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European Services Industries Priorities for the EU-Philippines Free Trade Agreement



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Executive Summary

- The European Services Forum strongly supports the negotiations towards an ambitious EU-Philippines Free Trade Agreement and welcome the resuming of the talks.
- The EU is Philippines's fourth largest trading partner, but bilateral trade does not match the importance of the two partners. EU-Philippines FTA will contribute to increase bilateral trade.
- Bilateral trade in services between EU and Philippines in 2022 amounted to €6.6 bn, with EU exports amounting for €3.1 bn and imports amounting to €3.5 bn. In 2022, EU services exports to Philippines are dominated by the category digital services (34%), “Other business services” (26.5%), transportation (25.6%) and interestingly Construction services (15.3%). Philippines is only the 33rd EU trading partner of the EU in services trade.
- ESF takes note that Philippines has signed bilateral FTAs, notably with Japan and more recently with EFTA countries, plus the ones through the ASEAN, and is currently negotiating, in addition of the EU, with negotiations with Canada, Chile and Mexico, and also joined the RECP. ESF calls upon the negotiators to do their utmost so that the European services companies will obtain at least the parity with the best FTA signed by Philippines but considers that so far, the level of commitments remains rather low and call for more market access in trade in services.
- At the end of the Uruguay Round, Philippines GATS commitments were very weak. And this remains today the only bidding elements towards the European Services companies. The FTA must seriously improve market access to EU service businesses.
- ESF is closely monitoring developments around the Philippines Constitution and the Foreign Investment Act (FIA), which keep significant restrictions and burdensome regulatory requirements on market entry and foreign equity participation in several services sectors. We urge EU negotiators to include improvements into the FTA.
- The FTA should improve the mobility of European businesspeople to Philippines.
- Given the growing exchange of data between EU and Philippines due to the active BPO sector, the FTA should include strong provisions in the Digital Trade Chapter, including on cross-border data flows. The FTA should also include a strong Horizontal Chapter on Disciplines for Domestic Regulation, rules on State-Owned Enterprises.
- Given the strong interest of services companies in public procurement both for services contracts and works/infrastructure contracts, ESF calls for a comprehensive market access to public procurement for services in the FTA negotiations, with substantive coverage of public institutions and entities.
- On Trade and Sustainable Development, ESF encourages the EU to negotiate similar level of commitments with Philippines than the ones negotiated with the most recent EU agreements in the region.
- Philippines did not take any GATS commitments in many services sectors. ESF goes into the details of all services sectors in the last section of this Position Paper, makes some comments and recommendations for the consideration of the negotiators (in sectors like professional and business services, telecommunication and digital services, courier and express, distribution services, insurance and financial services, transport services, etc).

Brussels, 2024

European Services Industries Priorities for the EU-Philippines Free Trade Agreement

Negotiations for an EU-Philippines Free Trade Agreement were launched on 22 December 2015. The aim was to conclude an agreement that covers a broad range of issues, including tariffs, non-tariffs barriers to trade, trade in services and investment, as well as trade aspects of public procurement, intellectual property, competition and sustainable development.

The second round of negotiations between the EU and the Philippines took place in February 2017. Negotiations were since put on hold by the EU because of the human rights violations perpetrated by President Duterte in its war against the drugs.

The [2021 EU Indo-Pacific Strategy](#) confirms the EU's longstanding interest in resuming FTA negotiations with the Philippines. The EU already has state-of-the-art FTAs in place with two ASEAN countries (Singapore and Vietnam), is negotiating FTAs with Indonesia, Thailand, and is carrying out a stocktaking exercise with Malaysia.

On 30 June 2022, the new administration in Philippines assumed office and has shown willingness to engage with the EU on key issues of importance. In June 2023, Philippines Secretary of trade and industry Alfredo Pascual was on a roadshow through Europe to advocate for his country as a trade partner, including a stopover in Brussels to meet the Commission's Executive Vice-President and Trade Commissioner Valdis Dombrovskis where he argued in favour of the resumption of the FTA negotiations.

On 31st July 2023, the EU and the Philippines held technical discussions with a view to potentially resuming negotiations over a free trade agreement (FTA). According to a [release from the European Commission](#), the EU and the Philippines announced their intention to begin shortly a bilateral "scoping process" to assess the extent to which they share a mutual understanding on the future FTA. If this process concludes successfully, and after consultations with the EU member states, the EU and the Philippines would be in a position to resume FTA negotiations. The EU and the Philippines [announced the resumption of negotiations](#) for a comprehensive and modern FTA in March 2024. The next round of talks should take place in the autumn of 2024.

It is with this perspective that the European Services Forum has developed its Position Paper to express its priorities for these forthcoming FTA negotiations.

ESF [contributed](#) to the Questionnaire issued by the Directorate General for Trade in April 2016. This current Position Paper reiterates many aspects of that contribution, as not much has changed in Philippines for European services providers since.

I. INTRODUCTORY REMARKS ON THE PHILIPPINES

The Philippines is a sovereign island country in South-East Asia that turned into a constitutional democracy in 1986. They are a member of ASEAN, gathering 10 country members that are aiming at unifying their economies in December 2015 by the completion of the ASEAN Economic Community (AEC), thus allowing for the free flow of goods, services, investment capital and skilled labour in a market with over 660 million people in 2023 and a combined gross domestic product (GDP) of \$3.2 trillion. Although much remains to be done towards that completion, the political dynamic remains committed.

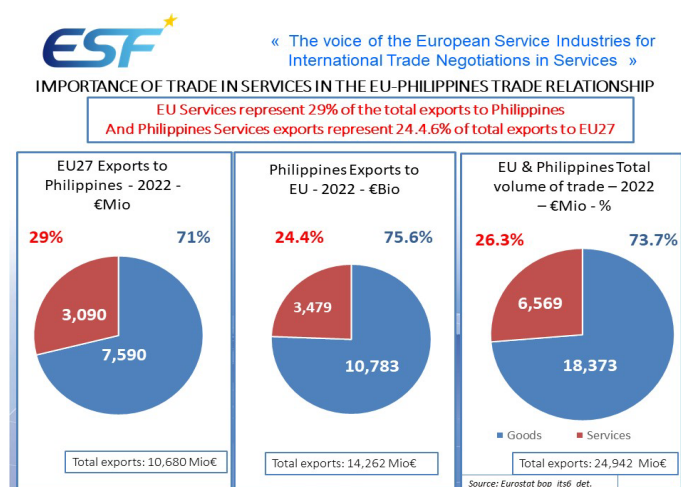
A. The Philippines economy in figures

The Philippines is the 30th largest economy in the world and generated a GDP over \$380 bio in 2023. The population reached **116 million inhabitants at the end of 2023**¹. The World Bank Report on “*Doing Business*”² was ranking the Philippines on the ease of doing business as number 95 out of 190 countries in 2020 (the last year of the ranking), showing that the country has many reforms to do if it wants to raise the development ladder and attract foreign direct investors.

With bilateral trade in goods amounting to €18.4 billion in 2022, the EU ranked as the Philippines' fourth largest trading partner accounting for 7.9% of the country's total trade (after China, Japan and the United States), while the Philippines was EU's sixth largest trading partner in the region. The Philippines was the EU's 39th largest trading partner globally, accounting for 0.4% of the EU's total trade.

When considering trade in services, the Philippines' economic share in services accounts for 61.2% of the country's GDP³, which is a significant increase since 2015 (49,8%). The services sector employs more than 60% of the total workforce in the country⁴.

The Philippines is the EU's 28th largest services trading partner globally in 2022. Trade in services represents 26.3% of total trade between both partners, which is in the global average. EU Services exports amount to 29% of total EU exports, while Philippines services exports represented 19.6% of total exports to the EU, which is higher than compared to other countries in the region and of similar economic development.



¹ [CIA Factbook](#)

² [World bank “Doing Business” ranking](#)

