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POSITION PAPER

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

Introductory remarks on Mexico

The United Mexican States is a federal presidential republic composed of thirty-one states and its capital, Mexico City (Federal District). The country has been pro-active in concluding free trade agreements (FTAs). It has implemented ten bilateral or plurilateral FTAs with: both the United States of America and Canada in the framework of the North American Free Trade Agreement (NAFTA), Colombia, Chile, the European Union, Israel, together Iceland-Liechtenstein-Norway-Switzerland within the European Free Trade Association (EFTA), Uruguay, Japan, Peru and Panama¹. It has also concluded the Trans-Pacific Partnership (TPP) agreement, as well as the TLC Unique gathering Costa Rica-El Salvador-Guatemala-Honduras-Nicaragua. Finally, it is a participant to the Trade in Services Agreement (TISA) negotiations.

Mexico' economy in figures

Mexico is the 15th largest economy in the world and generated a GDP of €995, 155 billion² in 2015. That year, the population reached more than 127 million inhabitants³. The World Bank Report on "Doing Business"⁴ is ranking Mexico on the ease of doing business as number 47 out of 189 in 2015, showing that the country is on the way to becoming a major free market economy.

With bilateral trade in goods amounting to €53. 4 billion in 2015⁵, Mexico was the EU's 14th largest trading partner (1.5% of the EU's total trade in goods with the world) while the EU was Mexico's 3rd largest trading partner (7.7% of Mexico's total trade in goods with the world)⁶. When considering trade in services, it first needs to be highlighted that Mexico's economic share in services accounted for 62.4% of the country's GDP and 61.9% of the labour force in 2015⁷. In the previous year, bilateral trade in services between both partners amounted to €11. 8 billion, with a surplus of €4.1 billion for the EU⁸. Mexico's services exports to the EU are dominated by travel, sea transport, air transport and construction services, while the EU's services exports to Mexico are dominated by travel, sea transport, air transport and computer and information services.

But all these figures are based on the Balance of Payments (BoP) methodology, which in fact minimizes the significance of international trade in services. In terms of Global Value Chains (GVC), and analysing under the Trade in Value Added (TiVA) methodology, it appears that

¹ WTO, RTA database - <http://rtais.wto.org/UI/PublicSearchByCrResult.aspx>

² Exchange rate 23/09/2016 - World Bank - <http://databank.worldbank.org/data/download/GDP.pdf>

³ World Bank - <http://databank.worldbank.org/data/reports.aspx?source=2&country=MEX>

⁴ World Bank - <http://www.doingbusiness.org/rankings>

⁵ European Commission, DG Trade - <http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/>

⁶ European Commission, DG Trade - http://trade.ec.europa.eu/doclib/docs/2006/september/tradoc_113418.pdf

⁷ CIA, The World Factbook - <https://www.cia.gov/library/publications/the-world-factbook/geos/mx.html>

⁸ European Commission, DG Trade - <http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/>

32.7% of Mexico's exports of goods came from services in 2011⁹. These may refer to marketing, finance and insurance, distribution, transport, ICTs, etc. which surround the trading process of a good. Similarly, and more generally, it appears that the services value-added in the content of Mexico's exports of both goods and services reached 37.8% in 2011¹⁰. Within the 37.8%, 12.7% was accounted for by foreign services, the remaining 25.1% coming from domestic services. This shows that there is still a room for market opening for foreign services in Mexico.

When looking at foreign direct investments, EU outward stock in Mexico amounted to €119, 2 billion in 2014 while Mexico outward stock in the EU represented €28, 3 billion¹¹. On this matter, it is appropriate to remember that according to Eurostat, around 60% of all EU FDI is, on average, coming from the services sectors¹².

A country full of potential

Mexico's current government, led by President Enrique Peña Nieto, emphasized economic reforms during its first two years in office, passing and implementing sweeping education, energy, financial, fiscal, and telecommunications reform legislation, among others, with the long-term aim to improve competitiveness and economic growth across the Mexican economy. In 2015, growth continued to expand at a moderate annual rate of 2.5%. Private consumption became the main driving force of economic activity on the back of stronger job creation, real wage growth, and credit expansion. In contrast, the expansion of investment activity has slowed down, for reasons including public spending adjustments. Over the medium-term, the Mexican economy faces a complex external environment in which a weak expansion of industrial activity in the United States, heightened risk aversion and persistently low oil prices and – approximately 20% of government revenue comes from the state-owned oil company, PEMEX – and financial market volatility pose challenges to the economic policy and growth outlook. In this framework, economic growth is projected to slow down slightly in 2016.

Travel services represent the major services sector of the Mexican economy. In 2015, it accounted for 77.3% of its economy's total exports and 30.5% of its economy's total imports¹³. When focusing on the tourism sector, it exceeded growth expectations for 2014, registering a record number of international tourist arrivals at nearly 29.3 million – a sharp increase of 21% on 2013 – and over 5 million domestic arrivals¹⁴. The United States and Canada were the top source market, representing respectively 56% and 12% of total tourists' arrivals. Europe accounted for 13%, driven primarily by higher arrivals from the UK, Italy and Germany.

