

European Services Sectors Priorities for the EU-Malaysia Free Trade Agreement



EXECUTIVE SUMMARY.....	3
I. INTRODUCTORY REMARKS ON MALAYSIA.....	5
A. A COUNTRY WITH IMPORTANT ECONOMIC POTENTIAL.....	6
B. EU AND MALAYSIA TRADE IN FIGURES.....	8
II. HORIZONTAL ISSUES.....	10
A. STARTING LEVEL OF THE SERVICES NEGOTIATIONS.....	10
B. SCHEDULING METHOD.....	12
C. MOVEMENT OF NATURAL PERSONS (MODE 4).....	12
D. FOREIGN DIRECT INVESTMENT REGIME.....	13
E. RULES ON STATE-OWNED ENTERPRISES (SOES).....	16
F. PUBLIC PROCUREMENT.....	17
G. DIGITAL TRADE CHAPTER.....	18
1) Digital Services.....	18
2) Telecommunications networks.....	19
H. DOMESTIC REGULATION.....	
1) Regulatory coherence.....	20
2) Regulatory cooperation.....	20
I. CUSTOMS AND TRADE FACILITATION.....	20
1) The customs clearance system.....	21
2) Duty and/or tax exemptions for imported de minimis goods.....	22
3) Free Zone Charges per Declaration.....	22
4) Civil Aviation Authority Screening Fees.....	23
J. OTHER HORIZONTAL ISSUES.....	23
III. SERVICES SECTOR SPECIFIC ISSUES.....	234
A. BUSINESS SERVICES.....	234
1) Professional Services.....	24
a. Legal Services (CPC 861).....	24
b. Accounting, Auditing and Bookkeeping Services (CPC 862) & Taxation Services (CPC 863).....	25
c. Architectural Services (CPC 8671).....	25
d. Engineering Services (CPC 8672) & Integrated Engineering Services (CPC 8673).....	25
2) Computer and Related Services.....	27
3) Other Business Services.....	27
B. POSTAL AND EXPRESS COURIER SERVICES.....	28
C. TELECOMMUNICATION SERVICES.....	29
D. CONSTRUCTION AND RELATED ENGINEERING SERVICES.....	30
E. DISTRIBUTION SERVICES.....	30
F. EDUCATION SERVICES.....	30
G. ENVIRONMENTAL SERVICES.....	31
H. FINANCIAL SERVICES.....	31
a. Insurance.....	32
b. Banking.....	32
c. Asset Management.....	32
I. TOURISM AND TRAVEL RELATED SERVICE.....	33
J. TRANSPORT SERVICES.....	33
K. ENERGY SERVICES.....	34
IV. List of ESF Members Supporting this Position Paper.....	35

I. EXECUTIVE SUMMARY

- The European Services Forum strongly supports the negotiations towards an ambitious EU-Malaysia Free Trade Agreement and welcome the resuming of the talks.
- The EU is Malaysia's fourth largest trading partner, but bilateral trade does not match the importance of the two partners. EU-Malaysia FTA will contribute to increase bilateral trade.
- EU exports of services to Malaysia represent 26.4% of the total trade (goods & services), but only 14.8% of Malaysia total exports to the EU, which is a rather low level for a middle-income country. Bilateral trade in services between EU and Malaysia in 2023 amounted to €10.6 bn, with EU exports amounting for €5.5 bn and imports amounting to €5 bn. In 2023, EU services exports to Malaysia are dominated by the category Transport services (28%), “Other business services” (26.3%), Insurance services (7.3%) and interestingly Manufacturing services (17.4%). Malaysia is only the 26th EU trading partner of the EU in services trade.
- ESF takes note that Malaysia has signed bilateral FTAs, notably with Japan, New -Zealand and Australia, plus the ones through the ASEAN, and is currently negotiating, in addition of the EU, with negotiations with UAE and EFTA countries, and also joined the RECP, and more importantly the CPTPP. 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 Malaysia 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, Malaysia 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.
- In 2022, Malaysia was the best-performing country among Southeast Asia’s largest economies with the most potential to attract foreign investors, and the efforts made by the Malaysian Investment Development Authority (MIDA) are much appreciated. We expect that the FTA will improve EU FDI in services sectors (55.6%), which is lower than the world average (77.7%).
- The FTA should improve the mobility of European businesspeople to Malaysia.
- 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 Malaysia than the ones negotiated with the most recent EU agreements in the region.
- Malaysia 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, express delivery, distribution services, insurance and financial services, transport services, etc).

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

Negotiations for a Free Trade Agreement (FTA) between the EU and Malaysia were launched in 2010. 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.

However, after seven rounds of negotiations, the negotiations were put on hold in 2012 at the request of Malaysia. Despite a stocking exercise that was meant to have the two parties agreeing on the scope and depth of the agreement, Malaysia considered that there was a discrepancy between their own vision and the one of the EU. In particular, the negotiations were stalled in September 2012 due to the political campaign in advance of the General elections in Malaysia. Following the general elections that took place in May 2013, Malaysia could have step up its level of ambition to allow for further progress in the negotiations. But unfortunately, no date for a new round has ever been fixed.

In the meantime, progress was made by the EU with many Malaysia's neighbours, and Malaysia is now the last of the ASEAN six main countries in terms of economic development that has either no agreement or is not currently negotiating with the EU.

The [2021 EU Indo-Pacific Strategy](#) confirmed the EU's longstanding interest in resuming FTA negotiations with Malaysia. 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 recently resumed FTA negotiations with Philippines. In 2023, both parties began another stocktaking exercise to determine their positions regarding a possible resumption of the negotiations.

On Monday 20 January 2025, Europe and Malaysia announced the re-launch of negotiations for an EU-Malaysia Free Trade Agreement at the occasion of the visit of Malaysia Prime Minister Anwar bin Ibrahim to in Brussels. See [here the statement](#) of European Commission President Ursula von der Leyen. The next round of talks should take place in June 2025.

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

In November 2011, [ESF already adopted a Position Paper](#) highlighting the services industries priorities for the FTA negotiations. This current Position Paper reiterates many aspects of that contribution, as not much has legally changed regarding the international trade framework in Malaysia for European services providers since.

I. INTRODUCTORY REMARKS ON MALAYSIA

Malaysia is a federal constitutional monarchy. In 1948, the British-ruled territories on the Malay Peninsula (except Singapore) formed the Federation of Malaya, which became independent in 1957. Malaysia was formed in 1963 when the former British colonies of Singapore, as well as Sabah and Sarawak on the northern coast of Borneo, joined the Federation. In August 1965, Singapore became a separate, independent country. Malaysia consists of 13 states and three federal territories, separated by the South China Sea into two regions: Peninsular Malaysia and Borneo's East Malaysia. Peninsular Malaysia shares a land and maritime border with Thailand and maritime borders with Singapore, Vietnam, and Indonesia. East Malaysia shares land borders with Brunei and Indonesia, as well as a maritime border with the Philippines and Vietnam.

Malaysia is a founding member of ASEAN, gathering 10 country members that are aiming at unifying their economies 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 695 million people in 2024.

In line with the goals under the AEC Blueprint 2015 and the AEC Blueprint 2025 for strengthening the AEC, other services agreements in the ASEAN followed, like the ASEAN Movement of Natural Persons (MNP) Agreement in 2012. Under the Asean Framework Agreement on Services, the Asean Member States scheduled 10 packages of commitments for non-financial services, eight packages for financial services, and 11 packages for transport. These were the final packages under the AFAS, as it was replaced by the ASEAN Trade in Services Agreement (ATISA), which was signed in 2020. The ATISA differed substantially from the AFAS in its approach to liberalisation, by adopting the negative list approach versus the positive list approach under the AFAS. Under the ATISA, a timeline was set for the submission of negative lists, with the ASEAN-6 given 5 years after the entry into force of the ATISA (5 April 2021) to submit its schedules of non-conforming measures. Viet Nam was accorded 7 years, while Cambodia, the Lao PDR, and Myanmar were allowed 13 years.

The combined GDP of ASEAN Member States was **USD 3.8 trillion in 2023**, making it the world's fifth-largest economy. Projections indicate that by 2030, ASEAN countries are poised to ascend to the position of the world's fourth-largest economy¹. Although much remains to be done towards that completion, the political dynamic remains committed. Timor Leste is bound to join ASEAN in a near future.

Following a year of negative economic growth in 2020 due to the COVID-19 pandemic, the Malaysian economy returned to its strong growth trajectory of the pre-COVID-19 period in 2021. Malaysia undertook wide-ranging reforms in different policy areas. These include in particular the Eleventh Malaysia plan (2016-2020) and the Twelfth Malaysia Plan (2021-2025), which aim at resetting the economy, strengthening security, improving wellbeing and inclusivity as well as advancing sustainability. Other important policy reforms pertain to the digital economy, investment, and labour reform. Trade plays a critical role in Malaysia' economy, as evidenced by the very high ratio of trade to GDP (132% according to the World Bank).

¹ [ASEAN Annual Report 2023](#)

A. A country with important economic potential

Malaysia's population reached **34.5 million inhabitants at the end of 2024**². The economy of Malaysia is an emerging and developing, upper-middle income, highly industrialised, mixed economy. It ranks the 36th largest in the world in terms of nominal GDP, however, when measured by purchasing power parity, its GDP climbs to the 30th largest. The labour productivity of Malaysian workers is the third highest in ASEAN and significantly higher than Indonesia, Vietnam, and the Philippines.

Malaysia excels above similar income group peers in terms of business competitiveness and innovation. Global Competitiveness Report 2024 (of the International Institute for Management Development - IMD) ranks Malaysian economy as the 34th most competitive country economy in the world.

According to the World Bank, Malaysia is the 35th most trade intensive economy globally; higher than Denmark, Norway, Germany, and Sweden with total trade activities at 132% of its GDP. In addition, the Malaysian economy has developed vertical and horizontal integration across several export linked industry while capturing a significant global market share for manufactured products and commodities ranging from integrated circuit, semiconductor, palm oil to liquefied natural gas. Furthermore, Malaysia is an important nexus in the global semiconductor market and is the third largest exporter of semiconductor devices in the world.

