUTIVE SUMMARY**

- ?? The European Services Forum fails to understand the political or legal value of a wording where Members “are determined to intensify the negotiations”. Such a text does not contain any real political commitments to achieve any specific results in the services negotiations. Such a wording is much too weak to gather the support of the European service industries. At a time where real liberalisation measures are under serious discussions at the highest levels in the area of agriculture, we cannot accept that there are no further obligations adopted in Hong Kong but to intensify the negotiations in the services.
- ?? ESF position supports the fact that the Request-Offer process is and should remain the basis on the GATS negotiations. It is not for the industry to tell Governments what should be the negotiating procedure, as long as at the end, the negotiators can deliver what companies are looking for, i.e. at least binding the current practices and not only increasing the level of bindings that would remain lower than the situation that companies already face on site, and as far as possible creating new business opportunities by opening new market access.
- ?? The ESF fully supports a complementary approach on plurilateral basis, which would allow higher levels of ambition in specific sectors of interest to some members. However, such plurilateral agreements could only be acceptable provided that critical masses of WTO Members would make commitments according to pre-agreed Model Schedules or any other frameworks. These agreements should not allow free-riders with emerging economies in those specific sectors to take profit without committing themselves.

The European Services Forum (ESF) is commenting below the First Revised version of Draft Ministerial Text that was drawn up by the Chairman of the WTO Council for Trade in Services – Special Session, dated 3<sup>rd</sup> November 2005. The comments follow the chronological order of the Draft.

*[Principles]*

1. The introduction in the Revised Version on the first paragraph of the wording "with due respect for the rights of members to regulate" could be maybe complemented by some additional text such as "under the principles of transparency, necessity, legitimacy and proportionality" or "under the principles of domestic regulation as mentioned in paragraph 8 below" (if properly covered there). We believe that it is important to show somehow that the right to regulate has to respect general principle of law.
2. We welcome the introduction of the new §3 in the Revised Version, which brings into the “Objectives” section, and not any more as a “principle”, the recognition of lack of significant progress and the undertaking to intensify the negotiations.

*[Objectives]*

3. However, we fail to understand the political or legal value of the first sentence of the “Objectives”, where Members “are determined to intensify the negotiations”. Such a text does not contain any real political commitments to achieve any specific results in the services negotiations, but to “intensify the negotiations”! Such a wording is much too weak

to gather the support of the European service industries. At a time where real liberalisation measures are under serious discussions at the highest levels in the area of agriculture, we cannot accept that there are no further obligations adopted in Hong Kong but to intensify the negotiations in the services. The DDA is a single undertaking and all issues must advance at a similar pace as to ensure a balanced agreement. If the services negotiations are to be concluded by December 2006 (as stated in §15), there is a clear need for much binding obligations in Hong Kong.

4. The CTS Chairman's Proposal does not contain any target objectives for the multilateral approach. The initial text suggested that "we agree that Members shall ensure, to the greatest extent possible, that their new and improved commitments adhere to the following objectives..." It was already unclear what real political commitment that members would undertake with such vague wording. Our concerns about the lack of strong commitments from WTO Members in Hong Kong are now even bigger, given that in the revised text of 3<sup>rd</sup> November 2005, the wording has been considerably softened and states: "Members should strive to ensure that their new and improved commitments adhere to the following principles"
5. The text proposes that for Mode 1 and 2, Members shall take commitments at existing levels of openness, i.e. binding current practice. We welcome the revision, which slightly strengthens the wording. This is a welcome move. For Mode 1, Members should remove existing commercial presence requirements. Such de-linkage between Mode 1 and Mode 3 is very important as to allow real cross-border operations and hence very welcome. Commitments on Mode 2 should automatically be taken when commitments on Mode 1 exist.
6. In Mode 3, Members are to enhance levels of foreign equity participation, but no further obligations are specified. They also should undertake substantial reduction of economic needs tests (ENTs) and allow greater flexibility in the types of legal entities allowed in their territories. These objectives are welcome but remain rather vague. It is regrettable that there are no more concrete obligations for the Members, for instance allowing progressively at least 51% foreign equity ownership.
6. It is a pity that the former section e) of §4 of the first version on Economic Needs Tests has been deleted. The second paragraph of that former section has been re-introduced in new f)(ii), but the first paragraph has been withdrawn ("elimination of existing, and refraining from inscribing new, economic needs tests unless stipulated in existing legislation"). We hope that the new wording will not allow WTO Members to inscribe new ENTs that would modify the value of commitments taken in the current round of negotiations. The third section in the chapter on "Objectives" (§5): "sectoral and modal objectives as expressed by Members, in order to provide guidance for the request/offer negotiations" (e.g. Annex to the Chairman's Report to the TNC) is extremely unclear and requires further clarification. What is the purpose of that paragraph? Will the Annex to the Chairman's report to the TNC be attached to the Hong Kong Declaration? What will be its value? So far, the Annex to the TN/S/20 of July 2005 was prepared under the own responsibility of the Chairman. Will that change? Providing guidance for the request/offer negotiations is a commendable objective, but where is the political commitment that companies are expecting out of this Ministerial conference? Can we understand that the various negotiating proposals tabled by countries or group of countries will be the basis of the sectoral and modal objectives as expressed by Members? Such a perspective might be interesting, but would require further analysis and comments from our part in due time.
7. §7 deals with the negotiations on rule-making, with commitments from members to "intensify their efforts" to engage in discussions on Emergency Safeguard measures, Government procurement and subsidies, but the text on Domestic Regulation remains to be added. It is on this latter that the ESF attention is the greater and we would make remarks on it in due time.

