

**ESF Meeting with European Commission regarding a Services Plurilateral
Friday, 1st June 2012**

Minutes

ESF Policy Committee Chairman, Mr Edward Bowles, chaired the meeting between ESF members and Mr Ignacio Iruarrizaga Diez, DG Trade, Services Unit Head.

Opening the meeting, the chair welcomed everyone and noted that Ignacio would join following an initial discussion between members and an introduction from the secretariat.

It was noted that the European position had been portrayed as reluctant in certain quarters and that the meeting would provide a good opportunity to obtain greater clarity of the situation from the Commission. Mr Pascal Kerneis, ESF Managing Director, added context to the liberalisation agenda of a plurilateral agreement; specifically on the topics of coverage, content and form (see [enclosure 1](#)). Following the introduction, the topic was opened to discussion.

It was noted that a clear distinction should be made between the relevance of the WTO and the DDA in terms of services liberalisation. The WTO was felt to have continued value that should not be confused with the lack of results generated from the Doha round of negotiations. The sentiment was echoed by other members.

A further question was raised regarding the differing tones of language from the US and EU. Specifically, there was a desire to know why the US CSI (Coalition of Services Industries) was more content to pursue an agreement diverging from the framework laid down in the GATS. Another concern raised was the possible impact on the EU-US initiative and whether a plurilateral negotiation might distract from key progress sought in an ambitious transatlantic relationship. It was agreed that such questions should be put to Ignacio, who had arrived and been welcomed to the meeting. Ignacio was first asked to give a brief of the current situation and the position of the Commission.

Ignacio began by explaining the extent of ongoing talks. He explained that talks were currently being engaged in by 20+ countries, including the Really Good Friends of Services (RGF) plus Israel, Peru and Costa Rica. It was felt that Malaysia could join the club at some point. Market Access issues were being discussed along the lines of the “headlines paper” ([enclosure 2](#)) that included binding autonomous liberalisation and new market access through the elimination of equity caps. This area created the strongest links between those involved. Rules were also being discussed, including within the areas of Public Procurement and State Owned Enterprises, as well as cross border data flows. The nature of the discussion on rules was still very much explorative.

The primary area of controversy was centred on the possible form an agreement might take. It was clearly felt that emerging countries would not join the initiative in the short term, despite substantial effort by the EU to get them on-board. Emerging countries were not interested in turning away from the single undertaking of the DDA, with their offensive interests in Agriculture and NAMA, and with defensive interests (including in services) at the heart of such political positions. This included the ASEAN countries, with the possible exception of Malaysia (as well as Singapore obviously).

The value of the agreement was consequently less clear due to the higher levels of openness already present between the interested parties and their ongoing FTA negotiations. Similarly, common rules offered some value but their real value would come when agreed to by the emerging countries. The value of pursuing a services plurilateral would therefore primarily come in eventually expanding it to include the emerging countries in the future. As a result, the

Commission strongly believed that an agreement must be designed so as to be somewhat conducive to emerging countries potentially joining in the medium term. Following the GATS framework - as opposed to creating a competitor framework, based on the negative list approach - would therefore have the greatest chance of achieving this objective, particularly if the competitor architecture were to be perceived as an elite club developed architecture forced upon those emerging countries. Some other members, such as Australia, shared this concern; however others were content to follow the TPP format pursued by the US in an International Services Agreement (ISA) because many were already party to that architecture. Such an approach could be seen more as trying to pressure emerging countries to join.

The Commission's approach was to take the GATS as it is and build into it, rather than to redefine it. It was felt that the GATS were a young and untested agreement, which has great flexibilities. These flexibilities allow countries of the willing to go much further, in terms of greater market access and of tougher rules and disciplines, but still keeping open doors for countries that would consider themselves as not ready yet. It was felt that the GATS could easily be improved through the articles on Domestic Regulation, GATS rules, and disciplines on Public Procurement, and also through specific reference papers, understandings and additional commitments. This would extend the GATS while maintaining the same architecture and retaining it as the reference. The same logic applied to the use of negative and positive listing. The Commission felt confident using negative listing for the EU, now that it has been done for the first with Canada, and that the "map" of the regulatory situation in the EU has been drafted. But the primary concern was how this could realistically be docked into the WTO. China would be an important player in services in the future but it would be unlikely that they would accept a negative list approach, therefore would using a negative list approach actually end up being short sighted? The same was felt for India, Brazil and most of the ASEAN countries, that group of countries constituting the emerging countries where the growth is and will be in the foreseeable future. It was therefore felt unwise to close the door to these countries to join the plurilateral agreement on services.

The US had a political interest in pursuing a TPP model and they were said to be less concerned with undermining the multilateral system as a result. On the other hand, countries such as Japan and Canada, who were trying to join the TPP, were cautious to run counter to the TPP approach at the wider plurilateral level in case it conflicted with their immediate TPP interests.

The next steps would involve some form of declaration by the summer. The content and tone of such a declaration was still very much to be decided. It could be quite general in nature, or it could be more specific and immediate, such as announcing an intention to launch negotiations. The response of the Commission would depend very much on the nature of this declaration. Ignacio once again outlined that the agreement's form must be decided alongside the level of ambition, because this was a key strategic issue. Ignacio also reiterated that while the EU had strategic interests in the form, it was certainly amongst the most offensive in terms of ambition, being on market access as well as on rules.

In terms of the balance of value, i.e. pursuing an FTA style plurilateral /Versus securing an extendable GATS architecture, Ignacio pointed out that the EU already had FTA negotiations and higher levels of autonomous liberalisation access to the countries interested in a non-GATS style plurilateral. The Commission's view was therefore that it would offer only limited short term gain while doing longer term harm.

Ignacio was unable to state at this point what the Commission's position would be after the declaration as this depended very much on the nature of the declaration. Should the RGFS+ decide to go for a non-GATS FTA architecture, Member States and high level decision makers would need to be consulted. EU leverage in a TPP style architecture would likely be reduced. Ignacio also noted the concern of a possible impact on the EU-US initiative and noted that certain areas, such as aviation, would indeed be difficult to tackle in the GATS and should be explored bilaterally between the EU and US.

The ESF Policy Chairman thanked Mr Iruarrizaga-Diez for his candid briefing and contribution to the discussion and reiterated the commitment of ESF members to respect such openness and to internally discuss the issue further to develop a common position. The meeting was closed.

List of Participants**Chair: Edward Bowles (Standard Chartered)**ESF Secretariat: Pascal Kerneis
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