By mid-2024, the country attracted large foreign direct investment centred on the global artificial intelligence boom with foreign technology companies flocked to the country and invested some US\$6.5 billion to capitalise on Malaysia's competitive advantage in the data centre and hyperscale construction due to its highly educated workforce, cheap land acquisition, low water and electricity cost, and the absence of natural disasters. This is expected to consolidate Malaysia position as a cloud computing hub for wider Asia, increasing its high value sector and propel its economy to meet the government high-income economy goal.

Malaysia is a fast-growing export-oriented economy, a relatively low national income tax, highly affordable local food and transport fuel, as well as a fully subsidized single-payer public healthcare system.

According to the OECD³, sustained rapid and inclusive economic growth for half a century has brought Malaysia close to the threshold of high-income status. Growth is now accelerating, driven mostly by domestic demand. Exports are also set to rebound amid stronger external demand. The economy has been resilient to recent shocks, and inflation has remained contained.

The World Bank Report on "*Doing Business*"⁴ was ranking Malaysia on the ease of doing business as number 12 out of 190 countries in 2020 (the last year of the ranking), showing that the country has an economy that is business oriented and open to attract foreign direct investors. However, many barriers persist on the ground, in particular in the services sectors.

Malaysia's economic share in services accounts for 53.5% of the country's GDP⁵, which is only 1.4% more than in 2015 (52%). This is despite Malaysia's announced objective in 2010's that the share of

² [CIA Factbook](#)

³ [OECD Economic Surveys: Malaysia 2024](#)

⁴ [World bank "Doing Business" ranking](#)

⁵ [World Bank Data](#)

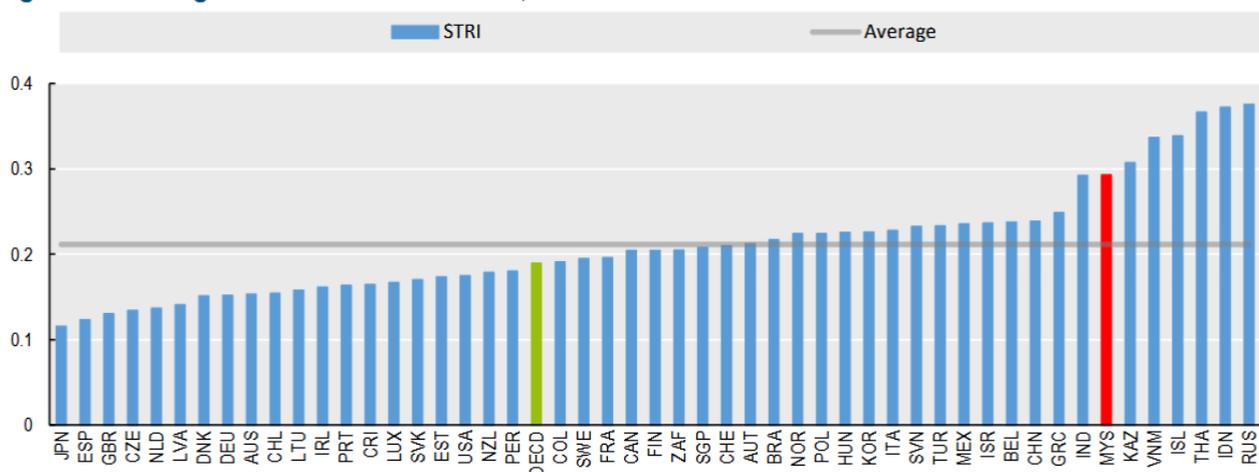
the services sector in the GDP should raise to 60% by 2020, in an effort to establish a knowledge-based economy less reliant on manufactured exports. So, there are still some efforts to do in that domain so as to bring Malaysia in club of developed countries. The services sector employs 61.8% of the total workforce in the country.

In the area of investment, development towards a more business and trade-friendly environment took place in recent years, through the setting up of the one-stop centre for business registration and licensing in 2020, and the approval of the National Investment Aspirations Policy in 2021. However, in addition to foreign equity caps in a number of services sectors, Malaysia has a set of discriminatory domestic policies that negatively affect FDI. Malaysia has to continue to improve its business climate and further liberalize foreign investment restrictions, including in the areas of financial services and retail sector. Malaysia has introduced recently various policies and initiatives to accelerate technology adoption with the aim of increasing efficiency and productivity in agriculture, manufacturing, and services activities for Malaysia's economy and trade.

However, in the Malaysia's last Trade Policy Review in the WTO in 2023, many countries highlighted many issues to be addressed, like the lack of predictability and transparency in business licensing; the rationale for the import prohibition of certain products; the important government-linked companies; the nationalistic industrial policy; the policies on the operation of foreign companies; the export subsidies and local content; the alignment of domestic standards with international ones; the requirement to obtain international circulation permit on cross-border road transport; the regulatory discretionary powers in the services sector, including financial services; and Islamic finance. ESF believes that some of these issues could be improved through the FTA negotiations with the European Union.

When we look at general openness level of services sectors, the OECD in 2023 found through its Services Trade Restrictiveness Index (STRI) that Malaysia is **above the OECD average and relatively high compared** to all countries in the STRI sample (44 out of 50 – see table below), indicating a **relatively closed regulatory environment for trade in services**. The index decreased slightly in 2023 compared to 2022 (i.e. the openness improved slightly). OECD STRI reports that Malaysia's regulatory environment for services has been relatively stable in recent years, with signs of slight liberalisation across sectors particularly in 2018-22. Commercial banking is the most open sector in Malaysia while legal services is the most restricted, relative to the sectoral average.

Figure 1. Average STRI across countries, 2023ⁱ

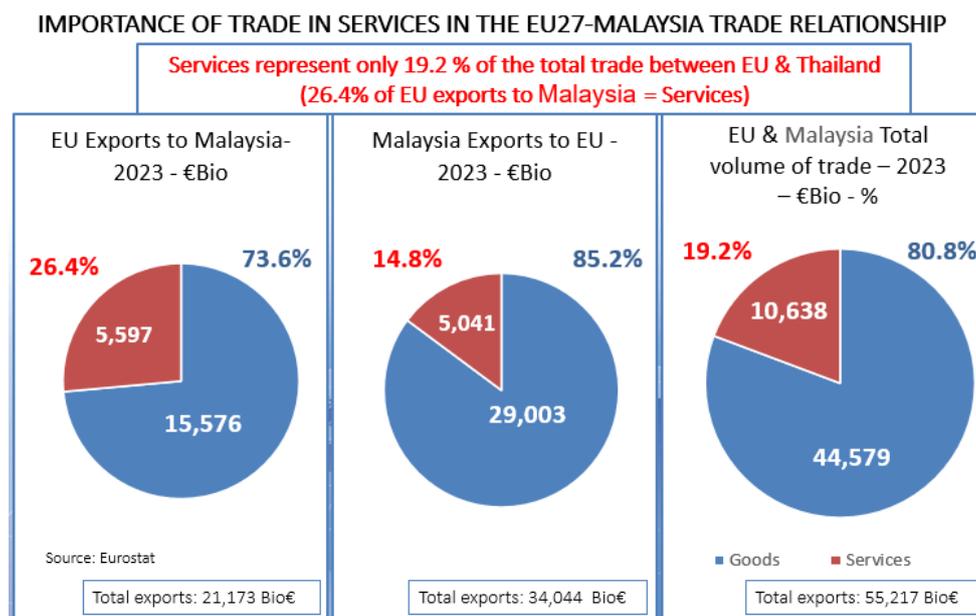


OECD (2023). STRI and TiVA databases.

B. EU and Malaysia trade in figures

With bilateral trade in goods amounting to €44.7 billion in 2023, the EU ranked as Malaysia's fourth largest trading partner (after China, Singapore, and the United States), accounting for 9.5% of the country's total trade in goods, while Malaysia was EU's third largest trading partner within the ASEAN region (after Singapore and Vietnam). Bilateral trade in goods between the EU and Malaysia is dominated by industrial products, which account for over 90% of trade flows, and in particular by machinery and appliances, which account for 62% of all EU imports and over 46% of EU exports (2023 figures). Besides machinery and appliances, the EU mainly imports animal and vegetable fats and oils, chemical products and optical and photographic instruments, and mainly exports chemical products.

When considering **trade in services**, although Malaysia has not been a major trading partner in services so far, opportunities have already been increasing due to its liberalisation policies and would even further advance with an FTA. Malaysia is the EU's 26th largest services trading partner globally in 2023. Trade in services represents 19.2% of total trade between both partners, which is lower than the global average. EU Services exports amount to 26.4% of total EU exports, while Malaysia services exports represented only 14.8% of total exports to the EU, which is lower than compared to other ASEAN countries like Philippines, Singapore or even Thailand.

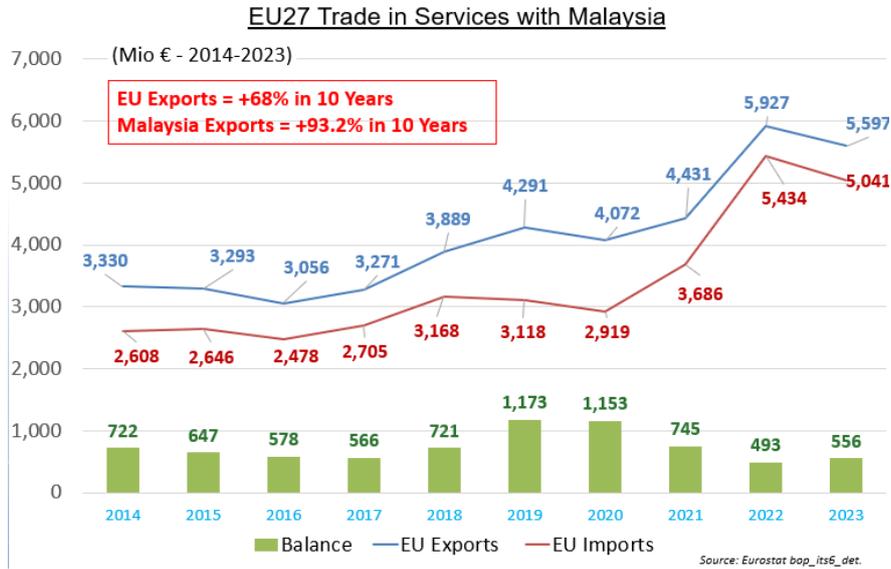


For EU-Malaysia Trade in Services, the slight surplus is to the advantage of the EU for the last decade, with a surplus of €556 million in 2023. **EU-Malaysia two-way trade in services grew by a around 79% to a total value of €10.6 billion in 2023** (€5.9 billion in 2014). Malaysia services exports to the EU expanded by 93.2% since 2014, to reach €5 billion in 2023 while services imports from the EU improved also by 68% in the last 10 years to €5.6 billion⁶.

