

ESF Position on Trade and Climate

“THE VIEW OF THE EUROPEAN SERVICES INDUSTRY ON THE WTO INITIATIVE ON TRADE AND ENVIRONMENTAL SUSTAINABILITY STRUCTURED DISCUSSIONS (TESSD)”

I. EXECUTIVE SUMMARY

Considering the emergency to fight against climate change, and to improve market access to goods, technologies and services around these products, the European Services Forum calls upon the WTO countries that are participating at the Trade and Environmental Sustainability Structured Discussions (TESSD):

- to have a joint statement at the 12th WTO Ministerial Conference end of 2021, recognising the emergency to take trade related measures to speed up the fight against climate change,
- to establish a work programme that would include exploratory discussion on trade in environmental goods and services.
- To launch trade in environmental goods **and services negotiations** as soon as possible. There is an urgent need to update the GATS commitments on environment related services, to allow international players to spread investment and operations in countries in need.

II. BACKGROUND CONTEXT

On 17 November 2020, two proponent groups launched new initiatives to intensify discussions at the WTO on trade and the environment. The initiatives establish structured discussions on trade and environmental sustainability (now labelled **TESSD: Trade and Environmental Sustainability Structured Discussions**)¹, and an informal dialogue on [plastics pollution](#).

Fifty members said they are organising structured discussions for interested WTO members to advance work on trade and environmental sustainability. The members that have sponsored this TESSD communication are Australia; Canada; Chad; Chile; Costa Rica; the European Union (27); Gambia; Fiji; Iceland; Japan; Korea; Liechtenstein; Maldives; Mexico; Moldova; Montenegro; New Zealand; North Macedonia; Norway; Senegal; the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu; Switzerland; and the United Kingdom. We understand that the group has got four additional participating countries (Brazil, Ecuador, El Salvador and Paraguay). **ESF welcomes the fact that the initiative remains open to all WTO members and encourage all of them to join as climate change impact does not know borders.**

The group intends to complement the existing work of the Committee on Trade and Environment and other relevant WTO committees and bodies. A first plenary meeting was held on 5th March 2021 with participation open to all WTO members. Participants outlined their views on what the priority issues for discussion should be and what concrete outcomes could be delivered at the WTO’s 12th Ministerial Conference (MC12) and beyond. Director-General

¹ Further information on the TESSD initiative is available [here](#).

Ngozi Okonjo-Iweala welcomed the discussions, telling participants the initiative is in line with the WTO's founding principle of promoting sustainable development ([§1 of the preamble of the Marrakesh Agreement Establishing the World Trade Organization](#)). She highlighted areas where the WTO could do more to support environmental sustainability, including trade in environmental goods and services, trade and climate change, sustainable and circular value chains, environmentally harmful subsidies and inclusiveness.

Canada's WTO Ambassador Stephen de Boer and Ambassador Gloria Abraham Peralta of Costa Rica are coordinating the initiative in Geneva. The second plenary meeting took place on 27-28 May 2021. Participants suggested possible deliverables for the WTO's next Ministerial Conference, to be held in Geneva the week of 29 November 2021. Many identified setting parameters for negotiations on liberalizing trade in environmental goods and services and agreeing on a work programme for addressing other pressing issues in the longer term as goals for MC12.

III. ESF PRIORITIES FOR THE TESSD

ESF shares the view that, working towards the goal of Paris Agreement which is to achieve global carbon neutrality, the World Trade Organisation - which is a responsible body for the multilateral trading system - is expected to address trade issues related to climate change and to deliver measures that will promote reduction of global carbon emissions and of pollution at large.

a) A Transparent Process and Open Contribution from Stakeholders

The European Services Forum understands that the initiative is open to all WTO members and is also **involving outreach to representatives from the business community**, civil society, international organizations and academic institutions. ESF views the participation of competent outside stakeholders in the TESSD process as contributing added value and expertise to the process. We believe that competent NGOs, academic institutions, international organisations, private sector entities etc. possess valuable knowledge and expertise and have an important contribution to make towards positive and concrete results of the TESSD process.