*[Approaches]*

8. In the first paragraph of the chapter on “Approaches” (§9), Members “agree to intensify and expedite the Request-offer negotiations” (see our comments above). We feel that such a commitment to intensify the negotiations is not a sufficient political engagement, compared to the potential progresses in agriculture and NAMA, where all WTO members would undertake concrete steps toward a positive conclusion of the DDA. The text indicates clearly that the Request-Offer negotiations remain the main method for negotiations, “with a view to securing substantial commitments”. ESF position supports the fact that the Request-Offer process is and should remain the basis on the GATS negotiations. It is not for the industry to tell Governments what should be the negotiating procedure, as long as at the end, the negotiators can deliver what companies are looking for, i.e. at least binding the current practices and not only increasing the level of bindings that would remain lower than the situation that companies already face on site, and as far as possible creating new business opportunities by opening new market access.
  
9. A long section on the plurilateral approach follows (§10). “The results of such negotiations shall apply on an MFN basis”. The proposal does not mention “Model Schedules”, but mentions that any country or group of countries may present individual or collective requests to other members in any specific sector or mode, identifying their objectives for the negotiations in that sector or mode, which in fact is an approach that corresponds to a model schedule. The text underlines that the CTS SS will review the progress of these plurilateral negotiations, which should be open to all WTO Members. The section on Plurilateral negotiations has been a little bit clarified in the Revised Version, without major modification. The ESF fully supports such a complementary approach, which would allow higher levels of ambition in specific sectors of interest to some members. However, such plurilateral agreements could only be acceptable provided that critical masses of WTO Members would make commitments according to pre-agreed Model Schedules or any other frameworks. These agreements should not allow free-riders with emerging economies in those specific sectors to take profit without committing themselves.
  
10. A section entitled “Numerical targets and indicators” is included in the Proposal (§11), although the section is left blank. As for §5 above, it is unclear what is the purpose of such a paragraph. ESF would support the expression of these numerical targets and indicators in the Hong Kong text as to give guidance to the negotiators of countries accepting to enter into plurilateral negotiations.
  
11. The ESF shares the view that small economies and LDCs must be given special pace in the services negotiations and that targeted technical assistance should be provided with a view to enabling these countries to participate effectively in the negotiations (§12, 13, 14). But it would be wrong to give them the impression that they are out of the world trading system. These countries desperately need foreign direct investments in key infrastructural services sectors to ensure a sustainable development of their economies. Reasonable and progressive commitments under the GATS would be a clear signal to investors, much more efficient than any development aid policy.
  
12. The last chapter in the Proposal deals with “Timelines” (§15). It reiterates the fact that negotiations should end in December 2006. It specifies that the group of Members wishing to submit requests for sector-specific plurilateral negotiations should do so by [February 2006]. The date for submitting the second round of improved revised offers and the Final draft schedules of commitments remains undecided [brackets], and should be decided in Hong Kong. ESF view is that the second round of improved revised offers should be made by as early as spring 2006. Final draft schedules of commitments should be submitted in September 2006 at the latest, as to give ample time to negotiators to assess the offers before the final round in December 2006.

## **ESF Preliminary Comments on EU Offer on Services dated 28<sup>th</sup> October 2005**

Taking into consideration the comments above, the ESF would like to make the following preliminary remarks on the Services part of the last EU Offer tabled on 28<sup>th</sup> October 2005.

First, while we favour progress in the agriculture negotiations, we strongly support the EU Position that Hong Kong must formalise comparable progress towards and adopt full modalities in areas other than agriculture, and in particular Services, NAMA and Rules. The WTO is not a World Agriculture Organisation, but a trade organisation. The DDA is a single undertaking exercise and this it must remain. Progress in services discussions has been much slower than in agriculture talks, even though services represent more than 2.5 times the volume of trade in agriculture products in the world (World exports in agricultural products, 2003 = US\$674 bn - World exports in commercial services, 2003 = US\$1 795bn - WTO figures). In addition, services liberalisation will contribute more to the development of the poorest developing countries than any agricultural market opening and tariff cuts by rich countries.

As regards the Offer on Services, we have always insisted the quality of offers is more important than the quantity; hence we favour qualitative parameters implying progress in the 4 modes of supply.

We support the idea of quantitative targets as a mean to keep all WTO Members participating, at their own rhythm and for their own benefit, to the services negotiations.

Flexibility could be introduced here, provided that the major emerging economies will effectively participate to the sectoral negotiations in key sectors to achieve quality offers, i.e. that they will be included in the plurilateral agreements as to gather critical masses. ESF Members retain the right to come back on the list of sectors where sectoral negotiations should be launch and on the minimum content of these negotiations.

The wordings and introduction of different criteria between developed and developing countries have therefore to be used with extreme prudence and taking into consideration the fact that many emerging economies could not any more be classified as developing countries in the long term (framework in which the DDA and further round of negotiations has to be understood), given their fast development pace.

-----