Mexico's economy is heavily dependent on imports in transport services, which accounted for 46.3% of the economy's total imports of services but only 4.1% of the economy's total exports in 2014¹⁵. That year, transport services also represented 6.4% of the country's GDP and 5.3%

⁹ WTO, Trade in Value Added and Global Value Chains - Click on Mexico on this page: https://www.wto.org/english/res_e/statis_e/miwi_e/countryprofiles_e.htm

¹⁰ Previous

¹¹ European Commission, DG Trade - <http://ec.europa.eu/trade/policy/countries-and-regions/countries/mexico/>

¹² Eurostat - Foreign direct investment statistics - [http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Extra_EU-28_FDI_stocks_by_economic_activity_EU-28_end_2013_\(billion_EUR\)_YB16.png](http://ec.europa.eu/eurostat/statistics-explained/index.php/File:Extra_EU-28_FDI_stocks_by_economic_activity_EU-28_end_2013_(billion_EUR)_YB16.png)

¹³ WTO, Mexico's Trade Profile, September 2015 - http://stat.wto.org/CountryProfiles/MX_e.htm

¹⁴ The entire development to follow is based on Oxford Business Group, "Mexico plans for long-term tourism growth", 2015 - <https://www.oxfordbusinessgroup.com/overview/looking-ahead-authorities-are-laying-foundation-long-term-growth>

¹⁵ WTO, Mexico's Trade Profile, September 2015 - http://stat.wto.org/CountryProfiles/MX_e.htm

of national employment¹⁶. The expansion of strategic sectors – especially manufacturing –, coupled with the size and geographic diversity of the country, are both benefitting the Mexican transport sector and placing it under increased pressure. Infrastructure revamping remains a top priority for the government, and this has translated into a succession of improvements to roads, ports, airports and urban railway networks.

As for other commercial services – which include communications services, construction, insurance services, financial services, computer and information services, royalties and licence fees, other business services, and personal, cultural and recreational services according to the WTO –, they represent 16.5% of Mexico’s economy total exports and 21.6% of its economy’s total imports¹⁷ in 2015. On communication services especially, the country has implemented a large reform since 2014 with the aim to increasing competition in the telecommunication and broadcasting sector¹⁸. As of 2013, major suppliers were: TELMEX (América Móvil) and Axtel in fixed telephony services; Telcel in mobile telephony services – albeit América Móvil recently raised its stake to 92.8% –; and Grupo Televisa in cable TV services¹⁹. The country has also initiated a reform in financial services in 2014. This is based on four strategic pillars: encouraging competition in the sector, boosting credit through the Development Bank, extending credit in private institutions, and maintaining a sound and prudent financial system²⁰.

I. HORIZONTAL ISSUES RELATED TO SERVICES

1) Starting baseline of the services negotiations

ESF takes for granted that respective Mexico best TPP offers, as well as best GATS commitments – including the revised offer tabled on 26 May 2005 during the Doha Development Agenda negotiations and the oral commitments made at the WTO Signalling Conference on Services on 26 July 2008 in Geneva – form the baseline for the services and investment FTA negotiations. On the European side, ESF considers that the Comprehensive Economic and Trade Agreement (CETA) concluded between the EU and Canada shall be the benchmark for those negotiations.

ESF also encourages EU negotiators to monitor closely any other trade talks in which Mexico is engaged or intend to engage during the FTA’ negotiations, especially the currently negotiating Trade in Services Agreement (TiSA).

2) Scheduling Method

ESF calls the negotiators to use the negative list approach, so as to ensure a good readability and comparability of the various FTAs commitments. Such a method obliges the negotiators to review together all service sectors and produce greater liberalisation results and greater clarity, since it is much easier for businesses to assess whether their sector is covered or not

¹⁶ Oxford Business Group, “Mexico transport infrastructure development continues”, 2015 - <https://www.oxfordbusinessgroup.com/overview/full-steam-ahead-investment-major-transport-infrastructure-upgrades-continues-despite-tighter-budget>

¹⁷ WTO, Mexico’s Trade Profile, September 2015 - http://stat.wto.org/CountryProfiles/MX_e.htm

¹⁸ Mexico, Presidency of the Republic, “Reform of Telecommunications” - <http://www.gob.mx/presidencia/reformas/reforma-en-materia-de-telecomunicaciones>

¹⁹ WTO, Mexico Trade Policy Review, 10 July 2013, item 4.213, p. 253

²⁰ Mexico, Presidency of the Republic, “Financial reform: more credit for Mexicans” - <http://www.gob.mx/presidencia/reformas/reforma-financiera-mas-credito-para-los-mexicanos>

and what the limitations are. As a consequence, the participation of all administrative levels of the signatories should be a *sine-qua non*e condition to the use of the negative list, otherwise it would result in a great lack of transparency and could lead to situations in which local entities could refuse to comply with the terms of the agreement.

The Parties' negotiators should also include standstill and ratchet clauses that ensure extension of trade liberalisation on a non-discriminatory basis, once a party has unilaterally decided to open up the market.

3) Trade facilitation and customs

Excessive import controls and complex processes and requirements in Mexico have not been modified over time to accommodate new trends in global trade. The lack of consideration of trade facilitation measures in Mexico are an important illustration of this overall problem: preclearance procedures are in particular extremely limited. Moreover, there are general restrictions/licenses requirements for many commercial imports. Apparel and footwear imports face additional restrictions to be imported only through a handful of airports. Certain customs rules may also be discriminatory, such as the current rules as regards the use of customs brokers which may discourage the consideration to become third-party customs brokers. Moreover, Federal regulations are not uniformly implemented across the board. Local Customs procedures and levels of customs control differ heavily. The current negotiations should promote better practices from Mexican authorities as regards trade facilitation especially for third country operators, and harmonized customs legislation within the Mexican territory. Services businesses taking care of shipment of goods across borders face administrative and financial burdens on a daily basis. ESF therefore strongly support improvement in customs procedures.

4) Movement of natural persons (mode 4)

Mobility of service suppliers is a key priority for business in the EU-Mexico FTA. It should cover temporary movement only and not permanent migration. Negotiators should notably allow faster Business Visa and Work permits delivery procedures for all categories of natural persons covered under Mode 4.

As a preliminary remark, it must be pointed out that TPP sets up an incentive rule for establishing a dialogue between Parties relevant bodies "on issues that relate to the recognition of professional qualifications, licensing or registration"²¹. This provision only concerns professional services. ESF calls for the EU negotiators to deliver a similar mechanism encouraging and enabling the regulators of these sectors to achieve, when there is a mutual demand from EU and Mexican professional bodies, Mutual Recognition Agreements in Professional Qualifications in an EU-Mexico FTA. Ideally, they should follow example set in the EU-Canada CETA.

