

ALL ABOUT TiSA

A stylized world map is positioned to the right of the word 'TiSA'. The map uses a red and white color scheme, with red highlighting the countries that are members of the Trade in Services Agreement (TiSA). These include North America (USA, Canada), most of Europe, Japan, and Australia. The rest of the world's landmasses are shown in white.

EVERYTHING YOU DIDN'T KNOW ABOUT
THE **TRADE IN SERVICES AGREEMENT**

Disclaimer:

The following analysis is made based on leaked negotiating texts* by WikiLeaks. The texts are not finalised and some of the contents of the analysis might not apply on the final text. The author has tried to include only provisions that enjoy wide support of TiSA Parties or do not face wide opposition by TiSA Parties although this is not always the case. The impact described below will differ from country to country and from sector to sector depending on the final list of exemptions/inclusions that each country adopts in the TiSA.

Some of the leaked Annexes and texts, for instance the Annexes on Energy Related Services, Environmental Services and others, are not included in this analysis, as they were not available earlier.

*<https://wikileaks.org/tisa/>

Introduction

What is TiSA?

The proposed Trade in Services Agreement (TiSA) is designed to liberalise international trade in services and to set binding international rules on how participating countries regulate services. The TiSA talks began in 2012, and officials aim to complete the deal by the end of 2016, although previous deadlines have been missed.

From the limited leaks to the public on TiSA, the scope of the treaty's coverage appears vast, spanning transportation, energy, retail, e-commerce, express delivery, telecommunications, banking, health, private education and more. Services make up the majority of economic activity in most countries, affecting virtually all aspects of life and society.

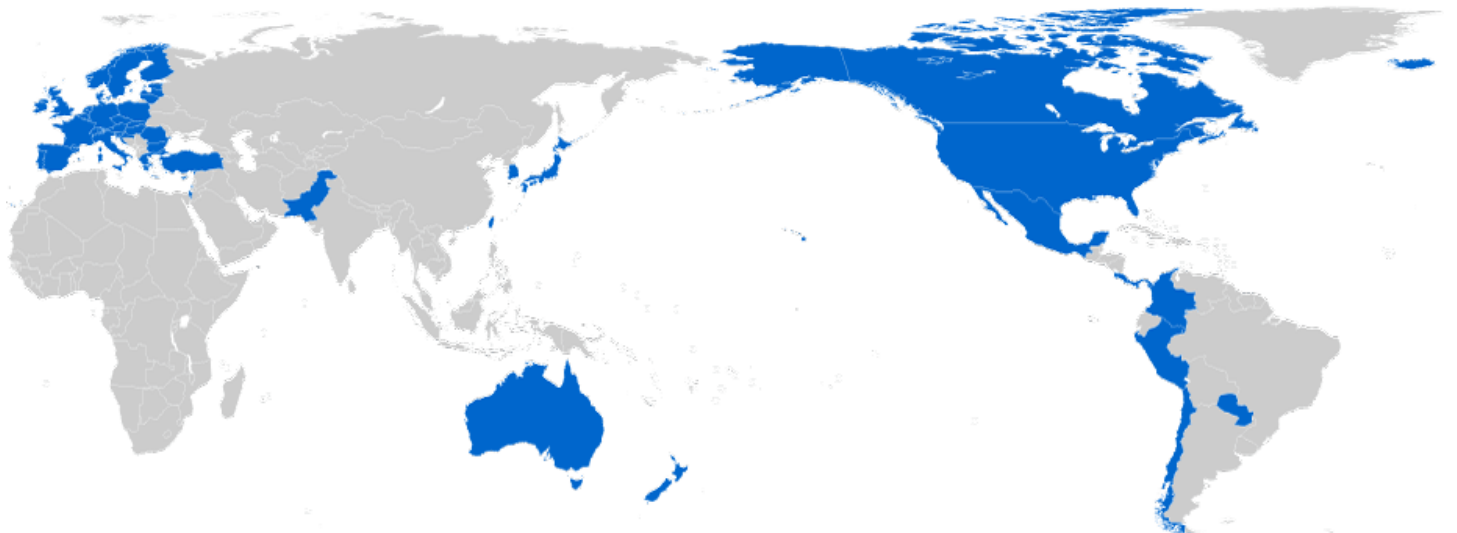
Unlike international trade in goods, services trade is not normally subject to import tariffs or other border restrictions. Instead, the “barriers” to cross-border trade in services being targeted by TiSA negotiators involve national and local regulations, such as foreign ownership restrictions, licensing requirements, differing quality standards, financial regulations, universal service obligations, and public services (which by their very nature can close off large parts of sectors like health or education to for-profit service providers).

The aim of the talks is to facilitate the entry of global service corporations into domestic markets by restricting government regulations that might interfere with these companies' commercial aims and activities. The TiSA impinges on a wide swath of issues related to foreign investment, public interest regulation and even the temporary movement of workers and potentially has far greater and more intrusive impacts on democratic authority than traditional trade-in-goods agreements.

Who is involved?

The agreement is currently being negotiated by Australia, Canada, Chile, Colombia, Costa Rica, European Union (28 countries), Hong Kong, Iceland, Israel, Japan, South Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Panama, Pakistan, Peru, Switzerland, Taiwan, Turkey, and the United States. The main participants who have been the strongest proponents of services liberalisation in the WTO's Doha Round services negotiations facetiously call themselves the “Really Good Friends of Services”. Others mockingly call them the “Really Good Friends of Transnational Corporations”.¹

¹ See Ellen Gould. The Really Good Friends of Transnational Corporations Agreement. Public Services International. September 2014.



The list of TiSA participants is also notable for who is missing. The five largest developing countries – Brazil, Russia, India, China and South Africa – are not involved in the treaty. The Really Good Friends, led by the U.S. and the EU, have deliberately side-stepped these emerging market powers and the stalled Doha services negotiations in order to advance an ambitious agenda of trade-in-services liberalisation. Uruguay, an initial TiSA member, withdrew from the negotiations after local trade unions and civil society groups strongly opposed the country's participation. Paraguay has also reportedly withdrawn from the negotiations.

The TiSA text is rooted in the General Agreement on Trade in Services (GATS). In theory, this could allow TiSA to become part of the WTO architecture once a sufficient number of WTO members that are not currently parties to the agreement join in. But there are many obstacles to a smooth transition of an eventual TiSA into the WTO framework, not least of which is the resentment of key WTO member governments at being sidestepped and excluded by TiSA proponents.

From the outset, the Really Good Friends have worked in close alliance with corporate lobby groups representing multinational services industries, including the U.S. Coalition of Services Industries, the European Services Forum and the Global Services Network. It is fair to say that these lobbies have been openly frustrated by the impasse in the Doha round and are the driving force behind TiSA and its break away from the WTO.

BOX 1

National treatment means that governments must treat services and service suppliers of other parties to the agreement no less favourably than they treat their own, both in law and in practice. “No less favourably” means that foreign suppliers can be treated more favourably than domestic ones. The GATS (and TiSA) stipulate that even “formally identical [...] treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service supplier of the Party compared to like services or service suppliers of any other Party.”

Market access means that governments cannot put numerical limits on either the supply or suppliers of a service, nor can they require that service suppliers take a specific legal form (e.g., requiring that multinational corporations must provide services through a local subsidiary or that social services must be provided exclusively by not-for-profit entities). Such measures are prohibited even if they apply equally to foreign and domestic service suppliers.

Standstill means that where governments make commitments they automatically lock in their current level of services liberalisation and future governments cannot adopt more restrictive regulation.

Ratchet means that an exempted measure can only be amended to be make it more consistent with TiSA and such changes are permanently locked in. Furthermore, if a protected measure is eliminated by a future government, it cannot be restored.

What is the structure of the TiSA?

TiSA's core text applies across all services sectors. The core text will be supplemented by sector-specific Annexes, which create additional rules tailored for particular sectors. The Telecommunications Annex, for example, sets out special rules that apply only to telecommunication service providers and to governmental regulation of telecommunications.

Governments negotiate commitments on market access and national treatment across the different **modes of supply** (see Box 2). These commitments apply only to services sectors that each country agrees to schedule (i.e., include or commit) (see Box 3). Unlike under GATS, national treatment commitments in TiSA follow a **"negative list" approach** (see box 1), where all sectors and measures are automatically covered except those that governments specifically list as excluded. The negative list approach is problematic because governments may fail to protect important measures or sectors, either through human error or due to the complexity of the process.²

An issue closely related to negative listing is whether new services should be automatically subject to national treatment. E-commerce and digital trade are examples of key sectors that did not exist 20 years ago. 3D-printing and app-based "gig economy" services such as Uber and Lyft are examples of services that are emerging rapidly, but where appropriate regulation is still being developed. The blanket application of national treatment, as strongly advocated by the US, to services that have not even been invented yet could easily interfere with legitimate regulation designed to ensure that workers and local economies benefit from services innovation.

In TiSA, market access commitments are made using a **"positive list" approach**. This means that a given government specifically lists the sectors it wants to include (*schedule*) in the agreement. Only the listed sectors are subject to the market access obligations. For instance, if a given country schedules construction services in its *market access* list, it means that it permanently surrenders its authority to limit the number of construction companies operating in its territory (even on a regional basis) or to insist that they take local partners. If a country grants *na-*

tional treatment to all construction services providers of other TiSA Parties, it means that it commits to treat construction companies from other TiSA countries at least as favourably as its own domestic enterprises.

The scheduling procedure is of paramount importance. Countries could exclude specific modes of supply when they liberalise different sectors (see Box 2). For example, a country may include (schedule) legal services for market access and national treatment in all modes of supply except "presence of natural persons" (mode 4). In this case, foreign legal firms will be allowed to provide online services in the said country, provide advice to citizens of the said country if the citizens travel abroad to receive the advice, and open offices in the said country. It will not be possible, however, for employees of foreign legal firms to travel to the said country to provide legal services there.

BOX 2

TiSA covers **all four ways in which services are supplied** and, in principle, aims at the greatest **possible** liberalisation across these modes of supply.

"Cross-border supply of services" or Mode 1: e.g., providing online legal advice or opening an account in a foreign bank located abroad.

"Consumption abroad" or Mode 2: e.g., repairing a ship abroad, studying abroad or tourism.

"Commercial presence" or Mode 3: e.g., a foreign school opening in another country or a foreign architecture office establishing local subsidiary.

