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**NOTE FOR THE ATTENTION OF THE TRADE POLICY COMMITTEE
(SERVICES AND INVESTMENT)**

SUBJECT: TiSA factsheet

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Gintare Kemekliene
Tel+32 2 299 9375
Gintare.Kemekliene@ec.europa.eu

OBJECTIVE: For information

REMARKS:

Please find enclosed - for information –the new document on TiSA ("TiSA factsheet") published on DG Trade's external website

(http://trade.ec.europa.eu/doclib/docs/2016/september/tradoc_154971.doc.pdf).

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TRADE IN SERVICES AGREEMENT (TiSA)

FACTSHEET

Contents

What is the Trade in Services Agreement (TiSA)?	2
Why do we need a Trade in Services Agreement?	2
TiSA architecture	2
What will TiSA cover?	3
Disciplines and sectors not covered in TiSA	9
Other issues	10

What is the Trade in Services Agreement (TiSA)?

The Trade in Services Agreement (TiSA) is a plurilateral agreement currently negotiated among **23 WTO members**:

Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey, the United States.

Together, the TiSA Parties account for approximately 70% of world trade in services.

TiSA is open for other WTO Members to join during the negotiations or after the Agreement is signed. The negotiations formally started in March 2013. Meetings rounds are organised in Geneva and are alternately chaired by the EU, the US and Australia.

Why do we need a Trade in Services Agreement?

Services are increasingly important in the global economy and play a central part in the economy of all EU Member States, accounting for approximately 70% of GDP and employment in the EU. However, services represent only around 25% of external trade.

TiSA is, therefore, an important tool to increase the share of services trade by **tackling the existing barriers**. This involves ensuring that there are **no discriminatory rules**, which prevent the EU companies from, for example, establishing offices or offering services, such as telecommunication or consultancy.

With TiSA new opportunities for EU services providers will be offered while fostering growth, jobs and prosperity at home.

TiSA architecture

The TiSA architecture is based on the WTO's General Agreement on Trade in Services (GATS) and all negotiated provisions are compatible with the GATS, such as scope, definitions, disciplines related to market access and national treatment, as well as exceptions. For the EU, TiSA is intended to be a forerunner of a multilateral agreement on services that would be folded into the WTO once critical mass is reached. In the meantime, the benefits of the agreement will be available for the participants only.

TiSA consists of three parts.

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- The first part outlines the general rules that apply to trade in services between the Parties. This part in essence replicates the core provisions of the GATS, as well as including TiSA-specific scheduling requirements;
 - The second part includes market access and national treatment commitments by each TiSA Party; this part will also include exceptions where TiSA Parties will not take commitments (example for the EU: public services).
 - The third part contains common rules and standards that apply horizontally as well as for specific sectors, for example telecommunications, financial, delivery, maritime transport services.

What will TiSA cover?

The final structure and content of the Agreement, as well as sectors to be covered in TiSA, are still being negotiated. However, the Parties are discussing all areas which the GATS already covers, such as telecommunications, maritime transport, financial services and the movement of service providers abroad to temporarily provide services (the so called Mode 4). TiSA aims to establish strong, transparent and effective horizontal and sectoral disciplines to facilitate trade in services.

Market access and national treatment commitments are scheduled individually by each TiSA Party. Each Party decides which sectors it wants to open up to foreign competition, as well as the extent to which it wants to do so.

These obligations will not affect national or local governments' **rights to regulate** their services markets. Quite to the contrary, the right to regulate services will be enshrined in TiSA. Rather, the objective is to tackle discrimination that currently prevents service suppliers from operating in another TiSA Party. This means that TiSA will not affect rules that all service providers have to meet, whether foreign or domestic, such as measures in place to:

- Protect public health, safety, or the environment;
- Set minimum qualifications for service suppliers;
- Safeguard people's rights at work.

Horizontal and sectoral rules being negotiated in TiSA

Currently there are 17 negotiating texts –so called Annexes – containing potential regulatory disciplines discussed among TiSA Parties. Since negotiations are on-going, it has not yet been agreed which of the Annexes will be part of the final text.

Certain Annexes apply horizontally to trade in services (such as transparency, domestic regulation, e-commerce annexes); others address trade rules in specific sectors (such as financial services and maritime transport). The EU ensures that these rules are in line with the EU acquis. These are briefly outlined in the remainder of this section.

