



Report of the 21st TiSA negotiation round 2 – 10 November 2016

Summary

The **21st TiSA negotiating round** took place from 2 to 10 November 2016 and was organised and chaired by the EU.

Parties made **good progress in working towards an agreed text** and finding pathways towards solving the most controversial outstanding issues at both Chief Negotiators and Heads of Delegation levels.

The beginning of the round was dedicated to the **discussion on offers**, following the exchange of their second revised versions at the end of October.

The round then focused on advancing **technical discussions on texts** in small groups, as well as bilateral and plenary settings. A number of outstanding issues that could not be solved earlier at technical level were now discussed by Chief Negotiators and Heads of Delegations.

Parties discussed mainly the **key annexes** on:

- Transparency
- Domestic Regulation
- Financial Services
- Telecommunications
- E-commerce
- Localisation
- "Mode 4",

as well as **other annexes** related to transport (maritime, air, road), professional services, state-owned enterprises and delivery services.

In a separate discussion parties addressed **institutional arrangements**, including dispute settlement.

Detailed report

1. Market access

Following the exchange of second revised offers in the end of October, Parties discussed in a plenary setting all the offers currently on the table. At this stage, only one participant of the talks has not yet presented its revised offer. The EU presented its offer that comes close to its best recently concluded trade agreement. Overall, Parties found that the level of ambition of most of the offers makes it possible to contemplate the end of the negotiating process on market access. The issue of new services remains though a controversial one, on which Parties remain divided.

2. Discussions at the levels of Chief Negotiators and Heads of Delegation

Negotiations at Chief Negotiators and Heads of Delegation levels addressed a number of outstanding issues that to date could not be solved so far at a technical level.

These include the following:

- **Most-Favoured Nation (MFN) Treatment:** While some Parties favour a forward looking MFN clause that would grant all benefits of future bilateral trade agreements concluded by each participant to all TiSA Parties, others have raised concerns with such an approach. The Parties engaged therefore to find a middle-ground solution.
- **Licensing, qualification requirements and procedures:** Parties discussed the scope of the disciplines, i.e. whether they should apply to all services or only the services included in a Party's schedule of commitments. Parties also addressed the possible inclusion of technical standards in certain disciplines, as well as a necessity test. Many Parties, including the EU, raised concerns on the latter.
- **Mode 4:** Discussions on the movement of natural persons focused on outstanding issues relating to the EU's traditional divide between trade and migration policies.
- **Localisation:** An initial discussion took place as regards a provision of Senior Management and Boards of Directors. Parties have different FTA practices in that respect and therefore the approaches they favour diverge.
- **Financial Services:** Parties discussed all outstanding issues relevant to the Financial Services Annexes as part of a possible compromise package.
- **Institutional provisions:** Parties discussed questions related to a possibility of allowing observers at the TiSA Committee, as well as potential modification of schedules following the conclusion of the agreement.

3. Institutional provisions

Discussions continued on the basis of the proposal submitted by the EU earlier this year, which covers all **administrative issues** that would be necessary for the functioning of the agreement. Parties exchanged views on each of the provisions addressing: the inter-governmental committee - including chair and observers; modification of schedules; entry into force; multilateralisation of the agreement; accession of new Parties and amendments. Technical work will continue to integrate all Parties' views in the text.

On **state-to-state dispute settlement**, during five days of negotiations, Parties discussed all the provisions of the EU proposal for a dispute settlement chapter in TiSA and the respective provisions of recent proposals by other Parties. This round produced a consolidated text for solving TiSA disputes between states, which serves as a good basis for future discussions.

At the end of this round, there appears to be overall convergence on the structure of the dispute settlement chapter and on several articles regarding panel proceedings and reports. Conversely, a divergence of views is still present on issues such as scope, panel composition, proceedings for implementing panel reports, remedies for cases of non-implementation and mediation. Parties are still working towards bridging those differences.

4. Transparency

Following a very short plenary discussion, the text of the annex on transparency is now entirely agreed.

5. Licensing and qualification requirements and procedures

In relatively short negotiations at technical level, Parties addressed the limited outstanding concerns on the development and administration of measures, as well as a new proposal by one Party to address discrimination based on gender.

6. Financial Services

During this round parties discussed "landing zones" on some of the remaining open provisions of the financial services Annex. Good progress could be achieved regarding domestic regulation provisions applicable to financial services, which are now almost stabilised. Some progress could also be achieved on the Senior Management and Board of Directors discipline. The proposal on the location of data and computing facilities was further explained and discussed. Parties also discussed whether and to what extent disciplines for local presence and local content/performance requirements should apply to financial services, which is supported by the EU.

7. Telecommunication Services

Parties held successful discussions on telecommunications and managed to advance text on issues such as access and use of such services, appeal and review of the decisions by the telecom regulatory body, the telecom regulatory body, licenses and general provisions. Constructive discussions took place also as regards provisions that imply obligations on suppliers and Parties identified a clear path for further progress in the coming weeks.

8. E-commerce

Parties had good discussions on e-commerce, covering issues such as spam, data flows, localisation of computing facilities, source code, access and use of the internet, online consumer protection and international cooperation. Some provisions are already very advanced (spam, international cooperation) whereas others (in particular provisions on data flows and localisation of computing facilities) will continue to require in-depth discussions between Parties.

9. Localisation

Discussions on localisation disciplines focused on resolving the few remaining issues in order to stabilise the text. All articles were discussed, the main areas of discussions related to Article 2 on Local Management and Boards of Directors, and Article 3 on Local Content and Other Performance Requirements (where it was possible to achieve agreement) and Article 5 on exceptions.

10. Transport

Discussions on transport were held in small groups.

As for **maritime transport**, progress has been made on most of the articles discussed. The round focused on the articles relating to the movement of empty containers, the prohibition of cargo sharing agreements, the access to ports and to port services, as well as port fees and charges.

With respect to **air transport**, discussions continued in order to agree on the outstanding articles relating to the list of services to be covered by TiSA.

Discussions on various articles of the annex on **road transport** continued as well.

11. Other topics

Discussions also took place in small group format on other topics, such as **state-owned-enterprises**. The EU continued to take a position in line with the prevailing policy adopted in bilateral trade negotiations. A discussion on an annex on **professional services** addressed rules related to the scope, business names, licensing and qualification requirements and procedures, as well as legal services. Parties also made good progress towards agreeing the final text of the **annex on delivery services**.