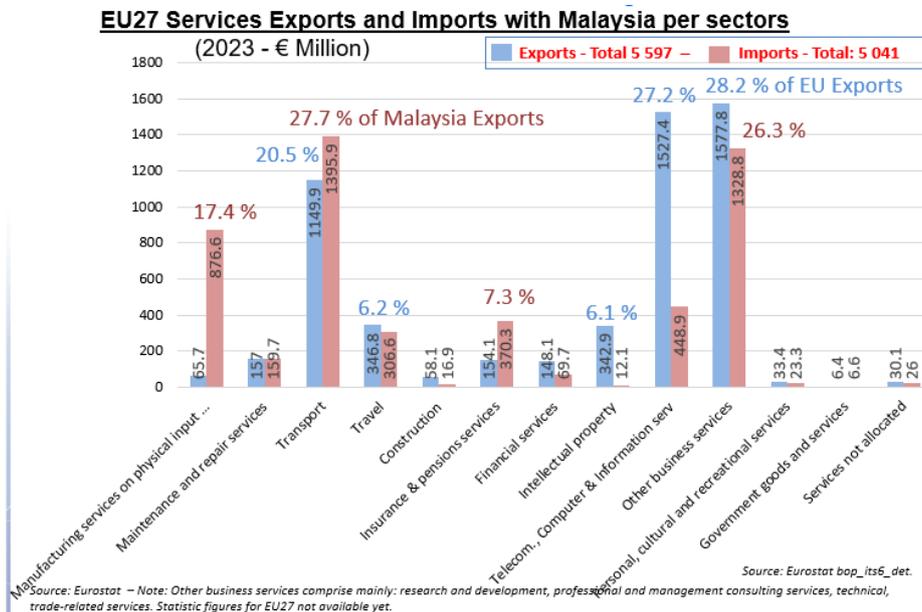
Those figures are based on the Balance of Payments (BoP) methodology, which in fact minimize significance of international trade in services. When looking in terms of Global Value Chains (GVC) and analysing under the Trade in Value Added (TiVA) methodology, it appears that the services value-added in the content of both goods and services exports from Malaysia globally reached

⁶ [Source: Eurostat bop_its6_det](#)

41.8% in 2020. Services represent 62.1% of all EU exports globally (goods & services)⁷. 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.



Malaysia’s services exports to the EU are dominated by Transport Services (27.78%), “Other Business Services”, (26.3%). “Insurance & Pension services” reached 7.3% and interestingly exports of “Manufacturing services on physical input” amount to 17.4%. On the other way, EU services exports to Malaysia in 2023 are dominated by “Other Business Services” (28.2%). Then come Telecom, computer and information services (27.2%), followed by Transport services (20.5%).



The importance of exports by the EU of ICT services, with a strong figure of € 1.52 billion of “computer services” shows the importance of the bilateral “digitally delivered services” trade between the EU and Malaysia, and hence the interest for a strong digital trade chapter in the FTA (see Section II.G of this Position Paper).

⁷ [OECD TIVA Data base](#)

II. HORIZONTAL ISSUES

A. Starting level of the services negotiations

Malaysia has been a member of the WTO since the organisation's creation in 1995. **The level of binding commitments by Malaysia towards the EU is currently the GATS** (General Agreement on Trade in Services) Schedule of Commitments in the Uruguay Round. Malaysia's GATS commitments from the Uruguay Round were very limited, particularly in mode 3 (commercial presence abroad) where any acquisition of assets in Malaysian companies is subject to strict approval procedures. In the vast majority of service sectors commercial presence can only be established either through the joint ventures with shareholding in Malaysian companies, with foreign investment limited to 30%. The provisions for Mode 4 (temporary mobility of services suppliers) are also relatively limited with only a very small number of senior managers and specialists covered in most cases. Malaysia took some rather good commitments in cross border services (mode 1 and 2) for many business services and transport services. Some reforms have been taken by Malaysia since but are not legally binding for the EU service suppliers. The FTA is therefore an excellent opportunity to open up the markets so as to attract European investors in this growing economy.

Malaysia participated to the Services negotiations of the WTO Doha Development Agenda with a rather low enthusiasm and tabled only a modest initial and revised offer in June 2005. ESF made an assessment of these offers at that time, and these comments remain valid. In a nutshell, for telecom services and financial services, "Weak offer", for transport services, Distribution services, Postal & Courier Services and Tourism, "No Offer, weak Uruguay Round Commitments". Hence, some of the inputs below are referring to this assessment.

The ESF aims at improving market access for European services exporters to Malaysia through the FTA negotiations and to secure a more transparent and predictable regulatory environment for services.

ESF takes for granted that respective best GATS offers form the basis of the services and investment FTA negotiations with Malaysia, including the verbal commitments at the WTO Signalling Conference on Services on 26 July 2008 in Geneva, to which Malaysia took part even if the table revised offer was rather weak. The commitments taken in October 2022 Partnership and Cooperation Agreement (PCA) that governs the overall relationship between the EU and Malaysia must also be kept into consideration. More importantly, **the best commitments taken by Malaysia in its existing FTAs or plurilateral agreements that it is part of, should be the basis of the FTA negotiations with the EU.**

Malaysia RTAs & FTAs with other trading partners

First, as already mentioned above, Malaysia 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 and the willingness improve the share of services in the Malaysian economy through domestic policy reforms, innovations, export

promotion, and trade negotiation strategies, etc, 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 Malaysia, 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.**

Malaysia, 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.

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 Malaysia. However, the services chapter of RCEP is not considered as really advanced.

Finally, and more importantly, Malaysia is a member of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), and the obligations and rights entered into force for Malaysia in November 2022. ESF takes note that Malaysia took better commitments (see here Malaysia CP-TPP Services commitments in [Annex I](#) and [Annex II](#)) in that framework than in any other trade agreement that it is part of, and hence, **call the EU negotiators to aim at getting at least the same level of Commitments achieved by Malaysia in the CPTPP.**

Second, we note that, in addition of the regional FTAs, Malaysia has signed and implemented 7 bilateral FTAs, namely 1) Malaysia-Japan Economic Partnership Agreement (MJEPA) which entered into force on 13 July 2006; 2) Malaysia-Pakistan Closer Economic Partnership Agreement (MPCEPA) (1 January 2008). In November 2024, Malaysia and Pakistan announced that they will renegotiate their Free Trade Agreement; 3) Malaysia-New Zealand Free Trade Agreement (MNZFTA) (1 August 2010); 4) Malaysia-India Comprehensive Economic Cooperation Agreement (MICECA) (1 July 2011); 5) Malaysia-Chile Free Trade Agreement (MCFTA) (25 February 2012); 6) Malaysia-Australia Free Trade Agreement ([MAFTA](#)) (1 January 2013). This is the bilateral FTA where Malaysia took better market access commitments than in its WTO GATS Schedule, but still lower than the ones taken in the CP-TPP; and 7) Malaysia-Turkey Free Trade Agreement (MTFTA) (1 August 2015).

There is also the Framework Agreement on [Trade Preferential System among the Member States of the Organisation of the Islamic Conference \(TPS-OIC\)](#), which entered into Force on 1 October 2023. However, this latter does not deal at all with services trade.

Furthermore, we note that Malaysia is having ongoing negotiations with other countries. In September 2024, Malaysia was in the final stages of concluding a free trade agreement (FTA) with the Gulf Cooperation Council (GCC), which includes Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE). The FTAs under negotiation include also the Malaysia-United Arab Emirates Comprehensive Economic Partnership Agreement and the Asean-Canada FTA. The government is also in talks for a Malaysia-European Free Trade Association Economic Partnership Agreement (EFTA).

ESF invites the EU Negotiators to assess all of these agreements and to monitor all the on-going talks so as to ensure that the EU obtain the best level of services commitments that Malaysia will undertake.

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. The fact that Malaysia has accepted this negative list by ratifying the CP-TPP should allow the parties to agree to take services commitments by using this method. However, 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 Malaysia 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 Malaysia are an important business priority in the trade negotiations. The provisions for Mode 4 in Malaysia's GATS commitments are relatively limited and disappointing with only a very small number of senior managers and specialists covered in most cases. Malaysia's revised DDA GATS offer also failed to improve on this area. Given that Malaysia was aiming to become a 'fully developed nation' by 2020⁸, it will be important that European companies providing key services are able to bring in personal with the exact expertise required in an expedited fashion. As such, ESF encourages negotiators to secure greater commitments from Malaysia in Mode 4 in line with EC requests.

Obtaining a work permit in Malaysia involves a structured process with specific requirements for both employers and foreign employees. There are three types of Work Permits:

- **Employment Pass (EP):** For skilled professionals in managerial or technical positions. The minimum age is generally 27 years, except for IT sector applicants, where the minimum age is 23.

It's categorised into three types:

- **Category 1:** For key positions with a minimum monthly salary of RM10,000 (Malaysian Ringgits) and contracts up to 5 years.
- **Category 2:** For managerial roles with salaries between RM5,000 and RM9,999 and contracts up to 2 years.

⁸ Malaysian National Mission policy framework including [the Ninth Malaysia Plan](#).

- **Category 3:** For non-executive positions requiring specific skills, with salaries between RM3,000 and RM4,999 and contracts up to 2 years. This category can be renewed up to two times.
- 2. **Temporary Employment Pass:** For unskilled or semi-skilled workers in sectors like manufacturing, construction, and agriculture. Valid for up to 12 months, with possible extensions.
- 3. **Professional Visit Pass:** For foreign nationals employed by an overseas company but working with a Malaysian company on a temporary basis. Valid for up to 12 months.