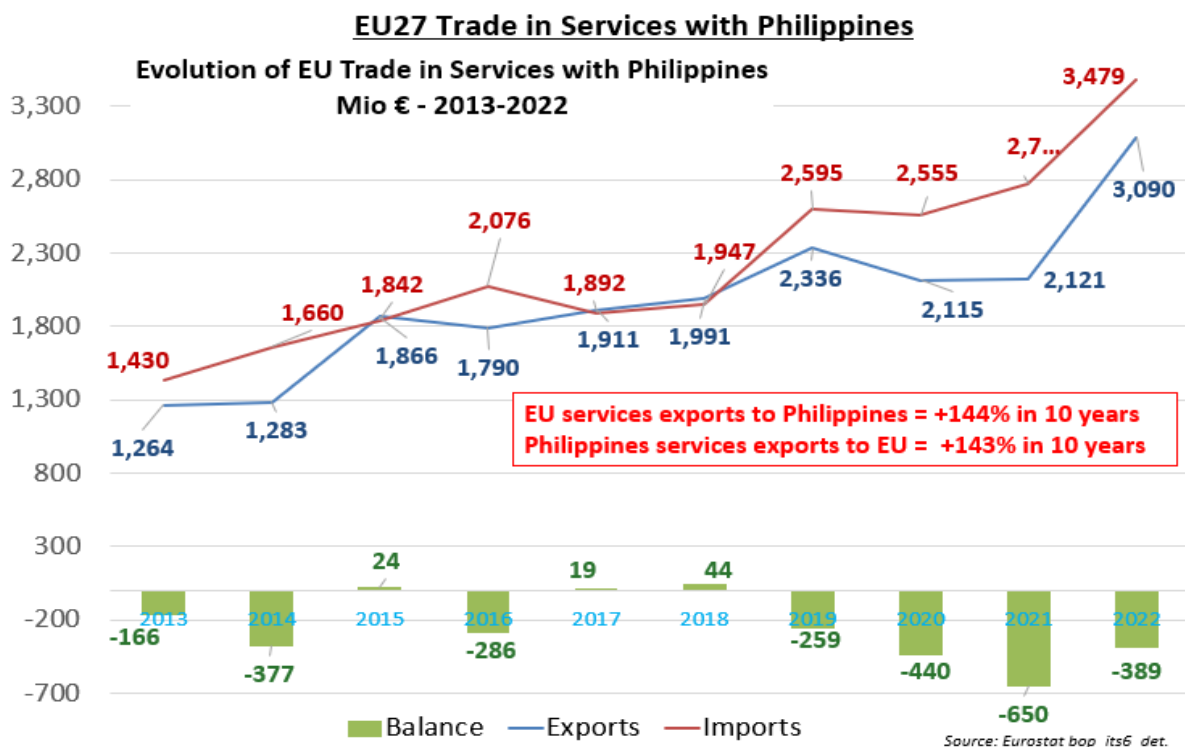
³ [World Bank Data](#)

⁴ [Philippine Statistics Authority, NCR \(2023\).](#)

When it comes to EU-Philippines Trade in Services, the surplus is to the advantage of the Philippines, with a surplus of €389 million in 2022. **EU-Philippines two-way trade in services grew by a staggering 140% to a total value of €6.6 billion in 2022** (€2.6 billion in 2012). Philippine services exports to the EU expanded by 143% since 2013, to reach a record high of €3.5 billion in 2022 while services imports from the EU improved also by 144% in the last ten years to €3.1 billion.

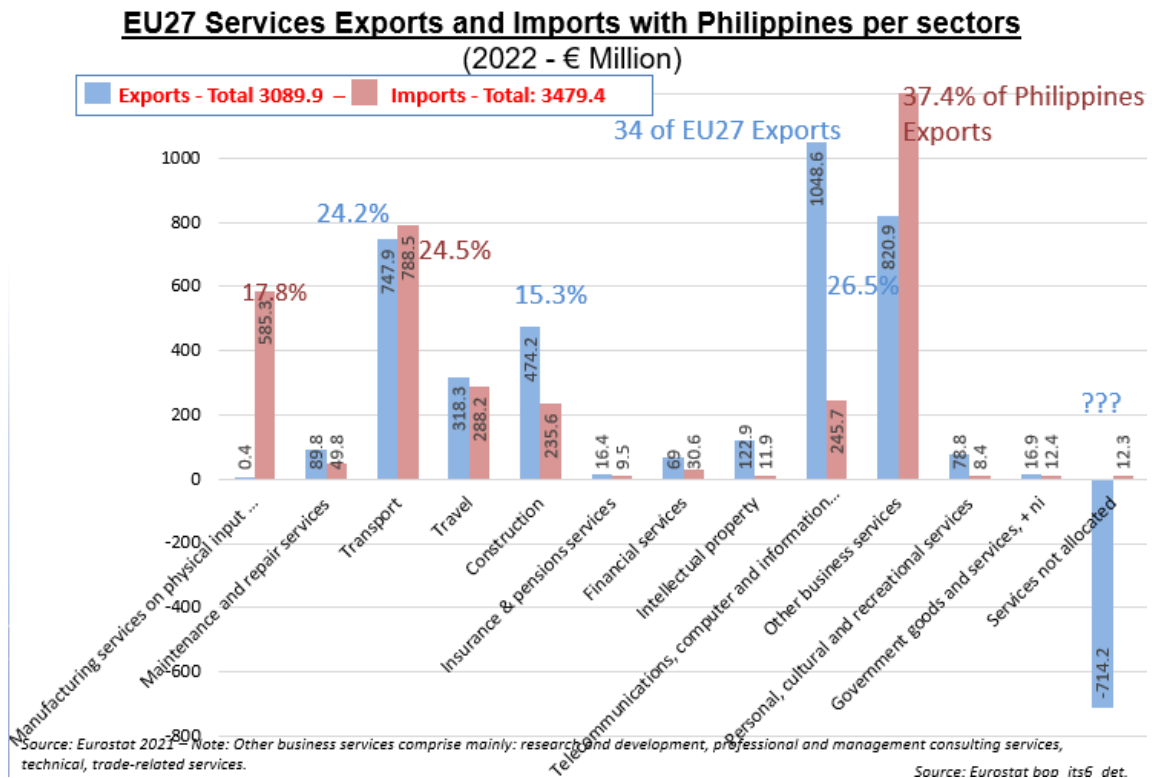
Those figures are based on the Balance of Payments (BoP) methodology, which in fact minimize significance of international trade in services. When looking in terms of Global Value Chains (GVC) and analysing under the Trade in Value Added (TiVA) methodology, it appears that the services value-added in the content of both goods and services exports from Philippines globally reached 49.9% in 2016. Services represent 58.9% of all EU exports globally (goods & services)⁵. This demonstrate that trade in services plays a bigger role than the BoP figures tell, and it needs to be taken into consideration by the two parties during the negotiations.

Philippine services exports to the EU is dominated by “other business services”, which includes notably the BPO activities (Business Process Outsourcing) (37.4%), transportation (24.5%) and interestingly Manufacturing services (17%). COVID19 lead to a drastic reduction of the travel/tourism services, down to 8.2% while it was 28% in 2015. “Other business services” includes BPOs.



EU services exports to Philippines are dominated by the category “ICT” services (i.e. Digital Trade) which represent 34% of EU27 exports (€1078 billion). “Other business services” (26.5% share in 2022 or €820 million), transportation (25.6% or €748 million) and interestingly Construction services (15.3% or €474 million) account for nearly two-thirds of imports. There is also an anomaly, or a lack of understanding of a negative figure in the EU exports of “Services Not Allocated” (-€714 million) that would require further explanations.

⁵ [OECD TiVA Data base](#)



B. A country with important economic potential

Even though the country is still dominated by a few big influential families whilst a large part of the population lives in poverty, one can positively observe a growing middle class due to economic development that derived from a shift in the economic activities, coming from a focus on agriculture towards a market economy with an emphasis on services and manufacturing. The Philippine economy has many important characteristics that hold a lot of opportunities for trade. The **Philippines GDP growth rate of 7.6% in 2022** was comparable to some of the world's fastest growing large emerging markets in 2022, including the Gulf Co-operation Council oil exporting nations of Saudi Arabia and United Arab Emirates, as well as other rapidly growing Asian emerging economies such as Malaysia, Vietnam and India. The Philippines finished strong in 2023 with a full-year gross domestic product (GDP) growth rate of 5.6 percent. The [government](#) projects faster GDP growth above 6.5 percent in 2024 despite domestic and external headwinds. Other [non-governmental sources](#) predict a GDP growth rate between 6 to 6.5 percent until 2028. So clearly, The Philippines has an important attractiveness for EU investors.

One of the most important contributors to the country's growth is certainly the sector for Business Process Outsourcing (BPO). These include healthcare, back office, software development, technology, game development, animation and other knowledge-based services. Business process [outsourcing in the Philippines](#) accounts for 10 to 15 % of the global BPO market, where the local BPO sector has grown at a compound annual rate of 10 % over the past decade. BPO Philippines has also consistently ranked among the top five outsourcing destinations in the world.

Although about 1.7 million Filipinos were employed by the BPO industry in 2023, Artificial Intelligence (AI) and [Robotic Process Automation \(RPA\)](#) poses a threat to take over jobs that require simple skills, such as manual data entry. The job market is constantly evolving due to advancements in technology. Adapting to these advancements represents a challenge, that the Philippines BPO industry is investing on reskilling in [knowledge process outsourcing \(KPO\)](#). The Philippines are the world's second destination for BPO right after India, with a strong focus on IT BPO. Europe (the largest offshoring market of the world) is the second largest BPO export market of the Philippines

(accounting for around a tenth) next to the US. Many European Firms already operate in the Philippines due to BPO, in activities such as billing services, Human Resources management, or back-offices operations for banks. The significance of the sector makes the issue of free data flows highly relevant, an essential requirement for business in BPO.

25% of the country's **energy production** can be generated through geothermal sources, but the remaining amount derives from oil, gas and coal. The current energy mix in 2022 is made up of coal (31%), natural gas (4.2%), renewable energy (32.7%), and oil-based solutions (32.2%). While the country has indicated an interest in clean energy, this clearly will not come at the expense of development. The lack of supply leads to the fact that rotating black outs of energy on the countless islands are still a common procedure. The electricity sector is fully privatized, with one major utility, Meralco, holding 80% market share.

