

Brussels, 25 January 2018

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

Introductory remarks on Australia

The Commonwealth of Australia is both a representative democracy and a constitutional monarchy with Queen Elizabeth II as the country's head of state. Under a federal system, powers are divided between a central government – the Commonwealth federal government – and six individual states – New South Wales, Queensland, South Australia, Tasmania, Victoria and Western Australia –. Australia is a pro-active country in concluding FTAs. It has implemented ten agreements with New-Zealand, both New-Zealand and the Association of South East Asian Nations (ASEAN), Singapore, Thailand, the United States, Chile, Malaysia, Korea, Japan and more recently with China, where the FTA came into force on 20 December 2015. It has also concluded the Trans-Pacific Partnership (TPP) agreement and it is negotiating with six countries or group of countries: India, Indonesia, the Gulf Cooperation Council (GCC), the Pacific islands, together the ten ASEAN countries-Japan-China-the Republic of Korea-India-New Zealand, and the “Really Good Friends of Services” in the framework of the Trade in Services Agreement (TiSA)¹. Especially, Australia has been trading with New-Zealand under a Closer Economic Agreement since 1983, which covers substantially all trans-Tasman trade in goods – including agricultural products – and trade in services. This partnership dates back to 1922 and had been modernised several times. It is important to realise how close relationship it is, because this will have an impact on the future FTAs with both parties.

Australia' economy in figures

Australia is the 12th largest economy in the world and generated a GDP of €1,339 trillion² in 2015. That year, the population reached more than 23 million of inhabitants³. The World Bank Report on “Doing Business”⁴ is ranking Australia on the ease of doing business as number 15 out of 190 in 2016, showing that the country is one of the freest market economy in the world but still have room for improvement.

With bilateral trade in goods amounting to €41.21 billion in 2015, the EU ranked as Australia's 3rd largest trading partner after China and Japan, while Australia was the EU's 19th largest trading partner⁵. When considering trade in services, it first needs to be highlighted that Australia's economic share in services accounts for 68.2% of the country's GDP and the sector employs 3 out of 4 jobs⁶. In 2015, the EU has been Australia's 1st largest trading partner for the 15th year in a row with 21% (€20.4 billion⁷) of Australia's total services trade⁸. Imports from Australia to the EU was €7.1 billion⁹ (+6% compared to 2014) while exports from the EU to

¹ Australian Trade and Investment Commission - <http://www.austrade.gov.au/Australian/Export/Free-Trade-Agreements>

² Exchange rate 08/09/2016 - World Bank - <http://databank.worldbank.org/data/download/GDP.pdf>

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

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

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

⁶ CIA, The World Factbook - <https://www.cia.gov/library/publications/the-world-factbook/geos/as.html>

⁷ Exchange rate 08/09/2016

⁸ EEAS, “Media Release: EU marks 15-year milestone as Australia's largest trading partner in services” - http://eeas.europa.eu/delegations/australia/press_corner/all_news/news/2016/24_05_16_en.htm

⁹ Exchange rate 08/09/2016

Australia amounted to €13.3 billion¹⁰ (+11%). Hence, trade in services represents more than 1/3 of total trade between both partners. More importantly, exports of services from Australia to the EU in 2015 totalled €9.5 billion, out of total exports of €19.1 billion, which means that **49.6% of all Australia exports to the EU are services**. This is significant and must be highlighted at a time where most of the political focus on this FTA would as usual be on agriculture. In this framework, travel and education are the biggest services markets. Travel services represented almost half of the two-way trade in services in 2015, accounting for € 10.0 billion¹¹ (+8% compared to 2014). Trade in education-related services rose to €1.0 billion¹² that year (+8% compared to 2014), with the EU being Australia's 3rd largest partner after China and India. Transportation, financial services, computer services and other business services are also important parts of bilateral trade.

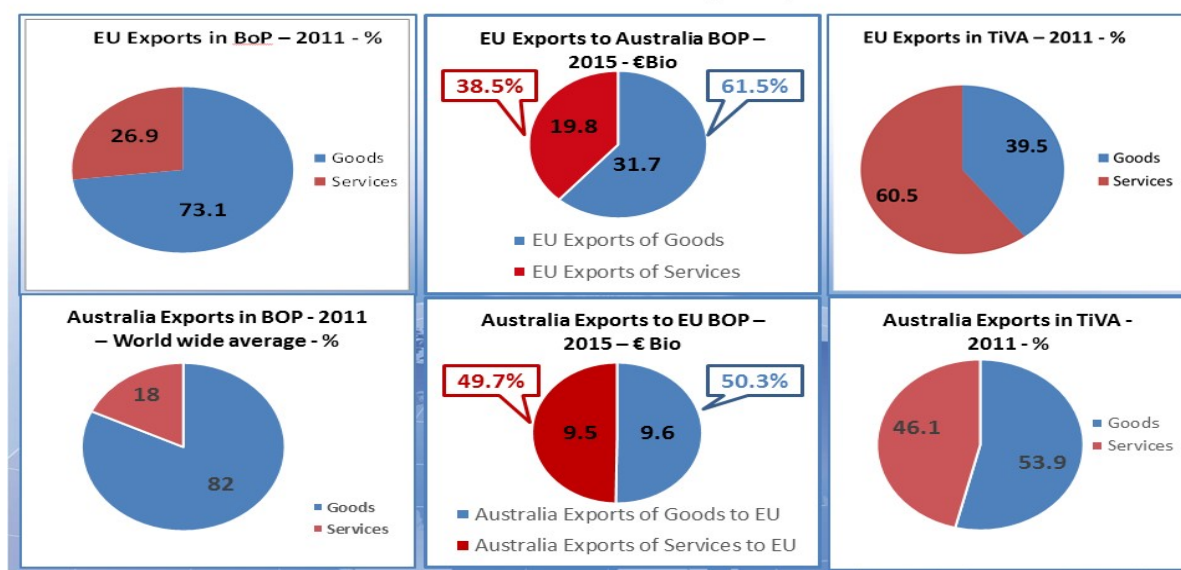
Those figures are based on the Balance of Payments (BoP) methodology, which in fact minimize significance of international trade in services. When thinking in terms of Global Value Chains (GVC) and analysing under the Trade in Value Added (TiVA) methodology, it appears that 36.3% of Australia exports of goods came from services in 2011. Those may refer to marketing, finance and insurance, distribution, transport, ICTs, management consulting and after sale services, etc. which surround the trading process of a good. Similarly, and more generally, it appears that the services value-added in the content of both goods and services exports from Australia globally reached 46.1% in 2011. In these 46.1%, only 5.7% were provided by foreign services, the remaining 40.4% coming from domestic services. But, it is clear that this particular figure, if known, would show a bigger figure for services for exports of Australia to the EU, given that the BOP already demonstrates that nearly 50% of exports are services. This shows that there is still a room for openings to foreign services in Australia. In comparison, 39.1% of EU exports of goods are services and Services represent 60.5% of all EU exports globally (goods & services). The penetration rate of foreign services in EU exports is much higher, with 18%.