Regarding the process, the Malaysian employer must first obtain approval to hire foreign workers by registering with the Expatriate Services Division (ESD) and securing the necessary quotas. Once the employer's application is approved, the foreign employee must provide necessary documents, including a valid passport, academic and professional certificates, and a signed employment contract. Proficiency in English or Malay is often required. Employment Pass holders in Categories 1 and 2 can bring eligible dependents (family) to Malaysia. The entire process typically takes between 7 to 12 weeks, encompassing quota approval, expatriate post approval, and final processing by the Immigration Department.

Regarding the costs, for the Employment Pass, the application fees are approximately RM200, with an additional processing fee of RM125, while for the Professional Visit Pass, the fee is around RM360.

So, the process can be intricate due to stringent requirements and the need for thorough documentation. However, with proper preparation and adherence to guidelines, obtaining a work permit is achievable and easier than in some ASEAN neighbours. The number of documents needed to obtain a business visa decreased from 10 to 7 in 2020, and further to 6 documents in 2022, easing the entry of business travellers. Though it is understood that visas and work permit delivery is not an exclusive EU competence, ESF would recommend having visas facilitation provisions in the agreement for the categories of workers committed under the mode 4 schedules.

D. Foreign Direct Investment Regime

Malaysia is the best-performing country among Southeast Asia's largest economies with the most potential to attract foreign investors according to the 2022 Milken Institute Global Opportunity Index. Malaysia does not have any overarching legislation or guideline that requires that all foreign direct investment (FDI) be first approved by a central governmental body. However, there remain some restrictions to FDIs in Malaysia even if foreign investors can hold up to 100% of the equity in all investments in new projects in certain sectors. Foreign companies may submit an online application through the Invest Malaysia Portal using their country of origin registration. However, access is limited to certain types of applications. For comprehensive access, companies are encouraged to incorporate a business entity under the Law of Malaysia, particularly the Companies Act 2016. This opening up and investment facilitation process is most welcomed and makes EU investors' life easier compared to the conditions currently in place in countries like Thailand and Philippines.

In 2023, the EU's outward Foreign Direct Investment stocks in Malaysia were €31.9 billion, while Malaysia investment into the EU reached €15.4 billion. However, in 2022, only €17.7 billion (55%) of outward EU FDI were invested into services sectors, while the EU's world average is above 70%, which demonstrates that there are still restrictions to services sectors investors. On the contrary, more than € 14 billion (87%) of Malaysian FDI into the EU were invested into services sectors, a higher rate compared to the EU's world average (75%).

Services Sector

At the end of 2021, FDIs in Malaysia amounted to RM788.8 billion and this was largely due to foreign investments in the services sector, mainly in the financial and insurance/takaful sub-sector as well as in wholesale and retail trade activities. Malaysia's services sector emerged stronger as the main pillar of the nation's economic growth, accounting for 65% of total approved investments from local and international investors. Entrenched digitalisation had paved the way for a fully-fledged digital economy, a catalyst commonly identified as the key marker for business success.

Of course, service sector investors must ensure that they have registered a business entity in Malaysia to act as the investing party. Depending on the sub-sector and activities undertaken, specific equity conditions may be imposed to obtain the required approvals, licences, permits or registrations by the regulating authority. Certain ministries, government agencies and regulatory authorities have issued guidelines, circulars and policy documents containing foreign ownership restrictions that are industry or sector specific. Some, but not all, of such guidelines and circulars were issued pursuant to legislation. These guidelines are extremely relevant for European services sectors potential investors to find appropriate information on their sectors, including on tax incentives for instance (see below). They also include information on equity caps, and we encourage the EU negotiators to ensure that the current practice is as much as possible incorporated in the services schedule of Malaysia.

There is no central agency in Malaysia governs foreign investment. Where FDI restrictions apply, the approval of the relevant ministries or regulatory authorities in charge of the specific sector may be required. Below, we have identified the authorities in charge of several key sectors where FDI restrictions may apply:

- banking and financial institutions: Ministry of Finance and Central Bank of Malaysia (*see below*);
- manufacturing: Ministry of International Trade and Industry, and Malaysian Industrial Development Authority;
- telecoms: Ministry of Communications and Multimedia, and Malaysian Communications and Multimedia Commission;
- healthcare facilities and services: Ministry of Health and Malaysia Healthcare Travel Council;
- education: Ministry of Education and Ministry of Higher Education;
- distributive trade: Ministry of Domestic Trade and Cost of Living (*see below*); and
- logistics: Ministry of Transport, Land Public Transport Agency and Road Transport Department Malaysia.

It must be noted that there is no restriction on inflow funds into Malaysia for the purchase of shares or real estate. There is also no restriction on the repatriation of dividends or proceeds of sales, provided that the funds are repatriated in foreign currency.

Financial activities

For FDI in financial activities, the regulatory body for the financial and insurance/takaful sub-sector⁹ is the **Central Bank of Malaysia (*Bank Negara Malaysia*)**.

Among the liberalisation measures taken by Central Bank of Malaysia, one can mentioned those as follows:

⁹ The development of the takaful industry in Malaysia in the early 1980s was inspired by the prevailing needs of the Muslim public for a Shariah-compliant alternative to conventional insurance, as well as to complement the operation of the Islamic bank that was established in 1983.

- (a) existing domestic Islamic banks are given flexibility to enter into strategic partnerships with foreign players through an increased foreign equity limit of up to 70% and will be required to maintain a paid-up capital of at least USD 1 billion; and
- (b) Insurance companies and takaful operators are given greater flexibility to tie-up with foreign partners through an increased foreign equity of up to 70%.
- (c) However, a company whose equity participation has been previously approved will not be required to restructure its equity at any time as long as the company continues to comply with the original approval conditions and retains the original features of the project.

We take note that in the [Malaysia-Australia FTA](#), for the financial services sector, Australian institutions were granted the possibility of Equity holdings up to 70% in insurance companies and investment banks; ☐ Equity holdings up to 100% in investment advisory companies and up to 70% in both corporate finance advisory and financial planning companies; and A higher number of Australian expatriates with senior managerial and specialist skills is offered for the banking, insurance and capital market sub-sectors.

Distributive Trade Sector

Distributive trade (which is of course a services sector) is regulated by the Ministry of Domestic Trade and Cost of Living and comprises of all linkage activities that channel goods and services from the supply chains to intermediaries for the purpose of resale or to the final buyers.¹⁴ Foreign investment and participation in the distributive trade sector is welcomed by the Malaysian Government and regulated by the Domestic Trade Division of MDTCA in line with the [2020 Guidelines for Foreign Participation in Distributive Trade](#) in Malaysia (published by [Malaysian Investment & Development Authority – MIDA](#)).

MDTCA encourages and recommends that all foreign business operators engaged in distributive trade services obtain prior approval from MDTCA before commencing operations in Malaysia. According to MDTCA, all companies with foreign investors involved in distributive trade must comply to the following recommendations:

- (a) appoint Bumiputera or Malay director(s);
- (b) employ Malaysian personnel at all levels particularly for the management positions and above;
- (c) have only 15% of the total workforce consist of low skilled foreign workers;
- (d) develop and provide transparent standard operating procedures for local suppliers to market their goods;
- (e) encourage Bumiputera or Malay participation in the distributive trade sector;
- (f) employ at least 1% of the total workforce of persons with disabilities in large formats;
- (g) increase the utilisation of local airports and ports in the export and import of goods;
- (h) encourage utilisation of local professional services which are available in Malaysia;
- (i) submit audited annual financial reports to MDTCA;
- (j) support the initiatives and the agenda for sustainable development as provided under the Sustainable Development Goals by the Government of Malaysia; and
- (k) comply with all the by-laws and regulations of the local authorities.

Furthermore, the efforts made by the [Malaysian Investment Development Authority \(MIDA\)](#) for the purpose of providing investors with relevant information on establishing projects in the identified services sub-sectors in Malaysia are much appreciated:

1. Booklet 3 – [Research & Development \(R&D\) Services](#) (up to 100%)

2. Booklet 4 – Logistics Services Ordinary Warehouse: no equity condition; Public Bonded Warehouse: A company must have at least 30 per cent Bumiputera equity; Private Bonded Warehouse: no equity condition
3. Booklet 5 – Specialised Technical Support Services (up to 100%)
4. Booklet 6 – Information and Communication Technology Services
5. Booklet 7 – Environmental Management Services (incorporation as Malaysian company required)
6. Booklet 8 – Distributive Trade
7. Booklet 9 – Tourism and Travel Related Services (much fully liberalised – up to 100%)
8. Booklet 10 – Private Education and Industrial Training Services (incorporation under the Companies Act 2016 (Act 777) & Regulations required)
9. Booklet 11 – Legal Services (foreign law firm no more than 40 percent, of the equity and voting rights and of the total number of lawyers in the International Partnership)
10. Booklet 12 – Accounting, Auditing and Taxation Services (To increase local participation in business, the Government encourages joint ventures between Malaysian and foreign investors).
11. Booklet 13 – Architectural Consultancy Services (The Government encourages joint-ventures between Malaysians and foreign investors to increase local participation in business. See Board of Architects Malaysia website <https://www.lam.gov.my/>).
12. Booklet 14 – Surveying Consultancy Services (Government encourages joint-ventures between Malaysian & foreign investors to increase local participation in business).
13. Booklet 15 – Medical and Healthcare Services (“To increase local participation in business, the Government encourages joint-ventures between Malaysian and foreign investors”. Starting 17th July 2020, the setting up of a new private healthcare facility with foreign equity is subject to approval by Ministry Of Health
14. Booklet 16 – Engineering and Energy Consultancy Services (“To increase local participation in business, the Government encourages joint-ventures between Malaysian and foreign investors”).
15. Booklet 17 – Management Consultancy Services (“The Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business”).
16. Booklet 18 – Market Research Services (“The Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business”).
17. Booklet 19 – Advertising Services (“The Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business”).

It is unclear however, when in the last 8 or 9 sectors, the guidelines say “The Government encourages joint-ventures between Malaysian and foreign investors to increase local participation in business”, whether it is possible for a foreign company to set up business in Malaysia without local partner, and when it chooses to do so, whether there is an equity cap. Clearer information would be welcomed to properly guide the investors.