It is in this context that ESF would like to express its interest in contributing to the discussions and would like to present in this Paper its priorities. ESF is of the view that liberalisation of goods and services with environmental benefits will support international commitments to combat climate change and contribute towards a more sustainable world economy by reducing pollution of all sorts.

ESF notes that many participating countries have already tabled proposals on their views for the Structured Discussions (see [here](#) a list of 20 proposals and communications), and this is obviously welcomed. It is unfortunate however that only few of these proposals are "unrestricted". **ESF calls for full transparency in this process** as a way to spur inclusiveness and provide input to all stakeholders and urge WTO countries who haven't done so to lift off the restrictiveness of these proposals.

b) Include services in the scope of the TESSD to ensure efficient policy to tackle climate change

Many countries participating to the initiative, support a broad scope of the TESSD. In this paper, given its membership, ESF will focus on the “Liberalization of Environmental Services and of Trade in Green/ Climate-Friendly Services at large”

To achieve global carbon neutrality, it is necessary, not only to utilize existing products, services and technologies, but also to newly develop and globally spread innovative products, services and technologies that contribute to emission reduction. For that purpose, it is essential not only to set up a favourable regulatory environment for business and to remove trade obstacles such as through elimination of tariffs, but also **through opening the market to environmentally friendly services.**

The initiative should also cover other trade policy issues important for services like intellectual property and public procurement related issues.

Increasing transparency of services domestic measures, as promoted in the Joint-Statement Initiative on Services Domestic Regulation Disciplines, but with a particular focus on environmental services aspects should also be envisaged, as it will improve certainty for investors and exporters of these services. ESF reminds all WTO Members that such a transparency is already an obligation as per Article 3 of the GATS. ESF calls upon WTO members to ensure, in their future work towards reforming the organisation, an improved monitoring of the notifications that are already embedded into WTO rules.

In relation to the negotiations of the **JSI on domestic regulations**, there are ongoing negotiations for concrete rules such as on providing transparent and public licensing and authorisation procedures, single points of contact, indicative timeframes for processing applications, informing the applicant of the reasons for rejection, and providing opportunities to comment on new laws and regulations, etc. All these aspects will be beneficial for suppliers of environmental services and related. ESF has provided in due time [comments for these JSI](#) and **call WTO members to deliver these long-due disciplines at the up-coming WTO Ministerial Conference at the end of this year.**

c) A need to include the Public Procurement dimension

The TESSD structured discussions must take into consideration the great role that public spending will play into the fight against climate change, and hence need to include the public procurement dimension in the initiative.

It will be crucial that all public entities will commit to follow rules such as non-discrimination treatment and providing a sufficient time-period for the tender process stipulated in the Agreement on Government Procurement, when procuring "environmental goods" and "environmental services" and "works with environmental impact" which exceed a certain threshold.

One could also envisage that the requiring considerations by public entities in their call for tender could include the information on amount of greenhouse gas emission reduction that would occur thanks to the use of certain "environmental goods" within the criteria (e.g., energy saving performance) or supply of environmental services (e.g. clean air services performance, waste management services performance) when formulating the technical specifications for procurement of such "environmental goods", "environmental services" and "works with environmental impact". Such requirement have been introduced successfully in the recent [EU-UK Trade and Cooperation Agreement](#) in its public procurement chapter (see Article 285).

ESF draws the attention on the fact that many environmental services are provided through public-private partnerships and that this should be taken into consideration while drafting rules and negotiating market access commitments.

d) **A Focus on rulemaking and market access for environmental services.**

ESF can only note that there have not been thorough discussions on environmental services in the WTO, compared to goods that had been dealt with at the [Environmental Goods Agreement](#) negotiations, which started in July 2014, but were unfortunately halted in December 2016.

ESF welcomes the fact that several participating countries to the TESSD highlighted the **important role of environmental services** in supporting efforts to advance climate and other environmental priorities, and many said that they supported work on environmental services within TESSD.

