

## **GFIA position paper on the Trade in Services Agreement (TISA)**

GFIA, the Global Federation of Insurance Associations, represents the interests of insurers and reinsurers in 58 countries through its 37 member associations. These companies account for around 87% of total insurance premiums worldwide.

GFIA welcomes the establishment of the “Really good friends of services” (RGF) as a positive initiative towards an “International Services Agreement” (TISA). We believe that it is important that the negotiations should be ambitious and should ensure that new commitments are legally binding. TISA should ensure 100 percent market access for insurance suppliers of its members, including freedom from discriminatory treatment, absence of quantitative restraints and investment restrictions, and freedom of choice of legal entity through which to engage in the insurance business.

GFIA welcomes the intention to establish an agreement compatible with GATS rules. We hope that such agreement will facilitate the extension to other WTO members in the future, including emerging economies.

### **Current WTO GATS commitments.**

GFIA believes that the participating countries should reaffirm and bind their existing commitments under the General Agreement on Trade in Services (GATS):

- **Existing commitments and levels of openness.** TISA should ensure that participating countries comply fully with their existing GATS commitments. No country should be able to modify, retract, or withdraw commitments previously undertaken pursuant to GATS, including modification of those commitments in the guise of "clarification." TISA should bind the existing levels of openness (standstill clause), thereby prohibiting participating countries from introducing new nonconforming measures. Existing nonconforming or conforming measures may not be modified to increase the degree of nonconformity with GATS disciplines. No nonconforming measure may be introduced after the effective date of TISA without agreement by all TISA parties.
- **Reduction of GATS unbound sector commitments.** TISA should aim to reduce the number of commitments in the insurance sector specified as "unbound" or "not applicable," as well as commitments that are bound but on a qualified basis.
- **The prudential exception.** The "prudential carve-out" in the GATS Annex on Financial Services risks limiting the effects of trade liberalization and enabling members to avoid trade commitments. TISA should introduce language limiting the scope of the carve-out, ensuring that it is always applied in a non-discriminatory manner, and that prudential measures be no more restrictive than necessary to achieve prudential objectives. When members have questions about the prudential justification of a implemented measure, the TISA should establish a government to government consultation process..

## **New commitments.**

GFIA believes that TISA should go beyond existing GATS commitments:

- ***Understanding on Commitments in Financial Services.*** All TISA participants should sign up for the currently optional Understanding on Commitments in Financial Services appended to the Final Act of the Uruguay Round. Committing to this understanding would ensure that participants implement specific commitments going beyond GATS in areas such as monopoly rights, cross-border trade and commercial presence. The Understanding on Commitments on Financial Services would automatically include new financial services.
- ***Equity limitations.*** TISA should provide that members will eliminate equity caps or limitations on foreign insurance suppliers and impose no new limitations. Requirements that foreign insurers divest a portion or all of their interests in local insurance suppliers should be prohibited.
- ***Transparency.*** TISA should include the transparency clauses set forth in GATS Article III and should allow members to comment on new regulatory policies in a timely and transparent manner, including new exemptions or preferential treatment accorded to a domestic supplier, where the exemption or preferential treatment is appropriate in extraordinary circumstances. Introduction of new measures inconsistent with these disciplines should be prohibited. TISA should ensure
  - a clearly expressed and coherent regulatory environment subject to peer review by other members;
  - where product approval is required a transparent approval process for new products;
  - clarity and precision with respect to requirements attached to licensing applications;
  - an independent regulatory authority with robust and transparent data protection provisions underpinned in legislation and the ability to protect confidential information; and
  - adoption and implementation of regulatory transparency measures and procedures set forth in the OECD's Policy Framework for Effective and Efficient Financial Regulation.
- ***Horizontal minimum commitments which would apply across all sectors.*** TISA should include horizontal market access, most favored nation, state-owned enterprises, universal service, and national treatment commitments establishing minimum standards for participating and future signatory countries.

- **National treatment commitments should include:**
  - equal laws, taxation, regulation, regulatory authorities supervision, and licensing requirements for foreign and local firms, including SOEs;
  - access to public and private distribution networks;
  - access to government contacts and procurement;
  - absence of government guarantees or privileged financial support for domestic firms;
  - absence of additional reporting or more onerous regulatory measures applicable to foreign firms, including higher capital requirements;
- Most favored nation commitments should be undertaken by all participating countries, ensuring treatment to services and services suppliers of other parties which is no less favorable than that accorded services and services suppliers of any other country.
- Market access commitments should require elimination of
  - localization requirements, including the obligation to establish a commercial presence in a specific legal form and the requirement to convert from one form of legal entity to another;
  - shareholding requirements, including equity caps and joint venture requirements.
- Universal service requirements should be administered in a transparent, nondiscriminatory and competitively neutral manner and should not be more burdensome than necessary for the kind of universal services defined by the member.
- State-owned enterprises should not be prohibited but should be subject to all of TISA's disciplines and all national laws of general applicability without explicit or implicit exceptions. Each SOE should be subject to all of the obligations of the governmental entity or entities that own it. Procurement of goods and services by SOEs should be on a commercial basis and conducted in a transparent, competitive and nondiscriminatory manner.

#### **Insurance-specific commitments.**

TISA should include commitments which are specific to the insurance sector, focusing on Mode 1 (cross-border supply), Mode 2 (consumption abroad), and Mode 3 (commercial presence). These commitments should prohibit:

- restrictions on foreign affiliates' insurance cessions;



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- compulsory levels of (re) insurance to be placed locally;
- collateral requirements for reinsurance placements;
- burdensome approval and licensing requirements, including consecutive licensing and branch approval requirements in regions or provinces;
- nationality requirements for officers, senior managers, or board members;
- investment restrictions, including compulsory investments and the obligations to convert financial assets into local currency;
- requirements that foreign insurers cede a portion of their business to foreign insurers;
- restrictions on investment such as obligation to the transfer or repatriation repatriate of capitals and/or profits from foreign investment or obligation to invest in certain projects,
- in particular, we think that TISA should eliminate the restrictions for marine, aviation and transport insurance (MAT) for as well as reinsurance. These lines of business are inherently international due to the size and/or complexity of risks associated and therefore typically provided from highly developed insurance centres on a Mode 1 (cross-border) or Mode 2 (consumption abroad) basis.

#### **Cross-border data flows.**

GFIA believes that all requirements that data be maintained in a given jurisdiction should be prohibited. Foreign companies doing business in a member should be permitted to transfer electronic information out of the member for processing offshore. Companies should be free to supply data from headquarters, through affiliates, through regional centers, and through third party vendors as long as the data protection requirements of the local jurisdiction are satisfied.

GFIA appreciates the consideration of these comments and would be glad to discuss the content of this position paper.

#### **About the GFIA**

Through its 37 member associations, the Global Federation of Insurance Associations (GFIA) represents the interests of insurers and reinsurers in 58 countries. These companies account for around 87% of total insurance premiums worldwide. The GFIA is incorporated in Switzerland and its secretariat is based in Brussels.