

Trade In Services Agreement

1.0 What is the Trade in Services Agreement (TiSA)?

The Doha Round Negotiations at the World Trade Organisation (WTO) started in the year 2001. After 15 years of negotiations, the Round has not yet been concluded due to divergence of views on various issues. It is unlikely that any agreement will emerge soon given the continued stalemate in the negotiations. In view of this situation, a number of countries with export interest in the services sector agreed to initiate negotiations in March 2013, on a plurilateral Trade in Services Agreement (TiSA). The Agreement is open for all WTO Members to join.

At present, there are 23 Members of the World Trade Organization (WTO) participating in the negotiations: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the European Union, Hong Kong (China), Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Turkey and the United States. The European Union represents 28 Member States. Altogether, some 50 countries are involved in the TiSA negotiations.

The TiSA represents an enormous services market of some 1.6 billion people and a combined GDP of more than \$50 trillion in 2015 i.e. nearly two-thirds of the world's economy. Together, these 50 countries account for about 70% of world trade in services.

1.1 Objective of the TiSA

The objective of the TISA is to improve rules on trade in services and market access, building on the WTO General Agreement on trade in services.

2.0 Why Mauritius joined the TiSA?

The Services sector accounts for over 75% of the Mauritius GDP and employs some 75,000 people directly, excluding indirect employment and the multiplier effect in the economy. It is expected that this sector will expand further and create additional employment. Government is particularly keen to ensure the export of services from Mauritius. It is in such a context that Mauritius decided to join the TiSA negotiations with a view to creating the necessary conditions for the further development of the Services sector in the country and to open up market access opportunities for local service providers.

There is, in parallel, a regional impetus to liberalisation of the services sector. The negotiations on the TiSA are a vital complement to the negotiations already taking place in the services sector at the level of COMESA, SADC and also at the broader continental level.

2.1 The benefits of TiSA to Mauritius

The TiSA, once concluded, would:

- (a) allow Mauritius to have enhanced market access to the services sector of other TiSA Parties e.g. provide cross border services from Mauritius such as translation or education.
- (b) remove impediments to Mauritius investments in the services sector in the TiSA parties e.g. establishment of professional advisory services overseas.
- (c) enable Small and Medium-sized Enterprises(SME) to have access to the markets of the TiSA parties without the requirement to have a commercial presence in those markets.
- (d) facilitate the movement of Mauritian professionals to work in the TiSA Parties.
- (e) to consolidate the standing and stature of Mauritius in the international financial market as a well regulated and transparent jurisdiction.

3.0 The Costs of TiSA to Mauritius

Under the TiSA, Mauritius is seeking to obtain reciprocal market opening for the access which it is already providing on an autonomous basis to foreign service providers.

Mauritius, being already an open economy, will not be negatively impacted upon by our commitments under the TISA as these do not exceed the access that already exists

4.0 The TiSA Core text:

A. The TiSA recognises the sovereign right of Parties to regulate and to introduce new regulations regarding the supply of services to meet public policy objectives. .

All services provided in the exercise of **governmental authority** are excluded from the scope of the TiSA.

The TiSA provides for exceptions that allows the Parties to take measures that are:

- (i) necessary to protect public morals or to maintain public order;
- (ii) necessary to protect human, animal or plant life or health;
- (iii) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to:
 - the prevention of deceptive and fraudulent practices or to deal with the effects of a default on services contracts;
 - the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;

- safety

B. Security Exceptions

The Agreement does not:

- (i) require any Party to furnish information, the disclosure of which it considers contrary to its essential security interests; or
- (ii) prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:
 - relating to the supply of services as carried out directly or indirectly for the purpose of provisioning a military establishment;
 - relating to fissionable and fusionable materials or the materials from which they are derived;
 - taken in time of war or other emergency in international relations; or
- (iii) prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.”

4.1 Annexes to the Core Text:

There are 16 Annexes to the core text of the Agreement which include the following:

(a) Annex on Financial Services

The main objectives of the Financial Services Annex are inter-alia to promote financial services best practices and to define the scope of financial services liberalisation including the main sectors and sub-sectors to be covered by Member State’s schedules of commitments.

The Financial Services Annex also allows Member States to take prudential measures and encourages international financial services standards. Mauritius is already a member of the main international financial services standard setting bodies.

(b) Annex on E-commerce Services

The annex aims at removing unnecessary barriers in the supply of a service through e-Commerce. It covers issues related to the movement of information, data protection, network access facilities, Customs duties on electronic transmission, International Cooperation amongst others.

The annex stipulates that a relevant regulatory framework should be put in place to ensure the use of computing facilities, including requirements that seek to ensure the security and confidentiality of communications. Moreover, Parties to the agreement shall not impose customs duties on electronic

transmissions. The parties are also expected to exchange and share experiences on how to promote an innovative and sustainable electronic ecommerce sector including on technology transfer.

(c) Annex on Telecommunication

The annex on telecommunication provides measures on the use of telecommunication services.

The telecommunication supplier should have the right to choose the technologies it desires to supply its service provided it meets the domestic regulation requirement. The country is free to also set criteria in a non-discriminating manner for the grant of any license in the telecommunication sector. It is also to be noted that broadcasting services is excluded from the agreement.