Mexico commitments on the movement of natural persons in TPP are much wider than its current GATS scheduling. Those commitments are divided into the following five sub-sections: a) business visitors; b) intra-corporate transferees (ICTs); c) investors; d) professionals and

²¹ TPP, Chapter 10 on Cross-border Trade in Services, Annex 10-A, p. 11 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Text/10.-Cross-Border-Trade-in-Services-Chapter.pdf>

technician-professionals and; e) contractual service suppliers (CSS). ESF focuses on business visitors, intra-corporate transferees and contractual service suppliers in developments to follow.

a) Business visitors

Mexico's TPP scheduling is substantially different and broader than its current GATS commitments. Business visitors refer to three categories of business persons seeking to: "(a) establish, develop, or manage a foreign capital investment; (b) provide specialised services, including after-sale or after-lease services, previously agreed or as referred to in a contract of transfer of technology, patent and trademark, for the sale of machinery and equipment, technical training of personnel or any other production process from an established company in Mexico; or (c) attend business administration meetings, conferences, trade fairs and performing management or executive duties in a company or its subsidiaries or affiliates that are established in Mexico"²². Period of stay accorded is up to 180 days. ESF welcomes such market opening and requests the same within the EU-Mexico FTA.

b) Intra-corporate transferees (ICTs)

This category remains divided into three categories of business persons, though the wording is quite different: (a) executive; (b) manager; and (c) specialist²³. In principle, length of stay is of one year, but it may be extended three times for an equal period of time. It should also be noted that Mexico allows the temporary entry to spouses of ICTs and provides them a work permit or work authorization – (subject to conditions). ESF requests similar commitments with the EU.

c) Contractual service supplier (CSS)

This category does not exist in Mexico's GATS commitments. In TPP, the country defines a Contractual service supplier as "a business person who is engaged in a specialty occupation requiring: (i) theoretical and practical application of a body of specialised knowledge, and (ii) attainment of a post-secondary degree for entry into the occupation"²⁴. In principle, length of stay is of one year, but it may be extended three times for an equal period of time. In this category as well, Mexico allows the temporary entry to spouses of CSS and provides them a work permit or work authorization (subject to conditions). ESF welcomes such market opening and requests the same commitment for the EU.

5) Foreign direct investment regimes

ESF calls for an FTA which covers pre-establishment commitments as well as a post-establishment protection.

Concerning pre-establishment, the FDI chapter should allow businesses to establish in any legal form that they see fit for them, especially legal form that allows owning and controlling their new establishment. Therefore, the EU-Mexico FTA should remove, as far as possible, all kinds of control of foreign ownership, such as any remaining equity caps, or limitations imposed for instance by the Mexican Foreign Investment Law (Ley de Inversion Extranjera). On the basis of this law, Mexico has maintained in TPP the requirement for a favourable resolution from the

²² TPP, Chapter 12 on the Temporary entry of business persons, Annex 12-A, p. 1 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Annexes/12-A.-Mexico-Temporary-Entry-for-Business-Persons.pdf>

²³ Previous, p. 2

²⁴ Previous, p. 7

National Commission on Foreign Investment (Comision Nacional de Inversiones Extranjeras) for each investment in a Mexican enterprise of more than 49 percent, “when the total value of the assets of the Mexican enterprise exceeds the applicable threshold at the time the application for acquisition is submitted”; such threshold being fixed at US\$1 billion²⁵ at the date of entry into force of the Trans-Pacific Partnership agreement²⁶. As demonstrated below, Mexico has removed in TPP most of its foreign equity caps it inscribed in its GATS commitments; but such positive market opening would be affected by the requirement of a favourable resolution. For this reason, ESF strongly encourages the EU negotiators to obtain the removal of that restriction or, at least, the relaxation of the threshold within the EU-Mexico FTA. Terms and conditions surrounding the favourable resolution procedure should also be published and made transparent.

Furthermore, there is a strong interest from the EU industry in favour of having a state of the art investment protection in the EU-Mexico FTA, which will not diminish the current level of protection that is currently achieved by the 16 existing BITs with EU Member States²⁷, but will be extended to the whole EU. As a result, it is vital that the relationship between both partners includes a neutral, binding, transparent and efficient investor-state dispute settlement (ISDS) mechanism.

6) Public procurement

The question of public procurement should benefit from particular attention in the FTA negotiations since Mexico is not yet a member of the Government Procurement Agreement (GPA).

ESF calls for a comprehensive market access to public procurement for services, with low thresholds and substantive coverage of all public institutions and entities, committing the partners to remove any discrimination, or preference to local suppliers, in the bidding by any EU or Mexican businesses. It is of crucial importance to increase access for services businesses to all public entities that use 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. It is equally true for public administrations and entities that need, in 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.

Negotiators should also ensure that all the measures taken also apply at the sub-federal level as well as the central level. Hence, the added value for the FTA could be the reduction of the thresholds at which businesses from the two partners should have the right to participate to the calls for tender.

7) Rules on State-Owned Enterprises (SOEs)

²⁵ According to the official exchange rate on the 5th October, 2015

²⁶ TPP, Annex I on the Schedule of Mexico, p. 6 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Annexes/Annex-I.-Mexico.pdf>

²⁷ Mexico has currently BIT with Austria, Belgium & Luxembourg, Czech Republic, Denmark, Finland, France, Germany, Greece, Italy, Netherlands, Portugal, Slovakia, Spain, Sweden and United Kingdom. See: <http://investmentpolicyhub.unctad.org/IIA/CountryBits/136#iialInnerMenu>

The Agreement should also look at stating specific rules to ensure that competition legislation also applies to 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. Consideration could be given to the EU regime on state aids, which places obligations of transparency on state owned businesses in the EU, ensuring that the businesses have transparent accounting rules and forbid any cross-subsidisation transfers among different segments of a state enterprise.

