



GLOBAL SERVICES COALITION POSITION PAPER ON THE TRADE IN SERVICES AGREEMENT (TiSA)

September 2014

The Global Services Coalition (GSC) is an informal coalition of associations representing the services industries from major economies, speaking for the services sector in their respective countries on matters of international trade and investment. Services, such as financial services, professional services, information and communications technology, express delivery and logistics, retail services, education services, electronic security services, and energy and environmental services, tourism and transport services lie at the heart of the functioning of modern, competitive economies. We have a shared interest in the continuing liberalisation of trade in services and modernizing rules on services. The GSC expresses its strong support to the participating parties in the negotiation of the Trade in Services Agreement (TiSA), – comprising nearly a third of the WTO membership with 50 countries - for an ambitious and future-oriented agreement. We believe that the current plurilateral negotiations on the TiSA will significantly boost the growth prospects for this vital sector of the global economy, open new market access opportunities for business, and serve as the cornerstone for the rules governing services trade in the 21st century. With that in mind, we wish to provide a common input on the various issues that currently are being negotiated.

The world economy is increasingly dependent on services. According to the WTO, international trade in services (excluding intra-EU trade) reached over \$3.35 trillion in 2012, 68.7 percent of which occurred among the markets currently represented in the TiSA negotiations. Services provide essential components in all global supply chains and represent a growing share of value-added embodied in traded goods. Indeed, according to the WTO & OECD, global trade in services represents approximately one quarter of global trade in terms of balance of payments accounting, but nearly half of global trade in terms of “trade in value added – TiVA”. This stems from the rise of knowledge-based activities, the growing importance of intangible assets in all economies, together with the development of the Internet, and the enhanced interplay between services and the manufacturing and agricultural sectors. Major advances in computer networks, telecommunications, express delivery, and air transportation, have driven this economic shift. These changes have provided the platform for raising countless small and large services companies from local establishments to international businesses and are creating millions of jobs world-wide.

A. Creating the New International Framework for Services

During the current stalemate in the WTO trade negotiations, many bilateral and regional trade agreements have been negotiated or are underway. Our organizations believe that bilateral and regional approaches are vital for promoting expanded international trade and investment in services. At the same time, the long-term goal of GSC members is to achieve a multilateral agreement that increases market access and establishes a trading system in services that takes into account the dramatic changes in technology and business practices that have emerged in the twenty years since the negotiation of the General Agreement on Trade in Services (GATS), and those which will continue to emerge through ongoing innovation.

Therefore, while maintaining the goal of a high level of ambition in the TiSA, we encourage continued efforts to expand the number of participants, including among emerging markets, provided that new members show readiness to adhere to TiSA parties' shared objectives and guiding principles through concrete action.

We consider that countries seeking to join the talks should take all opportunities to demonstrate their commitment to the level of ambition required by accepting the already agreed core TiSA text and disciplines and by demonstrating its ability to table a comprehensive, high level initial offer going significantly beyond their current GATS schedules and aiming at reducing remaining market access impediments in services.

It is vital that the negotiations continue to focus on reaching an ambitious agreement in 2015 – a schedule that is challenging but achievable.

B. Providing New Market Access Opportunities

Our members seek real market access gains across all services sectors. While we applaud the decision to start the market access discussion by agreeing to table the highest level of commitment expressed by each party under its best free trade agreement (FTA), we are concerned by reports indicating that not all TiSA participants have adhered to this commitment. The aim of TiSA should not be simply to repackage existing commitments in completed free trade agreements, but to create genuine new opportunities through new market access commitments that go beyond current openness.

We understand that the parties are tabling market access commitments using the positive list approach, and the national treatment commitments using the negative list approach. The GSC organizations had called on the negotiators to use the negative approach in scheduling their market access commitments because this enables businesses to better assess what they are allowed or not to do in a market. Nevertheless, the so-called hybrid list approach, although not optimal, may help to attract a wider range of WTO members, including those familiar with the positive list approach, to join the negotiating process.

We strongly support the participants' agreement to a standstill and a ratchet mechanism applied to the national treatment commitments and encourage the negotiators to consider extension of these clauses to cover their market access commitments. In particular, we urge the negotiators to ensure that "new services" are covered. It would be an error to repeat the major mistake made when negotiating the GATS by concluding an agreement that is outdated the day it enters into force. New services are invented and traded every day. Innovation is a key driver of a modern economy, and the TiSA has to incorporate that concept if it is to be and remain relevant for some time. Negotiators need to heed the lessons of the GATS' structural limitations to ensure that they are avoided in the TiSA.

Businesses aim to provide the best customized service to their clients. An essential aspect of this service standard is the ability to move highly skilled services personnel rapidly to the locations required by their business. The TiSA needs to address the important issue of talent mobility to allow market access to services providers in a predictable and expedited way across all participating countries.

C. Addressing Horizontal Issues

The Global Services Coalition strongly encourages the TiSA negotiators to pursue their efforts in drafting horizontal disciplines as an integral part of the agreement. In this regard, TiSA negotiators must address the new so-called "21st century" issues such as cross border data flows, forced localization, and state-owned and state-sponsored enterprises (SOEs) that compete in commercial markets

Cross-border commercial data flows are the real backbone of the digital economy that is crucial to boosting growth in all sectors of the economy, including small and medium-size enterprises. The GSC calls upon negotiators to ensure that TiSA will allow cross border data flows and data-processing to occur free from discriminatory terms and trade distorting conditions such as requirements to use local network infrastructure or local servers. These commitments should be applied across all services sectors. Any exceptions to these provisions should be limited to legitimate public policy objectives and only in full compliance with the provisions of GATS covering data privacy (GATS Article XIV). With the objective of enhancing users' trust and companies' certainty, and thus trade in goods and services, it is essential that security and appropriate and effective protection of data is assured through compliance with all applicable privacy and security regulations.