Likewise, the **transport infrastructure** continues to be underdeveloped, with many roads, bridges and other transport routes still being very remote. This calls for an improvement of the current public procurement regime, which largely favour domestic companies and still functions a lot according to the so-called Build-operate-transfer (BOT) logic and obliges companies to transfer their project back to the government after having operated it for a set number of years. It is foreseen though to transfer the current procurement regime into a system fostering public-private partnerships. According to the Central Bank of The Philippines, the country is planning to invest around 5-6% of its GDP into infrastructure from 2023 to 2028⁶, which is why it would be a great opportunity for European companies, could they participate in public procurement projects.

The country has a favourable demographic structure with a young population of 25.4 years on average in 2023 (with around 1.5 million Filipinos are entering the job market every year), however, the need to attract FDI is constantly rising to provide employment for these new entrants to the labour market. The Philippines have been able to double their inward FDI stocks from 2015 (\$58.4 billion) to 2022 (\$113 billion). This is however far from what is necessary. And the European Union, which is the biggest global investor, after a peak of outward investment to Philippines in 2015 (€19.6 billion), has a rather stagnating trend since then, with €14.5 billion FDI stocks in 2022 (12.8% of total inward FDI). FTA negotiations should lead to removing barriers to European investors.

In the absence of a strong manufacturing sector and inflows of FDIs, the country still highly relies on **remittances from Overseas Foreign Workers (OFWs)**. As of 2019, there were 2.2 million OFWs. They work in a wide array of fields, most frequently in services (such as caregivers and domestic work), skilled trades, and construction but also in professional fields, including nursing and engineering. OFWs most often migrate to Middle Eastern countries, but other popular destinations include Hong Kong, China, and Singapore, as well as employment on ships. Indeed, in 2022, the Philippine Overseas Employment Administration (POEA) deployed over [400,000 seafarers](#) to countries worldwide in the maritime industry. Filipino seafarers make up 35-40% of the world's seafarers. Women OFWs, who work primarily in domestic services and entertainment, have outnumbered men since 1992. One in ten Filipino families receive money through a relative working abroad, adding up to around 25 billion US\$ in foreign remittances every year, which second to the amount generated through BPO. Contrary to this, the nursing sector suffers from an over-supply of workers. There are around 280 000 nurses in The Philippines that are unable to work outside their country as they lack the necessary language skills to work abroad. Overseas Filipino workers make up a significant share of the country's gross domestic product, representing as much as 8.9%, or around \$36.14 billion sent home from abroad, in 2022.

⁶ <https://www.bsp.gov.ph/Pages/IRG/irg-files/DOHA-NEDA.pdf>

The Philippines is a country with strong labour protection rights and thus welcomes European investors which are generally known for adhering to and going beyond these minimum labour standards. Beyond this, both EU and the Philippines undertake efforts/attempts to explore the possibility to further deepen their trade relations through a bilateral free trade agreement.

The level of binding commitments by Philippines towards the EU is currently the GATS (General Agreement on Trade in Services) Schedule of Commitments in the Uruguay Round. At the end of the Uruguay Round, the Philippines made only very few commitments, in three sectors only (Financial services - 1998, telecommunications (1997) and transport services (1995)). The FTA is therefore a good opportunity to open up the markets so as to attract European investors in this growing economy.

The Philippines participated to the Services negotiations of the WTO Doha Development Agenda with a rather low enthusiasm and tabled only a modest initial offer in June 2005. ESF made an assessment of that offer at that time, and these comments remain valid, since Philippines, contrary to 30 other countries, did not table a revised GATS offer. Hence, some of the inputs below are referring to this assessment. For this reason, the ESF aims at improving market access for European services exporters to the Philippines through the FTA negotiations and to secure a more transparent and predictable regulatory environment for services.

II. HORIZONTAL ISSUES

A. Starting level of the services negotiations

ESF takes for granted that respective best GATS offers form the basis of the services and investment FTA negotiations with the Philippines, including the verbal commitments at the WTO Signalling Conference on Services on 26 July 2008 in Geneva, to which the Philippines took part even if it did not table a revised offer. The commitments taken in the 2012 Partnership and Cooperation Agreement (PCA) that governs the overall relationship between the EU and the Philippines must also be kept into consideration.

Philippines RTAs & FTAs with other trading partners

First, as already mentioned above, Philippines is part of ASEAN. ASEAN countries have decided to create the ASEAN Economic Community (AEC), which aims at creating a single market between these countries. The blueprint for the establishment of AEC was adopted on 20 November 2007 in Singapore.

However, despite efforts to identify number of approaches in a policy paper titled “Formulating the Philippine services strategy for inclusive growth” prepared by the Philippine Institute for Development Studies (PIDS) in 2014, and the willingness to include in the national services roadmap some domestic policy reforms, innovations, export promotion, and trade negotiation strategies, not much has been achieved so far as regards further integration of services within the AEC.

As of the 9th ASEAN Framework Agreement on Services (AFAS) Package signed in 2014 by the ASEAN economic ministers in Myanmar, ASEAN member states have made commitments to liberalise a wide range of service sectors and subsectors, ranging from 90 to 108 subsectors out of a total 128 subsectors. The 10th package was meant to open up further 6 other sectors in 2019, including some digital services sectors. It is however unfortunately difficult to see concrete progress from Philippines, on whether it has put in place the necessary changes to support the AFAS target of 70% foreign equity allowance in all service sectors (ASEAN equity), and whether such a strategy also allows more non-ASEAN foreign equity. ESF encourages the Commission to foster these reforms by making relevant requests in the FTA.

We take note that Philippines, has as an ASEAN member, concluded five FTAs: 1) ASEAN–China (into force in 2010); 2) ASEAN–India (into effect on 1 January 2010), 3) ASEAN–Korea (the agreement on trade in goods entered into force in 2007, and the ASEAN-Korea Trade in Services Agreement entered into force in May 2009). We understand that negotiations are on-going to upgrade these three agreements to modernised them. 4) the Agreement of Comprehensive Economic Partnership among Member States of the Association of Southeast Asian Nations and Japan entered into force in 2008 but did not include trade in services. (We understand that in 2013, ASEAN and Japan have started negotiations to include trade in services and investment, including market access commitments, but these talks are still on-going.); and 5) ASEAN–Australia–New Zealand. AANZFTA entered into force in January 2010. This agreement was already considered the highest quality of ASEAN's FTAs with its partners and has been upgraded at the end of 2022.

Finally, the negotiations with ASEAN + 5 (China, Japan, South Korea, India, Australia and New Zealand) called “Regional Comprehensive Economic Partnership (RCEP)” was signed in November 2020, and entered into force for ten signatories on 1st January 2022, including Philippines. However, the services chapter of RCEP is not considered as really advanced.

Philippines has in addition expressed an interest in becoming a negotiating party to the Comprehensive and Progressive Transpacific Partnership (CP-TPP), but no formal decision has been taken yet.

Second, we note that Philippines has signed some bilateral FTAs.

The Philippines-Japan Economic Partnership Agreement (PJEPA) is the first bilateral free trade agreement of the Philippines. It was signed in September 2006 and the Agreement officially entered into force on 11 December 2008.

Philippines and EFTA members – Iceland, Liechtenstein, Norway, and Switzerland – signed a free trade agreement in 2016 which entered into force in 2018.

We take note that the Services Schedule of Commitments by the Philippines towards **Japan⁷ and EFTA⁸** covers a longer list of sectors than those of the Philippines GATS Schedule and considers therefore **ESF considers that these schedules are the strict minimum basis for the negotiations between the EU and the Philippines**. However, given that domestic reforms have been undertaken by the Philippines, ESF calls for the binding of the current practice as far as possible.

Any other trade talks in which Philippines is engaged or intend to engage during the EU-Philippines FTA process should also be monitored by the European negotiators, notably the possible future FTA negotiations with Canada, Chile and Mexico.

B. Scheduling Method

ESF would prefer that the negotiators use a negative list approach in all on-going and future trade negotiations, so as to ensure a good readability and comparability of the commitments of the various FTAs. Such a method obliges the negotiators to review all service sectors and produce greater liberalisation results and greater clarity, since it is much easier for companies to assess whether their sector is covered or not and what the limitations are. However, given the sensitivity of that method with developing countries, and considering that both methods can technically lead to similar results and that it has been used so far with other ASEAN trading partners with which the EU has negotiated or is negotiating with, the use of the Positive list approach would be acceptable with the Philippines if this is the method that the country prefers, but should not be an excuse for lowering ambition.

C. Movement of natural persons (mode 4)

The negotiations of commitments to allow high skills European services providers to the Philippines are an important business priority in the trade negotiations. There are some outstanding concerns over the process of obtaining work permits for foreign employees in the Philippines. Rules and procedures for obtaining work permits for foreigners are restrictive and complex. The

⁷ See [here](#) from page 716 to 834.