(d) Annex on Professional Services

This Annex covers measures affecting trade in professional services such as architecture, legal services, engineering, urban planning, accounting and auditing amongst others. It stipulates that no Party shall adopt any new or more restrictive sector specific limitation on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding. Moreover, no Party shall adopt any new or more restrictive measure which restricts or requires specific types of legal entity, joint venture or joint operation through which a service supplier may supply a professional service. A party should not adopt or maintain discriminatory economic needs tests as a requirement for the supply of a professional service.

(e) Annex on Maritime Services

The Annex provides for the Parties to take commitments to remove limitations on Maritime Services covered by it such as Maritime Auxiliary Services, storage and warehousing services, customs clearances services, contained station and depot services, Maritime Agency Services, subject to terms, conditions or limitations contained in the schedule of commitments. It carves out Maritime cabotage and Mauritius has not taken any commitments with regards to cargo handling services.

(f) Annex on Localisation

The Annex provides that Parties should agree for the provision of services through the cross-border mode where commercial presence is not necessarily required.

It further provides that investors from TISA Parties should not be conditioned by certain performance requirements or local content requirements to be able to provide a service such as:

- (i) The obligation to export a given percentage of goods.
- (ii) the obligation to transfer a specific technology.

(iii) the requirement to have on its Board of Directors more than a minority of shareholders.

However, it is to be noted that Parties are allowed to take a reservation against these obligations.

(g) Annex on Air Transport

The Annex covers services for which Parties have to take commitments in their market access offer such as computer reservation system, repair and maintenance of aircraft, speciality air services, ground handling services and airport operation services, subject to terms, limitations and conditions which the Parties may inscribe in their schedules.

The Annex explicitly carves out air traffic rights and recognises that obligations of the Parties taken under Bilateral Air Services Agreement will take precedence over the TISA.

(h) Delivery Services

The Annex requires that Parties that maintains a Postal monopoly have to define the scope of the monopoly on the basis of objective criteria such as price or weight threshold.

5.0 Draft Mauritius Market access offer

The Mauritius draft market access offer provides for Mauritius to adopt or maintain any measures with respect to all services established for a public purpose, including but not limited to the following: Public Health, Public Education, Public Housing, Public Transport, Public Utilities, Public Postal Services, Social Security, Public Safety (Public law enforcement), and Distribution of energy related products.

It also indicates that services provided at the Port, in particular, cargo handling services, as well as cabotage and air traffic rights, are excluded from the scope of the agreement.

The draft market access made by Mauritius has been drafted in consultations with stakeholders from the services sectors concerned. These draft offers will have to be negotiated with the TISA parties and may be subject to change.

Sectors in which Mauritius has taken commitments, include:

- Financial services
- Banking
- Professional services
- Communications
- Environmental
- Transport
- Computer related
- Social services
- Tourism

- Energy services and
- Research and Development

5.1 The Horizontal section

Mauritius has, in **the headnote** of its market access offer, indicated that it reserves the right to:

- not take commitments in air access rights
- take measures necessary to build the capacity of local small scale service providers
- provide preferential treatment to small scale local service providers in relation to procurement.
- regulate new sectors of activities or new subsectors
- take measures, fiscal or otherwise to promote the development of local service suppliers
- impose a requirement for professional undertaking employment in Mauritius and build skills of our Mauritian counterparts
- exercise the principle of reciprocity and a fair balance of market openness relative to its offers

Section A Reservations (not subject to liberalisation)

- Under limitations under Section A of the Horizontal Commitments (policy space reservations), Mauritius has entered a reservation not to open services in the authority of Government , such as:
 - Public Health*
 - Public Education*
 - Public Housing*
 - Public Transport*
 - Public Utilities*
 - Public Postal Services*
 - Social Security*
 - *Public Safety (Public law enforcement)*
- The right to provide more favourable treatment with respect to reinsurance services to government controlled entities. This is important for companies like the Sugar Insurance Fund Board.

6.0 TiSA, Regional Agreements and Future Agenda

The negotiations on the TISA are a vital complement to the negotiations already taking place in the services sector at the level of COMESA, SADC and also at the broader continental level. TiSA parties have proposed that the TiSA be

multilateralised at the WTO. The participation of Mauritius to the TiSA negotiations provides a window of opportunities to have our concerns taken on board and thus influence the outcome of the negotiations. Mauritius also brings in a small island perspective in the negotiations.

Prior to the various rounds of negotiations in Geneva, relevant Ministries and stakeholders have been consulted. Negotiations in Geneva have been conducted with a view to preserving the state of our current legislative framework as far as possible. In taking positions, negotiators have taken into account policy guidance offered and positions advised by the relevant Ministries and stakeholders. Taking this into account, any change in legislation that might take place following the signature and ratification of TISA ought to be in line with the policies of relevant Ministries.

We are confident that once concluded, TiSA would provide an excellent framework for the increased participation of Mauritius in trade in services and further integrate Mauritius in the regional and global economies.

Ministry of Foreign Affairs, Regional

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22.11.2016

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