« The voice of the European Service Industries for International Trade Negotiations in Services »

IMPORTANCE OF TRADE IN SERVICES

If we use the trade in value-added (TiVA) indicators



¹⁰ Idem

¹¹ Idem

¹² Idem

When looking at foreign direct investments, in 2015 the EU has been Australia's largest investment partner for the 15th year in a row¹³. In 2014, EU outward stock in Australia amounted to €115.3 billion while Australia outward stock in the EU was €26.4 billion¹⁴.

A country with a modern economy and trade opportunities

Following two decades of continuous growth, low unemployment, contained inflation, very low public debt, and a strong and stable financial system, Australia entered its 23rd year of uninterrupted annual economic growth in 2014, averaging 3.4% a year. However, the country is facing a range of growth constraints since the beginning of 2016, principally driven by a sharp fall in global prices of key export commodities (coal, iron ore), of which Australia is a big exporter. Demand for resources and energy from Asia and especially China has stalled and sharp drops in current prices have impacted growth. When considering international trade and foreign direct investment (FDI) patterns, it continues to reflect the rising importance of China as Australia's main export market (especially for mining products), and the EU, the United States, and Japan as its major sources of FDI.

The travel sector is one of the most important services sector contributors to the country's growth. In 2014, it counted for 60.0% of the economy's total exports in services and for 42.1% of the economy's total imports in services¹⁵. The same year, Australia ranked 11th among exporters of travel services (amounted to €28 407 million¹⁶) and 9th among importers of travel services (amounted to €23 307 million¹⁷)¹⁸. The EU was the main destination in 2013, representing €7 942 million¹⁹, and New-Zealand was the main origin of international visitors in 2014, followed by China, the United Kingdom, and the United States. While tourism-related services remain Australia's major services export, domestic tourism still accounts for over two-thirds of the industry's value²⁰. The authorities project visitor arrivals to increase by nearly 5% annually over the next five years, with strongest growth coming from China and India. Australia's national strategy for the tourism sector is Tourism 2020, launched in December 2011. The overarching objective is to enhance growth and competitiveness within the industry through a focus on six strategic areas, namely to: (1) grow demand from Asia; (2) build competitive digital capability; (3) encourage investment and implement a regulatory reform agenda; (4) ensure the tourism transport environment supports growth; (5) increase the supply of labour, skills and indigenous participation; and (6) build industry resilience, productivity and quality. A key goal is to grow overnight visitor expenditure to between €78 billion and €95 billion²¹ by 2020. As noted in a 2013 evaluation of Tourism 2020, focus has notably been placed on increasing investment in tourism and ensuring sufficient capacity on relevant air transport routes. Furthermore, the tourism sector is fully open to investment and benefits from little government support.

The transport sector is another major contributor to the country's growth. In 2015, it represented 24.5% of the economy's total imports in services and 10.5% of the economy's

¹³ EEAS, "Media Release: EU marks 15-year milestone as Australia's largest trading partner in services" -

http://eeas.europa.eu/delegations/australia/press_corner/all_news/news/2016/24_05_16_en.htm

¹⁴ European Commission, DG Trade - <http://ec.europa.eu/trade/policy/countries-and-regions/countries/australia/>

¹⁵ WTO, Australia' trade profile - <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=AU>

¹⁶ Exchange rate 08/09/2016

¹⁷ Idem

¹⁸ WTO, Australia' trade in services profile -

<http://stat.wto.org/ServiceProfile/WSDBServicePFView.aspx?Language=E&Country=AU>

¹⁹ Exchange rate 08/09/2016

²⁰ WTO, Trade Policy Review on Australia, item 4.5.8, p.129 - https://www.wto.org/english/tratop_e/tpr_e/s312_e.pdf

²¹ Exchange rate 08/09/2016 for the two figures

total exports in services²². In July 2014, the Government embarked on the second phase of its Nation Building Programme (NB2). The objective of the programme is to increase the nation's productivity through improvements to land transport infrastructure and is structured along four themes: moving freight, connecting people, safety, and innovation²³. €34 billion²⁴ over a seven-year period are planned to be spend under the Infrastructure Investment Programme on road and rail infrastructure works (including land transport links to ports and airports). This is expected to catalyse state/territory and private-sector infrastructure investment of €85 billion²⁵. Under the National Stronger Regions Fund, €0.68 billion²⁶ of funding will be made available over five years, starting from 2015/16, to finance priority infrastructure in regional communities. Additionally, a €3.42 billion²⁷ Asset Recycling Fund has been proposed to encourage state governments to use the sale of public assets to fund nation-building infrastructure, particularly roads. Furthermore, most major government-owned ports and airports are operated by the private sector entities. In the maritime transport subsector, reforms have been implemented to make the Australian shipping industry more internationally competitive, increase the size of the shipping fleet and promote employment. These have included tax reforms, the creation of an International Shipping Register, and the implementation of a licensing system to give domestically-flagged ships a first opportunity to cabotage services. However, the cabotage policy is being reviewed by the current Government in light of concerns about its resulting costs and inefficiencies. In air transport, there has been a big increase in international passenger arrivals by air, the negotiation of several new air services agreements with third countries, and plans to enhance infrastructure. The domestic civil aviation market, which accounts for significantly more passenger arrivals than from international destinations, is dominated by two companies.

Financial services also represent an important part of the services sector, contributing to 8.7% of GDP in 2015²⁸. The sector is in good health from a prudential perspective but there are concerns, particularly relating to the degree of concentration in banking. Indeed, the global financial crisis strengthened the already dominant position of the four main banks, as two of them took over smaller banks over this period. Nevertheless, according to available indicators it would appear that competition is robust. In this framework, a broad reform has been engaged through the Financial System Inquiry. The final report, released in December 2014, has recommended eliminating distortions to the efficient market allocation of financial resources (such as taxation, information imbalances and unnecessary regulation) as well as removing impediments to competition. Other recommendations fell under five specific themes, namely: (a) strengthening the economy by making the financial system more resilient; (b) lifting the value of the superannuation system and retirement incomes; (c) driving economic growth and productivity through settings that promote innovation; (d) enhancing confidence and trust by creating an environment in which financial firms treat customers fairly; and (e) enhancing regulator independence and accountability, and minimising the need for future regulation. Considering the insurance sector, Australia's insurance market is the 12th largest in the world. In 2014, total insurance premiums were equal to around 5% of GDP. In 2012, direct gross premiums per capita were above the OECD average; but the share of foreign companies in the domestic market was under the OECD average, representing 15.8% for life insurance companies and 27.1% for non-life insurance companies. Following the decline in insurance

²² WTO, Australia' trade profile - <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=AU>

²³ WTO, Trade Policy Review on Australia, item 4.5.7, p.123 - https://www.wto.org/english/tratop_e/tpr_e/s312_e.pdf

²⁴ Exchange rate 08/09/2016

²⁵ Idem

²⁶ Idem

²⁷ Idem

²⁸ Previous, item 4.5.5, p.113

numbers over the past 10-15 years, the general insurance business has become more concentrated, the largest five direct insurance groups accounting for over 70% of direct insurance premiums in 2013. Over the same period, the top five life insurers held around 82% of the industry's assets. The Commonwealth Government used to own 100% of Australia's largest private health insurer, Medibank Private Limited, but sold this entity through an initial public offering in November 2014. Overall, the general insurers' profitability has strengthened since 2012, due in part to a benign claims environment (in sharp contrast to the years 2010 and 2011) and increases in premiums. Both the general and life insurance industry are well capitalised, with capital equivalent to respectively 1.7 times and 1.9 times APRA's²⁹ prescribed amount.