E. Rules on State-Owned Enterprises (SOEs)

The FTA 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. 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.

F. Public procurement

The question of public procurement should benefit from particular attention in the FTA negotiations since Malaysia is not a member of the Government Procurement Agreement (GPA). We take note that Malaysia is an observer in the GPA since July 2012, but is not currently negotiating its accession to the GPA.

In 2023, Malaysia expenditure in public procurement reached \$21 Billion, corresponding to 5.3% of the country's GDP (\$398 Billion). However, we understand that the bulk of public procurement in Malaysia (by value) is done by the States and not the Federal Government. It is therefore essential that any provisions in this area are applied to the States as well as the Federal Government.

To our knowledge there is no proper access for European services companies to participate to call of tenders, except eventually to projects where Malaysian companies do not have the sufficient know-how and expertise.

We understand that European companies can generally participate in public procurement and calls for tenders in Malaysia, especially if the project involves international funding (e.g., World Bank, ADB) or if local expertise is not available, but there are specific rules and considerations they must be aware of.

The "Open Tenders" are typically more accessible to foreign companies, particularly for large-scale or specialized projects, such as infrastructure, technology, or energy. Some projects are restricted to Malaysian companies, particularly those related to national interests, Bumiputera (indigenous) participation, or sectors prioritized under Malaysia's local procurement policies. Many tenders require partnerships or joint ventures with Malaysian companies. This is common in industries where local knowledge or compliance with Bumiputera policies is required. Foreign companies might need to register with relevant Malaysian authorities, such as the Ministry of Finance (MOF) or the Construction Industry Development Board (CIDB), depending on the industry.

We recognise that some key sectors are open to foreign participation like Technology and innovation; Infrastructure and construction; Renewable energy; and Specialized manufacturing or equipment supply. However, there are many challenges. Many tenders have requirements for local content or subcontracting to Malaysian firms. The bureaucracy is burdensome and navigating the tender process can be complex, requiring local expertise and familiarity with Malaysian regulations.

The FTA negotiations are a good occasion to bind these existing opportunities and to further open up the Malaysian market. 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 Malaysian 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. (often labelled under "works" in trade agreements). Furthermore, 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.

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.

G. Digital Trade Chapter

The digitalisation of the economy is a major driver of economic development and an important factor for a possible integration of Malaysian 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. It is therefore important to ensure that the FTA will determine legally binding commitments to ensure smooth and secure transactions.

Contrary to many other sectors (see OECD STRI), Malaysia has an excellent score in the Digital Services Trade Restrictiveness Index (See [here](#)), raking in the top 5 of the Asia-Pacific countries, after Australia, Japan, Korea and Philippines, and before Thailand, New-Zealand and Israel... and with a better score than many EU countries. Malaysia score is 0.087, with excellent value for infrastructure and payment system, and very good rate for intellectual property rights and “electronic transactions”.

We welcome that fact that Malaysia is among the 92 countries that have participated to the negotiations of the Joint Statement Initiative on E-Commerce in the WTO, and is among the 72 countries that have endorsed the finalised text that has been tabled to the General Council of the WTO mid-December 2024 for incorporation into the WTO core set of global rules as annex 4 of the WTO agreement. We also take note that Malaysia is implementing the CP-TPP rules, including the provisions of Chapter 14 on electronic commerce that contains ambitious rules on digital trade.

Therefore, ESF calls upon the European negotiators to negotiate state of the art rules in that domain.

A. Digital Services

A Digital Chapter of the EU – Malaysia 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 on a permanent basis. Given that this requirement has already been taken by Malaysia in the CP-TPP, this should be easily negotiated. 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.

We take note that, in a significant move to strengthen data protection, **Malaysia passed the Personal Data Protection (Amendment) Bill on July 31, 2024**. This landmark reform introduces substantial changes to the Personal Data Protection Act (PDPA) 2010, aligning Malaysia's data privacy laws more closely with international standards like the EU GDPR. For businesses, both domestic and international, proactive compliance is essential to avoid hefty penalties and to build trust with customers and partners. This reform is more than welcomed by the European Services Forum, and its content should be incorporated accordingly into the FTA digital trade chapter.

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.

B. 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 Malaysia in telecom services is of low level, and Malaysia 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.), although committed to some of these requirements through its own annex as additional commitment of its GATS Schedule, entitled "Pro-competition regulatory principle in respect of interconnection arrangement and competition". The full requirements set in the Basic Telecommunication Reference Paper will need to be established in the bilateral agreement.

H. 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. The official and national language in Malaysia is **Malay, or Bahasa Malaysia**. The second official language of Malaysia is English, which is also one of the most commonly spoken languages. It is appreciated that **English** is commonly used by the government, and most of the regulation and sub-level government rules are available in English. Also important to note that the law of Malaysia is mainly based on the common law legal system that means that English law forms part of the laws of Malaysia.

ESF deplores the fact that Malaysia was not a participating country to the Joint Statement Initiative on Services Domestic Regulation that was concluded in December 2021 at the 12th WTO Ministerial Conference. ESF urges the Malaysia government to consider joining the JSI and incorporate the

disciplines included in the “[Reference paper on Services Domestic Regulation](#)” in its core of national laws. We urge the EU Negotiators to ensure that the content of the disciplines on domestic regulation will be an integral part of the FTA with Malaysia. 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 should 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.

I. [Customs and Trade Facilitation](#)

The FTA should ensure that customs simplification and trade facilitation measures are included in the most optimal manner. Transport, express delivery and logistic companies and customs agents (which are all services providers) register a list of problems with procedures and requirements for imports, exports and/or transit in Malaysia that the FTA negotiations should aim at improving. Some of the challenges currently being faced include:

1) The customs clearance system

The customs clearance system is not fully automated and still requires some manual procedures, which adds to complexities and time. For example, businesses making customs declarations are still required to submit physical copy of trade documents such as import licenses to Customs office for verification. While we recognise the Royal Malaysian Customs Department (RMCD)’s efforts to facilitate paperless trade by deploying the Malaysian Customs Import/Export Document System (MyCIEDS) to allow the electronic submission and verification of trade documents for formal entry shipments, it is critical that such new digital systems are connected and integrated with other

customs declaration systems so that businesses would only need to go through one single platform or interface to submit their customs declaration with any accompanying trade document for customs clearance.

2) Duty and/or tax exemptions for imported de minimis goods

Duty and/or tax exemptions for imported de minimis goods valued MYR500 or below do not apply for shipments imported via land. This disparity raises the cost of trade for businesses importing goods into Malaysia through Singapore or Thailand, especially for Malaysian manufacturers and SMEs leveraging on Singapore Changi International Airport and Bangkok Suvarnabhumi Airport together with Kuala Lumpur International Airport and other airports in Malaysia to ensure optimal time-in-transit and flexibility for their shipping needs. With the recent launch of the Johor-Singapore Special Economic Zone (JS-SEZ), we call for Malaysia to further facilitate the cross-border movement of ground cargo and consider applying de minimis exemptions for low value goods imported into the country via land.

3) Free Zone Charges per Declaration

Logistics providers, manufacturers and warehouse operators operating in Free Zones are charged RM5 (EUR1) per approved formal customs declaration (Import, Export, Transshipment) since 2011. The Free Zone Regulations Section 8A states: "Where the Minister so directs, a free zone charge shall be payable by any person or his agent to the Authority in respect of every approved declaration made under the regulations". Malaysia Airport Berhad (MAB), as the Free Zone Authority charges this.

However, the rationale for the charge is unclear. The authorities indicated this was for enhanced security, however there had been no change to the security infrastructure features of the free zone including the perimeter fence, entry/exit checkpoints etc. In addition, companies in the Zone are already leasing from MAB (the landlord) and the rental contract covers security and maintenance of the area in its scope. The charge effectively acts as an additional tax on import and export. Logistics operators have had a significant cost impact, raising logistics cost and border efficiency. This also impacts e-commerce players and express delivery companies unfairly as opposed to traditional freight forwarders as they clear high volume low value shipments.

This issue was raised by the EU-ASEAN Business Council (EUABC) to the Malaysian government multiple times, but to no avail). In addition, the ASEAN Trade In Goods Agreement Article 7 states that: *"Each Member State shall ensure, in accordance with Article VIII.1 of GATT 1994, that all fees and charges of whatever character (other than import or export duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III.2 of GATT 1994, and antidumping and countervailing duties) imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes."* Also WTO Article VIII:1(a) states that *"All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes."*

EUABC has repeatedly sought clarification that if the services rendered were already covered in the lease agreement of FCZ operators, how would the additional FCZ charge fulfil these Articles in the

Agreements which Malaysia has committed to, but has not, to date received any acceptable nor justifiable response. ESF joins EUABC in requiring the clarification as described here above.

4) Civil Aviation Authority Screening Fees

The Civil Aviation Authority of Malaysia (CAAM) requires air cargo operators to perform security screening for all international shipments transiting through Malaysia. This screening requirement may also apply for transit and transfer cargoes even if they have been screened at the country of origin in compliance with international aviation security standards and are within secured networks with end-to-end visibility. CAAM is charging for the screening of all air cargo at a rate of RM0.02/kg. Logistics providers operating in the airport fully own, manage the screening operations with Certified Aviation Security personnel and also maintain the screening machines installed within their own facilities. This is to comply with the necessary regulatory and security requirements as required by CAAM, who also certifies the machines. Beyond this there is minimal ongoing involvement by the authority in the operational aspects of the screening process. In this regard, the introduction of a screening charge—despite the limited role played by CAAM—places an undue financial burden on industry players and is unclear exactly what this charge is for. This further compounds the overall cost of doing business and acts as a tax on the import and export of goods. Exempting qualified air cargo operators from re-screening transit and transfer cargoes will ensure seamless processing and transfer of such cargoes to their connecting flight in Malaysia, allowing cargo airlines to invest in major air hubs for transit and transfer cargoes that would strengthen Malaysia's position as a regional gateway for international shipments. ESF calls for the cancellation of this unjustified screening charge.