8) Rules on cross-border data flows and e-commerce

Cross-border commercial data flows represent a very sensitive subject in the EU. But, they are the real backbone of the digital economy that is crucial to boosting growth across all sectors, including small and medium-size enterprises. The EU-Mexico FTA will have to include rules on cross border data flows. 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 data privacy (GATS Article XIV). With the objective of enhancing trust of users and certainty of businesses, 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.

Following the Commission's latest publication "Communication on Exchanging and Protecting Personal Data in a Globalised World" suggesting enhancement of trade agreements with those countries with similar privacy regimes, we encourage the Commission to analyse the Mexican legal framework on Privacy and Data Protection, with the objective of determining whether it merits an "Adequacy Decision" for Data Transfers. Such status could be positive for European businesses with investments in Mexico.

The text of the FTA should also look at ensuring that cross-border data flows are not limited by requirements for 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. Preferential treatment to national suppliers should be prohibited in the use of local infrastructure, national spectrum, or orbital resources. Finally, the two partners should also ensure that local infrastructure used for the provision of electronic communications networks is made available to service suppliers under fully non-discriminatory terms and conditions.

In addition to the rules on cross-border data flows, and irrespective on where these rules will sit in the revised agreement, the FTA will also need to include additional rules on the more specific aspects of the electronic commerce. These rules could be included in the telecommunication & e-commerce chapter or in a more horizontal chapter. ESF will welcome rules that would include the following issues, which were also discussed in the TTIP and TiSA framework, and are part of the TPP Draft agreement: i) Unsolicited Commercial Electronic Messages, ii) Transfer or Access to Source Code, iii) Principles on Open Access to Networks and Use of the Internet for Electronic Commerce, iv) Electronic Authentication and Electronic Signatures, v) Permanent commitment to abolish Customs Duties on Electronic Transmissions, vi) Make trade administration documents available to the public in electronic form (Paperless Trading); Commitment to exchange information and share experiences on regulations, policies, enforcement and compliance regarding electronic commerce, including (a) personal

information protection; (b) online consumer protection, including means for consumer redress and building consumer confidence; (c) unsolicited commercial electronic messages; (d) security in electronic communications; (e) authentication; and (f) e-government; and finally vii) set up bilateral Cooperation on Cybersecurity Matters.

9) Domestic regulation

The FTA should include a strong Horizontal Chapter on Disciplines for Domestic Regulation. This chapter should establish obligations going beyond the rules that could be adopted in the WTO Post Bali Work Programme or in the draft TiSA agreement, which will essentially establish basic rules of better transparency in licensing and qualification procedures. Such a chapter of the FTA should be divided into two sections, one on regulatory coherence and one on regulatory cooperation.

a) Regulatory coherence

Principles such as regulatory transparency, 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.

The chapter should also include an impact assessment mechanism for regulatory activities that would have a potential impact on trade between the two parties. The purpose would be to set up a mechanism for exchange of information among the regulators of all sectors, wherever they are, to increase transparency and to lead towards better regulatory coherence.

b) Regulatory cooperation

The FTA should establish a mechanism by which the regulators would agree to meet and exchange information. It would set up an obligation of cooperation when an issue of mutual interest is identified. These regulators should establish an annual or pluri-annual programme, report on their progress or lack of progress, and provide explanatory notes. However, the regulators would remain independent and would not be subject to any obligations of result. Furthermore, the chapter should 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.

10) Other horizontal issues

ESF takes note of the fact that EU negotiators are now developing a chapter on Trade and Sustainable Development in FTAs, which will likely be included in the EU-Mexico FTA. ESF takes note of the discussions on those topics, and should new rules be enacted in particular on labour and corporate social responsibility's obligations, ESF will possibly develop a position at a later stage.

II. SERVICES SECTOR SPECIFIC ISSUES

Whatever the sector or sub-sector, ESF expects Mexican negotiators to make more ambitious commitments within the EU-Mexico FTA than those offered to Mexico's TPP partners. On market access, ESF especially requests the removal of the general restriction inscribed in Annex II, page 12 and followings of the draft Trans-Pacific Partnership agreement; that restriction covers all sectors or sub-sectors but those listed in the table. ESF also underlines its serious concerns over the fact that Mexico maintains a general restriction covering all existing non-conforming measures adopted at the regional level²⁸; this is a too broad and non-transparent restriction and ESF requests its removal.

Note: ESF acknowledges the fact that the fate of the Trans Pacific Partnership (TPP) is now uncertain, but considers that it remains a good negotiating reference and urges the EU Negotiators to keep it as a benchmark.

1) **Professional services**

a) Legal services

ESF really welcomes fresh market opening by Mexico in TPP in this sector, and requests the same within the EU-Mexico FTA. While legal services were not committed in Mexico's GATS commitments, they are now fully opened on market access under Modes 1-3 in its TPP scheduling.