Concerning information media and telecommunications services, it accounted for 3% of GDP in 2012/13³⁰. Australia ranked 14th out of 157 economies in the ITU's 2016 ICT Development Index, moving down three places from the previous year³¹. The country has a very high level of ICT development and has recently seen a large increase in the number of wireless-broadband subscriptions and penetration rates. It has witnessed an increasing take-up of mobile subscriptions and fixed (wired) broadband subscriptions, while fixed line subscriptions have gradually declined. Increased use of Voice over Internet Protocol (VoIP) is also posing a growing challenge to revenue streams from traditional telecommunications services. The roll-out of the national broadband network is continuing, albeit with a new focus on using a range of different broadband technologies – an "optimised multi-technology mix" (MTM) – rather than a largely fibre-to-the-premises approach. The network is fully state-owned and will operate on a non-discriminatory, wholesale-only basis. Completion is anticipated in 2020. With a total market share of respectively 46.5% and 19.5% at October 2014, Telstra and Optus remain the main players in the telecommunications sector. Telstra has a particularly dominant position in the provision of retail fixed voice services, although its market share in this segment has slightly declined in recent years.

On foreign direct investments, it should be noted that Australia maintains an open stance towards foreign investment but continues to screen large investment projects to ensure they are in the national interest. FDI proposals subject to screening are rarely rejected, but often have conditions attached. For instance, foreign ownership of the current incumbent telecom company Telstra is limited to 35% by the Telstra Corporation Act 1991.

Potential Impact of Brexit on the EU-Australia FTA negotiations

ESF is considering the impact Brexit will have on the EU-Australia free trade agreement negotiations. Given the importance of UK-Australia bilateral trade, due to historical and cultural links, this will significantly reduce the volume and value of the EU-Australia bilateral trade and investment. Indeed, in 2015, the European Union exported 19,780 million euros of services to Australia. The United Kingdom contributed 6,018 million euros, or 30% of that total³². But in the meantime, the UK imported 3,518 million euros, representing 37% of the total EU import of services from Australia (9,475 million euros). Also, EU foreign direct investment to Australia in 2015 was 117.7 billion euros and Australian foreign direct

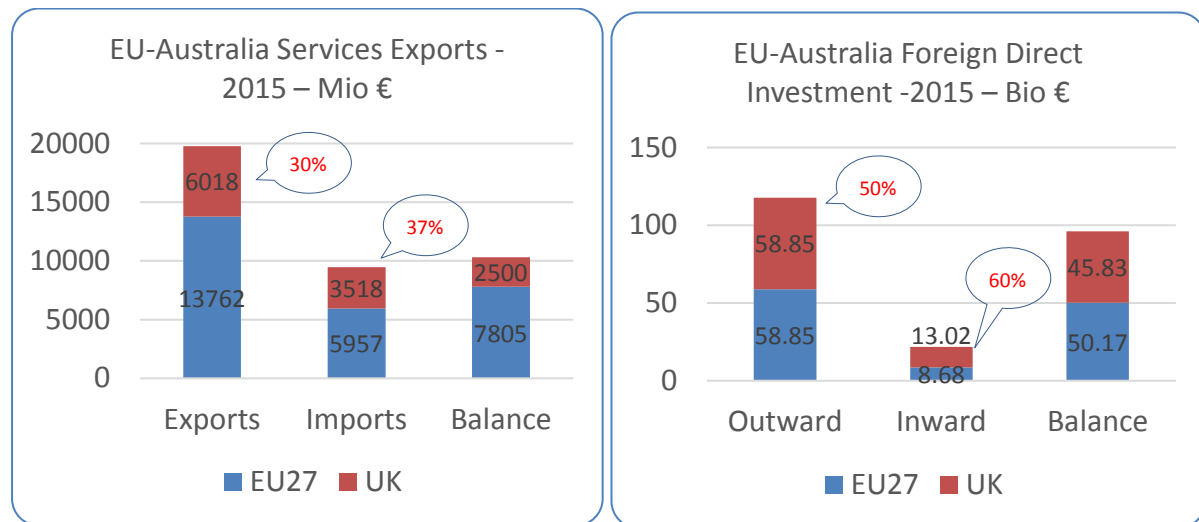
²⁹ Australian Prudential Regulatory Authority

³⁰ WTO, Trade Policy Review on Australia, item 4.5.6., p.118 - https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=133397,132901,132882,132032,130975,130635,130634,96007,101163,96671&CurrentCatalogueIdIndex=0&FullTextHash=

³¹ Previous

³² Eurostat <http://appsso.eurostat.ec.europa.eu/nui/submitViewTableAction.do>

investment in the European Union was 21.7 million euros³³. It is important to note that the United Kingdom contributes half of the EU investment in Australia and welcome 60% of Australian investment in the EU³⁴.



Despite Brexit, and Australia's close ties to the United Kingdom, it will still be valuable for Australia to reach a new free trade agreement with the European Union so it can still have access to the single market which has provided for 70% of total service imports in Australia. Since 2010, EU service exports have increased by over 5 billion euro from 14.7 billion euro to 19.7 billion euro, while United Kingdom service exports fluctuated in the 5.8 to 7-billion-euro range total, settling around 6 billion euro in 2015³². This highlights increased trading trends with European Union members outside of the United Kingdom in recent years, indicating that the EU will remain a viable trade partner for Australia despite Brexit. Furthermore, it is difficult to measure the impact of Brexit, notably what is the share of trade and investment from Australia to the UK that is partly motivated with the access to the EU Single market, using the UK as a hub to the 450 million non-UK consumers. It will be interesting to monitor whether some of the Australian FDI currently in the UK would partly move to the EU27. The FTA will also be an additional interest between the two partners, since it might encourage regulatory cooperation with a bigger focus on continental Europe, which is sometimes different from the Common law way of doing!

I. Horizontal issues

1) Starting level of the services negotiations

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

³³ European External Action Service https://eeas.europa.eu/headquarters/headquarters-homepage_en/9544/EU-Australia%20relations,%20factsheet

³⁴ Business Envoy October 2016 <http://dfat.gov.au/about-us/publications/trade-investment/business-envoy/Documents/business-envoy-brexite-october-2016.pdf>

ESF also encourages EU negotiators to do their utmost in getting from their Australian counterparts' similar commitments than committed by Australia with other countries, in particular in the recently concluded Trans Pacific Partnership (TPP). ESF also calls the EU negotiators to monitor closely the Regional Comprehensive Economic Partnership negotiations between the ten ASEAN members and those countries which have existing FTAs with the organisation – Australia, China, India, Japan, Republic of Korea and New Zealand. Any other trade talks in which Australia is engaged or intend to engage during the FTA' negotiations should also be taken into account, especially the currently negotiating Trade in Services Agreement (TiSA)³⁵.

