The Canadian Services Coalition

Initial input to the Trade in Services Agreement Consultation

Introduction

Canada, like other advanced economies, is in the process of a structural shift towards a services-dominated economy. Today, services represent more than 70 percent of Canada's gross domestic product (GDP) and employ three out of four Canadians.

Advances in computer networks, express delivery and air transportation have helped drive the growth of services from a local to a global business. This includes both the direct trade of services, as well as a growing share of value-added services embodied in traded goods.

Unfortunately, the international legal framework needed to further this growth is critically weak and seriously lags behind the rules established for goods trade.

While the WTO's General Agreement on Trade in Services (GATS) yielded some limited gains, it can only be viewed as the beginning. Many Canadian service providers had hoped that the Doha Round would move the international services trade regime forward, but the negotiations have stalled due to other issues.

A strong multilateral system greatly benefits Canadian businesses, particularly small and medium sized enterprises, and the Canadian Services Coalition (CSC) encourages the Canadian government to remain engaged in efforts to revitalize the negotiations under the auspices of the WTO. Unfortunately, liberalization of international services trade in the near-term will require efforts outside this system.

> *About the Canadian Services Coalition*
>
> The Canadian Services Coalition (CSC) is a membership-based organization that provides a strong and cohesive voice to the Canadian services sector. A core objective is to remove trade and investment barriers that impede access to global markets for Canadian service providers. The CSC is an active member of the Global Services Coalition, a group of 11 industry associations representing services industries in countries around the world.

Accordingly, the CSC supports the government's pursuit of bilateral and plurilateral agreements that will benefit Canada's services economy. The recently announced Trade in Services Agreement (TISA) is a particularly valuable opportunity.

Canada and the other parties should leverage the early goodwill towards this initiative to produce an ambitious agreement that will lay the framework for modern international services trade.

The following highlights key priorities for the CSC, as well as illustrative examples of barriers to services trade maintained by select negotiating parties. Additional examples are available upon request and will be provided as the CSC continues its consultations with Canadian service providers.

Market Access & National Treatment

The TISA should provide new market access for Canadian firms as well as bind existing access. At a minimum, the TISA should include the highest level of commitment expressed by each party under the GATS and other free trade agreements (FTAs). Parties should demonstrate a willingness to bind current levels of market access.

An international service provider electing to establish a local commercial presence should be given the freedom to choose their juridical form, such as a branch or subsidiary. When establishing a subsidiary, they should be free to choose between forming a new company or acquiring an existing entity. Moreover, there should be no requirement to enter a joint-venture with local investors. The agreement should also remove any restrictions on branding, such as restrictions on the use of the home company name.

Financial Services

Locally established and cross-border financial service providers should not have limits placed on the number of offices/branches, value of financial services transactions or outputs, number of financial services operations, number of persons employed or type of legal entity. Where they exist, foreign equity caps should be raised substantially, if not eliminated. National treatment should also apply to requirements related to capital, solvency,

> *Restrictions on juridical form: Colombia*
>
> Foreign banks in the Colombian market are required to establish a local subsidiary, precluding them from operating under a branch model.

reserves, the granting of new insurance/reinsurance licences, transfers of profits and capital, and participation in pension and fund management and enterprise annuities.

However, exceptions should be permitted in cases of prudential regulation undertaken to ensure the maintenance of the safety, soundness, integrity, or financial responsibility of financial institutions or cross-border financial service suppliers. More specifically, this includes protecting investors, depositors, policy holders or persons to whom a fiduciary duty is owed or to ensure the integrity and stability of the financial system.

The TISA should allow for cross-border trade in wealth management services by sophisticated providers such as pension funds or exempted persons. These “qualified investors” should not be required to establish a commercial presence or require a separate licensing and approval process beyond those generally applied to firms with a commercial presence in that market. The agreement should allow for the dissemination and processing—within a country and cross border—of financial and other business information to provide clients with services necessary for the conduct of ordinary business.

Regulatory Environment

The TISA should promote a coherent regulatory environment that includes the recognition of widely adhered to international standards, such as the Financial Stability Board and the International Association of Insurance Supervisors (IAIS) in the case of financial services, and that avoids the creation of unnecessary barriers to trade. This means replacing vague or inconsistent regulations with a principles- and rules-based approach that allows companies to operate with sufficient flexibility and to compete and differentiate themselves in the marketplace unless specifically prohibited.

TISA members’ regulatory and administrative frameworks must be transparent and effective, align across jurisdictions and maintain non-discriminatory enforcement under domestic law. There is also a need to ensure full transparency in terms of requirements and a timely response to obtaining a licence to operate or expand in a jurisdiction. Issuance of licences and certifications should be transparent and non-discriminatory.