J. Other Horizontal issues

The following list of general issues, in addition to those highlighted elsewhere, need addressing or removal:

- (a) Restrictions on acquisitions of Malaysian companies;
- (b) Restrictions on the purchase of land, property and real estate;
- (c) Obligation to enter the market through joint venture;
- (d) Limitations on capital ownership (at least 51% ownership to foreign investors is required, hence control of the company, a necessary condition to trigger real investment that would initiate transfer of know-how, management expertise and the creation of local growth and local jobs);
- (e) Limitations on licenses allotted to foreign companies;
- (f) Restrictions on branching;
- (g) Lack of National Treatment;
- (h) Local employment requirements (when the percentage is too high, it can block foreign companies that usually start with small operations);
- (i) Long and burdensome administrative procedures, including for customs clearance, licensing and goods in transit (e.g. value-added logistics performed in free trade zones);
- (j) Corruption and transparency (PEMUDA estimates the cost of corruption in inefficiencies at RM10 billion a year).

III. SERVICES SECTOR SPECIFIC ISSUES

In all the services sectors listed here below, ESF calls upon the EU negotiators to try to obtain systematically at least the same treatment that Malaysia granted to its trading partners in the CP-TPP or in any other better FTAs.

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 Malaysia 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 EBOPS¹⁰) amounted to €983 million in 2022 (19.4% of total Malaysia exports to the EU) and hence require the granting of legal security to the EU importers.

1) Professional Services

Malaysia's professional services sector, as one of the sectors identified for further growth in government programmes, has been relatively closed to foreign competition by comparison with other sectors of the economy. The Government has been reviewing the domestic laws and regulations in an effort to further liberalise this sector. The ASEAN Free Trade Area offers more market openings within the region, enabling Malaysian professionals to be more involved in professional services in neighbouring countries. A number of MRAs have been also been signed. European service suppliers need, at a minimum, treatment on par with these other agreements, and it is highly desirable that Malaysia commits further as an outcome of the FTA negotiations.

a) Legal Services (CPC 861)

The practice of Malaysian law is restricted to Malaysian citizens or permanent residents who have served an apprenticeship with a Malaysian lawyer, are competent in Bahasa Malaysian, and have been admitted to the Malaysian Bar. See further details on the conditions to practice legal services in Malaysia [here](#).

Under Malaysia's GATS commitments, there is no commitment for practice of third country law. Furthermore, in its GATS Schedule related to Mode 3, foreign lawyers can practise in Malaysia only through a corporation incorporated in the Federal Territory of Labuan and are allowed to supply their services only to offshore corporations established in Labuan, which restricts access to a very small clientele.

So far, to our knowledge, no further commitments have been made in Malaysia's bilateral and regional trade agreements (see [here Services Schedule of Malaysia-Australia FTA](#)).

¹⁰ Extended Balance of Payments Services classification (EBOPS 2010) – See [Eurostat International trade in services \(since 2010\) \(BPM6\)](#)

As of today, a legal firm registered with The Bar Council of Malaysia is required to maintain a 100 per cent Malaysian equity ownership.

The equity and voting rights of International Partnerships, QFLFs, and foreign lawyers employed by Malaysian law firms shall be as determined by the Selection Committee. This will be determined by reference to a business plan that must be submitted as part of the application process.

- **International Partnerships (IP)**

ESF would like to highlight that International Partnerships (IP) provides for the Malaysian partner to hold at least 60% equity and voting rights as compared to offering a mere 40% stake to Foreign Law Firms (FLFs). This removes the incentive for the Foreign Law Firms to expand and invest in their business in Malaysia. Thereby, reflecting the lack of attractiveness of Malaysian legal market under current regulations.

- **Qualified Foreign Law Firm (QFLF)**

- Under the QFLF licensing structure, we would like to draw the attention on the mandatory Islamic Finance (IF) expertise requirement by FLFs.

We understand that there is (almost) no demand for work around (IF). Most FLFs may not necessarily have the IF expertise or would like this pre-condition to be reconsidered for a QFLF licence. This mandatory condition for QFLF was originally introduced by the Bank of Negara (Central Bank of Malaysia) to convert the jurisdiction into a regional centre for Islamic Finance. Such a pre-condition (IF) is not even practiced in Islamic countries including the UAE.

FLFs are not permitted to practise Malaysian Law in the country – although interestingly 90% of Islamic Finance (IF) activity is Malaysian Law governed. Based on this, even if a FLF would have liked to practise IF (if there was a demand for it), still they cannot practise (IF) due to the constraints attached to the QFLF licence.

- The number of Malaysian lawyers in a QFLF shall not be less than 30 percent of the total number of lawyers in that firm; and
- The number of foreign lawyers employed by a Malaysian law firm shall not be more than 30 per cent of the total number of lawyers in that firm.

Objectives:

- (a) Allow EU lawyers/firms to provide consultancy on law of jurisdiction, including the whole territory of Malaysia, where the service supplier or its personnel are qualified lawyers.
- (b) Remove Mode 3 territorial restrictions for EU legal service suppliers and recipients of services in order to permit foreign lawyers to practise anywhere in Malaysia, to employ and enter into partnership with Malaysian lawyers and to enter into the employment of a Malaysian lawyer or law firm in a softer manner than today.

We understand that Malaysia has the potential to become a regional hub for legal services in ASEAN (owing to its common law heritage from English courts, cost advantage, excellent lawyers with English-speaking proficiency), if it could work towards removing the above legal services trade barriers, to create opportunities for foreign participation in the Malaysian legal sector, which currently remains limited.

b) Accounting, Auditing and Bookkeeping Services (CPC 862) & Taxation Services (CPC 863)

One can find information on how Accounting, Auditing and Taxation Services can be practiced today in Malaysia [here](#).

Under Malaysia's GATS commitments, foreign accounting firms may provide accounting and taxation services in Malaysia, but only through a locally registered partnership with Malaysian accountants or Malaysian accounting firms where the aggregate foreign shares must not exceed 30%. The Government has been considering increasing foreign equity participation in accounting and taxation services under the Doha Round negotiations and European Service suppliers would benefit from this being taken up in the FTA.

So far, to our knowledge, no further commitments have been made in Malaysia's bilateral and regional trade agreements (see [here](#) Services Schedule of Malaysia-Australia FTA).

Objectives:

- (a) Remove the Mode 3 obligation to enter into a limited partnership (30%) with Malaysian accountants or accounting firms, or at least obtain the possibility of a majority ownership (+50% equity share or voting rights).
- (b) Remove the Mode 4 residence requirement for registration of professionals.

c) [Architectural Services \(CPC 8671\)](#)

The licensing requirement and other employment requirements to be fulfilled by architectural services providers can be found [here](#).

The Malaysian schedule does not list restrictions on the form of commercial presence but does restrict the supply of services to natural persons. Foreigners architects are subject to temporary registration for one year granted by the Board of Architects Malaysia and may be renewed as it deems fit. Foreign architects may hold up to 30% shares (not listed in schedule) in a multidisciplinary consultancy firm providing architectural, engineering, and/or quantity surveying services in Malaysia, and at least 10% of the total share of the multidisciplinary firm. Some softening of these rules has been granted in the CP-TPP (only the majority of the directors of such a firm shall be "registered professionals").

Objectives:

- (a) Remove the requirement for authentication by a registered architect in Malaysia.
- (b) Remove restrictions to commercial presence and commit Mode 3 fully *i.e.* no restrictions.
- (c) Allow the possibility to obtain a "temporary registration" for a period longer than one year, or for a more systematic renewal, so as to grant the business longer predictability.
- (d) Remove the Mode 4 restriction that allows foreign architects to be approved for work only if the project is wholly funded by a foreign government or implemented under bilateral agreements.
- (e) Improve commitments in Urban Planning and Landscape Architectural Services (CPC 8674).

d) [Engineering Services \(CPC 8672\) & Integrated Engineering Services \(CPC 8673\)](#)

The licensing requirement and other employment requirements to be fulfilled by Engineering and Energy Consultancy Services in Malaysia can be found [here](#). The Government had announced on 7 October 2011 that engineering services is one of the 17 services sub-sectors that would be liberalised. It is however very difficult to see the effect of this "liberalisation". The regulation is very complex, and it seems that, like for other professional services, much is done to dissuade foreign engineers to come to Malaysia, although the Engineering Services & Integrated Engineering Services are important to contribute to the innovation of the economy

While not specified in the GATS schedule, foreign engineering firms must form joint ventures in a specific project and obtain approval from The Board of Engineers Malaysia (BEM) before they can operate in Malaysia. Up to 30% foreign equity is allowed in a company providing multi-disciplinary practices. Only foreign professionals participating as temporary engineers are allowed on a job by job basis. The certificate of registration for a Professional Engineer with Practising Certificate expires on 31 December every year and yearly renewal is mandatory.

In practise the local regulations make it impossible for foreign companies to own a Malaysian company engaged in engineering consultancy, such as the ship design business. In the GATS schedule, there is a further restriction for “integrated engineering services” (CPC 8673), as they can operate in Malaysia “Only through a representative office, regional office or locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both for the purpose of services contract awarded in Malaysia”. It is not clear whether these conditions have changed since.

The rules are set forth in the Registration of Engineers Act 1967 ("Engineers Act"), where the BEM is the statutory authority responsible for the enforcement of the Engineers Act. Under this Act it is provided that only Professional Engineers can carry out engineering consultancy practice. Only citizens or permanent residents of Malaysia may qualify as Professional Engineers and no person shall be registered as a Professional Engineer unless they are at the time of application, and have been for a period of not less than 6 months prior to the date of application, residing in Malaysia.

The Engineers Act provides that a company may practise as an engineering consultancy practice, but it has to be registered with the BEM and in order to qualify for registration it must satisfy the following:

- i. Its board must be composed by Professional Engineers; and
- ii. Its shares are held by members of the board of directors solely or with any other persons who are Professional Engineers.

The BEM has further clarified the rules as follows:

- i. Foreign and local engineers cannot set up a joint venture to practise as consulting engineers because foreign engineers are not allowed to be directors and shareholders of such company; and
- ii. Foreign and local engineers could work in association with each other on a project by project basis, but the local consultants must be the lead consultant.

Similar limitations are imposed by the Engineers Act to those who wish to carry out multiple tasks within one company, such as providing professional engineering services, architectural consultancy services and/or quantity surveying services.