2) Scheduling Method

Given that Australia is a developed economy, member of the OECD, ESF urges the EU to accept to run the services negotiations by using the negative list approach, as it did for the negotiations with Canada. Such an approach ensures a good readability and comparability of the various FTAs commitments. It obliges the negotiators to review together all service sectors and produce greater liberalisation results and greater clarity for businesses, since it is much easier for companies to assess whether their sector is covered or not and what are the limitations. As a consequence, the participation of all administrative levels of the signatories shall be a *sine-qua non*e condition to the use of the negative list, so as to provide full transparency on all relevant legislation and regulation, whatever the level of the regulatory authorities.

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

3. Movement of natural persons (mode 4)

The question of mobility of the service suppliers is a key priority for businesses in the EU-Australia FTA. It should cover temporary movement only and not permanent migration. Negotiators should notably work on the possibility to allow faster Business Visa and Work permits delivery procedures for all categories of natural persons covered under Mode 4.

As a preliminary remark, it must be pointed out that TPP sets up an incentive rule for establishing a dialogue between Parties relevant bodies "on issues that relate to the recognition of professional qualifications, licensing or registration"³⁶. This provision only concerns professional services. Similarly, ESF calls for the EU negotiators to deliver on a mechanism encouraging and enabling the regulators of these sectors to achieve, when there is a mutual demand from the professional bodies, Mutual Recognition Agreements in Professional qualifications in an EU-Australia FTA. Ideally, they should follow the example set in the EU-Canada CETA.

Australia commitments on the movement of natural persons in TPP are a good scheduling, reusing its DDA classification. It is divided into the following five sub-sections: a) business visitors; b) installers and servicers; c) intra-corporate transferees (ICTs); d) independent

³⁵ Although the TiSA talks are stalled since November 2016, the texts of chapters, of separate disciplines and annexes and the offers that were tabled by the EU and by Australia should be used as benchmark when higher than in other bilateral or regional talks.

³⁶ TPP, Chapter 10 on Cross-border Trade in Services, Annex 10-A, p. 11 -

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

executives; and e) contractual service suppliers (CSS), including independent professionals and specialists.

However, we must take note that on 18 April 2017, the Australian Government announced that the Temporary Work (Skilled) visa (subclass 457 visa, which was the main tool for European firms to send intra-corporate transferees (ICT) to EU subsidiaries or branches) will be abolished and replaced with the completely new Temporary Skill Shortage (TSS) visa in March 2018³⁷.

The TSS visa programme will be comprised of a Short-Term stream of up to two years and a Medium-Term stream of up to four years and will support businesses in addressing genuine skill shortages in their workforce and will contain a number of safeguards which prioritise Australian workers.

We urge the EU authorities to closely monitor the evolution of this matter. Indeed, it must be highlighted that in the framework of the EU Directive 2014/66 of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (The ICT Directive), Australia will now benefit of good entry conditions to the EU. Upmost efforts must therefore be done to negotiate similar conditions to Australia in the framework of the mode 4 talks.

Furthermore, it should be noted that with regard to Mode 4, in the US-Australia relationship, the two countries agreed to discuss visa issues separately from, but simultaneously to, the FTA negotiations. We understand that was also a path that the EU started with the US in the TTIP talks.

Should that be the preferred route of the Australian authorities, we call upon the EU negotiators to envisage such a method as well with Australia, with a purpose of creating a new class of visas through legislation separate to the FTA but run at the same time, or through the new visa regime introduced by the Australia Department of Immigration and Border Protection.

The EU should aim at negotiating to get visas for EU business personnel to enter Australia which could:

- set a separate annual numerical limit for EU citizens;
- incur lower costs as possible,
- be granted for up to 2 years and offers the possibility of renewal;
- Make spouses and unmarried children under 21 years old eligible for the visa;
- Remove economic needs test/labour market test;
- Ensure short employment period prior to ICT sending to Australia.

ESF focuses on business visitors, intra-corporate transferees (ICTs) and contractual service suppliers (CSS) in the developments to follow.

a) Business visitors

In its TPP schedule, Australia slightly modified its GATS scheduling, in a more favourable way for the first category of business visitors. Indeed, Mode 4 is now divided – and opened – into two categories of natural persons: “business persons seeking to travel to Australia for business purposes, including for investment purposes [...]” and “services sellers [...], who are sales representatives of a service supplier, seeking temporary entry for the purpose of negotiating

³⁷ <https://www.border.gov.au/Trav/Work/457-abolition-replacement>

for the sale of services or entering into agreements to sell services for that service supplier”³⁸. For both statuses, remuneration and financial support for the duration of the visit must be derived from sources outside Australia. Services suppliers’ entry is allowed for an initial stay of 6 months and up to a maximum of 12 months while business persons seeking to travel for business purposes are allowed to stay for distinct periods up to a maximum of 3 months.

ESF requests the same treatment for EU business visitors under the EU-Australia FTA negotiations.

b) Intra-Corporate Transferees (ICTs)

As in Australia’s GATS Schedule of Specific Commitments, ICTs in TPP schedule refers to: a) an executive or a senior manager; and b) a specialist³⁹. But conditions have been softened in TPP on the length of stay as the initial period of stay can be extended. In principle, that period is up to 4 years for executives or senior managers while it is up to 2 years for specialists. Moreover, the country has committed to grant the right of temporary entry, movement and work to the accompanying spouse or dependants of an ICT moving to Australia. ESF requests the same commitments with the EU, but would welcome an initial period of stay up to 3 years for specialists – as negotiated in CETA –. ICTs should not be submitted to any economic needs tests, limits or quotas.

However, a new condition is set up in TPP: temporary entry of ICTs is subject to employer sponsorship. Referring to the “visa 457” in Australia, this means the business person has to be sponsored by an employer and to undertake a work for that only one sponsoring employer. Should the EU grant better access to Australian ICTs to come to the EU, including the benefit of the ICT directive and of the Blue Card directive, ESF would appreciate softer conditions for EU ICTs entering Australia, such as a faster delivery procedure.

Moreover, Australia has committed to grant the right of temporary entry, movement and work to the accompanying spouse or dependants of an ICT moving to Australia. ESF requests the same commitments for EU suppliers moving to Australia, as negotiated in CETA.

c) Contractual service suppliers (CSS), including independent professionals and specialists

This sub-section in TPP Schedule of Australia is a new opening. It refers to: a) employees of an enterprise of a Party that has concluded a contract for the supply of a service within Australia and that does not have a commercial presence within Australia; and b) employees by an enterprise lawfully and actively operating in Australia in order to supply a service under a contract within Australia⁴⁰. Length of stay can be for distinct periods up to a maximum of 12 months; further stay is possible.