However, ownership of more than 49 percent is subject to a favourable resolution from the National Commission on Foreign Investment. ESF requests the removal of that limitation.

b) Accounting, auditing and bookkeeping services

In TPP, Mexico has given full market access under Modes 1-3 for that sub-sector. ESF welcomes that commitment since it is an improvement on Mexico's GATS scheduling, in which Mode 3 remained limited by a foreign equity cap of 49 percent. ESF requests the same market opening for the EU.

c) Taxation advisory services

This sub-sector is subject to a general limitation on market access allowing Mexican authorities to adopt or maintain any existing or future non-conforming measure²⁹. ESF regrets such a restriction and requests its removal within the EU-Mexico FTA.

d) Architectural and engineering services

As in its DDA revised offer, Mexico has removed foreign equity caps of 100 percent in its TPP scheduling in those sub-sectors. However, this applies only to consultancy and technical studies for architecture and to consultancy and technical services for engineering. ESF requests the same degree of market opening for Mode 3 but would appreciate even wider commitments from Mexico in both sub-sectors.

e) Integrated engineering services and urban planning and landscape architectural services

²⁸ TPP, Annex I, p. 66

²⁹ TPP, Annex II, p. 12

While those sub-sectors were closed in Mexico's GATS commitments, they have been fully opened on Modes 1-3 in TPP. This is a positive step and ESF requests the same opening.

f) Medical and dental services

This is also a better commitment since Mode 3 is fully opened in TPP while it was limited to a 49 percent foreign equity cap in the GATS. ESF requests a similar commitment with the EU.

2) Computer and related services

Mexico has made good commitments in TPP. It has opened up all sub-sectors on Modes 1-3, including data processing services, which it did not table in its DDA revised offer. While ESF really appreciates such market opening, a commitment at a two-digit level within the EU-Mexico FTA would be even more welcome.

3) Research and Development services

Mexico has also improved this sub-sector. The foreign equity cap of 49 percent inscribed in the GATS has been removed in TPP. ESF requests the same commitment with the EU. However, Mexico reserves the right to adopt or maintain any existing or future non-conforming measure with respect to research and technological development centres³⁰.

4) Real estate services

In this sub-sector, Mexico has simply embodied its DDA revised offer by opening Modes 2 and 3 for the whole sub-sector except for real estate services involving own property³¹. This is a good step since those services were closed in the country's GATS commitments; nevertheless, ESF encourages negotiators to remove the limitation on real estate services involving own property.

5) Rental/Leasing services without operators

The most positive step here is that limitations to market access on Mode 3 inscribed in the GATS have been removed for all sub-classes of those services in TPP. The essential limitation to Mode 3 was a foreign equity cap of 49 percent. ESF really welcomes that improvement and requests the same with the EU.

Moreover, Mexico has made two new commitments on rental/leasing services without operator concerning aircraft (CPC 83104) and other personal or household goods (CPC 83209). Those are fully opened on Modes 1-3. ESF requests similar commitments.

6) Other business services

In TPP, many improvements have been made in this sub-sector³². All foreign equity caps of 40, and 49 percent have been removed, which means that most of the services opened in that sub-sector are now fully opened on Modes 1-3 under market access. Moreover, Mexico has committed several new services: technical testing and analysis services (CPC 8676), services incidental to forestry and logging (CPC 88104), services incidental to fishing (CPC 882), repair services incidental to metal products, machinery and equipment (CPC 886), part of printing and publishing services (CPC 88442)³³, convention services (CPC 87909***), translation and

³⁰ TPP, Annex II, p. 14

³¹ Previous, p. 15

³² Previous, p. 17-20

³³ Previous, p. 19

interpretation services (CPC 87905) and laundry collection services (CPC 97011). ESF really welcomes such market opening and requests a similar approach within the EU-Mexico FTA.

However, FDI remains limited to 49 percent in enterprises engaged in the printing or publication of daily newspaper³⁴. The country also maintains a non-conforming measure on advertising and related activities with respect to restricted radio and television services³⁵. In ESF's understanding, this appears to back-track from Mexico's GATS commitments. ESF calls for the EU negotiators to obtain the removal of this restriction.

7) Communication services

a) Postal and courier services

Mexico has still not opened postal services since this activity is reserved to the Mexican State³⁶. This sub-sector remains closed since the Uruguay Round. The country has excluded from Annex 10-B on Express Delivery Services in TPP, "mail services reserved for exclusive supply by the Mexican Postal Service as set out in the Mexican Postal laws and regulations, as well as motor carrier freight transportation services, as set forth in Title III of the Roads, Bridges, and Federal Motor Carrier Transportation Law and its regulations"³⁷. It has also reserved the delivery of a permit by the SCT to provide parcel and courier services, to Mexican nationals and Mexican enterprises³⁸. ESF requests the removal of this restriction in the EU-Mexico FTA and would like to see at least some elements of postal handling, processing or delivery be opened to competition.

Concerning courier services, Mexico has removed the foreign equity cap of 49 percent it inscribed in its GATS commitments. This is a positive point and ESF requests the same with the EU. While recognizing current regulation applying to postal and express delivery services, express import process should stay as easy as possible.

b) Telecommunication services

When comparing Mexico's GATS commitments to its TPP scheduling, it has included radio broadcasting, cable television, satellite transmissions of DTH and DBS and audio digital services in basic telecommunication services. Moreover, monopoly control of Intelsat and Inmarsat connections by Telecomm – also known as Telecomunicaciones de Mexico, the historical operator of the country – has been removed. Finally, all restrictions on Mode 3 have been deleted for all services committed with the exception of paging services (CPC 75291) and resellers³⁹. Those are good commitments and ESF requests similar one with the EU.

The Government has launched a reform of the telecommunications sector since 2013, with great success in many of its aspects. Nevertheless, more can be done in order to foster a more balanced market. ESF would like to see better commitments in telecommunication services that put Mexico closer to the conditions that foreign operators face in the EU. Especially, business ICT services users would benefit from such improvements in terms of competition and pricing. The key to global ICT business services is fair, non-discriminatory access to

³⁴ TPP, Annex I, p. 28

³⁵ TPP, Annex II, p. 17

³⁶ TPP, Annex II, p. 9

³⁷ TPP, Chapter 10 on Cross-border Trade in Services, Annex 10-B on Express Delivery Services, p. 15 -

<https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Text/10.-Cross-Border-Trade-in-Services-Chapter.pdf>

³⁸ TPP, Annex I, p. 62

³⁹ TPP, Annex II, p. 22-23

economic bottleneck facilities at equivalent terms as local providers grant their own downstream business. This requires among others due accounting transparency and independent regulatory oversight of operators with monopoly or significant power. Current regulatory measures/obligations imposed on suppliers with market power should be maintained.