"Presence of natural persons" or Mode 4: e.g., a legal expert that comes to a country temporarily to provide advisory services or an engineer being posted abroad for several months to work on a project.

² In the very first GATS case, which was lost by the U.S., the American government claimed that it had inadvertently listed gambling and betting services in its schedule. World Trade Organization, United States - Measures Affecting the Cross-border Supply of Gambling and Betting Services," Report of the Panel. 10 November 2004.

Countries are not completely free in scheduling their commitments because pressure is being put on them by other negotiating parties to undertake wide commitments. A big difference between GATS and TiSA is that the latter includes various negotiating devices (or modalities) – such as negative listing, standstill and ratchet mechanisms (see box 1) – that are explicitly designed to pressure participating governments into making more extensive commitments than they might otherwise consider. Adding to this pressure is the fact that member governments intend to make TiSA a plurilateral agreement accepted by the WTO. WTO rules (GATS Art. V) state clearly that such a regional or plurilateral agreement needs to have “substantial sectoral coverage” – so too many TiSA exceptions will not be acceptable.

BOX 3

Services sectors are classified according to a central product classification system developed by the United Nations. For example, CPC code 8672 covers, “Engineering services”, which comprises the following activities³:

- 8672-1 - Advisory and consultative engineering services
- 8672-2 - Engineering design services for the construction of foundations and building structures
- 8672-3 - Engineering design services for mechanical and electrical installations for buildings
- 8672-4 - Engineering design services for the construction of civil engineering works
- 8672-5 - Engineering design services for industrial processes and production
- 8672-6 - Engineering design services n.e.c.
- 8672-7 - Other engineering services during the construction and installation phase
- 8672-9 - Other engineering services

When a sector, for example CPC51** (construction services), is scheduled without limitations, all subsectors of the broad category of services are automatically included, unless specifically carved out. CPC51** is a three-page-long list describing all aspects of construction services/activities.

Looking ahead

The Really Good Friends broke off from the WTO Doha Round because they were seeking a highly ambitious deal, one that would placate the global corporate lobby groups who were deeply dissatisfied with the lack of movement at the WTO. While the basic rules in TiSA's core text are very similar to GATS, its negotiating architecture is calculated to strong-arm governments into making far-reaching concessions. Such binding legal commitments would be permanent, locking in future governments under an international treaty.

Beyond the TiSA's core text are its sectoral-specific annexes. These annexes raise serious concerns from a public interest perspective. The proposed “pro-competitive” regulatory templates largely reflect the aims and desires of multinational services corporations. It is dangerous, and certainly undemocratic, to forge binding, inflexible, and highly prescriptive regulatory frameworks in secrecy, with input only from commercial trade negotiators and corporate lobbyists, and without balancing viewpoints from other legitimate interests. In fact, it is only because WikiLeaks released a number of these secret texts that it is even possible to analyse their implications for workers, consumers, public services and regulation.

Structure of the report

The analysis starts with the examination of impacts on regulation-making by the Domestic Regulation and the Transparency Annexes followed by an analysis of the Movement of Natural Persons Annex and impacts on service workers. It continues with the Annexes on Professional Services, Telecommunications and E-Commerce. The rest of the analysis examines the particular Annexes on logistics and distribution sectors: Delivery, Air Transport, Maritime Transport, and Road Transport. The report continues with the analysis of the Government Procurement Annex and a general note on the impacts on public services.

³ <http://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=9&Lq=1&Co=8672>

How could TiSA affect governments' ability to regulate?

The Domestic Regulation Annex and the Transparency Annex

Two annexes explicitly seek to restrict general, including non-discriminatory, government regulations, raising serious concerns about TiSA's potential impacts on the ability to regulate. The Transparency Annex obliges governments to provide foreign service corporations with early notice of planned regulation and an opportunity to comment on them. Such seemingly innocuous requirements can increase pressure on regulators and exert a chilling effect, particularly when they are backed up by the prospect of a trade dispute. The Domestic Regulation Annex allows for such legal challenges to regulations – even those that treat foreign and domestic companies equally – that are considered “more burdensome than necessary” on foreign service providers. The scope of these intrusive provisions is very broad, affecting licensing and qualification requirements, as well as technical standards such as those ensuring the quality of a service. The provisions in the Domestic Regulation Annex still permit unaccountable trade dispute panels to second-guess the regulatory decisions of elected governments.

By scheduling services under the TiSA Core Text, governments provide market access and national treatment to foreign service providers from other TiSA countries. Nonetheless, multinational services corporations remain concerned that national regulations could still block their entry or make it too difficult for them to operate profitably. For example, regulations such as municipal zoning requirements, local language requirements or even labour and environmental standards can make it harder and costlier for foreign service providers to take advantage of market opening under TiSA or other services agreements. The Domestic Regulation and Transparency Annexes seek to address these corporate concerns by restricting non-discriminatory domestic regulation relating to qualification and licensing requirements, and depending on the final deal, possibly technical standards.

The underlying aim of such provisions is to remove regulation which is deemed unnecessarily burdensome to business, restrain existing regulations, create a disciplined procedure for the creation of new regulation, and help foreign businesses find out what regulation actually applies. The GATS contained a similar commitment to develop “disciplines” on non-discriminatory domestic regulation, but these talks proved so difficult and controversial that they have not been completed.

BOX 4

Mutual recognition of standards occurs when two or more countries agree to recognise each other's standards or licensing requirements as equivalent. For example, where a mutual recognition agreement is in place, a professional or tradesperson who is licensed to practice in one jurisdiction would automatically be considered qualified to practice in the other.

BOX 5

Non-discriminatory regulation is governmental regulation that does not discriminate between domestic and foreign service providers.

BOX 6

For the purposes of the Domestic Regulation Annex, “regulation” is understood to mean:

- **Licensing requirements** and procedures relating to the regulations that a service provider needs to comply with in order to be granted permission to operate. For example, in a given country, in order to acquire a casino license, a service provider might be required to demonstrate that they have a clean criminal record and that they possess a certain amount of capital. In order to obtain a license to operate a cinema, one needs to demonstrate that compliance with fire and building safety requirements and obtain a license from a performing rights society that proves that films and other copyrighted material are legally displayed. Licensing procedures are the procedures with which someone demonstrates compliance with the requirements.
- **Qualification requirements** and procedures relating to the competence of the service provider to provide the service. For example, in a given country, a doctor may need a specific medical diploma and some years of practice before she is recognised as capable of being a surgeon. Journalists may be required to have a journalism diploma and be registered with the national journalism association. Qualification procedures are the procedures through which someone demonstrates professional competence to perform an activity.
- **Technical standards**⁴ relate to the characteristics of a service and the permitted ways of delivery. For instance, water quality tests are required by water distributors, and the use of certain medical methods is not allowed. A reference to ILO Conventions in the Maritime Transport Services Annex (analysed in a section below) seems to suggest that labour standards are considered to be “technical standards”.

BOX 7

ILO standards (technical standards) in TiSA are a ceiling

The only mention of ILO standards in the leaked TiSA text is in the Maritime Transport Services Annex. The maritime annex refers to the ILO Conventions as a measurement of compliance with a general stipulation for countries not to arbitrarily or unjustifiably adopt or maintain non-discriminatory regulation that impedes foreign service providers. The text stipulates that “A Party shall not adopt or maintain technical standards that are not based on objective and transparent criteria...” and “In determining whether a Party is in conformity with this Article, account shall be taken of international standards applied by that Party, such as international standards adopted by the International Maritime Organisation and the International Labour Organisation”. Therefore, the ILO and IMO standards are considered a ceiling. If a government establishes higher standards, and therefore uses the ILO standards as a floor – as they should be – other countries might be able to challenge those higher standards as “arbitrary or unjustifiable discrimination or a disguised restriction” on trade.

Principles that governments must follow when creating regulation

The leaked TiSA refers to the controversial GATS text (GATS Article VI.4) which stipulates that regulation (licensing and qualification requirements and technical standards) should be:

- based on *objective and transparent* criteria;
- *not more burdensome than necessary* to ensure the quality of the service;⁵
- not a restriction to the provision of services itself (e.g. requesting high fees).

⁴ The inclusion of technical standards is facing opposition from certain countries and it is possible that they are excluded from the text.

⁵ See TiSA - Annex on Domestic Regulation, 10 October 2015. Available at: <https://wikileaks.org/tisa/domestic/10-2015/page-1.html>.

A proposal championed by a significant block of TiSA governments would incorporate **the necessity test** by reading this GATS wording into TiSA. Under a necessity test, governments would have to demonstrate that regulations are “necessary” to achieve a TiSA-sanctioned legitimate objective. Generally, a government can’t justify a regulation as necessary if there is an alternative one that is less burdensome. If the only regulatory measures that are reasonably available are all burdensome, then the government must employ the measure that is least burdensome.

The heavily bracketed Domestic Regulation Annex is still peppered with references to regulation being “objective”, “reasonable”, “timely” and “inexpensive” for foreign commercial service providers. The ultimate meaning of such loosely worded restrictions on the right to regulate would be determined by dispute settlement arbitrators, who will be empowered to pass judgement on non-discriminatory public interest regulation. The impact could be profoundly deregulatory.⁶

The Transparency Annex also establishes the possibility for private companies to comment on relevant regulations before they enter into force. Furthermore, it requires that all governments maintain mechanisms to respond to enquiries from service suppliers on existing requirements and standards. This could lead to planned regulation being abandoned, watered-down or postponed if governments cannot provide good explanations on how the regulation they plan is based on *objective and transparent* criteria, terms which are vague.

Governments will need to be able to demonstrate that regulations are created in an *impartial, objective, reasonable and independent* manner. This stipulation is over and above the national treatment obligations of states not to discriminate against foreign providers, including in judicial procedures, application procedures and monitoring mechanisms. Another stipulation that appears often in the text relates to the timing of processing of applications for a license and the provision of information on an application: foreign companies should not face *undue delays* in these procedures.

Words like “reasonable” and “undue” are not clear, and they can be interpreted in different ways, opening the door for foreign businesses to challenge the regulation-making

procedures and the content of planned regulation. Depending on the interpretation, governments might find it increasingly difficult to develop and enforce regulation to protect workers, consumers and the environment.

Governments should try to harmonise existing regulation

Harmonisation of regulation among countries is a fundamental requisite for creating a common global market for services – a global services economy of scale.