We also call upon TiSA parties to require the elimination of discriminatory foreign ownership restrictions, including equity caps, localization requirements and other performance requirements, and economic needs tests. The TiSA should aim at establishing non-discriminatory treatment for all commercial participants in the economy, allowing freedom of establishment in the location and the legal form preferred by the investing businesses, including the use of corporate brand.

D. Promoting Regulatory Coherence

The current international environment poses serious challenges for regulated services seeking to meet conflicting and duplicative regulatory requirements – the higher the degree of regulation, the greater the risk of serious international divergences in the requirements to be met. The same factors impose the greatest burdens on small businesses with limited resources for compliance. It is essential, therefore, for TiSA parties' governments to work toward minimizing differences in services regulation and to encourage the adoption of processes aimed at greater regulatory coherence between the parties, including through mutual recognition of regulatory regimes.

E. Adopting Transparent and Fair Domestic Practices

We consider that one of the most significant TiSA achievements could be the adoption, as a minimum, of transparency and good governance disciplines in the conduct of domestic regulation. A transparent and fair regulatory system is important for every regulated services sector. We call upon the TiSA negotiators to work toward adoption of disciplines that will set general commitments in areas mentioned in the GATS, namely (a) Standard-setting, (b) Regulatory Application Process, and (c) Judicial, Arbitral, or Administrative Tribunals.

As a minimum, negotiators should seek agreement on the following regulatory practices:

- All new (or revised) regulations should be available for public comment prior to adoption with adequate time for comments by services suppliers operating in (or seeking to operate in) the national market;

- Regulators should establish a mechanism to respond to inquiries on rules and regulations from services suppliers, including by establishing enquiry points for the public;
- All current regulations and licensing criteria should be publicly available and accessible in writing and through electronic media;
- Licence applicants should be provided with a written statement setting out fully and precisely the documents and information the applicant must supply for the purpose of obtaining authorisation and license applications should be responded to in a commercially realistic timeframe.
- Administrative fees charged in connection with licences should be fair and reasonable, should not act to unreasonably limit licensing requests or the introduction of new products and services, and should seek to recover no more than the costs of the competent authority in processing the licence application and thereafter supervising the regulated entity;
- Foreign and domestic firms, including state-owned enterprises operating in a commercial capacity, should be subject to the same regulatory regimes and approval processes;
- Service providers should have an opportunity to file a complaint about inconsistent enforcement between foreign and domestic providers or arbitrary regulatory action. There should be effective legal recourse for such actions.
- National technical regulations and standards should generally be compatible with international standards but, in any case, should not have the effect of a non-tariff barrier.

The TiSA should include the use of the Internet in implementing all of these regulatory procedures.

The Global Services Coalition will do further work on these questions and is ready to continue to provide input on other regulatory practices.

F. Adopting Sector Specific Disciplines

In addition to the market access commitments and the horizontal disciplines applicable to all sectors, we encourage the TiSA negotiators to develop wherever appropriate sector specific disciplines that would form the basis for common rules that all TiSA participants would agree to adopt when regulating such a specific sector.

In **financial services**, we urge all TiSA parties to make the fullest use of the GATS and its Financial Services Annex, and to adopt in full the WTO Understanding on Commitments in Financial Services, as the starting-point for market access and national treatment commitments. TiSA parties should expand financial services commitments to ensure that the TiSA not only reflects the best commitments in existing FTAs among the TiSA parties but also sets the highest forward-looking standards both for market-opening across all GATS modes of supply and for developing processes towards ensuring regulatory coherence.

Information and communications technology (ICT) are the key drivers of economic growth, innovation, and value in the digitally networked economy. It is

essential, therefore, that the provisions of the TiSA support business innovation and development in the ICT sector. Accordingly, we support the development of updated measures in **telecommunications services and e-commerce**. Recognizing the globalized nature of the digital economy sector and the outdated policy distinction between communications services and Internet based services, we call upon the TiSA parties to improve the Reference Paper on Telecommunications Services so as to set the highest forward-looking standards for both market access and regulatory practices.

Disciplines for the **professional services** sectors should not only incorporate and implement the disciplines relating to the accountancy sector adopted by the WTO Council for Trade in Services in 1998, but also seek to expand similar disciplines to other professional services sectors such as architecture services, legal services, engineering services, etc. Specifically, countries should commit to ensure that measures relating to licensing requirements and procedures, technical standards and qualification requirements and procedures do not create unnecessary barriers to trade. TiSA parties also should ensure that such measures are not more trade-restrictive than necessary to fulfil a legitimate policy objective, such as public safety.

Furthermore, an annex on professional services should set a framework towards the possible adoption of mutual recognition of qualifications of professionals among the signatories, thereby enabling these professionals to take full advantage of the market opening while being held accountable for their work.

The Global Services Coalition understands that discussions are in progress covering additional services sectors such as transport services, postal and courier services, or energy or environmental related services.

G. Consultation with Industry

We appreciate the opportunities provided to date by the TiSA parties for consultation with our services industries. We call on negotiators to give regular updates to all the services sectors being negotiated in the TiSA.

The Global Services Coalition will continue to monitor closely the TiSA negotiations and to provide input and comments throughout the negotiations.