Other issues could also be tackled, such as spectrum. The local operator América Móvil (AMX) holds 40% of the available spectrum; through an upcoming auction, they may reach up to 51%. Spectrum caps may be a way forward. In addition, the Mexican Government shall improve the auction mechanisms to allow smaller players to access spectrum at more reasonable costs. Also, the Government has developed a project called “Red Compartida” (“Shared Network”) that deploys a common transport infrastructure and then leases capacity to market players. Spectrum costs for this network are 10 times lower than spectrum available through market auctions. This distorted situation may lead to market failures and harm private investments.

ESF regrets the local presence requirements Mexico maintains on procurement of: sole concessions and frequency band concessions, and authorisation to provide telecommunication services as a reseller without being a concessionaire⁴⁰. It calls for the EU negotiators to secure the removal of these restrictions.

8) Construction and related engineering services

In this sector, Mexico has removed all foreign equity caps of 49 percent in TPP⁴¹. This is a very good improvement and ESF requests the same with the EU.

However, Mexico has still not opened key CPCs such as warehouses, industrial buildings, hotels, bridges, tunnels or long-distance pipelines services. ESF encourages the negotiators to discuss these services.

9) Distribution services

In TPP, Mexico has removed all foreign equity caps of 100 percent as well as a ban on FDI in trade-union and cooperative stores in retailing services⁴². Moreover, it has made new commitments on trade intermediary services – including sales agents who are not considered within the paid staff of any establishment in particular – (CPC 621), commission agents’ services (CPC 62113-62118), wholesale trade services (CPC 622) – with some exclusions for non-food products –, and franchise services. Market access is fully opened on Modes 1-3. ESF welcomes those improvements and requests similar market opening for the EU; but it would also like to see further opening on sales in specialised outlets, which is currently only open for limited number of products under CPC 6329.

10) Educational services

In this sector too, Mexico has removed all foreign equity caps of 49 percent. Higher investments must however obtain a favourable resolution from the National Commission on Foreign Investment⁴³. ESF welcomes that first step but would appreciate the removal of this favourable resolution requirement.

11) Environmental services

⁴⁰ TPP, Annex I, p. 13-14

⁴¹ TPP, Annex II, p. 26-28

⁴² TPP, Annex II, p. 28-29

⁴³ TPP, Annex I, p. 34

This sector was completely closed in Mexico's GATS commitments, but many services have been committed in its TPP scheduling. Hence, market access is fully opened on Modes 2 and 3 for sewage services (CPC 9401), refuse disposal services (CPC 9402), protection of ambient air and climate (CPC 9404), noise abatement services (CPC 9405), nature and landscape protection services (CPC 9406), environmental protection services – limited to environmental impact assessments and consultancy services – (CPC 9409), and sanitation services (CPC 94030)⁴⁴. This is a very good scheduling and ESF requests similar market opening within the EU-Mexico. ESF would further encourage the negotiators to follow and insert disciplines proposed by Canada in the framework of the TISA negotiations⁴⁵.

12) Financial services

Although Mexico is one of the most open emerging markets for financial services, it has inscribed a strong restriction to the national treatment clause in its Annex III on Financial Services, Section B, page 20⁴⁶, under which Mexico “reserves the right to adopt or maintain measures to grant advantages or exclusive rights” to a broad list of national financial institutions, such as insurance institutions, bonding institutions, auxiliary credit organisations, etc. ESF calls for the removal of this restriction.

Furthermore, ESF notes the 51 per cent equity threshold required for the ownership of a subsidiary's equity; this would deprive investors of the ability to test the market before fully investing in Mexico's territory.

Finally, ESF calls for the EU negotiators to clarify the content of the limitation to national treatment specified in the footnote below⁴⁷.

a) Insurance and insurance related services

Comparing its GATS commitments to its TPP scheduling, Mexico has made new TPP commitments in Mode 1 for: insurance of risks relating to maritime shipping and commercial aviation and space launching and freight (including satellites)⁴⁸; insurance of risks relating to goods in international transit; consultancy, actuarial services and risk assessment in connection with such insurance of risks and with reinsurance and retrocession; and insurance brokerage of such risks⁴⁹. In addition, reinsurance and retrocession services are still open on Mode 1.

Moreover, all restrictions to Mode 3 which existed in Mexico's GATS commitments have been deleted in TPP. Hence, restrictions on foreign holdings of up to 40 percent of the paid-up capital and 30 percent of the non-voting paid-up capital, foreign individual holdings of up to 10 percent of the paid-up capital or up to 20 percent (previously requiring an authorisation from the Ministry of Finance and Public Credit (SHCP), and effective control by the Mexican shareholders), are all removed in Mexico's TPP scheduling. ESF very much welcomes such market opening and requests the same for the EU.