⁸ See [here](#) the Philippines Services Schedule in the EFTA-Philippines FTA

administrative requirements are cumbersome, time-consuming and unnecessarily onerous. The employer is required to try to hire Philippines' workers for the jobs to which they want to hire foreign workers, before foreign workers can be hired. A long notification period precedes the employment of a foreigner, where Philippines work force must be searched for. The foreign company has to provide sufficient evidence that a Filipino cannot fill the position, which has to be approved by the authorities. However, the criteria for this are unclear. The mode 4 conditions are therefore very problematic and there is scope to improving this in the FTA. ESF encourages the EU negotiators to negotiate ambitious provisions and commitments related to the movement of temporary services providers from the EU to The Philippines, in all different categories, with a priority to the Intra-Corporate Transferees (ICT), and with some language towards the facilitation of accreditation of business visas and work permits.

Ease restrictions on the employment of foreign nationals

In this field of mobility of workers, the European Services Forum would like to commend the Department of Labor and Employment (DOLE) and Bureau of Immigration (BI) in the Ceremonial Signing for a Data Sharing Agreement (DSA) last 26 February 2024. With the aim to expand the information exchange pertaining to foreign nationals issued with Alien Employment Permit (AEP), the DSA will streamline operations and eliminate duplication of documentary requirements as both agencies will be sharing relevant data and information in the processing of AEP and 9(g) visas. Particularly, the agreement will enable BI real-time online verification and authentication of AEPs being shown by foreigners seeking employment in the Philippines, and at the same time, provide DOLE updates on who have been issued 9(g) working visas, provisional work permits, and special work permits.

In relation to this, the processing of 9(g) visas is now online starting 1st June 2024. Prior to this, DOLE issued Labor Advisory No. 16-21 in compliance with the Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF) issued Resolution No. 131-A109 to govern the issuance of AEP or Certificate of Exemption/Exclusion for foreign nationals working for more than six months in the country. In addition, the BI issued Operations Order No. JHM-2021-004 which provided specific guidelines in relation to the issuances of 9(g) visas, while the Department of Justice issued its guidelines for the processing of applications for the issuance of Special Non-Immigrant Visas pursuant to Section 47(a)(2) of the Philippine Immigration Act. This reform is very much welcomed, and will contribute to smoother mobility of foreign businesspeople.

In line with business support of the current administration's commitment to digitalise services, particularly in the areas of government payments, company and business registrations, issuance of permits and licences, loan applications, and revenue collection, we believe that this crucial undertaking will provide better and quality services to the public.

In addition to this, ESF joins the ECCP recommendations to synchronise the validity of AEPs to the employment contract duration of foreign nationals in their companies in order to reduce the need to renew the permit annually. Currently, under Department Order No. 221, s. of 2021, the AEP is valid for the position and the company for which it was issued for a period of one (1) year, unless granted a longer period vis-a-vis the employment duration, as stated in the employment contract or other modes of engagement, but in no case shall exceed three (3) years. Even if these provisions might not be part of the FTA negotiations, ESF encourages the Philippine government to continue to revisit the law and regulations that serve as a guide for the employment of foreign nationals, either medium- or long-term.

D. Foreign direct investment regimes

In the years 2010', The Philippine government made efforts to improve the economic environment for foreign investors which were positive and fostered somewhere EU-Philippines trade relations. The three new legislations that are worth being mentioned in this context were 1) The Philippines Competition Act (2015) (see above); 2) The Foreign Ships Co-Loading Act (RA No. 10668, also known as the Cabotage Law), which allows foreign ships to call in multiple ports provided that their cargoes are intended for import or export and duly cleared by the customs commissioner. Thus, it reduces logistic costs for producers and creates a more efficient import and export system (see below); 3) the banking sector was widely liberalized in 2014 due to the enactment of a new legislation which removed significant restrictions for foreign investors. Under the new law, a) Foreign banks are allowed to acquire, purchase or own up to 100% of the voting stock of an existing Philippines bank, from 60% previously; b) invest in up to 100% of the voting stock of new banking subsidiary; and c) establish branches with full banking authority. Likewise, limits to the number of foreign banks operating in the country have been eliminated – an important step towards implementing the ASEAN Banking Integration Framework (ABIF).

However, major impediments for European companies to do business in Philippines remain. Certain sectors are reserved by law to Philippines citizens with foreign equity limited to a minority share; limits on membership of the board of directors; discriminatory access to capital and a ban on land ownership. And the most formidable impediment to investment-based growth remains unfortunately unaltered. **The 1987 Constitution** (and the Foreign Investment Act (R.A. 7042, 1991, amended by R.A. 8179, 1996) still states that foreign investors may not own more than 40% of a company's share, with the remaining 60% being under control of Philippine company/citizens ([more here](#)).

Only Filipino citizens can control, own, and/or lease alienable lands, public utilities, educational institutions, mass media companies, and advertising companies in the country. There have been some tentative of pushing for a revision in recent years. For instance, so lawmaker/members of the Filipino Parliament were criticising the fact that foreign corporations have been skirting the prohibition on foreign ownership of lands and businesses by resorting to dummyming. In [January 2021, Speaker Lord Allan Velasco](#), was seeking to "liberalize the restrictive economic provisions in the Constitution" that "prevents the Philippines from becoming fully competitive with our Asian neighbors." The House committee on constitutional amendments was suggesting in the same period that the phrase "unless otherwise provided by law" could be added to the constitutional restrictions. This would allow further liberalisation.

More recently, in [January 2024, a proposal to amend the Philippine Constitution to allow greater foreign ownership was filed in the Senate](#) by its top official, further setting in motion efforts to open The Philippines to more investors. Indeed, Senate President Juan Miguel Zubiri and two of his colleagues filed the proposal on Monday, 15th January 2024. The document also proposed that the Senate and the House of Representatives separately approve any constitutional change. President Ferdinand Marcos Jr., in December 2023, backed a review of the nation's nearly 40-year-old Constitution to attract more foreign investments. House Speaker Martin Romualdez said he will push for these changes this year (2024), but some lawmakers have questioned the timing and motive of such moves.

ESF can only strongly encourage the countries' leaders to effectively enact this reform as soon as possible and to transform the results of such a reform into binding commitments in the EU-Philippines FTA. ESF members call on Philippines as to ensure that the horizontal commitments of

the FTA in relation to establishment/commercial presence abroad (mode 3) will bind the existing practice in relation to foreign ownership. The current restrictions in the schedule deprive the foreign investors of legal certainty and are therefore a strong disincentive. These restrictions have a particular impact on the services sectors since a company will not invest in the same way when it has or not the control of its investment. The main reason is because a foreign investor will not want to lose its management expertise, its know-how and other specificities that makes its services more competitive than its competitors. ESF encourages the Commission to foster reforms by making relevant requests in the FTA negotiations.

We take note that some [Amendments to the Foreign Investment Act \(FIA\)](#) have been adopted in July 2021: Foreign ownership and control of MSMEs with a minimum paid-in capital of US\$100,000 is now permitted, as long as the businesses are using advanced technologies, are endorsed as a start-up or start-up enabler, or have mainly Filipino employees (i.e. no less than 15, a reduction from the 50 needed previously). This is an interesting reform, but far from being sufficient to really attract major international investors.

Similarly, ESF welcomes the [Amendments to the Public Services Act \(PSA\)](#) that were adopted as well in July 2021. The legislation facilitates the liberalization of key public services in the Philippines, allowing full foreign ownership in selected industries like domestic shipping, airlines and airports, railways and subways, and expressways, tollways, and transport network vehicles services and telecommunications. Indeed, previously, foreign ownership in these sectors was restricted to 40%. Crucially, the amendments have clarified the distinction between "public services" and "public utilities." By narrowing the definition of "public utility," the framework for foreign control and investment in these industries has become more transparent. In order to give legal certainty to this reform, ESF requests that this reform is transcribed into the Philippines schedule of commitments.

E. [Competition law](#)

The country has long acknowledged the distortive effects of state ownership of certain businesses and utilities in the market. As a response to the proliferation of State-owned Enterprises (SOEs) in the country in preceding decades, Administrative Order No. 59 was issued in 1988 by the President of the Philippines to stem discouragement of private initiative on account of undue government competition, and to rationalize the government corporate sector. Further reforms in SOEs have been facilitated by the enactment of Republic Act No. 10149, or the GOCC Governance Act of 2011. The law also recognized the need for a clear separation between the regulatory and proprietary activities of SOEs to achieve a level playing field with the private sector. By 2019, thirty (30) SOEs were approved for abolition and three (3) for privatization, while thirty-four (34) were declared inactive or non-operational⁹.

ESF welcomed the adoption of The Philippines Competition Act in July 2015¹⁰, after being in the making for more than 25 years. It allows all businesses in Philippines, domestic and foreign, to benefit from a level playing field. Importantly, the law moreover expressly includes those owned or controlled by the government in its definition of "entity", thus making SOEs engaged in economic activities subject to competition law and principles. We believe that the implementation of this legislation is helping to make the Philippines economy more competitive and more attractive to FDI.

Under the law, a Philippine Competition Commission (PCC) was established and is since

⁹ OECD - Global Forum on Competition - [THE PROMOTION OF COMPETITIVE NEUTRALITY BY COMPETITION AUTHORITIES - Contribution from the Philippines](#) – November 2021.