Qualifications, skills and work experience of the business person must meet the domestic standard in Australia for the nominated occupation.

4) **Foreign direct investment regimes**

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

³⁸ TPP, Chapter 12 on Temporary Entry for Business Persons, Annex 12-A, p. 1 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/12-a-australia-temporary-entry-for-business-persons.pdf>

³⁹ Previous, p. 3

⁴⁰ TPP, Chapter 12 on Temporary Entry for Business Persons, Annex 12-A, p. 6 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/12-a-australia-temporary-entry-for-business-persons.pdf>

Concerning pre-establishment, the FDI chapter should allow companies to establish in any legal form that they see fit for them, especially legal form that allows owning and controlling their establishment. Therefore, the EU-Australia FTA should remove, as far as possible, all kind of control of foreign ownership, like possible remaining equity caps, or limitation imposed for instance by the Australian Foreign Investment Review Board (the FIRB). The screening by the FIRB should be restricted to the minimum number of sectors as possible, and the criteria should be transparent.

5) Public procurement

The question of public procurement should benefit from particular attention in the FTA negotiations since Australia is not yet a member of the Government Procurement Agreement (GPA). We take note that Australia is currently negotiating its accession to the GPA, and although it is not clear when this process will come to a conclusion, we hope that it should be before the end of these bilateral negotiations. It must be emphasised however that this accession should not be seen as the end of the road for the Australian negotiators in that domain. It must be absolutely clear that the FTA with the EU should lead to “GPA Plus” commitments on both sides to be acceptable.

ESF calls for a comprehensive market access to public procurement for services, with low thresholds and substantive coverage of all public institutions and entities, committing the partners to remove any discrimination in the bidding by any EU or Australian businesses. It is of crucial importance to increase access for services companies to all public entities that are using public procurement in their functioning. This is obviously true for the construction services and construction related services, such as architecture and engineering services, urban planning, etc. All public administrations and entities also need for their daily activities to procure telecom and IT services, insurance and banking services, transport and logistic services, cleaning and catering services, legal and accounting services, etc.

Negotiators should also ensure that all the provisions taken also apply to the sub-federal level and not only to the central level. Hence, the added value for the FTA could be the reduction of the thresholds at which the companies from the two partners should have the right to participate to the calls of tender. The Chapter on Public procurement should also ensure transparency of the tender process and provide a portal for one single access of all tenders. 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.

6) Rules on State-Owned Enterprises (SOEs)

The Agreement should also look at stating specific rules to ensure that the competition legislation also applies to the state-owned and state-sponsored enterprises (SOEs) that compete in commercial markets. The entities concerned are those at EU central level and Australia federal level, but also those at EU Member States and Australia states level. These rules could be part of the provisions in the competition chapter of the agreement. Consideration could be given to the EU regime on state aids, which 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.

7) Digital Trade Chapter

Telecommunications services, ICT services and digitisation in general are engines for growth, competitiveness and job creation in our modern economies. Trade itself is unthinkable without the use of digital technology. Trade increases demand for ICT services and those services are an enabler of global supply chains, which in turn drive global growth.

Digital Services

A Digital Chapter of the EU – Australia 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. As proposed in the draft Regulation on the Free Data flow of Non Personal Data 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). With the objective of enhancing trust of users and certainty of companies, and thus trade in goods and services, it is essential that businesses comply with data protection and security rules in force in the country of residence of the data subjects, in particular with the protection of personal data.

The text of the FTA should also 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. Both Parties shall also set out in a schedule the specific commitments they undertake under the cross border data flows Article.

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. FDI limitations and other discriminatory restrictions e.g. related to citizenships at board level should be lifted.

The EU and Australia are highly developed markets with high use and take-up of modern communications technologies in residential and business markets. Both, the EU and Australia also have highly developed regulatory regimes that aim to ensure at the same time competition and investment in communications infrastructure and communications services.

In light of this like-mindedness, ESF asks to aim for an ambitious telecommunications chapter that can be used as a benchmark for other trade agreements with developed markets. It should match the openness and competitiveness of the EU's telecommunications services market and regulation and create a true level-playing field for both parties. Particularly, when there is market dominance at whole sale level, the access to and use of telecommunications networks and services should be under fully non-discriminatory terms and conditions.

8) Domestic regulation

The FTA should include a strong Horizontal Chapter on Disciplines for Domestic Regulation. This chapter should establish obligations that should go beyond the rules that could be

adopted in the WTO Post Bali Work Programme or in the TiSA agreement, which will essentially establish basic rules of better transparency in licensing and qualification procedures. Such a chapter of the FTA should be divided into two sections, one on regulatory coherence and one on regulatory cooperation.

a) Regulatory coherence

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

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

b) Regulatory cooperation

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

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

9) **Customs and Trade facilitation**

The FTA should ensure that customs simplification and trade facilitation measures are included in the most optimal manner. The preference would be to have a less onerous approach (like in the Australia-US FTA) rather than a prescriptive and burdensome one (like in the China-Australia FTA - ChAFTA). The Express clearance / immediate release guidelines that currently exist are good and should be retained. The recognition of goods sent from EU to Australia through other countries should be recognised as best practice.

Some clarifications are needed in terms of the COO (Customs Operations Officers) requirements, e.g. are blanket declarations permitted? Is there a set format and can they be electronic?

The FTA should notably address the following priorities:

- The mutual recognition of the existing Authorised Economic Operator and the Australia Trusted Trader (ATT) schemes;
- The decline of general duty rates, GST and formal entry fees in Australia;

- Enabling payment of duties and tariffs prior to the release into home consumption;
- Streamlined process to claim eligibility for certificates of origins.

ESF members will provide additional information on this issue in complementary separate papers.

10) Other horizontal issues

ESF takes note of the fact that the EU negotiators are now developing a chapter on Trade and Sustainable Development in FTAs, which will likely be included in the EU-Australia one.

ESF understands that the intention of the Trade and Sustainable Development (TSD) chapter in trade agreements is to promote long-term cooperation to foster sustainability and promote international standards. It is not envisaged to provide instant solutions to complex issues that are not related to trade, and hence the emphasis must remain on engaging with partner countries in a continuous manner to help them develop and implement international standards and regulations.

In this respect, ESF, together with other business associations⁴¹, welcomes the European Commission's non-paper on "Trade and Sustainable Development chapters in EU Free Trade Agreements", and wants to voice its support for the Commission's proposed approach towards "A more assertive partnership on TSD" with partner countries. Considering that the new model of EU trade agreements was quite recently introduced, the first option outlined in the non-paper recognises that progress in the environment, labour and human rights takes time. Nevertheless, it also acknowledges that improvements to the current practice can be made, such as strengthening cooperation with international bodies and stepping up monitoring of TSD issues. We also understand that the EU wants to make it clear that TSD chapters are an essential part of its FTAs, and that sanctions will be used as a last case scenario in cases of systematic abuse of human rights.