⁴⁴ TPP, Annex II, p. 30-32

⁴⁵ Wikileaks, TISA, Annex on Environmental Services, Proposal by Canada -

https://wikileaks.org/tisa/document/201412_Annex-on-Environmental-Services/201412_Annex-on-Environmental-Services.pdf

⁴⁶ TPP, Annex III, Section B, p. 20 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Annexes/Annex-III.-Mexico.pdf>

⁴⁷ TPP, Annex III, Section A, p. 16

⁴⁸ With such insurance to cover any or all of the following: the goods being transported, the vehicle transporting the goods, and any liability arising therefrom

⁴⁹ TPP, Chapter 11 on Financial services, Annex 11-A on Cross-border Trade, p. 30 -

<https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Text/11.-Financial-Services-Chapter.pdf>

At the same time, Mexico has retained an unwelcome economic needs test for cross-border insurance business. There is a Mexican requirement that, before a risk can be insured on a cross-border basis, it must have been declined by the local market (via the local insurance association) and approved by the regulator on a per risk basis. ESF requests the removal of this restriction. Its removal for certain risk classes in particular, such as Marine, Aviation and Transit (MAT) insurance, would no doubt benefit Mexico by ensuring greater access to expert underwriting and reduce local concentration of such risks.⁵⁰ The terms of this restriction should be narrowed while exceptions to it should be expanded. Insurance brokerage, insurance agency and auxiliary insurance services should be permitted for all types of contract above-mentioned in the restriction⁵¹.

b) Banking and other financial services (excluding insurance)

While Mexico has completely unbound commitments on Mode 1 in the GATS, it has opened cross-border trade in financial services to: the provision and transfer of financial information, financial data processing and related software as well as advisory and other auxiliary financial services – excluding intermediation, credit reference and analysis –⁵². ESF welcomes those new commitments but would like to see more market opening on Mode 1.

However, Mexico maintains some non-conforming measures in this sub-sector. Foreign individuals or legal entities are not allowed to hold more than 15 percent of the equity of a credit union; such investment must be indirect through a Mexican legal entity⁵³. This is better than in Mexico's GATS commitments (under which foreign investment in credit unions was totally forbidden), but ESF would appreciate still more improvements from Mexico. ESF also deeply regrets that branches of foreign financial institutions are forbidden in Mexican territory⁵⁴ and requests the removal of that restriction with the EU. The measure requiring that directors and managers of savings and loans cooperative businesses must be Mexican should also be removed⁵⁵. On the concession from the Federal Government required prior to the constitution of a stock exchange⁵⁶, ESF requests that terms and conditions surrounding the concession be made transparent automatically or upon request.

ESF also requests the removal of the 20% cap on overseas investments by Mexican pension funds.

13) **Tourism and travel related services**

In TPP, Mexico has removed all foreign equity caps of 49 and 100 percent as well as the requirement of holding a license issued by the Mexican Ministry of Tourism. Hence, FDI are allowed subject to holding a permit from the competent authority (Central, Regional or Local). ESF considers this is a positive step though it would like to see a full opening on Mode 3; and if not, clear and transparent conditions for getting a permit.

⁵⁰ TPP, Annex III, Section A, p. 13-14

⁵¹ Previous, p. 14, §3

⁵² TPP, Chapter 11 on Financial services, Annex 11-A on Cross-border Trade, p. 30-31 -

<https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Text/11.-Financial-Services-Chapter.pdf>

⁵³ TPP, Annex III, Section A, p. 2 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Annexes/Annex-III.-Mexico.pdf>

⁵⁴ Previous, p. 5

⁵⁵ Previous, p. 9

⁵⁶ Previous, p. 12

ESF also appreciates general commitment for the whole CPC 7471 on travel agencies and tour operators – subject to the limitation mentioned above on Mode 3 –. However, it notes that CPC 641 on hotel and other lodging services as well as CPC 642 on food serving have still not been committed at a three-digit level. This is disappointing and ESF expects from the negotiators to discuss on it.

Nevertheless, Mexico has made new commitments on “other tourism and travel related services”: spa services (for a few services explicitly mentioned – CPC 97029), catering services providing meals to outside (other than service on aircraft and in airports CPC 6423), bar services with entertainment (only in hotels and other lodging places), and public house services without entertainment (except in hotels, other lodging places and other means of transport – CPC 6431). Modes 2 and 3 are opened subject to holding a permit from the competent authority; in addition, Mode 1 is opened for spa services. These are good improvements and ESF requests the same with the EU.

14) Recreational, cultural and sporting services

This sector was completely closed in Mexico’s GATS commitments, but the country has introduced significant market opening in its TPP scheduling⁵⁷. Entertainment services (including theatre, live bands and circus – CPC 9619), news agency services (CPC 962), and libraries, archives, museums and other cultural services (CPC 963) are fully committed on Modes 1-3 under Market access clause. Concerning sporting and other recreational services, sports event organisation services (CPC 96412), sports facility operation services (CPC 96413), and other sporting services – only services provided by sport and game schools – (CPC 96419) are opened on Modes 2 and 3 while promotion of sports services (CPC 96411) are opened on Modes 1-3. ESF welcomes those new commitments and request the same with the EU.

15) Transport services

a) Maritime transport services

Mexico has made really good improvements in TPP since that sub-sector was fully closed in its GATS commitments. Thus, Mexico has given full market access on Modes 1-3 for supporting services for water transport (CPC 745) – with respect to services explicitly mentioned⁵⁸ –. It has also opened full market access on Modes 2 and 3 for: maritime cargo handling services, storage and warehousing services (except general bonded warehouses – CPC 742), container station and depot services, maritime agency services, maritime freight forwarding services, and vessel maintenance and repair services. Finally, it has committed international transport (freight and passengers) other than cabotage transport (CPC 7211 and 7212) on Modes 1-3, Mode 1 being limited to bulk, tramp and other international maritime transport, including passenger transport. ESF really welcomes this degree of market opening and requests the same within the EU-Mexico FTA.