¹⁰ PH gov't (2015). [Republic Act No. 10667. Philippine Competition Act.](#)

implementing the competition policy in the country. Furthermore, in 2020, the PCC, as the primary competition authority of the country, together with the National Economic Development Authority (NEDA), issued Joint Memorandum Circular No. 01-2020 (JMC) which provides for guidelines on the adoption and implementation of the National Competition Policy. ESF commends the country for the implementation of that policy and urges the authorities to ensure that the major family conglomerates are subject to the same rules that smaller firms and foreign businesses.

F. Rules on State-Owned Enterprises (SOEs)

The Agreement should also look at stating specific rules to ensure that the competition legislation also applies to the state-owned and state-sponsored enterprises (SOEs) that compete in commercial markets. These rules could be part of the provisions in the competition chapter of the agreement or in a specific chapter on rules for State-Owned Enterprises. The legislative development in Philippines as described above should allow for a positive environment on that matter. Consideration could be given to the EU regime on state aids, which set obligations of transparency to state owned companies in the EU, ensuring that the companies have transparent accounting rules and forbid market distortive cross-subsidisation transfers among different department of a state owned and state-sponsored company.

G. Public procurement

The question of public procurement should benefit from particular attention in the FTA negotiations since Philippines is not a member of the Government Procurement Agreement (GPA). We take note that Philippines is an observer in the GPA since June 2019, but is not currently negotiating its accession to the GPA.

To our knowledge there is no proper access for European services companies to participate to call of tenders, except eventually to projects where Philippines companies do not have the sufficient know-how and expertise. The House of Representatives of Philippines approved the House Bill No. 9648 (New Government Procurement Reform Act) on 12 December 2023, which aims to improve and modernize the decades-old Republic Act No. 9184 (of July 2002) that first set the government procurement system in the country. The new Bill notably pushes for the adoption of an electronic procurement system that would promote greater transparency, accountability, operational efficiency, and value for money through the modernization of the Philippine Government Electronic Procurement System (PhilGEPS). The proposed bill is now to be submitted to the Senate. ESF urges the EU negotiators to monitor this development.

The FTA negotiations are a good opportunity to open up this market where there is a huge need in infrastructure. ESF calls for a comprehensive market access to public procurement for services, with substantive coverage of all public institutions and entities, committing the partners to remove any discrimination in the bidding by any EU or Filipino businesses. It is important to increase access for services companies to all public entities that are using public procurement in their functioning. This is obviously true for the construction services and construction related services, such as architecture and engineering services, urban planning, etc. All public administrations and entities also need for their daily activities to procure telecom and IT services, insurance and banking services, transport and logistic services, cleaning and catering services, legal and accounting services, etc.

The FTA should also ensure the adoption of transparency rules and ways and means to fight against corruption. ESF would support the introduction of international standards in the FTA, as a mean to

contribute to ensure integrity and efficiency in the public procurement system of the country. Adjudicating criteria should be put in place so as to not always favour the lowest price to the detriment of quality. The Government Procurement Reform Act has brought up some improvements, but it continues to give preference to purchase of domestic products and services. We hope that this will be removed in the current Bill discussed in the Congress. Access to other services companies like environmental services (water and waste management); transport and logistics services, energy related services, cleaning services, etc.); telecom and computer related services; financial services etc. should also be negotiated. Furthermore, as the country is eager to attract more foreign direct investment, EU negotiators should also explore the possibilities to negotiate commitments related to Public-Private Partnership, which is of great interest to companies in transport, environmental and energy related services, and hence could contribute to fight against climate change.

H. Digital Trade Chapter

The digitalisation of the economy is a major driver of economic development and an important factor for a possible integration of the Philippine economy into global value chains. Telecommunications services, ICT services and digitisation in general are engines for growth, competitiveness and job creation in our modern economies. Any activities in relation to international trade require cross border data flows. Trade increases demand for ICT services and those services are an enabler of global supply chains, which in turn drive global growth. We have seen that Philippines is an important partner of the EU in BPO services. Most of these services require multiple cross-border data flows. It is therefore important to ensure that the FTA will determine legally binding commitments to ensure smooth and secure transactions. We welcome that fact that Philippines are among the 90 countries that are negotiating the Joint Statement Initiative on E-Commerce in the WTO. However, these talks are not yet concluded and not yet implemented. Therefore, ESF calls upon the European negotiators to negotiate state of the art rules in that domain.

1) Digital Services

A Digital Chapter of the EU – Philippines FTA should include provisions on cross-border data flows as they are the real backbone of the digital economy and are crucial to boosting growth in all sectors of the economy, including small and medium-size enterprises. The commitments taken on this issue should be applied across all services sectors, including financial services. Any exceptions to these provisions should be limited to legitimate public policy objectives and only in full compliance with the provisions of GATS covering general exceptions (GATS Article XIV). The agreement should also ensure that none of the parties shall impose customs duties on electronic transmissions. With the objective of enhancing trust of users and certainty of companies, and thus trade in goods and services, it is essential that businesses comply with data protection and security rules in force in the country of residence of the data subjects, in particular with the protection of personal data.

The [Data Privacy Act of 2012 \(Republic Act No. 10173\)](#) ('the Act') was the first comprehensive law covering data privacy in the Philippines. The [National Privacy Commission](#) ('NPC'), which was established in early 2016, later issued the [Implementing Rules and Regulations of Republic Act No. 10173](#) ('IRR'), which became enforceable on September 9, 2016. Since then, the NPC has adopted a very large number of circulars, protocols and other advisory notes with guidelines that are welcomed (see [here](#)) but would merit some harmonisation/codification to ensure a smoother and easier implementation by the operators and processors of data.

The text of the FTA should look at ensuring that cross-border data flows are not limited by a requirement of establishment of a local presence; with only few mutually agreed and well justified exceptions. The parties should allow cross border data flows without a requirement to use locally based servers. The obligation to use local infrastructure or to establish a local presence should not be required as a condition of supplying data services.

2) Telecommunications networks

As a general rule, preferential treatment to national suppliers should be prohibited in the use of local infrastructure, national spectrum, or orbital resources. There should also not be any preferential treatment in regulating State Owned Enterprises. There should be a level playing field for all licensees subjected to regulations. FDI limitations and other discriminatory restrictions (e.g. related to citizenship at board level) should be lifted. The Schedule of Commitments from Philippines in telecom services is of low level, and Philippines did not commit to the Basic Telecommunication Reference Paper, where disciplines requirements for the regulatory authorities are set (political independence of the regulator, interconnectivity obligations, etc.). Such requirements will need to be established in the bilateral agreement.

I. Domestic regulation

ESF believes that the FTA should include a strong Horizontal Chapter on Disciplines for Domestic Regulation. This chapter should establish obligations towards establishing basic rules of better transparency in licensing requirements and procedures, qualification requirements and procedures that affect international trade in services. It is appreciated that Filipino and **English** are both **official languages** and English is commonly used by the government, and most of the regulation and sub-level government rules are available in English.

ESF welcomes the fact that Philippines is a participating country to the Joint Statement Initiative on Services Domestic Regulation that was concluded in December 2021. ESF urges the Philippines government to fast track the certification of the disciplines in its domestic procedure so as to make the disciplines legally binding. It should be easy therefore to include disciplines on domestic regulation in the FTA with Philippines. The examples of the domestic regulation subsections that figure both in the regulatory framework section of EU-Singapore FTA and EU-Vietnam FTA could serve as a basis for such chapter. It would be appreciated if the obligations of transparency would apply to all services sectors, irrespective of the market access specific commitments undertaken by the parties, contrary to the plurilateral Services Domestic Regulation disciplines.

Such a chapter of the FTA could also include additional elements, related to efforts towards regulatory coherence and some principle about regulatory cooperation.

1) Regulatory coherence

Principles such as regulatory transparency and accountability, prior consultation with stakeholders before adoption of new or revised rules, impartiality and due process with regard to licensing and qualification requirements and procedures, right of appeal, etc. should be applied systematically at all levels of the FTA market regulation, to help in limiting future degrees of regulatory divergence. Funding and performance evaluation of regulators are also important to ensure sound governance of regulators and should be upheld in the FTA.

2) Regulatory cooperation

The FTA could establish a mechanism by which the regulators would agree to meet and exchange information. However, the regulators would remain independent and would not be subject to any obligations of result. Thus, the chapter should obviously not be subject to the Dispute settlement system established by the FTA.

The text could also include sector specific disciplines, either in the sector specific chapters of the FTA, such as on Telecommunication services, on Financial services, etc. or in sector specific annexes attached to the horizontal regulatory cooperation chapter. All specificities should indeed be taken into consideration and the regulators themselves are better positioned to set up specific arrangements, as they would see fit for their own sector.