Objectives:

- (a) Remove the requirement for authentication by a registered professional engineer in Malaysia.
- (b) Remove director and shareholder restrictions which prevent foreign companies from owning a Malaysian company engaged in engineering consultancy.
- (c) Remove restrictions to commercial presence and commit Mode 3 fully *i.e.* no restrictions.
- (d) Allow the possibility to obtain a “certificate of registration” for a period longer than one year, or for a more systematic renewal, so as to grant the business longer predictability.

- (e) On Mode 4, ensure that temporary registration allows the duration of stay to exceed one year if the contract requires this for completion.

2) Computer and Related Services

In the GATS schedule, this sector (CPC841-842-844) is open for mode 1 and 2, which is important at a time of the digitalisation of the economy. However, there is a severe restriction as regards to mode 3: “Only through a locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and the aggregate foreign shareholding in the joint-venture corporation shall not exceed 30 per cent”.

This sector has benefited from the April 2009 unilateral liberalisation and builds on Malaysia’s revised GATS offer (adding Maintenance and repair services and Other services), which was encouraging in this sector. While it is important that Mode 3, in addition to Modes 1 and 2, are committed and bound without limitation in the sub-sectors which have been liberalised, ESF would like to see this important sector opened further.

These sectors (CPC 841, 842, 843, 844, 845 & 849) have been fully committed in the Malaysia-Australia and in the CP-TPP, and ESF urge therefore the EU negotiators to obtain full liberalisation for EU providers as well.

Objectives:

Malaysia should extend its commitments to the whole Computer and Related Services sector (CPC 84) on a 2-digit-level. This helps avoid uncertainty as to which activities are considered a computer service.

3) Other Business Services

It is encouraging that other business services have been included in the April 2009 liberalisation, including technical testing and analysis services, Management consulting services and Rental/leasing services without operators. However, Malaysia must bind this liberalisation and go far further to unshackle this sector.

Objectives:

- (a) Remove limitations to Mode 3 *i.e.* eliminate establishment limitations and equity caps and minimum Bumiputera shareholding requirements.
- (b) Remove Mode 1 restrictions in advertising services.
- (c) Commit a broader range of subsectors, particularly in Mode 3, but also in Modes 1 and 2 (Services related to management consulting & to Scientific and technical consulting, Booklet 18: Market Research Services; Security services, Building cleaning services, Maintenance and repair of equipment, Real estate services, Placement and supply services of personnel, Photographic, Printing and publishing, Packaging services, as well as widening existing commitments for R&D).

B. POSTAL AND EXPRESS COURIER SERVICES

Malaysia’s total lack of commitments on postal and courier services under the Uruguay Round and the absence of offered commitments in the DDA revised GATS offer reduces legal certainty for operators and creates a less stable environment. Malaysia did not take any commitments with Australia either in that those sectors. It is not clear to our understanding whether these sectors have been committed in the CP-TPP, as not restriction has been listed, though usually UPU

requirement and other specific reservations and exceptions are mentioned in Schedule of Commitments. ESF would like to see commitments in this important infrastructural service area, especially in courier services. These commitments should also address the specific *Bumiputera* requirements of 51% equity ownership for companies holding a customs clearance license, as this affects the operations of express delivery services companies. The *Bumiputera* equity requirement also prevents logistics companies in these sectors from having access to government incentive schemes such as the Malaysian Investment Development Authority (MIDA)'s Integrated Logistics Services (ILS) tax incentives for business expansion and investment into the country that would be critical in supporting Malaysia's supply chain connectivity and adoption of Industry 4.0 technologies within logistics. In addition, Malaysia's licensing and other administrative requirements are excessive and onerous, particularly for foreign operators trying to obtain a trucking license.

We commend Malaysia's initiative to allow eligible logistics companies to have 100% foreign equity ownership under the International Integrated Logistics Services (IILS) scheme and call for Malaysia to ensure that businesses with the IILS status remain exempted from any *Bumiputera* requirement.

Objectives:

- a) Express delivery services: Make full commitments in modes 1-3 for all items.
- b) Postal services:
 - a. Make full market access and national commitments in modes 1-3 for parcels, addressed press products, handling of non-addressed items and document exchange.
 - b. Make commitments in modes 1-3 for addressed written communications and registered or insured mail.
- c) Make full commitments in modes 1-3 for customs brokerage and related services.
- d) Create a level playing field for foreign and domestic economic operators for fees, licenses (e.g. trucking licenses) and other administrative requirements.

C. TELECOMMUNICATION SERVICES

Malaysia's GATS commitments specified that foreign participation of up to 30% is allowed in telecommunications services. In its DDA revised offer, Malaysia sought to bind its Communications and Multimedia Act 1998 into the GATS. The offer was positive in that it addresses current requirements to own network facilities in order to provide basic services by creating a new licencing category of application service provider, which allows use of licenced facilities. However, foreign participation in application service providers was limited to 49%. Foreign ownership in companies or joint ventures involved in network facility and service provision remained limited to 30%. Competition in telecommunications (particularly in fixed-line services) is limited. The efficiency of the telecom sector is affected by, *inter alia*, the equity cap on foreign investment, the requirement that companies must have a *bumiputera* equity participation of 30%, and the uncertain and lengthy procedure for obtaining a licence. Application service provider licences are available for value-added services, but operators must still use channels or lines provided by licensed operators. These issues manifest in practical terms in a lack of investment in modern technology which makes the country less attractive for operating a business in many sectors, manufacturing and services alike.

The further development of the Malaysian ICT market is critically depending on sufficient spectrum resources to provide ICT services to all its citizens. In this regard Malaysia should commit itself to comply with administrative and regulatory principles of transparency and non-discrimination when assigning spectrum – in line with international best practices:

“Use of Spectrum: Governments should maximize the availability and use of spectrum by working to ensure that it is managed effectively and efficiently, and, where appropriate, in accordance with applicable International Telecommunication Union Radio communication Sector (ITU-R) recommendations. The allocation of spectrum for commercial purposes should be carried out in an objective, timely, transparent, and non-discriminatory manner, with the aim of fostering competition and innovation. Governments are encouraged to empower regulators with impartial, market-oriented means, including auctions, to assign terrestrial spectrum to commercial users.”

While it is welcomed that Malaysia incorporated some of the disciplines of the Reference Paper directly into its schedule in the UR (see here), ESF is disappointed with the omissions and changes, particularly regarding competitive safeguards, interconnection and universal service. In the EU FTA, Malaysia should sign up to content and disciplines of the Reference Paper in its entirety.

Objectives:

- (a) Commit to compliance with administrative and regulatory principles of transparency and non-discrimination when assigning spectrum – in line with international best practices.
- (b) Remove the requirement that basic services can only be provided on a facilities-basis for all Modes.
- (c) Remove for all Modes the provision that value-added services must be provided from channels or lines obtained only from licensed network operators.
- (d) For basic services remove Mode 3 restriction that stipulates that operation can only be done through acquisition of shares of existing licensed public telecommunications operators.
- (e) Remove all foreign equity caps.
- (f) Remove obligations that force Joint ventures or share acquisitions with Malaysian individuals/corporations/operators to gain commercial presence in value-added services (and Telex and telegraph services).
- (g) Remove prohibition on resale for value-added services companies.
- (h) Commit fully to the disciplines of the WTO Reference paper of the Basic Telecommunications negotiations.

We take note that in the Malaysia FTA with Australia, Malaysia's offers cover commitments in the Telecommunication sector, Up to 100% foreign equity holdings allowed depending on the type of licences: for Application Service Provider (ASP) licence, there is no limit in terms of Australian ownership; and for Network Service Provider (NSP) and Network Facilities Provider (NFP) licences, Australian can own up to 70%. These commitments should also be negotiated by the EU.

D. CONSTRUCTION AND RELATED ENGINEERING SERVICES

Scheduled commitments in this sector are weak. The revised DDA GATS offer would have allowed for foreign-owned and non-locally incorporated construction companies to carry out construction projects in Malaysia, however the circumstances where this would have been possible are very restricted and national treatment is virtually entirely unbound. Essentially such projects must either be foreign-funded or require expertise not held by Malaysian firms. This latter part of the Revised offer has been granted to Australia, so the EU should also negotiate the same, and if possible to improve it.

Objectives:

- (a) Remove Mode 3 representational/regional office and joint-venture requirements, as well as 30% aggregate foreign shareholding ceiling, or at least to bring it to 49% as granted to Australia, but obtaining 51% or 50% + one voting right would be appreciated.

(b) Extend commitments to other related sub-sectors.

E. DISTRIBUTION SERVICES

Distributive traders include wholesalers, retailers, franchise practitioners, direct sellers, suppliers who channel their goods in the domestic market, and commission agents or other representatives including those of international trading companies.

Distribution services are vital for the competitiveness of a country and it is extremely disappointing that Malaysia not only made no commitments in the Uruguay Round but also offered no commitments in its revised GATS offer. Malaysia has not taken any commitments in that sector with Australia neither in 2012.

The applied situation is restrictive as described in Section II.D here above and in the [Guidelines issued by MIDA in 2020](#). Furthermore, foreign business operators engaged in the distributive trade services in Malaysia are subject to the [Guidelines on Foreign Participation in the Distributive Trade Services issued in 2022 by the Ministry of Domestic Trade and Consumer Affairs \(KPDNHEP\)](#).

All applications involving foreign investment, including opening of new branches, relocation, expansion of existing branches/outlets, and buying over/taking over of outlets of other operators, require approval from the Committee on Distributive Trade. All applicants must also obtain approval from the Committee before purchasing any land, premises or assets to operate distribution services. The restrictions on store size, which are linked to the population area, ignore basic business principles and introduce discrimination towards foreign operators.

Furthermore, companies must be locally incorporated, with 30% of equity reserved for *bumiputera*. Minimum capital investment requirements vary according to the type of distribution service. An equity restriction of 30% applies to foreign investors in direct selling business. Department stores, supermarkets, and shopping malls must reserve 30% of the shelf space for products made by Malaysian SMEs. These restrictions and reservations have been under review by the Government, and we urge the EU to utilise this FTA to bring about ambitious reform and commitments.