The Core Text stipulates different ways of harmonising licensing and qualification requirements, and technical standards. Most of these provisions involve voluntary, rather than mandatory, harmonisation. The text establishes that Parties may mutually recognise the education or working experience obtained, requirements met or licenses and certification granted in other TiSA countries with bilateral agreements that should stay open to adhesion of other countries. In case of unilateral recognition of another country’s qualification components (diplomas, certificates, etc.), the country shall afford equal opportunities to all other countries to prove that their qualification components should also be recognised. The governments are also encouraged to agree multilateral criteria for the practice of trades and professions.

Providing space for business to lobby for regulation of their liking

The Transparency Annex of TiSA stipulates that governments should publish (“in a manner consistent with its domestic law and legal system” and “to the extent possible”) any planned regulation allowing sufficient time between the publication of a regulation and the date of entry into force. The reason for this is to give “interested persons” – that is corporations – an opportunity to submit comments about new regulations.

Governments must also publish the rationale of each new piece of regulation. This is important because it provides foreign businesses with a formal opportunity to challenge the rationale underlying regulation and to counter-propose other means of reaching the regulation’s goals in a less “trade-restrictive” manner. Governments have an obligation to establish mechanisms that collect and respond to comments by business. This could lead to de-politicis-

⁶ See WikiLeaks “Analysis of TiSA Annex on Domestic Regulation.” Available at: <https://wikileaks.org/tisa/domestic/10-2015/analysis/page-1.html>.

ing the regulation-making process. Governments would be restrained from adopting regulation that has clear political priorities that can be challenged with “sound science” arguments made by business.

However, regulation-making is an inherently political process where regulators prioritise social concerns in order to promote general well-being often contrary to the unwritten rules of economic efficiency that are branded as “common sense” by business. This is the very essence of politics. Often, the interests of different social groups are in conflict, and the decision on how to prioritise these interests is for regulators and elected officials to make, based on political criteria. For instance, a huge mining company that has an interest in exploiting the resources of an area may claim that it will generate income and jobs, but local communities might reject such activities because they prioritise a clean environment and habitat over investment and an ill-conceived notion of “growth”. Whatever the answer to this type of dilemma might be, it is intrinsically a question of values, and therefore inherently political. Regulators should enjoy full freedom to consider such questions, taking all arguments into account without fearing that companies could make use of trade agreements’ provisions to challenge and question their judgement. Foreign companies already have access to national justice systems to challenge regulations they object to, and judges have overturned onerous legislation and regulation in many cases. To this end, the TiSA Core Text stipulates that each Party shall “maintain judicial, arbitral or administrative tribunals or procedures which provide, at the request of an affected service supplier, for the prompt review of, and where justified, appropriate remedies for, administrative decisions affecting trade in services”. Creating new TiSA rights for foreign companies to challenge, and possibly overturn regulation affecting services, is detrimental to the public interest.

Pitting us against each other: How TiSA threatens workers' rights

Movement of Natural Persons Annex

This Annex applies horizontally across all services sectors. The aim is to rebrand broad categories of workers who currently enjoy labour protection, collective bargaining and other labour rights as “service suppliers” who would be employed under temporary contracts offering weaker labour protection, lower wages, no rights to unionise and collectively bargain, and no path to permanent residency or citizenship in the host country.

The provision of services with the presence of natural persons is the fourth mode of services supply (Mode 4). In this case, service suppliers need to move to another country party to the agreement, for a limited time, to provide their services.

The Annex recognises that there are service suppliers (contractors whose terms of employment are laid out in their contract) and workers (whose terms of employment are protected by national labour law and collective agreements). Each country decides which sectors it will “*schedule*” (include) in the agreement. *Scheduled* sectors will be open to foreign service suppliers subject to particular conditions explained by each country in the schedule of commitments. In case a scheduled sector includes low-skilled tasks and there is no exception for these tasks made by a given country, it should be expected that migrant low-skilled workers will gain access to employment opportunities. However, such workers (rebranded here “service suppliers”) will not necessarily be protected by the national labour laws of the host country. Their contracts and terms of employment might establish weaker protection than required for domestic workers. Moreover, their status depends directly on the firm that employs them; if they lose their job or displease their employer, they have no rights to remain in the host country.

BOX 8

Some examples of this mode of services supply would be:

- An independent engineer hired by a firm in another country to design a product or construction project
- A lawyer of a company transferred to a subsidiary of her/his company in another country
- Hairdressers and nurses given work permits for a certain time period to exercise their profession in another country
- An IT specialist freelancer hired for a specific project abroad for one year

Typically, developed countries that participate in bilateral and regional trade agreements with Mode 4 provisions would limit the categories of persons able to take advantage of these provisions to managerial-level and high-skilled persons. On the other hand, developing countries, where low-skilled and middle-skilled labour is abundant, have an interest in expanding these commitments to include services provided by low-skilled persons, so that their citizens can find income-earning opportunities abroad and send remittances back home.

What persons are covered?

The TiSA Annex on the Movement of Natural Persons makes a distinction between “service suppliers” and “persons of a Party who are employed by a service supplier of a Party” on one side, and “persons seeking access to the employment market of a Party” on the other. The Agreement covers only those in the first category. The distinction between a worker and a service supplier can be obscure. Highly skilled persons who would prefer to be employed under general contract law (e.g. freelance IT application designers) are service suppliers and should benefit from the Agreement. However, persons employed under labour laws (e.g., nurses) are workers and should be excluded from the agreement. This is not to say that such workers should not be afforded opportunities of employment abroad. Rather, migrant workers must enjoy protection under the same labour laws and collective agreements as all other workers in the host country, and

non-discriminatory treatment must be guaranteed. The TiSA is an instrument that does not guarantee labour protection and workers’ rights – on the contrary, it intends to promote a model of labour exploitation both of migrant workers and host country workers.

In the leaked text of February 2015, there was a long list of sectors that the countries were encouraged to open to foreign “service suppliers” (so to call them – indeed, workers). The list⁷ encompassed workers in:

- medical and dental services, including general, specialised and consultancy services;
- veterinary services;
- services provided by midwives, nurses, physiotherapists and paramedical personnel;
- library and archive services;
- general construction work for buildings;
- sewage services;
- meal serving with full restaurant services and in self-service facilities;
- beverage serving services with and without entertainment;
- and tourist guide services.

Many of the above-listed sectors comprise tasks usually delivered by low-skilled and middle-skilled workers who need the full protection of national labour laws. In the leaked text of April 2015, this list was removed, but it is still possible for any country to undertake commitments to open their borders to foreign labour in these sectors.

⁷ Many of the list's sectors appeared with a Central Product Classification code (CPC) that encompasses multiple tasks and services.

BOX 9

If a country includes “beverage serving services without entertainment” in the schedule of its commitments, it means that it will effectively open its borders to waiters and waitresses (and other professionals involved in managing beverage serving) of all other TiSA countries. Currently, in all negotiating countries waiters and waitresses are workers who need an employment contract. However, as ‘service suppliers’ they would be hired with a general contract for provision of services for a limited time similar to an IT freelancer who helps a company build a website and receives remuneration for this particular project. Such workers will not be protected by labour laws and they might end up being exploited. Also, locals employed in beverage serving might be faced with competition from unprotected workers whose wages are going to be lower than the agreed wage in this sector and in cases, even the minimum wage.

The danger is that labour brokers and manpower agencies will be enabled to provide labour for projects in other countries just by re-categorising workers as “service suppliers” under temporary contracts. When a country schedules a service sector under this Annex, it is forbidden to require foreign service suppliers that want to provide services in the scheduled sector to seek suitably trained workers locally. To this end, the draft Annex stipulates that information on requirements, categories of permits, application procedures and fees, application documents and limitations (e.g., length of stay, multiple entries and extension of stay) must be readily accessible and not more burdensome than necessary on the temporary movement of workers and professionals. It also requires that such applications be processed promptly and expeditiously.

TiSA impacts on architects, engineers, lawyers, accountants and educators

Professional services Annex⁸

In general, the Annex aims at removing many requirements for running a service, ensuring that liberalisation achieved with TiSA is to be comprehensive and irrevocable. The Annex frees up movement of professionals, and facilitates competitive players in professional services to penetrate foreign markets. For example, if companies can fly in their own staff when needed without limitations, it would make it easier for a competitive legal firm to get projects abroad.

Reaching common qualification criteria and eliminating limitations of movement of professionals will not happen in a day. Gradually, it would enable big companies to employ professionals from countries where they are abundant, putting pressure on the earnings of professionals. Also, many service providers will be facilitated to provide services online; a trend that could alter the labour market for professionals. For instance, legal firms could more easily provide legal advice online in all TiSA countries.

What professional services are covered?

This Annex applies to government regulatory measures affecting trade in professional services. In the leaked text, covered professional services are defined broadly to comprise legal services (including domestic, foreign and international law); accounting, auditing and bookkeeping services; taxation services; architectural services; engineering services and integrated engineering services; urban planning and landscape architecture services; engineering related scientific and consulting services; technical testing and analysis services; veterinary services; private education services; and construction engineering services. This annex is heavily bracketed, indicating considerable disagreement among the participants about the extent to which the TiSA should restrict government regulation of professional services.

Nevertheless, the leaked TiSA text contains some sweeping proposals, such as one from Australia for a standstill clause which would lock in the present level of liberalisation in terms of “market access”. This means that once a country has opened up or deregulated professional services, it will be impossible to roll it back.

⁸ The content of this chapter was created with input by Alliance Sud's, Isolda Agazzi.

Removing requirements that professional service providers currently need to meet

Where full TiSA commitments are made, foreign service suppliers cannot be required to establish or maintain a representative office or any form of commercial presence as a condition for providing services in another TiSA country. In this way, for instance, foreign accountants may be allowed to provide tax or bookkeeping services online to a domestic company without having to open an office in that country. The same situation will apply to legal, engineering and other covered professional services.

Foreign capital limitations, requirements to joint venture and local management participation are also forbidden where TiSA commitments are made. Taking private education as an example, foreign private schools are often required to maintain a minimum level of local participation to ensure that schools are well integrated into the host community. The foreign school may be required to be co-financed locally (contrary to the Annex's Article 5, "foreign capital participation"), or that part of the management of the school be locally hired (contrary to the Annex's Article 6, "foreign partnership or management participation limitations"). In other cases, a foreign private school must take the form of a joint-venture with a local school, e.g., to ensure a degree of local content and control.