J. Customs and Trade Facilitation

Philippine President Benigno Aquino III has finally signed into law on 30 May 2016 the Customs Modernization and Tariff Act (CMTA). Republic Act (RA) No. 10863 or “An Act Modernizing the Customs and Tariff Administration” is designed to overhaul Bureau of Customs (BOC) operations and update the Tariff and Customs Code of the Philippines (TCCP). It simplifies and harmonizes customs procedures, pushes for full customs automation, and aligns the TCCP with international standards and practices, ultimately making it easier for traders, importers and exporters to comply with border requirements. The CMTA states that one of the main tasks of the Bureau of Customs (BOC) is to facilitate trade and it also seeks to implement the commitments under the Revised Kyoto Convention, which the Philippines signed in 2012. The CMTA, among other things, introduces a USD 200 de minimis threshold, establishes clear rules for customs valuation, mandates automation in customs clearance and simplifies clearance for low-value shipments. It would be an opportunity for the EU, via the FTA, to address some of the concrete problems faced by European importers and investors on the ground, by stipulating clear provisions in the Customs and Trade Facilitation chapter. Smooth and transparent customs clearance procedures is a prerequisite for attracting European traders and investors into the country.

ESF takes note of the adoption of a recent (01/02/2024) Customs Administrative Order (CAO) that establishes a standard customs clearance process for cross-border e-Commerce goods bought via e-Commerce online shopping platform, consistent with the World Customs Organization (WCO) Framework of Standards on Cross-Border E-Commerce, WCO Immediate Release Guidelines and Article 7.8 of the World Trade Organization (WTO) Agreement on Trade Facilitation. We understand that this Order shall cover the processing, clearance, and release of imported goods brought into the country by means of on-line trading platforms (e-Commerce), excluding express shipments which are covered under the provisions of CAO No. 05-2020 with Subject: “Customs Clearance Procedures on Express Shipments”.

ESF welcomes the objectives of this recent CAO, which aim at a) providing guidelines in the processing, customs clearance and release of e-Commerce goods; b) establishing procedures in the accreditation of all stakeholders involved in e-Commerce transactions with the Bureau; c) preventing revenue leakage by ensuring the collection of the lawful and correct duties, taxes and other charges on importations of E-Commerce shipments; and finally d) implementing a dedicated e-Commerce System that will assist the Bureau of Customs (BOC) to monitor the entry of e-Commerce goods efficiently and effectively by optimizing the use of Information and Communication Technology (ICT).

The EU negotiators should embrace these objectives and include them as far as possible in the FTA.

However, on 11 May 2024, Customs signed new Customs dues, fees and charges (CAO 02-2024) which has impacted the industry negatively as it will add significant cost to trade processing, negatively impacting the business environment and impacting EU exports to Philippines. It also contravenes the President's goal of enhancing the ease and cost of doing business, attracting FDI into the Philippines, and making the Philippines into an international logistics' hub. Among others:

- a) Individual de minimis shipments (i.e. below Php.10,000) were previously being charged Php (Philippines Peso) 33.50 to be processed for clearance. Upon the recent CAO's effective implementation, these shipments shall now be charged Php 430.00 each or a 1,183.58% increase. In many cases, the cost of processing will exceed the value of the majority of shipments in this category. The proposed import processing fee will also increase import costs for local businesses who utilise low value materials for their production, negatively impacting the price competitiveness of local businesses, especially for Micro, Small and Medium Enterprises.
- b) Additionally, CAO 02-2024 has ambiguous terminology of fees and charges, opening the possibility for confusion and uncertainty at the various Customs districts by importers and exporters. The CAO's ambiguous terminology also contradicts Section 101 of the Customs Modernisation and Tariff Act (CMTA) which calls for clear and transparent customs rules, regulations, policies and procedures.
- c) The charges and fees, besides being vague, are also prone to overlap for e.g. overtime fees and aircraft supervision fees for e.g.:
 - i. The regulation has new "Off-Hours Fee" and "Customs Facilities and Warehouses Fee" which will be an overlap of the existing fees operators are currently paying for Customs overtime services under CMO 09-2021;
 - ii. It is unclear what services the new "Aircraft Supervision Fee" operators will be paying for. This is because the Civil Aviation Authority of the Philippines is mainly responsible for the regulatory oversight of aviation activities in the Philippines, not Customs.
- d) On the export charges, particularly those that require Certificates of Origin (CO), such charges (i.e. Php250.00) in addition to the charge for CO processing (i.e. Php 500.00) would further discourage exporters or render their products uncompetitive in the global market. There should be reasonable treatment for export charges, those that would support exporters grow rather than stunt their business;
- e) The regulation also potentially contradicts Philippine's commitments at the WTO in view of the significant increase in fees. The Trade Facilitation Agreement Article 6 (2) (i) states that fees and charges *"shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question"*.

Despite inputs from the industry, the revised CAO 02-2024 had proceeded, albeit with vague and ambiguous language, leading to much confusion on implementation on the ground. There is an urgent need to suspend its implementation pending further review and consultations with industry and in line with Philippines commitments at the WTO.

K. Other Horizontal issues

Labour and human capital represent the cornerstone of socioeconomic advancement, serving as drivers of economic growth and development. As integral components of a nation's productive capacity, investments in these areas are crucial for fostering innovation, productivity, and competitiveness. Furthermore, addressing disparities in labour market participation, skills acquisition, and access to education, and building on the gains of recent sector initiatives are

imperative to achieve inclusive growth. Importantly, it was stated by the International Monetary Fund (IMF) that particularly in emerging economies, unaddressed labour market concerns may lead to economic repercussions.

Furthermore, as seen in Section I.B. page 7 of this Paper, the Philippine services sector continues to thrive with strong contributions from Overseas Filipino Workers (“OFWs”). Nevertheless, the Philippine Services Sector, particularly on the domestic front, is in dire need of liberalization due to its continued adherence to outdated laws that unjustly hamper the ability of the Philippines to expand its local services sector.

The Philippines and the EU previously held productive discussions on investment and trade in services. These discussions covered regulations in various sectors, including domestic rules, mutual recognition of professional qualifications, delivery services, financial services, maritime transport, temporary business visas, and investment protection. ESF therefore strongly supports the recommendations of the European Chamber of Commerce in Philippines (ECCP), which include amending laws restricting practice of professions and easing of restrictions on the employment of foreign nationals.

Amend Laws Restricting Practice of Professions

Among the laws that need to be amended are those that expressly limit the practice of certain professions to Filipino citizens such as Republic Act No. 9297 or the CHEMICAL ENGINEERING LAW OF 2004 which prohibits Foreigners from practicing Chemical Engineering in the Philippines except as teachers or consultants, Republic Act No. 9298 or the PHILIPPINE ACCOUNTANCY ACT OF 2004 which prohibits foreigners from practicing Accountancy in the Philippines, and RULE 138 OF THE RULES OF COURT which limits the practice of law to Filipino citizens.

III. SERVICES SECTOR SPECIFIC ISSUES

A. Business services

ESF calls on the EU negotiators to ensure that the vast majority of business services as listed in Chapter I of the CPC list W/120 will be committed by the Philippines in the FTA. Getting commitments in services incidental to manufacturing, maintenance and repair services, management consulting services, advertising services, etc. will be of great interests to European companies. ESF draws the attention of the negotiators on the fact that the EU imports of “Manufacturing services on Physical Inputs owned by others” (Classification SA of EBOPS¹¹) amounted to €585 million in 2022 (17.8% of total Philippines exports to the EU) and hence require the grating of legal security to the EU importers.

1) Professional services

The development of the professional services like legal services, architectural services, accounting and auditing services are crucial for supporting the development of the economy towards a proper middle-income country. EU companies’ expertise in these fields is well-known worldwide and the FTA should aim at opening up this market.

Unfortunately, the Philippines did not take any commitments on professional services during the UR (except for C&RS, see below) and has no commitments in business services, despite EC request for improving access in almost every sub-sector. The lack of commitments is indicative of a general need to understand the effectiveness of services sectors liberalisation for taking advantage of the economic potential of integration into the global economy. More commitments were taken in the FTA with Japan and EFTA, but using unclear definitions, mixing up regulated and unregulated professions, listing notably a long list of engineering services (12). It is however welcomed that mode 1 and 2 of these services have been committed. ESF encourages the EU negotiator to obtain similar commitments and beyond.

For legal services, the EU negotiators should commit covering at least consultancy on public international law and on law of jurisdiction where the service supplier or its personnel are qualified lawyers.

As stated in Section II.K. above, among the laws that need to be amended are those that expressly limit the practice of certain professions to Filipino citizens such as:

- [Republic Act No. 9298](#) or the PHILIPPINE ACCOUNTANCY ACT OF 2004 which prohibits foreigners from practicing Accountancy in the Philippines, and
- [RULE 138 OF THE RULES OF COURT](#) which limits the practice of law to Filipino citizens.

2) Computer and Related Services

The Information Technology sector is not a regulated industry. However foreign companies must have legal presence in the Philippines in order to be able to conduct its business. If there is no local

¹¹ Extended Balance of Payments Services classification (EBOPS 2010) – See [Eurostat International trade in services \(since 2010\) \(BPM6\)](#)

presence and a company is merely doing occasional business, these operations are taxed as local business (even if it includes only one transaction) and the company is not allowed to use local courts. In the FTA with EFTA, we note that for some computer related services (CPC 8410, 842, 843,844 & 849), mode 3 is allowed up to 100% foreign equity participation in certain conditions of size and activities of the company. ESF considers that these requirements are unnecessary and the sector, that is so important for the Philippines economy, should be fully open.