The TISA should ensure changes to regulations be made public through a single window access point and include a provision of reasonable time to respond and implement such changes. The appropriate governmental authorities should make available documentation and information required to implement these changes and respond to any inquiries on a timely basis. Foreign service providers should have equal access to available consultation mechanisms. Clear and effective rules for resolving disputes and mechanisms to ensure procedural fairness should also be included.

To encourage regulations that meet international best practices, TISA member states should periodically agree to submit their system of domestic regulation to a non-binding peer review process by other members of the TISA, or by relevant international (standard setting) bodies such as the IMF, OECD, IOSCO, etc.

Investment

The TISA should encourage freedom of investment across sectors, such as the ability to own real estate and other fixed assets in other member states. It is critical that the agreement provide proper protection of investments, including protection from arbitrary or uncompensated expropriation. Protection should be extended to acquired rights, thereby preventing a roll-back on investments made by foreign service providers.

Transfers related to investments, including contributions to capital, profits, dividends, proceeds from sales, capital gains, and interest should largely be made freely and without delay into, and out of, participating jurisdictions.

Movement of People

Encouraging the movement of people for the purpose of service delivery represents one of the most critical areas of the TISA. Canada should pursue very ambitious coverage in these areas, such as the removal of restrictions on nationality or residency requirements for the selection of personnel; expedited visas for temporary entry of business persons and technical staff, including professional level and mid-term transfers; as well as improvements in the mutual recognition of professional credentials. TISA members' temporary entry processing procedures should be transparent and efficient with clear definitions of categories of business persons.

Nationality requirements for employees: Panama

90 per cent of the bank employees must be nationals. A branch of a foreign bank shall have two legal representative residents in Panama, one of which must be a Panamanian national.

Cross-border Data Flows

Technological advances mean that every company doing business across borders or using suppliers from abroad relies on the free flow of data across jurisdictions for their operations.

Increasingly governments are attempting to regulate the flow of data–often hindering the ability of firms to freely transmit business information. For example, some jurisdictions have imposed requirements on firms that force them to store data on local servers. At a minimum, the lack of common regulatory norms is resulting in a patchwork system of rules that differ across jurisdictions. It also provides an opportunity for abuse by governments who use regulation to artificially support their domestic industries. These impediments and localization requirements are particularly harmful to small and medium sized businesses.

A concerted effort is needed to find and set rules that balance the equally legitimate needs for the protection of personal privacy and national security and the needs for the free flow of business information. Regulations governing the international transfer of data should be as least trade-restrictive as possible so as to support the flow of data integral to business operations.

State-Owned Enterprises

The Canadian government should work with other negotiating countries to ensure that the TISA contains at least basic disciplines for State Owned Enterprises (SOEs).

In many countries, SOEs enjoy preferential treatment such as direct subsidies, reduced oversight in comparison to foreign owned firms and exemptions from laws or regulations. Such practices place international services providers at a competitive disadvantage. SOEs should be subject to equivalent, non-discriminatory supervision and regulation as the private sector players with which they currently compete to ensure a level playing field.

Preferential treatment of SOEs: Japan

Insurance products from Japan Post, which is 30% government-owned, benefit from preferential distribution through the post office network, and are not subject to the same regulatory approval process.

SOEs may also provide unfair advantages to other local firms or investors. The TISA needs to address non-commercial purchase or sales arrangements that discriminate against international service providers.

For SOEs that have both monopoly and competitive mandates, public financial reporting with two separate accounts should be required. These separate accounts must demonstrate that profits made from the sale of products/services in which the SOE has a monopoly are not cross-subsidizing their competitive operations.

Government Procurement

Many Canadian companies are international leaders in sales to public institutions. New market access in national and sub-national procurement would provide significant opportunities for Canadian contractors. Public procurement access negotiated under the TISA should be applied in a transparent manner. TISA member states should participate in the WTO Government Procurement Agreement. Access to sub-national government's procurement should be granted only to those TISA parties that provide mutual access.

Price preferences for domestic bidders: Turkey

Under Turkey's public tender law, foreign companies can participate in tenders valued above an established threshold. The law provides a price preference of up to 15 percent for domestic bidders, which is not available if they form a joint venture with foreign bidders.

Extraterritoriality

Canada should ensure that the TISA prevents the unnecessary and trade hampering application of a country's domestic regulations, laws or other measures abroad and should be limited to those operations of a company that are conducted within the state's jurisdiction.

Conclusion

The CSC is a strong supporter of Canada's participation in the TISA. The successful conclusion of an ambitious agreement on international services trade will significantly improve the competitiveness of Canadian businesses, resulting in higher economic growth and additional jobs for Canadians. The federal government should leverage the current momentum behind these negotiations to encourage the rapid conclusion of a robust agreement.

For more information, please contact Leah Littlepage at llittlepage@chamber.ca.