II. SERVICES Sector Specific Issues

As a preliminary remark, ESF would like to highlight that Australia is a federal country, with 6 states that have some regulatory powers, in particular in some professional services. ESF is therefore worried by the general exception that Australia takes in its page 1 of Annex I of its TPP schedule, stating as a general restriction covering all "regional" level and for all modes that "All existing non-conforming measures at the regional level of government" are not committed. Although we can understand the legal security that such a broad limitation provides to the country, it is unclear what is covered by these "existing non-conforming measures at the regional level of government", and it could well be that federal commitments are useless for foreign suppliers. ESF calls therefore the negotiators to ensure full transparency of these non-conforming measures, so that our businesses do effectively know what they cannot do at regional level. To have any added value, this transparency exercise must be legally binding.

1) Professional services

ESF calls for an ambitious FTA in that sector.

⁴¹ See ESF website: <http://www.esf.be/new/wp-content/uploads/2017/10/Joint-Business-Associations-Statement-on-EU-TSD-Chapter-FINAL.pdf>

a) Legal services

Australia has extended the scope of legal services in its TPP Schedule of commitments, largely reflecting its GATS revised offer. Legal services now cover both “legal advisory and representational services in domestic law (host-country law)” and “legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services”⁴². Concerning the market access clause in TPP, Modes 1-3 are fully opened in both categories, with the exception of the second one where Mode 3 is limited in South Australia since natural persons practising foreign law may only join a local law firm as a consultant and may not enter into partnership with or employ local lawyers.

Australia also maintains some non-conforming measures. Patent attorneys must be ordinarily resident in Australia in order to register to practise in the country⁴³. Above all, the country “reserves the right to adopt or maintain any measure at the regional level of government that is not inconsistent with Australia’s obligations under Article XVI of the GAT”⁴⁴ for cross-border services across the board of sectors.

ESF regrets this broad restriction and calls for the EU negotiators to obtain from their Australian counterparts more transparency on the “regional” measures that this restriction encompasses, since it could overcome the value of the commitment at federal level. On the other hand, ESF welcomes the new opening on “legal advisory services in foreign law and international law and (in relation to foreign and international law only) legal arbitration and conciliation/mediation services”. It requests the same commitment in the EU-Australia FTA.

b) Accounting, auditing and bookkeeping services

Australia’s TPP scheduling remains mostly the same as its GATS commitments. The sub-sector is opened except that Mode 1 is linked to Mode 3 for registered company auditor and liquidator⁴⁵. This is a local presence requirement that companies prefer to avoid when possible. Mutual recognition of qualification and licenses might be a good tool to overcome regulators concerns and allow lifting of local presence in due time.

c) Landscape architectural services

Embodying its GATS revised offer, Australia has opened for the first time landscape architectural services in TPP⁴⁶. Modes 1-3 are fully opened. ESF welcomes this new commitment and requests the same with the EU.

2) **Computer and related services**

ESF welcomes the full openness of that very important sector in Australia GATS DDA offer and in TPP, and request the same commitments in the EU-Australia FTA. ESF takes note that

⁴² TPP, Annex II on the Schedule of Australia, Appendix A, p. 21 and 22 -

https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf

⁴³ TPP, Annex I on the Schedule of Australia, p. 7 - https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-I.-Australia.pdf

⁴⁴ TPP, Annex II on the Schedule of Australia, p. 4 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/annex-ii-australia.pdf>

⁴⁵ TPP, Annex I on the Schedule of Australia, p.10 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/annex-i-australia.pdf>

⁴⁶ TPP, Annex II on the Schedule of Australia, Appendix A, p. 22 - https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf

Australia excluded measures *relating to content* in database services (CPC 844) and other computer services (CPC 849) from its offer to preserve Australia's cultural interests.

Australia has also maintained an existing non-conforming measure on Mode 3 for "the development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems". A notification and approval from the Australian Government is required for proposed investments by foreign persons in existing – at the time the investment is proposed or made - Australian businesses, or prescribed corporations, the value of whose assets exceeds AU\$252 million⁴⁷.

3) Research and development services

In Australia's GATS commitments as well as in its DDA revised offer, R&D services on natural sciences and interdisciplinary R&D services were closed. In its TPP scheduling, it has inserted new commitments on those groups of services by fully opening them on Modes 1-3⁴⁸. ESF welcomes that new opening and requests from Australia same commitments with the EU.

4) Other business services

Reflecting its GATS revised offer, Australia has extended the scope of other business services in its TPP scheduling. It has inserted new commitments on technical testing and analysis services, services incidental to manufacturing as well as maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment); those groups of services do not support any limitation on Modes 1-3⁴⁹.

Australia has also made new commitments that it did not address in its GATS revised offer. Hence, it has fully opened Modes 1-3 for site preparation work for mining (CPC 5115) under services incidental to mining; geological, geophysical and other scientific prospecting services (CPC 86751) and map-making services (CPC 86754) under related scientific and technical consulting services; and packaging services. With regard to subsurface surveying services (CPC 86752) and specialty design services (CPC 87907), Australia has replaced existing commitments – for the whole sector concerning the former and for interior design concerning the latter – with no limitation on Modes 1-3.

ESF welcomes all those openings and improvements and requests from Australia similar commitments in the framework of the EU-Australia FTA.

Concerning advertising services however, Australia reserves the right to adopt or maintain any measure with respect to transmission quotas for local content on free-to-air commercial television and radio broadcasting services⁵⁰. ESF requests from Australia the removal of that limitation, since the protection purpose can be achieved through good regulation.

5) Postal and courier services

Australia has not opened up postal and courier services in the Uruguay Round/GATS Schedule of Commitments. The Trans-Pacific Partnership agreement addresses express delivery services⁵¹, and Australia did not table restriction in its Schedule, but Australia excludes "express

⁴⁷ TPP, Annex I on the Schedule of Australia, §1 (v), p.4 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/annex-i-australia.pdf>

⁴⁸ TPP, Annex II on the Schedule of Australia, Previous

⁴⁹ Previous

⁵⁰ TPP, Annex II on the Schedule of Australia, item (a) and (c), p.9 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf>

⁵¹ TPP, Chapter 10 on Cross-border Trade in Services, Annex 10-B, p. 15 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/10-cross-border-trade-in-services.pdf>

delivery services reserved for exclusive supply by Australia Post as set out in the *Australian Postal Corporation Act 1989* and its subordinate legislation and regulations”⁵². ESF would welcome openings from Australia in postal sector and full clear commitments for express delivery services.

There is also an issue with the reserved area for letters up to 250 grams to Australia post. Other businesses can only carry them if they charge four times the basic postage. The EU has removed the reserved area in 2013. The negotiators should also explore clarification on eCommerce shipments.

In addition, while general customs clearance for shipments for goods from the EU are already reasonable, still a future decline of general duty rates, Goods and Services Tax (GST) and formal entry fees could be beneficial for trade. Payments of duties and tariffs prior to release into home consumption should be enabled as well. As a streamlined process to claim eligibility would be essential, it exists a need to minimise the level of bureaucracy around obtaining COO’S etc. Moreover, the FTA should include the recognition of the fact that EU-Australia goods will not be sent direct (thus transit points must not act as an exclusionary factor).