Including education under the TiSA⁹ professional services annex could lock-in current levels of commercialisation and intensify pressures for further privatisation. For instance, rules around market access can limit the ability of countries that make commitments on education services to restrict the entry and regulate the operations of private and for-profit schools and institutions. The TiSA aims at ensuring "competitive neutrality" or a level-playing field between public and private providers, meaning governments could not treat public schools more favourably.

Trade agreements can also adversely affect the ability of authorities to ensure the quality of education provided. The TiSA, like the GATS, intends to promote free trade in services by guaranteeing open markets for all. However, by granting unfettered market access to all foreign education enterprises, governments could very well usher in a flood of providers of questionable quality.¹⁰

⁹ For further clarity, a country could exempt sectors and sub-sectors if it decides so – but pressure for a wide opening will not allow many exemptions

¹⁰ For more information see the EI Briefing Note on TiSA http://download.ei-ie.org/Docs/WebDepot/2016_03_EIBriefingNoteonTiSA.pdf

BOX 10

Governments have put in place **requirements** and rules that serve public goals and promote inclusion; for instance, requiring service providers to be established (have an office) in a country protects local service suppliers from foreign competition and allows closer government supervision to protect consumers; requiring foreign investors to make joint-ventures with local partners can increase the transfer of skills; or requiring foreign service providers to hire a minimum number of locals can boost employment and local training opportunities.

In certain countries, including Canada, Iceland and the Slovak Republic¹¹, regulations commonly require that domestic legal services firms' boards of directors to comprise a majority of licensed individuals, so as to guarantee high quality service, a style of management that is oriented to values of the profession and the relevant ethics, and accountability. However, this is not the case in other countries, like for instance in Austria, Estonia and Latvia¹², where there are no restrictions as to how the board of directors is composed. In fact, in these countries there is no requirement even for one licensed professional to be on the board of directors. In such countries, legal firms are allowed to (and might want to) operate solely under business managers who usually make decisions on strict profitability terms. The annex targets the type of requirements for boards and senior management found under Icelandic, Canadian and Slovak law in order to remove such requirements that currently are deemed to ensure a level of quality service and accountability in these countries. Such requirements also ensure that domestic legal services firms are established by professionals themselves, rather than by a businessperson who has not studied law, or who might be not related to the sector at all.

¹¹ Data were retrieved from the OECD-STRI, <http://www.oecd.org/tad/services-trade/services-trade-restrictiveness-index.htm>

¹² Ibid

BOX 11

Economic needs tests usually examine the number of suppliers in comparison to the size of the market and levels of productivity. Regulators aim at keeping healthy levels of competition in a given market, before they issue new licences. The TiSA aims to abolish such economic needs tests, which are prevalent in the area of professional services.

Another provision aims at allowing lawyers in particular to “fly-in, fly-out” (FIFO). For example, in order to avoid re-locating a worker and family, FIFO would allow the legal professionals to fly-out at the weekend and return back to work on Monday. Such flexibility can be expected to increase competition greatly, as there are surpluses of lawyers in several countries that could be utilised for temporary work in other countries under this system. Apparently, these foreign lawyers, when practicing international and foreign law, would be exempted from regular visa requirements and the need to be licensed to practice domestic law in the country where the services are provided. While this system may lower the costs of certain legal services, it can also lead to cream-skimming with lucrative international and foreign law services being monopolised by global firms.

Cooperation on qualifications, licensing and registration

Professional qualifications and licensing are normally set by national regulators or delegated to self-governing professional bodies that establish the criteria and qualifications for exercising a profession and maintain standards to protect the public.

The Annex envisages a permanent framework for voluntary regulatory cooperation to promote trade in professional services, mainly by facilitating bilateral or multilateral dialogues on professional qualifications, licensing and registration procedures with a view to achieving greater mutual recognition. To this end, TiSA would also establish a Working Party on Professional Services which would facilitate ongoing regulatory cooperation and dialogue between regulators.

BOX 12

The TiSA will make it easier for companies like architects' offices, law firms, and engineering companies to do business abroad. It will also create opportunities for professionals, especially those with skills that are rare to find, abroad. On the other hand, domestic professional services providers will be exposed to external competition and might need to lower their fees, or change their business models in order to cope with the new competition. As requirements of running an office in the country where the service is provided and similar requirements are to be removed, we might one day see an **Uber for lawyers**. It could be an online platform where legal professionals from various countries offer their services in an open bidding process for much lower fees than those offered by local lawyers. The idea has been explored by different bloggers and business analysts, but poses formidable regulatory and consumer protection challenges.

TiSA on telephones, internet, television and radio

Telecommunications Annex

This Annex deals with market access and national treatment to all telecommunication companies for personal communication (telephones, text messages, internet) and, to a limited extent, broadcasting (television and radio). With this Annex, the TiSA guarantees access to physical networks and communication grids on a non-discriminatory basis and is aimed at enhancing competition. To this end, major service suppliers (usually enterprises currently or formerly owned by the state) as well as smaller suppliers have obligations to meet in order to ensure equal access. Also, the Annex spells out additional (beyond those in the core text) transparency obligations of states that ensure that regulation-making procedures, allocation of spectrum and independence of regulatory authorities are not utilised to promote domestic economic interests.

TThis Annex will enable global telecom companies to enter new markets without facing conditions less favourable than the domestic telecom operators. In general, in view

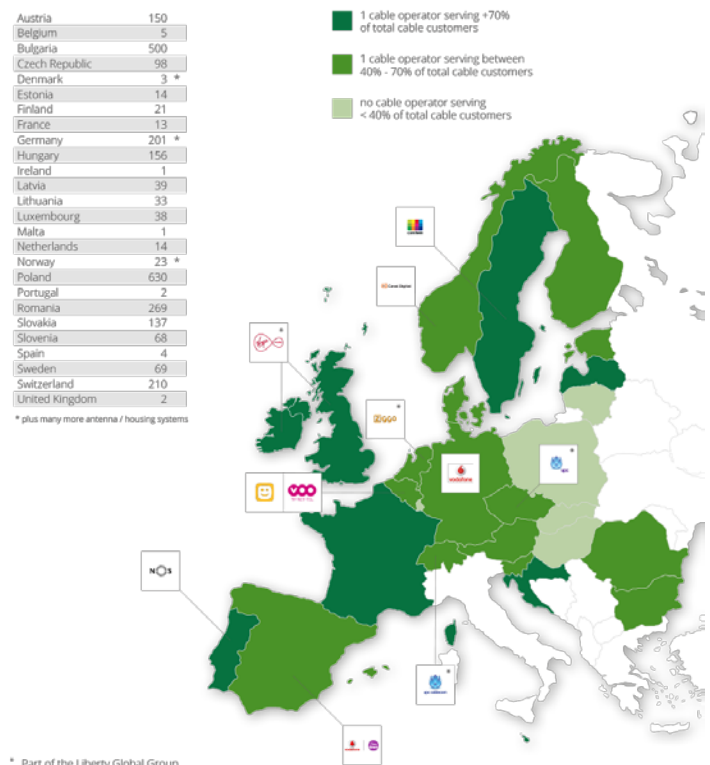
of mergers and acquisitions and the intensification of competition in telecommunications, the TiSA sustains the momentum of market consolidation and assists the enlargement of already huge telecom players (see chart).

What is the Annex's purpose?

The TiSA Telecoms Annex is intended to set binding rules that facilitate foreign competition in the telecommunications sector. It builds on the existing WTO provisions governing this sector, but enters into new territory. The main thrust is to open telecommunications networks and infrastructure, whether publicly or privately owned, to access by foreign providers. Creating the conditions for cross-border provision of services and open markets in telecommunications services mostly involves compelling established national telecommunications providers to allow foreign competitors access to their existing networks.

Opening markets to foreign competitors can lead to more consumer choices and price competition, but it also raises equity issues. The existing networks and infrastructure that enable the transmission of voice and data were typically built at public expense through government entities or heavily regulated monopolies. Although many of these incumbents have since been privatised, they are often still subject to universal service obligations, requiring that telecommunications services and networks extend to every part of a country and to all of the population. Such infrastructure investments can be expensive, yet the TiSA provisions would give foreign competitors access to existing networks at cost. This presents regulatory challenges, especially in developing countries or poor regions where networks are still not fully universal. In these situations, it is difficult to make foreign companies share the burden of building infrastructure through higher network connection fees or surcharges.

The Telecoms Annex is also intended to shape national schedules of commitments. When completed, it will serve as a template for how such commitments must be structured. Its most troubling proposals would bar limits on foreign ownership, prohibit restrictions on cross-border provision of services, and outlaw preferences for publicly owned telecommunications providers. The leaked text remains heavily bracketed, indicating continuing disagreement. Nonetheless, while many of these issues are still not finally resolved, this Annex will undoubtedly tie regulators' hands to some extent on a variety of key matters.



* Part of the Liberty Global Group

Source: <http://www.cable-europe.eu/ff-ye2014-cable-industry-consolidation/>

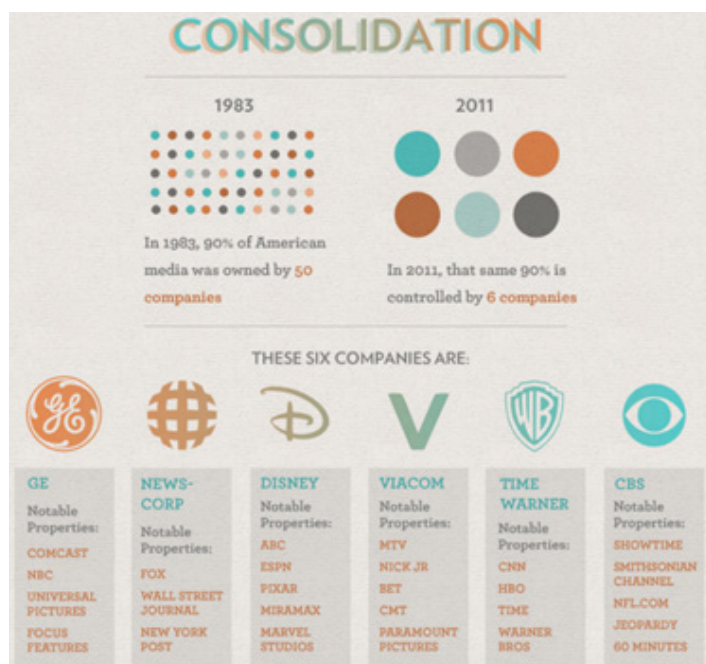
What telecommunication services are covered?