Objectives:

- (a) Commit fully *i.e.* with no restrictions and caps, in Modes 1-3 on Commission agents' services, Wholesale trade services, Retailing services and Franchising.
- (b) Ensure that the relevant regulatory framework be non-discriminatory vis-à-vis foreign operators.

F. EDUCATION SERVICES

We take note that in the Malaysia FTA with Australia, Malaysia's offers cover commitments in Education services, up to 70% foreign equity holdings allowed depending on the sub sector; and for private higher education, the foreign equity holdings were allowed up to 100% by 2015. Similar treatment should be granted to the EU.

G. ENVIRONMENTAL SERVICES

ESF takes note of the commitments of both EU and Malaysia to include a chapter in the FTA on Trade and Sustainable Development that will ensure that closer economic relations between the EU and Malaysia 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 Commission in other trade negotiations provides a useful working basis.

Malaysia's lack of GATS commitments (or offered DDA commitments) in this sector and the various sub-sectors is very disappointing in the view of ESF. Areas such as Waste and water management services, Services related to new energy, *etc...* are engines for new growth and should be opened by Malaysia to encourage a sustainable development of its economy.

ESF takes note that Malaysia took some commitments in the framework of its FTA with Malaysia on environmental services sectors and invites the EU negotiators to at least obtain the same commitments. We welcome in particular that mode 1 and mode 2 have been fully committed. Mode 3 commitment read as follows: "Only through a locally incorporated joint-venture with Malaysia individuals or Malaysia-control corporation or both and aggregate foreign shareholdings shall not exceed 51 per cent". This would allow European potential investors to control the company (which is better than a minority shareholding that is never appealing to EU investors), but as mentioned earlier in this paper, the preferred way to do business for services companies is to fully own their operations. We would therefore ask for the full removal of mode 3 restrictions. This would unleash investment in these sectors that favour green development.

Objectives:

Malaysia must consider full commitments in all sub-sectors of environmental services, as defined in the European classification proposal in the framework of the GATS negotiations.

H. FINANCIAL SERVICES

Malaysia's commitments under the Uruguay Round did not produce much liberalisation but did at least follow the classification of the Financial Services Annex. The DDA offer does not improve much. In the horizontal section there was a slight improvement under Mode 4 – for banks and insurance – but crucially Mode 3 entry remains limited to 30% stake in Malaysian banks with further National Treatment restrictions on these investments. Most of the changes in the revised offer of 31 January 2006 were cosmetic or clarification. There are some minor improvements in banking – in mode 2 and for merchant banks in mode 3 for *deposits*; increasing credit provision limits in mode 3 for *lending*; allowing limited mode 3 access for *financial leasing*. *Stockbroking* was also opened slightly in Mode 3 – foreign shareholding limits are increased from 30% to 49%. In *reinsurance and retrocession* (life and non-life), Malaysia committed in the Uruguay Round to provide new licenses, but the new offer does not repeat this promise. ESF would like to see more commercially meaningful commitments in financial services from Malaysia.

In line with the objective of developing a diversified and efficient financial services sector, under the Financial Sector Master Plan (FSMP), Malaysia announced measures in April 2009 to relax restriction on foreign companies. Despite the encouraging signs, much more needs to be achieved.

In the framework of the ASEAN Framework Agreement on Services (AFAS), which was concluded in April 2021, Malaysia only permits acquisitions of existing banks up to 30%, with no new banking licences, although it is more liberal in terms of insurance companies, which are subject to a national interest clause. It is unclear whether liberalisation has taken place in Malaysia through its implementation of its CP-TPP commitments, as one cannot find restrictions on financial services in

Annex I or II, but it would be surprising that CP-TPP partners will get better treatment than the ASEAN partners.

Off-shore regimes and geographical limitations applied to foreign companies are archaic regulatory tools. Malaysia should remove current restrictions on branching, abolish non-prudential authorisation requirements and most importantly eliminate the restrictive foreign equity caps. Off-shore regimes and geographical limitations to do business applied to foreign companies should also be removed. The country should undertake liberalisation measures in the auxiliary financial services of both banking and insurance. Additionally, Marine, Aviation and Transport (MAT) insurance should be liberalised (mode 1 and 3) and the legislation for the provision and transfer of data and information should be modified.

1) Insurance

Objectives:

- (a) Remove restrictions on Mode 3 foreign equity caps or at least get the 70% cap obtained by Australia for direct insurance.
- (b) Remove restrictions on branching and abolish non-prudential authorisation requirements.
- (c) Remove restrictions on the provision of reinsurance in Modes 1-2 and abolish preferential treatment of licensed reinsurers. Outward reinsurance is permitted only if local capacity is not available.
- (d) Remove restrictions on the provision of Marine, Aviation and Transport (MAT) insurance in Modes 1-2.
- (e) Reform legislation to allow for data and information transfer.

2) Banking

Objectives:

- (a) Remove restrictions on Mode 3 foreign equity caps.
- (b) Remove restrictions on branching and abolish non-prudential authorisation requirements.
- (c) Remove limitations relating to off-shore and geographical specifics that apply to foreign companies.
- (d) Liberalise the auxiliary services in Marine, Aviation and Transport (MAT) insurance in Modes 1-3.
- (e) Reform legislation to allow for data and information transfer.

3) Securities and Asset Management

Objectives:

- (a) Bind existing applied levels of liberalisation.
- (b) For Mode 1, foreign suppliers should be exempted from authorisation requirements in certain circumstances, such as: where the investor is sophisticated (defined in local law) and need not be covered by securities laws in certain circumstances; where supplier well-regulated in home jurisdiction; where account is taken of how actively services are marketed in local jurisdiction; and whether there is a local intermediary.
 - Ultimately regulation should be based on considerations relating to the goals of investor protection, efficient capital markets and the appropriate balance between the two.
- (c) Mode 2 should be open to Malaysian consumers who travel abroad.
- (d) In Mode 3, companies should be permitted to establish or acquire commercial presence without equity ceilings and choose the corporate form with no discrimination.

(e) Commitments are required that ensure that all measures relating to financial services are adopted, maintained, and applied in a non-discriminatory, transparent, and efficient manner. In particular, ESF seeks commitments that would require Malaysia to: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations, where practicable; (ii) make publicly available the requirements that suppliers must meet in order to supply a service; and (iii) enforce laws and regulations according to fair and transparent criteria.

I. TOURISM AND TRAVEL RELATED SERVICE

Malaysia's tourism sector was one of the promoted services sectors under the Third Industrial Master Plan 2006-2020. In particular, the National Tourism Policy (2004-10) aimed to develop the tourism industry into one of the country's main sources of income. Malaysia has been adopting measures to further promote the tourism industry, *inter alia*, by removing or reducing foreign equity restrictions, providing tax incentives, and offering loans at low interest rates. From April 2009, 100% foreign equity is allowed in: theme parks, convention and exhibition centres (seating capacity above 5,000); travel agencies and tour operators (for inbound travel only); and hotel and restaurant services (for 4- and 5-star hotels). Tax incentives have been granted to enterprises engaged in "priority sectors", including hotel accommodation and other tourist projects, and the development of "wellness" zones in Port Dickson, Negery Sembilan.

For the Tour Operating & Travel agency businesses (TOBTAB), Companies with foreign equity ownership are only allowed to apply for Inbound & Ticketing licences. Foreign companies must be established tour operating companies in their respective countries. 100 per cent foreign equity ownership is restricted to Inbound licences only. Foreigners are not allowed to provide tourist guide services (as stated in Malaysia CP-TPP Annex I, page 18).

See the current guidelines by the Malaysian authorities for that sector [here](#).

Objectives:

- (a) Bind existing level of liberalisation
- (b) Further remove the limitations in mode 3 in Hotels, Restaurants and Beverages as well as in Tour operator and travel agents' services.

J. TRANSPORT SERVICES

1) Maritime transport services

Malaysia has no GATS commitments outside of maritime transport services and has made no new offer in the DDA talks. Under maritime transport registration of ships as Malaysian is subject to extremely strict requirements and Market access is conditional on participation in a 30% capped joint venture. Mode 3 Market Access in maritime agency services and vessel salvage and re-floating also require joint ventures in which ethnic Malays (Bumitputera) must hold 30% of the shares. We hope that Malaysia will reply favourably to the Requests made on these sectors in the framework of the bilateral negotiations.

In the FTA with Australia, Mode 1 and 2 have been committed for International maritime transportation services, excludes cabotage (CPC 7211, 7212), which is welcomed. Establishment is permitted "only through a representative office, regional office or locally incorporated joint-venture corporation with Malaysian individuals or Malaysian-controlled corporations or both and aggregate

in the joint-venture corporation shall not exceed 51 per cent". Although not ideal, the EU should at least negotiate the same level of commitments. Similarly for the Maritime agency services (CPC 7454) which have been fully committed.

Objectives:

As per the model schedule on maritime transport (developed in Uruguay Round GATS):

- (a) Mode 1 & 2 Market access without restrictions for foreign shipping companies.
- (b) Mode 3 establishment: unrestricted, 100% ownership of commercial representation (own shipping agency, all tasks). Mode 3 is separated in two parts, 3(b) being the aforementioned commercial representation/shipping agency, 3(a) relating to establishment as a shipping company and for registration of vessels; this is of less relevance, also as unlikely to match reciprocal given all sorts of restrictions.

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 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.

K. ENERGY SERVICES

In August 2023, Malaysia has set to roll out the Energy Transition Roadmap to achieve Renewable Energy capacity of 70 percent by 2050. Alongside that, Malaysia also developed a rather ambitious yet optimistic goal to achieve net-zero carbon emissions in the same year. The Economy Ministry estimates that to roll out the Energy Transition Roadmap, the sector would require an investment of RM637 billion.

ESF shares the view that the green energy sector in Malaysia has major potential to attract more foreign direct investment (FDI) to Malaysia as the world moves toward sustainable energy sources, and that the FTA negotiations with the EU is a great opportunity to achieve this goal by providing EU companies in this domain, that have great expertise, good conditions to invest in the country .

List of ESF Members supporting the above Position Paper

- Amadeus
- 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
- CISCO
- Danish Shipping
- DHL Group
- 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
- 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