6) Telecommunications services

Australia has made good improvements in its TPP scheduling compared to its GATS commitments. Sub-sectors from (a) to (g) are now fully opened on Modes 1-3 – especially voice telephone, packet-switched and circuit-switched data transmission, private leased circuit services –⁵³.

Concerning Telstra – the government owned general carrier –, restriction on foreign ownership have been eased since aggregate foreign equity allowed has been raised from 11.7% to 35%⁵⁴. That is a first and positive step, but ESF would like to see this limit to be removed in the EU-Australia FTA. Furthermore, individual or associated group foreign investment is restricted to no more than 5% of shares. ESF requests this limit to be removed. There are also national treatment limitations: The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia.

More generally on Mode 3, following investments – in the telecommunication sector – require notification and approval from the Australian Government: proposed investments by foreign persons in existing – at the time the investment is proposed or made – Australian businesses, or prescribed corporations, the value of whose assets exceeds \$A252 million⁵⁵.

7) Construction and related engineering services

This sector is now fully opened on Modes 2 and 3 in its TPP scheduling, as Australia has opened the group “Other” gathering CPC 511, 515 and 518 (other general construction work for civil engineering)⁵⁶. The country had already offered that group of services during the DDA round of negotiations. ESF welcomes this opening and requests the same commitment with the EU.

⁵² Previous, Footnote 11

⁵³ TPP, Annex II on the Schedule of Australia, Appendix A, p.23 - https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf

⁵⁴ TPP, Annex I on the Schedule of Australia, p.13 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/annex-i-australia.pdf>

⁵⁵ TPP, Annex I on the Schedule of Australia, p.3-4 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/annex-i-australia.pdf>

⁵⁶ TPP, Annex II on the Schedule of Australia, Appendix A, p.24 - https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf

8) Distribution services

When comparing Australia TPP scheduling with its GATS commitments, good improvements have been done in that sector⁵⁷.

On commission agents' services, Australia has extended its scope of commitments to CPC 62111 and 62112. It now includes services by commission agents, commodity brokers, auctioneers and other wholesalers who trade on behalf of others, of food products, and non-alcoholic beverages.

On wholesale trade services, new commitments have been done on CPC 6221 and 6222. For the rest, GATS commitments have been replaced with no limitation on Modes 1-3. It gathers wholesale trade services of agricultural raw materials and live animals. However, wholesale trade services of motor vehicles (CPC 61111) and maintenance and repair services of motor vehicles (CPC 6112) are still unbound. ESF would those restrictions to be removed.

On retailing services, new commitments have been done on CPC 63211. Australia's commitments in relation to these services extend to cover the following services not listed in relevant CPC classifications: inventory management of goods, assembling, sorting and grading of goods, breaking bulk, re-distribution and delivery services for retailing. Retail sales of medical and orthopaedic goods seemed to be covered but not pharmaceutical goods. For the rest, existing commitments have been replaced with no limitation on Modes 2-3, while Mode 1 remains unbound except for mail order.

For all those groups of services, tobacco, tobacco products, alcoholic beverages and firearms are not covered by the Schedule.

ESF welcomes those improvements and requests from Australia similar commitments with the EU.

9) Environmental services

In this sector, Australia has straightforwardly embodied its GATS revised offer in its TPP commitments. This new scheduling is very ambitious. ESF really appreciates it and requests Australia make the same commitments with the EU.

While only three sub-sectors were covered (sewage services, refuse disposal and sanitation and similar services) in its GATS scheduling, in TPP Australia newly commits protection of ambient air and climate (CPC 9404), remediation and clean-up of soil and water as well as protection of biodiversity and landscape (CPC 9406), noise and vibration abatement (CPC 9405), and other environmental and ancillary services (CPC 9409)⁵⁸. All those classes are fully opened on Modes 1-3. Same openings have been done for the three remaining sub-sectors.

ESF welcomes the fact that Australia used the European Communities proposal⁵⁹ for the classification of environmental services in its TPP scheduling. This gives additional weight to the proposal and should help ensure broad recognition and use of this classification – already supported by industry as a tool to ensure common understanding and increase legal security

⁵⁷ Previous

⁵⁸ TPP, Annex II on the Schedule of Australia, Appendix A, p.25 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf>

⁵⁹ Communication from the European Communities and their Member States, "GATS 2000: Environmental Services" 22 December 2000, S/CSS/W/38 - http://trade.ec.europa.eu/doclib/docs/2003/december/tradoc_113099.pdf

of the investments –. ESF would further encourage the European Union and Australia to follow and insert disciplines proposed by Canada in the framework of the TiSA negotiations⁶⁰.

However, ESF regrets the exclusion of water supply services from all Australian commitments – *i.e.* the provision of water for human use, including water collection, purification and distribution through mains –.

10) Financial services

Australia commitments under TPP mostly reflect commitments made under the GATS and the Understanding. And many restrictions which existed under the GATS have been removed.

Nevertheless, Australia maintains some existing non-conforming measures whatever the type of financial services. Firstly, all existing non-conforming measures at the regional level are maintained⁶¹. Secondly and especially, ESF requests the removal or, at least some clarifications on terms and conditions, on the following restriction: “The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control of an existing financial sector company, may be refused, or be subject to certain conditions”⁶².

Furthermore, proposed foreign investments in Australian financial institutions - as with foreign investments in other sectors - are subject to a screening process. Some trading partners of Australia benefit from exception through bilateral FTAs (Chile, Korea, New Zealand, and the USA)⁶³. ESF requests from Australia the same exception.

a) Insurance and insurance related services

Australia has largely opened insurance services in its TPP Schedule of commitments. There is only one but major non-conforming measure maintained: the provision of life insurance by foreign companies through branch operations remains prohibited, the national “Life Insurance Act 1995” restricting the approval of non-resident life insurers to subsidiaries incorporated under Australian law⁶⁴. However, Australia has granted exceptions to this rule through RTAs with the USA, New-Zealand and the Republic of Korea; Japan will also benefit from this exception once the FTA will enter into force⁶⁵. ESF requests from Australia the same exception in favour of European life insurers.

b) Banking and other financial services (excluding insurance services)

The banking sector remains closed for many sub-sectors under Mode 1. Indeed, cross-border trade is only opened for “the provision and transfer of financial information, and financial data processing and related software” and “advisory and other auxiliary services, excluding

⁶⁰ Wikileaks, TiSA, Annex on Environmental Services, Proposal by Canada - https://wikileaks.org/tisa/document/201412_Annex-on-Environmental-Services/201412_Annex-on-Environmental-Services.pdf

⁶¹ TPP, Annex I on the Schedule of Australia, p.2 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/annex-i-australia.pdf>

⁶² Previous, p. 6

⁶³ WTO, Trade Policy Review on Australia - https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=133397,132901,132882,132032,130975,130635,130634,96007,101163,96671&CurrentCatalogueIdIndex=0&FullTextHash=

⁶⁴ TPP, Annex III on the Schedule of Australia, p. 6 - <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Annexes/Annex-III-Australia.pdf>

⁶⁵ WTO, Trade Policy Review on Australia - https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=133397,132901,132882,132032,130975,130635,130634,96007,101163,96671&CurrentCatalogueIdIndex=0&FullTextHash=

intermediation”, relating to banking and other financial services⁶⁶. Especially, retail banking remains restricted since a branch of a foreign bank that is authorised as a deposit taking institution is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than \$A250, 000⁶⁷.