A Data Privacy Law was passed several years ago. ESF welcomes the fact that the Data Privacy Law allows data flows, and that there are no data localisation requirement for personal data, but there is data localisation for government data within the government sites. This is problematic, and should be amended if possible.

Computer and related services are frequently considered as a tool for economic development because of their role in building infrastructure. This is one of the very few areas where The Philippines has made genuine offers in its DDA GATS Offer of 2005. The commitment of installation, implementation and 'other' was very welcome. The opening of mode 4 was also particularly welcome for this sector. This WTO offer should be secured in the FTA, and the Philippines should commit the remaining – and vital – areas of data processing and data base services and take commitments at the two-digit level. The development of the BPO sector in Philippines, with many investors from abroad including from the European union, is clear evidence that opening up of a sector in ripe conditions is good for the national economy and creates employment.

3) Other business services

The commitments taken by Philippines in its FTA with EFTA are unnecessarily complex and difficult to understand. Many sectors are still subject to the 40% equity cap, as set in the Constitution. Much of the economic development relies on the efficiency of the business services provided to all sectors of the economy (manufacturing, agriculture, mining, energy, etc). It is to be reiterated that 37.4% of Philippines services exports are coming from that sector, and 26.5% of the EU exports. The more flexible the conditions for these sectors, the better for the economy. The EU is nearly totally open for these sectors and the negotiators should insist on getting more reciprocity in these domains.

B. Communication Services

GATS Philippines' commitments in these sectors are very limited and no attempt has been made to improve them. Currently, the foreign ownership requirements for express delivery and logistics services are ambiguous and not favourable for a conducive investment climate. Under the Philippine Constitution, the "operation of a public utility" is still subject to 60% domestic ownership. A "public utility" is defined as a business or services engaged in supplying the public with a commodity or service of "public consequence", which according to this definition includes transportation services (even business-to-business transactions). The rules for wholly foreign-owned international transportation companies should be permitted, but the interpretation of this rule has been put to test in recent years. Domestic transportation and freight services are still subject to a 40% foreign equity threshold. This prevents large-scale investments and skills upgrading in the sector, which not only deters foreign investors but also hampers the country's connectivity as there is an acute shortage in the supply of trucks and skilled truck drivers. The horizontal de facto 40% equity cap for public utilities should therefore be reconsidered and full foreign ownership allowed.

1) [Postal and courier services](#)

Courier Services were fully liberalised in the Uruguay Round, except for Mode 1 (cross border services) that was subject to commercial presence. This is still the case also with EFTA countries. More importantly, the reserved 60% of the capital to be owned by Filipinos citizens for any foreign commercial presence abroad is extremely restrictive. This is very disappointing, and we hope that in the EU-Philippine FTA framework, the Philippines will reply favourably to the EU Requests made in that sector and will match its commitments with the EU to the level of those taken with other trading partners and of its current practice.

2) [Telecommunication services](#)

The Philippines's telecommunications industry has been dominated by the PLDT-Globe Telecom duopoly over the last two decades. Telecommunications infrastructure investments have been underwhelming while recent reforms and the launch of a third mobile operator will bring competition and innovation in the sector. Mobile subscriptions are forecast to continue to grow strongly in the coming years and fixed broadband subscribers will also continue to grow and increase its household penetration over the same period. The Philippines fixed broadband was very much a laggard compared to other ASEAN countries which have invested more heavily in Fibre-to-home infrastructure (FTTH). PLDT's FTTH penetration is much lower than in other countries such as Indonesia, Malaysia or Thailand. As a result, internet traffic is slow and expensive, thereby hindering the development of other sectors like BPO.

In the DDA services negotiations, the Philippines' offer in telecommunications was extremely restricted. Basic telecommunications can only be offered on a facilities basis; modes 1 and 2 were unbound and the requirements to operate under mode 3, in addition to the equity cap, were excessively burdensome. While it is welcome that the Philippines incorporated some of the disciplines of the Reference Paper directly into its schedule in the UR, ESF is disappointed with the omissions and changes, particularly regarding competitive safeguards, interconnection and universal service. We note that Philippines stuck to that policy in its FTAs with Japan (2006) and the more recent (2016) one with EFTA . **The Philippines should sign up to the Reference Paper in its entirety.**

Communications services enterprises are generally viewed as public services subject principally to provisions of the [Philippine Constitution](#), the [Public Service Act](#) (Commonwealth Act No. 146, as amended by [Republic Act No. 11659](#)) and the [Public Telecommunications Policy Act](#) (Republic Act No. 7925). The Philippines has other statutes and regulations that specifically apply to the communications sector, such as the [Radio Control Act](#) (Act No. 3846, as amended) and the issuances of the National Telecommunications Commission (NTC). The NTC has supervision and control over telecommunications and broadcasting entities and generally has the mandate to administer and implement laws on the licensing and operations of the covered entities.

Prior to the amendment of the Public Service Act, telecommunications and related services were classified as public utilities and subject to the Philippine Constitution's nationality restrictions, which specifically provide that public utilities may only be owned and operated by Filipino citizens or entities that are 60 per cent owned and controlled by Filipinos.

Under the [recent amendment on 18 April 2022](#), public telecommunications entities (PTEs) are no longer classified as public utilities subject to the constitutional requirements on Philippine nationality, but as a public service owning critical infrastructure. The law defines critical

infrastructure as physical or virtual systems and assets so vital to the Republic of the Philippines that the incapacity or destruction of such systems or assets would have a detrimental impact on national security. Thus, under the new law, PTEs may be 100 per cent foreign-owned, provided reciprocity conditions are met. However, Filipino ownership requirements may still be imposed under certain conditions such as when the reciprocity requirement is not met, if the investors are sovereign wealth funds and independent pension funds of states, and if the investors are entities controlled by or acting on behalf of a foreign government or foreign state-owned enterprises. ESF welcomes these important legislative developments and urge the EU negotiators to ensure that Philippines will take binding commitments in the FTA. Clarification on ownership, on reciprocity and other conditions will need to be provided.

Another telecommunications law-related change under the PSA amendment is the carving out of a value-added service (VAS) from telecommunications. Previously, VASs were considered PTEs under the Public Telecommunications Policy Act. These are positive developments that EU negotiators should seek to be committed in the FTA.

The amendments to the Public Service Act do not appear to remove the requirement for PTEs to obtain a legislative franchise and other licences from the NTC, thus it seems PTEs would still have to obtain a legislative franchise from the Philippine Congress, as well as certain operating licences.

The discussions set out here regarding licensing and permitting requirements for PTEs and VAS providers are in line with the prevailing regulations prior to the amendment of the PSA. There is no indication yet whether regulators will issue new or revised guidelines to align licensing and other requirements with the amendments. Broadcasting entities are considered mass-media enterprises and, under the Philippine Constitution, must be wholly owned by Filipinos.

In addition of the removal of the equity caps, there is an urgent need for ICT reform in the Philippines and the FTA is an opportunity to allow new investors with new technology and management expertise to penetrate in this crucial sector. The fact that the whole sector of telecommunications is considered as “value-added services” in the Philippines prevents the National Communication Commission to be able to properly regulate the sector, this should be changed.

C. Construction and related engineering services

Construction is a fundamental economic activity that provides all economies with essential infrastructure. Therefore, any barrier in a part of this sector may create difficulties in supplying the services of the sector as a whole. The statistics of trade for that sector are particularly high compared to other services exports and imports, and clarification would be needed to better understand this phenomenon (**15% of EU exports** and 7% of EU imports – total: €700 million)

The Philippines has not committed this sector under the Uruguay Round and its DDA offer in construction services was extremely limited, excluding all of buildings, civil engineering, installation and finishing. Instead, it covered only two small sections of ‘other’ related to its energy services offer (see below). Philippines should reduce the foreign equity caps and commit the sector on a larger basis. Problems as restrictions on the participation of foreign capital and on limiting types of legal entity, discrimination against foreign services suppliers and nationality requirements for executives and other employees need to be addressed as a package. Of course, this sector is also closely linked to progress in government procurement negotiations (see above Section II.G.)

D. Distribution Services (Retail & Wholesales)

The Philippines has not committed this sector in the Uruguay Round. The Retail Trade Liberalisation Act (RTLA) was enacted in 2000 to open the Philippine retail sector to FDI. But this regulation has not brought its expected fruits, and the retail sector accounts for only 1% of the FDI to the country. This is notably due to the fact of paid-up capital requirements, divestiture requirements (obligation to some foreign retailers to offer at least 30% of their equity to the public within 8 years of the FDI operation), etc.¹². These barriers should be removed.

The [Amendments to the Retail Trade Liberalization Act \(RTLA\)](#) in July 2021 were welcomed. The legislation includes provisions to encourage investment by foreign retail enterprises by lowering the paid-up capital requirement. According to RA 11595, the minimum capitalization requirement for foreign retailers was reduced from \$2.5 million (PHP140 million) to \$450,000 (PHP25 million). Additionally, the minimum investment per store was decreased from \$250,000 (PHP14 million) to \$180,000 (PHP10 million). These new conditions should be bound in the FTA.