The TiSA covers all existing and future personal communication (telephones, text messages, internet) and, to some extent, mass communication (television and radio). Many trade analysts argue that if a new telecommunication service is developed after the TiSA enters into force, it would likely be automatically included under the scope of the TiSA, specifically in terms of national treatment. These sectors are governed by a wide array of regulatory measures that restrict, condition and proportion access to physical networks. Unlike the GATS, which fully excludes broadcasting, the TiSA could open the door, by guaranteeing foreign broadcasters and cable companies non-discriminatory access to national transmission networks. Broadcasting increasingly occurs over the internet, and many countries are struggling with how and whether to regulate this access, especially where content rules to support local cultural industries and cultural diversity apply. Unlike the GATS telecoms obligations, which excluded broadcasting services, the TiSA would cover television and radio broadcasting only when it comes to market access and transparency provisions (as no national treatment appears so far in the text). This means that TiSA Parties will be required to establish transparency and non-discriminatory access for cable providers to telecommunications networks.

Some countries propose to include online data processing and online data base storage and retrieval services as telecommunications services covered by the agreement. If agreed, this would further broaden the scope of TiSA coverage.

Removing requirements and restrictions

The Annex stipulates that there should be no limitations on the percentage of telecommunications services owned by foreigners, no joint venture requirements, and no requirement to establish a company in order to operate in another TiSA country. Also, there should be no maximum number of licences except for the purpose of assigning frequencies and other scarce resources. In this way, market access for global corporations is facilitated.



Source: <http://www.frugaldad.com/media-consolidation-infographic/>

Most TiSA countries own at least one public television channel, and the telephone companies are often partly owned by the state. This happens because creating a telephone network is costly. In the past, such big endeavours could only be undertaken by the public sector, as private capital was not readily available to establish these networks. Although many such networks have been privatised over the course of decades, telecom enterprises still make use of infrastructure that was built with tax-payers' money. In order to impose a "level playing field", the Annex stipulates that access to such networks and infrastructure should become available to all interested telecom service

providers of other TiSA countries. Telecommunications companies from abroad should be permitted to connect onto the national networks, in order to operate.

Regulation shall abide by neutrality rules

While there is available policy and regulatory space provided in several articles of the Annex, most come as exceptions to the rule. Article 10, for instance, says that *"each Party shall ensure that no condition is imposed on access to and use of public telecommunications networks or services, other than that necessary to: (a) safeguard the public service responsibilities of suppliers of public telecommunications networks and services, in particular their ability to make their networks or services available to the public generally; or (b) protect the technical integrity of public telecommunications networks or services."*

Another article allows countries to regulate directly in anticipation of or to respond to a market issue. Although it mentions that states should recognise *"the importance of relying on competitive market forces to provide wide choice in the supply of telecommunications"*, the article provides some regulatory space that is contestable. Also, in the occasion of planned regulation by the governments, TiSA enables private telecom companies to request the national independent regulatory authority for telecommunications to decide that the direct regulation by the state is unnecessary. The authority has the obligation to respond to such a request and if it agrees, the government has to forbear from applying the regulation.

Ensuring that the field is levelled

The Annex stipulates that, in order to ensure national treatment, the national telecommunications regulatory authorities are independent and grant treatment no more favourable to local suppliers than foreign suppliers. They should be adequately resourced (with finances, capacity and employees) and able to impose sanctions. Telecommunications regulatory authorities should also be impartial on issues like the allocation of the spectrum of frequencies.

A number of other articles deal with issues like technological neutrality, interoperability, provisioning and pricings of access to leased circuits, interconnection (technical issues, legal issues like interconnection agreements, and transparency provisions like the need for interconnection

agreements to be made public). For instance, when a foreign mobiles operator requests to be interconnected with a local mobiles operator, the local operator is obliged to enter negotiations. Provisions also guarantee that foreign operators are not discriminated against when they ask services for resale. An example of services resale is when a foreign company that establishes internet hotspots would normally buy bandwidth capacity from a local operator and resell it to its clients (similar to what internet cafes do). Another provision in the Annex lists obligations of major suppliers¹³ which aim at ensuring a level playing field for smaller providers.

The Annex also stipulates that the current state of frequency bands of TiSA countries should be made public and that there should be “*market-based approaches in assigning spectrum*” of frequencies. Arguably, a frequency allocation to a new public television operating on a non-strictly for-profit manner could be contested.

Similarly, allocation of telephone numbers should be on a non-discriminatory basis and telephone number portability should be provided by all suppliers so that customers can easily move between providers. Regulated rates for roaming (calls and messages) are allowed as long as they are applied on a non-discriminatory basis.

The Annex also requires major suppliers to offer their services for sale to other telecom service suppliers unbundled. For example, a major supplier shall sell optical fibre capacity, copper wire capacity and antennas capacity unbundled and in “cost-oriented rates, that are reasonable, non-discriminatory and transparent”, so as to enable new entrants in the market and improve competition. Some countries, like the U.S. in 1996, have legislated on Unbundled Network Elements (UNEs) so as to promote competitiveness and liberalisation in telecoms.

Like in other Annexes, the telecommunications one requires a cooperation among countries for the exchange of information on technological development and technical aspects of supply of services as well as on regulation, including technical standards.

Giving business undue influence

An article on transparency contains a proposal that reflects the spirit of the Annex on Transparency. The purpose is to oblige under international law each TiSA country to have procedures for foreign telecom service suppliers to comment on domestic draft regulations before they are adopted by Parliaments or other regulating authorities. Countries would also have to make planned regulation public, explain why it is proposed, and provide adequate notice for comments. Usually such transparency articles establish a form of regulatory impact assessment and dialogue that provides ample space for business lobbying and can stop, deter or water-down regulation before its enactment.

TiSA infrastructure for TiSA Parties

An article seeks to grant to TiSA telecom companies access to all submarine cable systems. This would put telecom companies from non-TiSA countries into in a disadvantageous position, if not in terms of access, certainly in terms of cost of access. In a way, this provision would consolidate access to physical networks among TiSA members providing an advantage to companies in the TiSA area.

Driving the *Uberisation* of services

Annex on Electronic Commerce

Although the specifics of the e-commerce annex are still being debated, the draft provisions would create a deregulated environment for foreign e-commerce firms entering and operating in TiSA countries. The text places significant restraints on how governments can manage the transmission, processing and storage of data, including personal information, within and across borders. The text contains some provisions for personal privacy and consumer protection, but they are weaker than the rights extended to the firms engaged in electronic commerce.

Facilitating the *Uberisation* of the services economy

Electronic commerce is an increasingly important feature of the global economy. Not only do corporations provide a growing number of goods and services through electronic means – both within and across borders – but they also

¹³ Major suppliers are usually state-owned enterprises or (semi-)private enterprises that used to be publicly owned.

collect vast amounts of personal data on their customers and users. The access to, processing and use of vast amounts of data has given rise to a new economy. In this new model, a tech company creates an online application that connects the multiple providers of a service directly with millions of customers who download the application. In market terms, the company offers the customers the privilege of choosing among hundreds or thousands of providers who compete directly on the platform. Previously, a customer would probably know only few of them. The providers gain access to potentially thousands or millions of customers whom they can now reach without advertising costs. However, now they do not compete with other providers in their locality but with thousands of others in the whole city, and therefore they are pressured to lower their prices and improve their time of service delivery. The tech company effectively eliminates layers of intermediates, and captures disproportionately big part of the gains made by the new competition they created.

It is precisely these companies, and other e-commerce operators, that will benefit from the provisions of the TiSA and in particular the E-Commerce Annex.

As transactions, contracts, agreements, advertisement and all economic activity take place online and solely with electronic means, it is difficult to say which law applies where. The scope and pace of this transformation has outstripped governments' capacity to regulate. There are big gaps and inconsistencies in national responses to the explosion of social and economic activity on the Internet. But rather than encourage cautious domestic policy experimentation grounded in the public interest, the e-commerce lobby in major developed countries is pushing for permanent widespread liberalisation of the sector.

Based on the latest leaked draft, the e-commerce provisions in TiSA are designed to harmonise rules for electronic commerce and personal privacy. Significant regulatory diversity on personal privacy and use of personal privacy would impede the rapid cross-border spread of such applications, and therefore their interest is to create a TiSA-wide economy of scale for their services. The Annex introduces new and enhanced restrictions on how governments manage electronic commerce and private information within their borders, which will permanently configure and condition e-commerce regulation in those countries.

On cross-border information flows, TISA prohibits countries from placing restrictions on the transfer of information within and across borders. "Information" in this context explicitly includes personal information. The only limitation is that the transfer must be "carried out in connection with the conduct of the service supplier's business," which is, in practice, extremely permissive. The provisions enshrine the right of e-commerce firms to move data freely regardless of where it is collected, processed, or stored.

This right is complemented by the draft provisions on local infrastructure, which prohibit countries from requiring that foreign service suppliers establish a "local presence" to store or process any data collected in that country. This is a fundamental pre-requisite for the spread of the "share economy" model because the tech companies begin as small start-ups that do not have the ability to open offices in every country they operate. In fact, even after their annual turnover is in the billions of dollars, they do not employ more than a few thousands of employees¹⁴. Moreover, foreign service suppliers cannot be required to use domestic computing facilities or other local electronic infrastructure. Foreign firms are therefore free to collect potentially sensitive information and transfer it to another country, where it may be subject to different privacy laws from the jurisdiction where the data was obtained.

Moreover, a provision would *"allow persons to mutually determine the appropriate methods for resolving disputes."* In practice, this provision protects e-commerce contracts and lessens the possibility that a user or a provider would take up their right to use the judicial system in the event of a dispute. In this way, the platform companies would protect themselves from class action like for instance, the class action of drivers that cost Uber \$100 million¹⁵.

The Annex also enables companies and customers to mutually determine the appropriate authentication methods in their transactions. Logging in with a Facebook or Twitter account is to be legally recognised as a valid method of authentication, making it further easier for companies that rely on big data to grow.