ESF is conscious that some work is already taking place in the Special Session of the Council for Trade in Services (CTS-SS) and call upon the members to avoid duplication and to ensure complementarity between the work in TESSD and the CTS-SS. It is important to remind however that the importance of fighting against climate change should prevail over the necessity to get the approval of all WTO members, and that the Structured Discussions should allow progress on a plurilateral basis as a first stage and keep the door open for other WTO members which would request more time to join.

1) **Importance of Environmental Services**

Although updated global statistics are missing, one can see that “environmental services” is a growing sector in world services trade. With a compound annual growth rate of 4 percent from 2008 to 2015, global trade in clean technology, for which environmental services play an important role, has doubled during this period to more than \$1.15trillion in exports². With the new emphasis on green goods and services, and the public policies in many countries towards concrete actions to fight climate change, there is no doubt that these exports will surge in the near to long term future.

The environment industry, particularly its service component, exerts multiplier impacts across all sectors of the economy. It is considered to be a knowledge-based, enabling, high valued-added, growing component of the new economy. Over the years, there has been growing worldwide recognition of the importance of environmental services to improve environmental protection, remediation and prevention. This new context has given rise to an increasing global demand for environmental products and services.

For most WTO Members, in particular for developing countries, substantial benefits can be derived from greater trade liberalization of environmental services in the context of future Trade and Climate negotiations. A wider access to foreign markets as well as improving the current framework of rules will allow greater transparency and predictability for both small and large environmental services providers. It will allow service exporters to diffuse their knowledge and technological expertise worldwide while importers benefit from a broad range of environmental services at lesser costs.

²<https://www.analyticadvisors.com/sites/default/files/2017%20Canadian%20Clean%20Technology%20Industry%20Report%20Synopsis%20FINAL.pdf>

ESF believes that it is likely that trade liberalisation of environment friendly services will lead to potential win-win scenarios, considering the global nature of environmental issues, with first a better environmental protection, and second economic development thanks to investment that will create jobs and wealth. Further liberalization of environmental services will provide opportunities for businesses in developed and developing countries to integrate into global value chains due to the localised nature of environmental services.

Environmental services are intimately linked to environmental goods as they ensure the proper functioning and maintenance of those goods, and are often supplied in conjunction with them. In such cases, environmental services often represent the predominant element in the package (on average 65% in value terms). Thus, greater liberalisation of environmental services could positively contribute to the environmental goods market by allowing firms to source the services they need from price-competitive foreign services suppliers. This was the reason why in 2014 ESF was already advocating that the EGA negotiations should have also included negotiations of environmental services.

Furthermore, the uptake of technologies linked to environmental services can further create sustainable jobs, especially in services related to the installation and maintenance of environmental products, systems and infrastructure, like windmills, solar panels, carbon-capture technology, energy efficiency in construction services, etc. One already sees the benefits enrolling in the countries that have taken measures in their domestic institutional and legal frameworks.

The WTO is the right venue to negotiate international commitments that will trigger further foreign direct investment in these crucial environmental services and related that will contribute mitigating the effects of climate change.

Classification of environmental services

Environmental services are currently defined according to the current [W/120 classification](#) as follows:

- sewage services;
- refuse disposal services;
- sanitation and similar services; and
- other (e.g., cleaning services of exhaust gases, nature and landscape protection, etc.).

This classification is a summary of the Division 94 (“Sewage and refuse disposal, sanitation and other environmental protection services”) of the [Central Product Classification of the United Nations Statistical Commission](#) of 1991, that has been updated in 2002.

The European Services Forum draws the attention on the fact that there are many related services found elsewhere in the W/120 that are important to the delivery of environmental services, such as research and development services, technical testing and analysis services, scientific and technical consulting services, engineering services, construction services and digital services (telecommunication and computer services that allow the digitalisation of the environmental goods and services and contribute to optimise their efficiency and their supply chain). There is no doubt indeed that digital solutions and innovations will continue to play a key role in developing the technology necessary to drive action on climate change and other environmental urgencies.

2) The need to reduce trade barriers to environmental services

However, there are still many WTO Members who maintain a range of barriers affecting trade and investment which are likely to be an inhibiting factor in the potential growth of this industry of environmental services.