On the other hand, important restrictions to national treatment are maintained. There are foreign equity caps of 49 percent for investments in: Mexican enterprises engaged in the administration of an integral port⁵⁹, Mexican shipping enterprises or Mexican vessels engaged in the commercial exploitation of vessels for inland and coastal navigation – this restriction does not apply to tourism cruises and exploitation of dredges and maritime devices for the

⁵⁷ TPP, Annex II, p. 36-37

⁵⁸ Previous, p. 37

⁵⁹ TPP, Annex I, p. 49

construction, preservation and operation of ports –⁶⁰. A favourable resolution from the National Commission on Foreign Investment is required for FDI over 49 percent in enterprises engaged in high seas navigation services and port towing services. Cabotage services but tourist cruises are reserved to Mexican ship-owners with Mexican vessels⁶¹. ESF requests those restrictions to be removed or, at least, relaxed within the EU-Mexico FTA. Concerning cabotage of tourist cruises, dredges and maritime devices for the construction, preservation and operation of ports, they may be opened to foreign enterprises and foreign vessels under a condition of reciprocity; but Mexico maintains an incentive provision to favour Mexican enterprises and vessels⁶². ESF would like to see this incentive provision removed.

b) Inland waterways transport services

That sector has been opened in Mexico's TPP scheduling, but the country maintains important restrictions to national treatment. A foreign equity cap of 49 percent is established for the supply of piloting port services to vessels operating in inland navigation⁶³. Concerning port services to vessels for inland navigation – such as towing, mooring or tendering services –, a favourable resolution from the National Commission on Foreign Investment is required for investments over 49 percent⁶⁴. ESF would like to see these limitations removed.

c) Air transport services

The only and positive change in this sub-sector is the removal of a foreign equity cap of 30 percent on airport and heliport administration services. ESF requests similar market opening for the EU; but it would like to see still more commitments from Mexican negotiators.

In parallel, Mexico maintains limitations to national treatment in that sector. Foreign investors are not allowed to own more than 25 percent of the voting interests in enterprises providing commercial air services on Mexican-registered aircraft⁶⁵; this restriction should be removed. ESF also notes the favourable resolution required from the National Commission on Foreign Investment for foreign investments over 49 percent in enterprises being concessionaire or permissionaire of airfields for public service in Mexico⁶⁶ and asks for transparent and published terms and conditions surrounding the favourable procedure.

d) Road transport services

Mexico has removed a foreign equity cap of 49 percent on motor vehicle maintenance and repair services (CPC 6112 and 8867). Hence, Modes 1-3 are fully opened for these classes of services.

Moreover, the country has made new commitments on supporting services for road transport services – limited to management services of roads, bridges and auxiliary services – (CPC 744), and on other supporting services for road transport – limited to main bus and truck terminals and bus and truck stations – (CPC 74490). Market access is fully opened on Modes 1-3. However, a permit from the Ministry of Communications and Transportation is required for

⁶⁰ Previous, p. 54-55

⁶¹ Previous

⁶² Previous

⁶³ TPP, Annex I, p. 53

⁶⁴ Previous, p. 51-52

⁶⁵ Previous, p. 46

⁶⁶ Previous, p. 44

those services knowing that this permit is reserved to Mexican nationals and Mexican enterprises⁶⁷. ESF requests the removal of this limitation to the national treatment clause.

Mexico should reconsider removing the limits on express delivery services (weight of packages and vehicles) on the federal highway system to allow for greater competition and improved access to express delivery services for customers in Mexico.

e) Pipeline transport services

This is a new commitment from Mexico in TPP. It covers only transportation of other goods – limited to non-energy pipelines – (CPC 7139) but there is no restriction on market access from Modes 1-3. However, a concession from the Ministry of Communications and Transportation is required, which is reserved to Mexican nationals and Mexican enterprises⁶⁸. ESF requests that this national treatment limitation be removed.

f) Services auxiliary to all modes of transport

There are no new commitments in this sub-sector; the only services committed in Mexico's TPP scheduling being weighbridge services for transport purposes (CPC 7490) and supporting services for air transport. However, Modes 1-3 are now fully opened since the country has removed all restrictions on FDI, including a foreign equity cap of 49 percent. This is a positive step and ESF requests the same for the EU.

g) Other transport services

In that sub-sector, Mexico has scheduled tramway transport and subway transport (CPC 71211), and rental of commercial vehicles with operator (CPC 7124). The latter is a new commitment in TPP. Market access is now opened on Modes 2 and 3, while a foreign equity cap of 49 percent was maintained in Mexico's GATS commitments. ESF requests the same degree of market opening.

16) **Other services not included elsewhere**

Mexico has made some changes in that sub-sector too. It has removed foreign equity cap of 49 percent for each sub-classes committed, so as market access is fully opened on Modes 1-3 – with the exception of locksmiths' trade (CPC 63309) for which FDI may be authorised by regional or local authorities –. Moreover, it has made new commitments on footwear and leather goods repair services (CPC 63301) and repair services of electrical household appliances (CPC 63302). These are positive examples of market opening and ESF requests the same within the EU-Mexico FTA.

⁶⁷ TPP, Annex I, p. 59-60

⁶⁸ Previous, p. 56

LIST OF ESF MEMBERS SUPPORTING THIS POSITION

- Accountancy Europe
- Architects' Council of Europe –ACE
- BDO
- British Telecom Plc
- Bundesverband der Freien Berufe - BFB
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- Deutsche Bank AG
- Deutsche Post DHL
- Deutsche Telekom AG
- DI – Confederation of Danish Industries
- Digital Europe
- EK - Confederation of Finnish Industries
- Ernst & Young
- EuroCommerce
- European Banking Federation - EBF
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- European Savings Banks Group – ESBG
- European Satellite Operators Association - ESOA
- European Telecommunications Network Operators - ETNO
- European University Association - EUA
- Fédération de l'Industrie Européenne de la Construction – FIEC
- Foreign Trade Association – FTA
- HSBC Holdings Plc.
- IBM Europe, Middle East & Africa
- Inmarsat
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Law Society of England & Wales
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des Entreprises Françaises - MEDEF
- Oracle Europe, Middle East & Africa
- Orange
- PostEurop
- Prudential Plc.
- SELDIA – European Direct Selling Association
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- Tata Consulting Services - TCS
- Telenor Group
- TheCityUK
- Thomson-Reuters
- Zurich Financial Services