The Annex stipulates that *"[n]o Party may prevent a service supplier of another Party from transferring, accessing, processing or storing information, including personal in-*

¹⁴ For instance, Uber is said to have 6000 employees and a \$60 billion turnover: <http://uk.businessinsider.com/ubers-first-employees-2016-6?r=US&IR=T>

¹⁵ <https://www.washingtonpost.com/news/morning-mix/wp/2016/04/22/uber-settles-groundbreaking-labor-dispute-for-up-to-100-million-drivers-to-remain-independent-contractors/>

formation, within or outside the Party's territory...". In another provision, the Annex requires governments to adopt *domestic* legal frameworks on the protection of personal information. Also, that no Party shall require companies of other Parties to "use computer processing or storage services supplied from within the Party's territory". The location of data determines which domestic framework applies. Reading these three provisions together leads to the conclusion that the TiSA will introduce a regulatory race to the bottom where some governments will be keen to adopt lax domestic legal frameworks for the protection of personal information so as to attract companies that store and process big data. Even if some governments stick to strict protection of personal information, they will not be able to effectively protect them if the transfer of such information to Parties with looser laws is not to be impeded or regulated.

Other provisions

The proposed provisions on source code further restrict government policy flexibility by prohibiting countries from requiring foreign service suppliers to provide the source code of mass-market software sold, marketed, or otherwise provided for in the country. An exception for "critical infrastructure" does not account for the wide variety of situations where a government may legitimately demand access to source code, such as for software used by a critical public service.

The draft TiSA text also prohibits customs duties on all "electronic transmissions", which is largely the case already. These are digitally encoded goods that are produced for commercial sale or distribution, such as computer programmes, video games, movies, and music tracks.

In all cases, there are negotiating parties that dispute the provisions discussed above. Korea, for example, disputes the local infrastructure rules while Colombia disputes the provisions on source code. However, on balance, the draft TiSA text exhibits a strong liberalisation consensus that will entrench a deregulated environment for e-commerce firms without corresponding protections for personal privacy, consumer protection, and the policy flexibility of signatory governments.

Net neutrality under threat?

The leaked text acknowledges the principle of net neutrality, which is the belief that all data should be treated equally by the network regardless of source or destination. However, the TISA text only goes so far as at to protect "access and use" of services and not the quality of services. In other words, Internet service providers could still discriminate when providing a service so long as they do not block it completely – for example, by speeding up its own video streaming product while slowing a competitor's. The text also includes a reservation for "reasonable network management," which may provide cover for blocking of certain content anyway. Another provision acknowledges the issue of data discrimination but merely calls on parties to "endeavour to ensure" that it does not occur.

How the TiSA would affect postal and express delivery services

Annex on Competitive Delivery Services¹⁶

Multinational courier companies (for example, FedEx, UPS and DHL) have been among the strongest champions of TiSA. These corporations have long lobbied for international trade treaties to limit the role of public postal monopolies and to clip the wings of former public post offices who are striving to become regionally or globally competitive. The TiSA could represent a major victory for the private express delivery industry by freezing the scope of existing postal monopolies, outlawing cross-subsidisation, freeing the private sector from costly universal service obligations, and requiring the establishment of regulators who are at arms-length from public postal services. The long-term goal of this Annex appears to be to break the relationships between the state, postal delivery and the unions that can hold the state to its greater social responsibilities within this sector.

¹⁶ The content of this chapter relies on the analysis made by Sarah Finke, International Transport Workers' Federation, available at: <https://wikileaks.org/tisa/delivery/analysis/Analysis-TiSA-Competitive-Delivery-Services-Annex.pdf>

Freezing existing postal monopolies

The TiSA provisions on postal and express delivery services would effectively confine public postal services within the scope of their current letter-mail monopolies. Such a step would make existing privatisation, which has been widespread in Europe and elsewhere, irreversible. The TiSA also aims to lock in any future privatisation of postal services, such as reducing the weight and dimensions of letter-mail that falls under public monopolies or deregulating the delivery of international letter-mail, as has occurred in most countries.

Outlawing cross-subsidisation

A second major plank of the Annex is to prohibit public postal providers from cross-subsidising competitive services, such as using revenues derived from their monopoly letter-mail operations to fund express parcel delivery. In reality, any cross-subsidisation that occurs usually works the other way. Letter-mail volumes are declining in most countries, and national post offices have relied on revenues from competitive services such as express parcel delivery to help defray falling revenues from letter-mail.

By contrast, because of the growth in electronic commerce and on-line shopping, parcel delivery is a growing and lucrative market segment. Unlike private courier companies, public post offices are usually legally obliged to provide delivery to every physical address within their territory. Revenues from express parcel delivery are indispensable in fulfilling such costly universal service obligations.

The TiSA Annex would further threaten the integrated business model of the remaining public postal services by requiring them to act strictly according to commercial considerations where they compete with private companies. Another worrisome idea being floated is to compel public post offices to allow private competitors non-discriminatory access to their delivery networks and network of postal outlets. So for example, a courier company could drop some types of packages off at a post office for final delivery or insist that their express delivery products be sold at public postal outlets, alongside the post offices' own services.

Under the guise of encouraging more open competition, the TiSA provides legal tools that benefit global courier

companies over newer entrants with existing or former state mandates. Examples of the latter include France's La Poste, a state-owned enterprise seeking to expand its international courier operations (for example, DPD and Geopost); Japan Post, another state-owned enterprise that retains its letter-mail monopoly in Japan, but is expanding through major acquisitions (e.g., of Toll Logistics); and the Austrian Post, which is transforming itself into a European-wide service provider of postal, banking and telecommunications services.

BOX 13

Cross-subsidisation occurs when a company charges higher fees for one service in order to enable itself to provide another service at affordable rates. For example, a company may decide to charge higher prices for packet deliveries to urban apartments in order to maintain an affordable price for its deliveries to islands or geographically isolated areas.

Restricting universal obligations

The right to a universal postal service is recognised in international law. Article 3.1 of the *Universal Postal Convention* affirms "the right to a universal postal service involving the permanent provision of quality basic postal services at all points in their territory, at affordable prices." Historically, most governments have achieved universal postal delivery by providing postal services directly as a public service.

More recently, privatisation and liberalisation have become the norm in many parts of the world, especially Europe. The result has been diminished levels of service to the public and markedly worse, more precarious working conditions for postal workers.¹⁷ Yet even where postal services are privately provided, universal obligations (USOs) usually still apply. Several TiSA proposals would weaken USOs by confining them exclusively to letter-mail services, requiring that they be "no more burdensome than necessary," or banning their application to foreign express delivery companies.

17 See Christoph Hermann, "Deregulating and Privatizing Postal Services in Europe: The Precarization of Employment and Working Conditions," January 1, 2014. Available at: <http://www.globalresearch.ca/deregulating-and-privatizing-postal-services-in-europe/5363277>

Requiring independent regulators

A long-standing aim of the courier companies, now taken up by TiSA negotiators, is to force countries to set up an independent regulator of postal services at arms-length from the public postal operator. While independent regulators already exist in many countries, in others key decisions about frequency of postal delivery, postage rates, and other such matters are made by the public postal provider itself. These providers are ultimately accountable to the governments of the day and through them to the local populace.

TiSA impacts on airports and air services

Annex on Air Transport Services¹⁸

To date, only a limited number of air transport services have been covered by the GATS, mainly those services provided before and after the flight, like ground handling, ticket reservations, and aircraft repair and maintenance. The TiSA annex would significantly expand the types of air transport services covered by international trade in services rules. For workers, this raises important issues. In airports and in ground handling, employment conditions have already deteriorated greatly. Decent employment conditions are very rare in these two areas, and a similar situation is emerging in aircraft repair and maintenance. Expanded TiSA commitments will only worsen the continuing race to the bottom.

The civil aviation and aerospace industries are strategically important to any country which aspires to global leadership in high-technology civilian and military production. Likewise, efficient air transport of passengers and cargo is critical for all countries and necessary in order to cater to fundamental development needs. For many developing countries, especially those covering large land areas with undeveloped alternative transport modes, it is a vital requirement for economic development and national cohesion.

What does the Annex cover?

The leaked TiSA Annex on Air Transport Services covers six areas of international air transport:

- aircraft repair and maintenance
- computer reservation system services
- selling and marketing of air transport services
- ground handling
- airport operation services
- speciality air services

This would significantly expand coverage of air transport services beyond the GATS annex on air transport, which applies to only the first three of these activities.

The Annex is explicit that it will not affect traffic rights as in passenger and cargo services provided by air. These elements of air transport are governed by the Convention on International Civil Aviation and a network of bilateral air agreements. The Annex stipulates that, in the event of any inconsistency between the Annex and a bilateral or multilateral air services agreement, the air services agreement shall prevail in “determining the rights and obligations” of the countries that are party to that air services agreement.

The bilateral agreements are based on the concepts of reciprocity, and fair and equal exchange. A multilateral system, like the one to be established by the TiSA, on the other hand, is based on a Most Favoured Nation system, which means that concessions of a country granted to another country have to be extended to all countries. It is useful to recall that during the Uruguay Round of international trade negotiations that led to the creation of the WTO and GATS, most countries wanted to exclude aviation, partly because there was a steady process of worldwide liberalisation taking place, but mainly because there was already a specialised international organisation, the International Civil Aviation Organization, responsible for the regulation of international air transport.

¹⁸ The content of this chapter is an edited version of the analysis made by Sarah Finke, International Transport Workers' Federation. The original text is available at: <https://wikileaks.org/tisa/air-transport/analysis/Analysis-TiSA-Air-Transport-Services-Annex.pdf>

BOX 14

The **International Civil Aviation Organization (ICAO)** is the international organisation responsible for the economic regulation of international air transport. It is already overseeing a consensus process of gradual liberalisation, including various safeguards for developing countries. Countries allow each other's airlines to provide services to their territories with **bilateral and multilateral air service agreements**. All such agreements are registered by ICAO. Rights to fly over or land in other countries are governed by the "freedoms of the air" and regulated by ICAO rules for safety and other reasons. The TiSA will not affect these rights.

Concern that safety standards will be weakened

Although the Annex does not yet contain any special provisions relating to regulation making on air transport, general disciplines from the Core text and the Domestic Regulations Annex apply and therefore, governments are about to cede a great deal of regulatory authority to international panels that suggest new international standards and regulation (expectedly laxer) or challenge existing national regulation. Business has a strong say in these panels and, by the provisions of TiSA, business input in such processes has to be given due consideration. Countries will also have to remove or review regulation that is discriminatory or is non-discriminatory in nature but puts foreign air transport companies in an effectively less competitive position.