The offer for commission agent's services was welcome in the DDA offer but rather limited, given the obligation to export 60% or more of its output. Furthermore, the lack of commitments in retail and wholesale was very disappointing. ESF calls on the Philippines to include full commitments in these sectors, so as to match the reforms in its ASEAN neighbours in the framework of the ASEAN Economic Community (AEC).

The commitments taken in the FTA with EFTA in this sector are very restrictive and complex to understand. Clarity on the mode 1 commitments will be required and as well as transparency on the criteria required to be allowed to own 100% equity ("subject to compliance with prequalification requirements, the investment per store requirements and other conditions"). This is very opaque and disincentive to foreign investors.

E. Environmental Services

The Philippines has not undertaken commitments in environmental services during the UR. ESF welcomed the fact that sewage services have been included in the Philippines DDA offer, and then in the schedules with Japan and EFTA, but the mode 3 conditions remain very limited, particularly again the equity cap of 40%, and the extremely restrictive conditions to operate in Manila. This ceiling is a trade barrier that de facto discourages the investors who will not come in a country with their technology if they do not have the guarantee to remain in control. The mode 4 commitments, particularly those requiring reciprocity by the home country of the foreign national, were also very restrictive. All of these proposals need to be significantly improved in the FTA.

ESF takes note of the commitments of both EU and the Philippines to include a chapter in the FTA that will ensure that closer economic relations between the EU and the Philippines go hand in hand with environmental protection. This is welcomed as the EU has technologically advanced and world-class companies providing environmental services. ESF would call the negotiators to include specific commitments that cover the following services: sewage, refuse disposal, sanitation and similar services, and others. For the negotiation of such services, it would be useful to have a model list. The proposed classification presented by the European Communities in other trade negotiations provides a useful working basis.

¹² [Republic Act No. 8762, the Retail Liberalization Act, replaced Act No. 1180, amendments of SB2121](#). (2000)

F. Financial Services

ESF welcomes the fact that the Philippines' banking sector was widely liberalized in 2014 due to the enactment of a new legislation ([Republic Act 10641](#)) on 20 July 2014, which removed significant restrictions for foreign investors. It allows foreign banks to either own up to 100% of the voting stock of an existing bank, to invest in up to 100% of the equity of a new banking subsidiary or to open branches. Furthermore, a foreign bank subsidiary is now allowed to open up to five sub-branches. The European banks are already large investors in the Philippines with around 30% of total FDI stock in this sector in 2014¹³. Although 30 foreign banks were approved and authorized to operate by the BSP (Bangko Sentral ng Pilipinas—Central Bank of the Philippines) in the Philippines (out of 554 banks in total), this represented only 7.2 percent of the total banking system assets as at end of June 2019 according to [IMF](#).

An Act Allowing the Full Entry of Foreign Banks in The Philippines” provides standards related to the approval of entry applications of foreign banks. In particular, the Monetary Board shall: (i) ensure geographic representation and complementation; (ii) consider strategic trade and investment relationships between the Philippines and the country of incorporation of the foreign bank; (iii) study the demonstrated capacity, global reputation for financial innovations and stability in a competitive environment of the applicant; (iv) see to it that **reciprocity rights** are enjoyed by Philippine banks in the applicant's country; and (v) consider willingness to fully share their technology. It further provides that only established, reputable and financially sound foreign banks shall be allowed entry and such foreign bank applicant must be widely owned and publicly-listed in its country of origin, unless it is owned and controlled by the government of its country of origin¹⁴.

But the most formidable impediment to sustained, investment-based growth - the 1987 Constitution - remains unfortunately unaltered. The Constitution still states that foreign investors may not own more than 40% of a company's share, with the remaining 60% being under control of Philippine company/citizens. ESF encourages the Commission negotiators to obtain the binding of the banking reform in the EU-Philippines bilateral agreement, and to broaden and deepen as far as possible the commitments in that sector. Unnecessary restrictions on cross-border financial services business and consumption of services abroad including e-commerce should be removed.

The schedules of commitments from Philippines towards Japan and EFTA are long and complex, and efforts should be made to clarify and simplify them in the EU agreement.

On insurance, Filipinos are barely insured (the growing middle class may change that). Clear commitments in all segments of that sector will encourage European insurance companies to invest in The Philippines, and then contribute to long-term investment in infrastructure projects. Full commitments should be taken for market access for cross-border marine, aviation and transport (MAT) insurance and cross-border reinsurance, as well as to insurance intermediaries' services.

It is surprising to see that no commitment was taken on insurance services with Japan while some were enacted in the Philippines GATS Schedule ([GATS/SC/70/Suppl.3](#)). It is good to note that the conditions of commercial presence for life and non-life insurance have been smoothed a bit for the EFTA countries, and that Reinsurance has been committed. ESF call upon the EU negotiators to obtain similar treatment and, if possible, even better.

¹³ ECCP Advocacy papers 2014 : “EU Business in Philippines – Supporting sustainable and inclusive economic growth”

¹⁴ More on the conditions of entry and regulation of domestic and foreign banks in [IMF Country Report No. 20/296 of November 2020](#).

G. Tourism and Travel-related Services

The DDA offer provided some progress in hotel lodging services, removing the equity cap and very restrictive positions on mode 4. However, no progress was made to remove restrictions on ‘specialty restaurants’ in hotels. Also motel lodging and the rest of hotel CPC 641 remained uncommitted as did most of food and beverage. ESF welcomed the progress made on travel agencies and professional congress organisers, particularly the raising of the equity caps, but was disappointed that tour operation remained uncommitted.

Since the number of international arrivals to the Philippines is likely to significantly increase in the coming years and given the geographical configuration of the country with many islands, there is a clear need for the Philippines to improve the entire tourism transportation infrastructure, including airports, seaports and roads. European services providers have great expertise in construction and construction related services and would be willing to contribute to this effort, should the market be open (see Section 3 above).

The creation of more Tourism Infrastructure and Enterprise Zone Authorities (TIEZAs) with a stronger focus on security aspects is to be encouraged, provided that full liberalisation in all modes of supply are committed in these zones. It should not however prevent taking commitments for the whole country, since tourism will benefit the whole Filipino economy.

H. Transport services

1) Maritime transport services

Maritime transport services were one of the few sectors where Philippines took significant commitments during the Uruguay Round.

Furthermore, the [Foreign Ships Co-Loading Act](#) - which amends the 50-year-old Cabotage law - was adopted on 22 July 2015. The implementing rules and regulations (IRR) for the Foreign Ships Co-Loading Act, which allows foreign vessels to transport Customs-cleared foreign cargoes to multiple Philippine ports in order to cut logistics costs, was finally published in May 2016. IRR exclusively covers foreign cargo vessels carrying foreign containers or foreign cargoes, whether containerized, bulk, or break bulk¹⁵. It allows foreign operators to ship domestic cargoes within Philippine sovereign territories and is seen to reduce logistics costs for producers, create a more efficient import and export system, and lead to lower prices for consumers.

ESF expects the FTA to bind existing level of liberalisation of that sector and invites the Philippines to adopt the EC’s model schedule in full in the FTA. Similarly to other sectors, the 40% equity cap should be removed if possible.

2) Other transport services

For air transport, ESF regrets that no commitments were taken for freight and would like to see progress in supporting services in line with the EC request. The development of commercial air freight in such a geographically fragmented country will be beneficial to the local economy.

For rail services, more needs to be done for pushing, towing and supporting services. The economic needs test for road transport passenger and freight should be removed. ESF supports the decision of the Philippine government to transfer the current procurement regime into a system fostering public-private partnerships. This would be a great opportunity for European companies, could they

¹⁵ For more details, [see here the IRR](#), embodied in [Joint Department Administrative Order No. 001-2016](#).

participate in public procurement projects.

Similarly, as for other economic sectors, the Philippine constitution does not allow for more than 40 per cent foreign ownership in distribution and domestic trucking services (see Communication services above).

I. Energy Services

The Philippines offer on energy services was a welcome step forward but more must be done. 25% of the country's energy production can be generated through geothermal sources thanks to its volcanic activities, but the remaining amount derives from oil, gas and coal. The lack of supply leads to the fact that rotating black outs of energy on the countless islands are still a common procedure. This is where ESF members can be a meaningful partner.

In its offer on construction services the Philippines makes limited progress towards the EC energy request, committing site preparation work for mining and construction of long-distance pipelines. However, the offer here leaves mode 3 strictly limited by 40% or 25% foreign equity caps depending on the nature of the contract. The opening of power plant construction and operation to full foreign ownership is positive but the offer in energy distribution includes a 40% foreign equity cap and very strict mode 4 requirements. For services incidental to mining the offer only allowed more than 40% foreign equity without consultation with the President. Finally, openings provided for in services related to the supply of energy are again welcome but coverage – only oil refinery, oil terminals and petrol retail - was limited. ESF would in particular encourage the country to allow for full ownership the companies developing wind, solar and biomass energy services.

List of members supporting the above position

- Amazon
- Amfori
- Apple
- Architects' Council of Europe –ACE
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- BSA The Software Alliance – BSA
- Danish Shipping
- Deutsche Post DHL
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- General Council of the Bar of England & Wales
- Google
- Huawei Europe
- IBM Europe, Middle East & Africa
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- PostEurop
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS
- Vodafone
- Zurich Insurance