During the future negotiations, there will be an opportunity for WTO Members who have taken no commitments in the core list of environmental services sector during the Uruguay Round in their GATS Schedules to make binding commitments in all sub-sectors and all modes of delivery. For the 49 Member countries who have commitments in the core list, they should aim at reducing or eliminating existing restrictions on national treatment and market access and broadening their commitments to related services. The GATS schedules are indeed the currently binding level of commitments, and that was 25 years ago, at a time where climate change issues were less acute than today.

The most significant categories of restrictions are those related to the lack of transparency of regulatory regimes and practices (*hence see Section A here above*), investment/establishment, entry and stay of services managers, professionals and experts and licensing requirements. A combination of these barriers can also have a “multiple barrier” effect across sectors. The cost of maintaining barriers in the environmental service sector may not only have a significant impact on costs and the variety of services provided, but act as a disincentive for the global diffusion of environmental technology, skills and expertise. There is therefore an urgent need to update the GATS commitments.

The emergence of new technologies, such as electronic transactions, have opened a range of new possibilities to provide environmental services on a cross-border basis, for example by remotely controlling equipment via computers. More “**Mode 1**” (cross-border supply) commitments are therefore required.

Trade in environmental services remains however primarily linked to the commercial presence of services providers as many environmental services are infrastructure-dependent and require a continuous and long-term local presence. Hence, it is important for foreign firms to be able to establish affiliates abroad or to invest in local companies, which can provide benefit to the host country's markets as local firms could benefit from partnerships with more established firms so as to acquire industry knowledge and experience. More “**Mode 3**” (commercial presence abroad) will help in this endeavour.

Finally, with the use of ever more sophisticated technologies to provide modern environmental services, there is a need to bring experts on the ground. Such an expertise is not always available on the local market and there is the need to allow technicians and experts with such a knowledge to come to set up and to maintain the installations. Therefore, it will be important to negotiate better “**Mode 4**” (presence of natural persons) commitments, so as to allow these personnel to move on a temporary basis and to provide after-sale services.

CONCLUSION

ESF call the WTO countries that participate to the TESSD to adopt a report on progress to Ministers by MC12. The statement should propose deliverables, initiatives, and next steps for this crucial initiative on trade and climate. It will be important to establish ambitious, yet realistic, goals, and to develop a clear plan to advance viable proposals.

ESF believes that one of these viable proposals is to launch trade in environmental goods and services as soon as possible.

List of members supporting the above position

- Amfori
- Architects' Council of Europe –ACE
- British Telecom Plc
- BDO
- Bureau International des Producteurs et Intermédiaires d'Assurances – BIPAR
- BUSINESSEUROPE
- BUSINESSEUROPE WTO Working Group
- BSA The Software Alliance – BSA
- Conseil des barreaux de la Communauté Européenne – CCBE
- Danish Shipping
- Deutsche Post DHL
- DI – Confederation of Danish Industries
- Digital Europe
- EK - Confederation of Finnish Industries
- EuroCommerce
- European Banking Federation - EBF
- European Broadcasting Union - EBU
- European Community Shipowners' Associations – ECSA
- European Express Association – EEA
- European Federation of Engineering and Consultancy Associations – EFCA
- European Satellite Operators Association – ESOA
- European Public Telecom Network – ETNO
- Fédération de l'Industrie Européenne de la Construction – FIEC
- FratiniVergano European Lawyers
- General Council of the Bar of England & Wales
- Google
- Huawei Europe
- IBM Europe, Middle East & Africa
- Institute of Chartered Accountants in England and Wales (ICAEW)
- Insurance Europe
- Irish Business and Employers' Confederation - IBEC
- Law Society of England & Wales
- Le Groupe La Poste
- Microsoft Corporation Europe
- Mouvement des entreprises de France – MEDEF
- Oracle Europe, Middle East & Africa
- Orange
- PostEurop
- Prudential Plc.
- Svenskt Näringsliv (Confederation of Swedish Enterprise)
- TechUK
- Telenor Group
- TheCityUK
- UPS
- Vodafone
- Zurich Insurance