In the last six decades the bilateral system has developed an elaborate set of interdependent safeguards. Although it is not in its final form, the Annex does not address safety standards. Indeed, those promoting liberalisation consistently maintain there is no established link between economic regulation and safety. Over the last decade outsourcing and offshoring aircraft maintenance has been on the rise

Scientific studies and ICAO point out the possible negative implications of this for current and future aviation safety. An ICAO guide states: *"The rate of accidents and incidents involving maintenance concerns has increased.*

*An example of this is emphasized by looking at these incidents and accidents in the past years where the annual average of these has increased by more than 100 per cent, while the number of flights has only increased by 55 per cent."*¹⁹

Unions have raised specific concerns regarding: (a) the capacity of national civil aviation authorities to oversee outsourced/foreign repair stations and monitor all involved facilities; (b) shortcomings over worker training and qualifications at outsourced/foreign facilities; (c) the lack of English language skills required to read and comprehend relevant manuals and instructions at foreign facilities; (d) the adequacy of drug and alcohol testing programmes at foreign repair stations.

A wholesale liberalisation of aircraft repair and maintenance services with no safeguards could increase potential safety risks immensely. The removal of government controls through bilateral agreements, coupled with ongoing reduction of national ownership rules, could allow "flags of convenience" to become an established practice in the global aviation market. As relevant experience from maritime transport shows, a system of random inspections of aircraft maintained offshore is no substitute for strict regulations ensuring that aircraft are properly repaired and maintained in their home territory. Putting the aviation industry in a free trade environment that weakens national government controls on an industry which relies on government oversight to ensure its operational safety could be dangerous.

¹⁹ "Human Factors in Aircraft Maintenance & Inspection" <http://www.deepsloweasy.com/HFE%20resources/CAA%20HFE%20in%20Aircraft%20Maint%20and%20Inspect.pdf>

Impact on seafarers, ports and maritime services

Annex on Maritime Transport Services²⁰

This Annex aims at liberalising market access and granting national treatment to maritime transport services providers in all TiSA parties. Even without TiSA, liberalisation and deregulation are already extreme in maritime transport with weakened national government controls epitomised in the “flag of convenience” system. Deregulation has impacted negatively on the whole industry in terms of its operational safety, security and social conditions, and where state control is weakest it has left a space for illegal and unregulated operators. The TiSA can be expected to exacerbate corporate concentration and deregulation and intensify the adverse impacts on seafarers and workers in the sector.

The Annex will enhance the bargaining power of major shipping lines vis-à-vis port services. Global port operators will further consolidate their power, even without evidence that this will increase efficiency. It would appear that further liberalisation in this sector is ideologically driven, and aimed at locking in extreme deregulation and promoting a race to the bottom at workers' expense.

What does the Annex cover?

This text is sweeping and covers the broadest spectrum of international maritime transport services in both multimodal transport operations (ones that involve a combination of rail, sea, road or air) and maritime auxiliary services (maritime cargo handling, storage and warehousing, customs clearance, container station and depot services and maritime agency services, as well as freight forwarding). Feeder services like pre- and onward road transport services also fall within its scope.

Multimodal operators (big companies) are favoured

Several provisions within the Annex would appear to impinge broadly on non-maritime transport sectors, potentially favouring the global multimodal operators by giving them new rights to establish and access such services. Such restructuring would come at the expense of domestic players or single-mode transport companies, with negative job impacts in these areas.

Multimodal transport operators are to be given “reasonable” and “non-discriminatory” access to road, rail or inland waterways transport services and related auxiliary services, which includes the ability of multimodal transport operators to demand priority for the handling of their freight over other merchandise which has entered the port at a later date. Concerns have been raised that TiSA commitments regarding cross-border supply of feeder services and offshore vessel services could undermine cabotage requirements, threatening the long-term employment of national seafarers on board ships engaged in transport of passengers or cargo within a country. Furthermore, road and rail services are often public infrastructure, raising more questions about states' ability to manage their own infrastructure.

The broad interpretation of commercial presence could also be problematic. The Annex explains that “limitations on commercial presence for the supply of maritime transport services means any measure that would limit the ability for maritime transport service suppliers of another Party to undertake locally all (emphasis added) activities that are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element.” The need to explicitly exempt, or eliminate, every such measure threatens the ability to generate employment, spinoffs, and other local economic benefits from maritime transport and port services.

ILO Standards mentioned as ceiling, not floor

The Annex recognises the standards adopted by the International Maritime Organization (IMO) and the International Labour Organization (ILO). These standards were specifically created to address some of the grave social and safety concerns that have arisen in the industry. The text states that in cases where Parties “apply measures that deviate from the above-mentioned international standards, their standards shall be based on non-discriminatory, objective and transparent criteria”.

Because the TiSA does include binding and enforceable labour provisions to ensure that the standards of individual parties are in line with ILO Conventions and effectively implemented but it is unclear how standards will be enforced if countries or companies deviate downwards. Yet

20 The content of this chapter is an edited version of the analysis made by Sarah Finke, International Transport Workers' Federation. The original text is available at: <https://wikileaks.org/tisa/maritime/04-2015/analysis/Analysis-TiSA-Maritime-Annex.pdf>

TiSA parties who adopt higher standards will be forced to justify them. It is unclear if companies will have a right to comment on or object to safety provisions or labour standards which are better than the minimum set in ILO and IMO Conventions. Arguably labour standards are technical standards as defined in the Domestic Regulation Annex, which could give foreign firms the right to notice of and to comment on new national measures that deviate from international standards.

The ILO's Maritime Labour Convention²¹, which entered into force in 2013, explicitly sets *minimum* standards, with states being encouraged to go above and beyond its provisions. The most progressive employers are embracing best practices and continuous improvement in their company culture, and moving away from the so-called compliance culture. However, by treating international standards as a ceiling, rather than a floor, the TiSA moves in the opposite direction. As it stands, the annex's reference to international labour standards impedes, rather than facilitates progressively higher standards in a sector with often deplorable wages and working conditions. Unless the text is changed, this will constitute an attack on those very necessary minimum standards and threaten livelihoods of maritime workers everywhere.

TiSA's impact on road transport

Annex on road freight transport and related logistic services²²

The Annex envisages opening up all international and domestic road transport services – including cabotage – of all TiSA parties to operators from the other signatory countries. Similar to air and maritime transport and the competitive delivery services, freight road transport markets are also to be consolidated by means of the TiSA. The economic and commercial pressure exerted by the biggest freight customers, which results in fragmentation and increased layers of sub-contracting, would be increased.

The approach of dividing these chapters poses the question whether a piecemeal rather than a logical integrated approach is being employed. In the maritime transport annex, multimodal transport operators are given the upper hand. They may be given “reasonable” and “non-discriminatory” access to road, rail or inland waterways transport services and related auxiliary services. In the competitive delivery annex, the market expansion of the major private operators is given priority – an expansion that depends entirely on breaking open the state ownership of post and delivery services, mostly in the developing world.

As a matter of principle, governments should define their own social and economic goals and develop transport policies that meet these objectives, such as promoting development or structural transformation. However, the combined impact of the leaked TiSA documents' provisions would constitute serious barriers for any state wanting to invest in, manage and operate its national transportation infrastructure, to plan development or to defend social and safety standards across the transport industry itself.

Management of public infrastructure for logistics

One set of proposals envisages *processes for the transfer of the management of public infrastructure for logistics services related to road transport*. Such transfers could be disruptive for many countries and workforces and allow for the speedy market entrance of the bigger multimodal logistics operators at the expense of local operators. Furthermore, roads, bridges and tunnels tend to be public infrastructure, raising more questions about the potential impact on a state's ability to manage its own infrastructure.

Lowering labour standards in more than one way

The absence of mention to standards relating to labour in road freight transport is particularly problematic. The EU experience of opening up road freight services shows that Eastern European drivers, who were afforded access to the EU labour market after their countries joined the EU, are paid indecently low wages (because they live and work in one country but are paid according to their home country). These drivers are working long hours and are living in unsanitary conditions at truck stops and in parking lots across mainland Europe. Further liberalising this

²¹ http://www.ilo.org/global/standards/maritime-labourconvention/text/WCMS_090250/lang-en/index.htm

²² The content of this chapter is an edited version of the analysis made by Mac Urata and Sarah Finke, International Transport Workers' Federation. The original text is available at: <https://wikileaks.org/tisa/Analysis-TISA-Annex-on-Road-Freight-and-Logistics-Services/Analysis-TISA-Annex-on-Road-Freight-and-Logistics-Services.pdf>

sector would replicate these realities in TiSA countries where higher standards apply, and would further worsen working conditions for drivers. Road freight needs better regulation, road safety oversight, health and environmental oversight and proper enforcement.

Another proposal is to expand the Annex's scope to *"include more freight transport services, add a full range of auxiliary transport services and related services such as rental of commercial vehicles with operator."* If this is agreed, a driver from one country could be hired with his or her truck or van to work in another's domestic market leading to social dumping, and safety and environmental problems. By pitting drivers and freight operators against each other, drivers currently enjoying higher standards will have to accept lower standards in order to be able to compete with drivers, coming from usually poorer countries, that are willing to work for less. Driver fatigue and inexperience are some of the biggest factors in road safety. The prospect of increasing numbers of exhausted drivers who are unfamiliar with their environment and whose vehicles are not subject to stringent checks is worrying for any roadside community.

In line with the Mode 4 Annex, the Annex on road freight transport expedites paperwork for the temporary stay of professional drivers for up to one year. Along the same wavelength, the Annex envisages recognition of the intermediary role of transport associations in obtaining visas which would only enhance the power of companies to exploit drivers.

Despite the major environmental and safety issues associated with the road transport sector, the Annex does not include strong environmental safeguards, nor does it promote adequate safety provisions. On the contrary, under some domestic regulation proposals, safety standards are required to be *"not more restrictive than necessary"*, *"undue traffic rules"* cannot apply and *"timely delivery in order to avoid deterioration of goods"* takes precedence. The Annex states that: *"no limitations shall be imposed on vehicles in transit or their drivers except where necessary for the protection of public safety, safety, environment, infrastructure and other public policy reasons [...] on a non-discriminatory basis."* These provisions are explicitly designed to reduce regulation. Even where the Annex does recognise the role of public policy, it is insufficient in providing the necessary protection.