ESF would appreciate some improvements within the framework of the EU-Australia FTA.

11) Tourism and travel related services

Few changes have been made in this sector. Australia has only replaced existing commitments under travel agencies and tour operators’ services with no limitation on Modes 1-3⁶⁸. ESF welcomes this improvement since commercial presence is not required anymore to access the market under Mode 1. It would appreciate Australia tables the same offer with the EU.

12) Transport services

The EU transport and logistic services industry, in charge of carrying goods across the borders of the two parties, would strongly support mutual recognition of AEO/AUTT programmes, which will undoubtedly deliver benefits to all economic actors involved.

a) Maritime transport services

There are still strong market access restrictions in this sector in Australia. The “Shipping Registration Act 1981” and the “Shipping Registration Regulations 1981” impose a total ban or partial ban (local presence with minority requirement) to foreign investors to operate registered ships in Australia. Cabotage and offshore transport services remained excluded in Annex II of Australia TPP Schedule. Improvements should be negotiated in the EU-Australia FTA.

b) Air transport services

In this sub-sector, good improvements have been done in TPP⁶⁹. Australia has inserted new commitments with no limitation on Modes 1-3 in airport operation services and ground handling services. On selling and marketing of air transport services, new commitments have also been made, with no limitation on Modes 2-3; Mode 1 is opened except for retailing services – in which mail order is by way of exception opened –. We should indicate that selling and marketing of air transport services refers to: travel agencies and tour operator services, market research and public opinion polling services, advertising services and distribution services. ESF welcomes such improvements and requests the same with the EU.

c) Rail transport services

New commitments have also been made in this sub-sector⁷⁰. While this was fully closed in its GATS scheduling, Australia has opened freight transportation, pushing and towing as well as supporting services for rail transport services with no limitation on Modes 1-2. Mode 3 supports some restrictions: on below rail-track networks, there is no restriction on the right to

⁶⁶ TPP, Chapter 11 on Financial services, Annex 11-A on Cross-border Trade, p. 20-21 -

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

⁶⁷ TPP, Annex III on the Schedule of Australia, p. 2 - <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/annex-iii-australia.pdf>

⁶⁸ TPP, Annex II on the Schedule of Australia, Appendix A, p.26 - https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf

⁶⁹ TPP, Annex II on the Schedule of Australia, Appendix A, p.26 - https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf

⁷⁰ Previous, p.27-28

establish new networks but access to public land may not be guaranteed; on above track, access to rail infrastructure is allocated under pro-competitive principles for safety, efficiency and the long-term interests of users. ESF requests the same openings.

d) Road transport services

Passenger transportation remains the same as the GATS commitments (*i.e.* unbound on Mode 1 but none on Modes 2-3).

However, good improvements have been done on freight transportation⁷¹. While Mode 1 was unbound under GATS commitments, it is now fully opened for transportation of frozen or refrigerated goods (CPC 71231), transportation of bulk liquids or gases (CPC 71232), transportation of containerized freight (CPC 71233) and transportation of furniture (CPC 71234). New commitments have been inserted on mail transportation (CPC 71235), freight transportation by man – or animal – drawn vehicles (CPC71236) and transportation of other freight (CPC 71239); there is no limitation here on Modes 1-3.

New commitments have also been made on rental of commercial vehicles with operator (CPC 7124), with no limitation on Modes 1-3. For all of those classes, ESF requests from Australia the same commitments.

e) Services auxiliary to all modes of transport

Good improvements have been done with the exception of maritime auxiliary services which are entirely excluded⁷².

On storage and warehouse services, Australia has extended its existing commitments under Modes 2 and 3 to other services not included in CPC 742 (excluding maritime): distribution centre services and materials handling and equipment services such as container station and depot services. On freight transport agency services, it has also replaced existing commitments with no limitation on Modes 1-3. This group of services extends to cover customs agency services and load scheduling services. Finally, for other supporting and auxiliary transport services, existing commitments on pre-shipment inspections have been replaced with no limitation on Modes 1-3. This group of services has also been extended to cover container leasing and rental services. ESF welcomes those openings and requests similar commitments with the EU.

13) Other services not included elsewhere

ESF also encourages the EU negotiators to seek commitments from Australia on energy related services, as in the agreement with Canada.

⁷¹ Previous, p.28

⁷² TPP, Annex II on the Schedule of Australia, Appendix A, p.28-29 - https://www.mfat.govt.nz/assets/_securedfiles/Trans-Pacific-Partnership/Annexes/Annex-II.-Australia.pdf

List of ESF Members supporting the above Position Paper

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| 1. Accountancy Europe | 23. European Savings Banks Group – ESBG |
| 2. Architects' Council of Europe –ACE | 24. European University Association - EUA |
| 3. British Telecom Plc | 25. Fédération de l'Industrie Européenne de la Construction – FIEC |
| 4. BDO | 26. Foreign Trade Association – FTA |
| 5. Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR | 27. HSBC Group |
| 6. BUSINESSEUROPE | 28. IBM Europe, Middle East & Africa |
| 7. BUSINESSEUROPE WTO Working Group | 29. Inmarsat |
| 8. Conseil des barreaux de la Communauté Européenne – CCBE | 30. Insurance Europe |
| 9. Danish Shipping | 31. Irish Business and Employers' Confederation - IBEC |
| 10. Deutsche Telekom AG | 32. Law Society of England & Wales |
| 11. Deutsche Post DHL | 33. Le Groupe La Poste |
| 12. DI – Confederation of Danish Industries | 34. Microsoft Corporation Europe |
| 13. Digital Europe | 35. Mouvement des entreprises de France – MEDEF |
| 14. EK - Confederation of Finnish Industries | 36. Oracle Europe, Middle East & Africa |
| 15. Ernst & Young | 37. PostEurop |
| 16. EuroCommerce | 38. Prudential Plc. |
| 17. European Banking Federation – FBE | 39. SELDIA – European Direct Selling Association |
| 18. European Community Shipowners' Associations – ECSA | 40. Svenskt Näringsliv (Confederation of Swedish Enterprise) |
| 19. European Express Association – EEA | 41. Telenor Group |
| 20. European Federation of Engineering and Consultancy Associations – EFCA | 42. The CityUK |
| 21. European Public Telecom Network – ETNO | 43. Thomson-Reuters |
| 22. European Satellite Operators Association - ESOA | 44. UPS |
| | 45. Zurich Financial Services |