Opening up services procured by governments to global competition

Government Procurement Annex

The Annex intends to globalise access to government services procurement contracts. Major service suppliers, usually based in developed countries, are expected to benefit more from access to government procurement because of their advanced management techniques, low-cost procuring, ability to mobilise financial and human resources, and deploy specialised law and contract experts. Arguably, governments will be enabled to procure services cheaper but at the cost of funnelling national resources abroad, and losing an important instrument to promote development, structural transformation and decent work. Local services providers, even those that are competitive on national level, would not always be able to compete against large global companies that have a long experience in bidding in different countries, access to advanced technology and other advantages including those stemming merely from large companies' dominant market position.

Why is government procurement important for development?

Government procurement of goods and services makes up a substantial share of economic activity, an estimated 10 per cent to 15 per cent of global GDP.²³ Historically, governments have relied on preferential procurement policies in order to stimulate their economies, support emerging sectors such as renewable energy or to help enterprises and spur growth in less developed areas of a country²⁴. Governments will not be able to use local content requirements, as they are deemed discriminatory. For instance, local content requirements in government procurement require successful bidders on government contracts to employ locals and use locally produced or purchased materials.

What public tenders are covered?

In its current draft form, the Annex does not set a value threshold for contracts above which countries have to run an international tender under TiSA rules. Also, it is not yet clear which government entities would be covered.

²³ WTO Secretariat, Guide to the Uruguay Round Agreements, The Hague: Kluwer Law International, 1999, p. 248.

²⁴ For more information see the ITUC publication "Trade Unions and bilaterals: Do's and Don'ts", 2008: http://www.ituc-csi.org/IMG/pdf/Brochure_24_4_ENG_LR.pdf

In particular, it is not clear whether TiSA's procurement obligations would cover sub-national and sub-federal administration authorities, like municipalities and provinces; state-owned enterprises, like a public water distribution company; the broader public sector like schools, hospitals and universities; and particular government agencies, for instance those with planning or regional development mandates.

Instead, the current text provides for the across-the-board application of national treatment (non-discrimination) to all foreign service providers with a commercial presence, that is, that are established within the territory of a TiSA Party. This broad application goes far beyond existing multilateral commitments applying to government procurement.

For example, the WTO Agreement on Government Procurement (GPA) is an optional agreement that only some TiSA participants, mainly developed countries, have joined. Furthermore, GPA obligations apply only to services that are expressly included in each country's schedule. The majority of developing countries have remained outside the WTO GPA, and most oppose developed countries' attempts to fully cover government procurement under the WTO. In the WTO negotiations, developing countries rejected an attempt led by the EU to include "transparency in government procurement" as a negotiating topic. If that topic were to be included and agreed, all governments would have to follow transparency procedures and rules that would lower their power to instrumentalise public procurement for development by awarding contracts to domestic providers. Through TiSA, developed countries attempt significantly more far-reaching restrictions on the use of procurement for economic development than those rejected in the WTO Doha round.

Defence against corruption?

A common, but deceptive, argument for opening up government procurement to global competition is that the increased transparency helps avoid corruption and cronyism. Indeed, in many countries local suppliers and public procurers are involved in corruption and many contracts are tainted with bribes. Nonetheless, experience shows that transparency is not guaranteed in international tenders either. In fact, corruption might get worse in such cases because bigger companies can offer larger bribes.

For instance, Siemens, Daimler, and Rheinmetall¹ have been caught red-handed in scandals involving bribes to Greek politicians to secure contracts of government procurement. Addressing such issues requires better safeguards and judicial oversight to verify and audit the benefits received for a given public expenditure. But corruption can be effectively addressed without neutering the use of government purchasing as an economic and regional development policy tool.

How would public services² be affected?

Although there is no Annex on public services as such, public services will be affected in various ways by the application of the TiSA provisions. There is an inherent tension between free trade agreements and public services because of their diverging purposes. Public services are designed to meet social needs through affordable, accessible, and often universal programs that serve the public interest funded by public resource. Free trade agreements are designed to enhance private commercial interests by opening more sectors to global market forces. True to form, TiSA's provisions to promote trade in services on a commercial basis would have far-reaching consequences for public services in signatory countries.

Standstill and ratchet lock in current levels of liberalisation

Two major concerns are TiSA's *standstill* clause and *ratchet* mechanisms. Standstill means that the current level of liberalisation in each country is locked in. For example, if a country opened waste collection services contracts to foreign corporations prior to ratifying TiSA, in the future it could never favour domestic suppliers of that service. The ratchet mechanism means any actions taken by a government that might affect the market in services (including public services) must be taken in the direction of "greater conformity" with the agreement. For example, once a government opened a public service (e.g., postal delivery) to greater foreign competition, a future government could not return those services to the public sector except if explicit reservations are put in place during scheduling. However, this is not the spirit of the TiSA negotiations, and governments are under pressure to undertake wide commitments in their schedules. In other words, where TiSA commit-

¹ <http://www.euractiv.com/section/justice-home-affairs/news/ngo-german-firms-mired-in-worst-greek-corruption-scandals-since-wwii/>

² For an in-depth discussion of potential impacts on public services, see Scott Sinclair and Hadrian Mertins-Kirkwood, *TiSA versus Public Services, Public Services International (April 2014)*, <http://www.world-psi.org/en/psi-special-report-tisa-versus-public-services>

ments are made, governments can voluntarily privatise their public services but cannot freely socialise them.

Standstill and ratchet pose a direct threat to the trend of remunicipalisation that is currently gaining steam in Europe and around the world. Dissatisfied with the private provision of services such as water, hydro-power and health, many governments are attempting to return those services to public control. Under TiSA, those governments may be exposed to the threat of trade disputes and punitive sanctions even if they are acting in the public interest. The TiSA constrains the policy flexibility of governments and conditions their choices in favour of private competition.

State-owned enterprises to behave on the basis of market considerations

State-owned enterprises (SOEs), which are a popular vehicle for delivering a wide range of public services, are the subject of an entire chapter in TiSA. Under the terms of the chapter, which is modelled on the SOE chapter in the Trans-Pacific Partnership Agreement, SOEs must operate purely on the basis of commercial considerations insofar as they compete with private suppliers of the same services. This can defeat the purpose of public enterprises whose mandate is to serve the good of the community rather than commercial interests.

Full exception of public services is needed

Because of their nature, public services need to be totally excluded by the TiSA negotiations. However, as negotiations proceed on these services sectors, governments can adopt reservations to specific provisions. Overall, such reservations are more limited than in past treaties. Regarding national treatment, the TiSA takes a *negative list* approach to services liberalisation, which means all services (including public services) are covered by the terms of the deal unless specifically exempted by negotiators. Under this approach, any future services that have not yet been created are also covered, which can greatly constrain the creation or expansion of public services. By contrast, agreements such as the GATS took a *positive list* approach to services liberalisation, which means only those services specifically included by negotiators are covered by the terms of the deal. The TiSA employs a positive list approach to market access obligations, but

where market access commitments are made, standstill and ratchet mechanisms will usually apply.

The TiSA includes a general exception for “*any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers.*” In practice, this clause provides little protection for public services because major public sector services such as education, health, power generation, public transportation, homecare, insurances and others are already provided in competition with private companies in all TiSA Parties. Similarly, the SOE chapter includes a public mandate exception, which allows SOEs to apply some non-commercial considerations, but it does not go far enough to provide full flexibility to SOEs acting in the public interest.

Ultimately, it is left to each negotiating party to protect its own public services through carefully-worded country-specific reservations. Any errors or omissions could prove detrimental to the future viability of public services in TiSA countries.

Conclusion

As the WTO negotiations on market access are at stalemate and no significant developments took place on multilateral trade in services since the conclusion of the General Agreement on Trade in Services (GATS), a coalition of the willing, mostly developed countries, took an initiative to create the Trade in Services Agreement (TiSA) in order to remove any remaining barriers among them for service suppliers. The TiSA is designed to fit the WTO structure, but it is not an official WTO plurilateral agreement. The intention is to open it for accession to all other WTO Members soon after its completion. Once a sufficient number of WTO Members join in, the TiSA will be legally eligible to become part of the WTO system. In the meantime, the vast majority of developing countries will have been excluded from the negotiations of the new GATS. Developed countries are unlocking the WTO stalemate creatively.

The TiSA is not based on a-priori impact assessments that would inform the course of the negotiations. Multinational enterprises have been largely driving this agenda in order to consolidate their market power, increase their control on governments and subjugate regulation-making with strict disciplines and procedures.

The resulting consolidation of market power means that services workers will be faced with increased labour competition, flexible employment relations and a lessened ability to organise. Collective bargaining agreements will be threatened in virtually all sectors and unregulated forms of employment could become the norm in some sectors. The TiSA will enable companies to hire many categories of workers who are currently protected by labour law under contracts that set lesser levels of benefits and protection.

Domestic regulation making is put in a straightjacket. Governments will have to give notice for their planned regulation and accept comments by companies. With the threat of use of dispute settlement by big countries, or the use of investor-to-state dispute settlement where it exists, private service providers will be enabled to slow down,

water down and even block regulation that they do not like, before the regulation is tabled in the legislature for discussion and voting.

The TiSA will give a new push to the self-proclaimed “share economy” of companies like Uber and Task Rabbit that provide services on an informal basis competing unfairly with established operators who have to abide by laws, taxation, regulations and collective agreements that guarantee that workers are paid decently and are respected, and consumers enjoy high quality services. Professional services, including auditing, architecture, engineering and others, will be a new field for the platform applications to thrive and competition among providers in this sector will increase dramatically.

Public services will be faced with a new wave of liberalisation, wider exposure to competition by private companies, and indirect privatisation, while the current trend of remunicipalisation will be slowed down. State-owned enterprises will have to behave as private companies with market considerations demonstrated in their decision making.

Logistics and distribution services will be further opened. The effects experienced by Western European workers after the accession of Eastern European countries in the EU, and the consecutive legislative reform that lowered their working standards, will be amplified and expanded in all TiSA countries.

Depending on its final form, the TiSA could fundamentally alter the way business is done, and reshape the global economy taking power away from workers, small operators and governments and into the hands of the big companies and their shareholders.

The TiSA will increase the consolidation of market power of a few big players and will effectively lead to a lower state of economic freedom.

Publisher responsible in law:
Sharan Burrow, General Secretary

ITUC
5 Bd du Roi Albert II, Bte 1, 1210-Brussels, Belgium
Tel : +32 2 224 0211 Fax : +32 2 201 5815
Email : press@ituc-csi.org Web : www.ituc-csi.org

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