Transparency

The Annex on transparency:

- describes how stakeholders can participate in the legislative process;
- outlines obligations for making the existing laws and regulations publicly available.

The EU wants that transparency is ensured at all government levels, be it in relation to existing rules or the process of identifying future initiatives.

Domestic regulation

Service providers are often confronted with burdensome and time consuming licensing or authorisation systems when accessing third country markets. The domestic regulation Annex aims to develop a set of horizontal disciplines to streamline such systems. TISA will help to ensure that foreign service providers who need to get a licence or authorisation to supply a service are treated fairly in a timely and transparent manner.

For the EU, it is crucial that TiSA contains a set of clear horizontal provisions ensuring that licencing authorisation procedures are not used as an obstacle to trade in services.

Telecommunications

Telecommunications are the enabler of the digital economy in general and are key to a variety of services such as banking, logistics and e-commerce. Telecommunications are also an important service in of themselves.

The telecommunications Annex aims:

- to build a strong framework of trade rules to promote a pro-competitive environment in this sector;
- to open up networks as is already the case in the EU, while at the same time upholding strong consumer protection.

In TiSA, the EU supports a broad scope of the Annex that – among other things – ensures that new market entrants get access to essential infrastructure facilities in third countries.

The EU wants:

- a provision that encourages transparency on, and competition in, mobile roaming rates;
- other TiSA Parties not to apply foreign equity caps in the telecommunications sector (the practice when a government caps the amount of equity a foreign national or company may own in domestic companies).

Electronic commerce

E-commerce in TiSA concerns all trade that is enabled by electronic means. It is therefore a cross-sectoral issue: rules on e-commerce apply to any service, to the extent that those services are provided by electronic means, including retail, financial and business services. E-commerce is a rapidly developing area because of technological and business innovations such as cloud computing and the internet of things.

In TiSA, the Parties are discussing a number of disciplines, including:

- network access;
- customs duties;
- electronic authentication and electronic signatures;
- online consumer protection and spam;
- net neutrality and source code.

Discussions on data flows, which of course will fully preserve our data protection and privacy rules, are also envisaged. The EU is in favour of many of these rules to be included in the e-commerce Annex in TiSA.

Localisation

Localisation may cover all modes of supply by a service supplier but is mostly relevant for commercial presence of our service providers in third countries (mode 3). Localisation Requirements can be imposed at the point of market entry and/or a subsequent expansion of the service supplier's activity or, as is increasingly the case, as a condition for the provision of some kind of advantage.

Examples for such Localisation Requirements are:

- Local Content Requirements;

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- Local Presence Requirements;
 - Local Management and Board of Director Requirements.

Other measures like requirements for prior technology transfer are increasingly demanded by host administrations as a precondition for market access.

The EU wants:

- a broad scope of the Annex that ensures that market entrants do not face unfair licensing conditions when they enter a market;
- international practice in bilateral, regional and multilateral agreements to be reflected in TiSA.

Financial services

Financial services include all insurance and insurance-related services and all banking and other financial services, such as acceptance of deposits, lending, financial leasing, and money broking and asset management. These are all addressed in the scope of the financial services annex in TiSA, which aims at setting rules to facilitate trade in financial services.

The EU wants TiSA Parties to allow financial service suppliers to establish commercial presence in their country without discriminating against them compared to domestic firms. Financial services commitments will by no means limit the ability of the Parties to regulate their financial markets in a non-discriminatory manner – as has been the case in the EU following the financial crisis – or to take prudential measures when necessary to ensure financial stability.

Temporary entry and stay of highly-skilled professionals ("Mode 4")

The movement of natural persons, the so-called Mode 4, covers natural persons who are either service suppliers (such as independent professionals) or who work for a service supplier and are temporarily present in another country to supply a service. This includes consultants, architects or lawyers working for a client in the other country.

It is important to note that Mode 4 concerns trade-related mobility but not labour migration. In TiSA – similar to all other EU trade agreements – Mode 4 provisions concern the temporary movement of highly qualified professionals for specific business purposes, during a specified period and under precise conditions stipulated by a contract. Mode 4 does not concern migration on a permanent basis, nor entry into the EU labour market (i.e. competing for EU jobs). In particular, the EU consistently makes clear in all trade agreements, including TiSA, that:

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- EU and Member States' legislation concerning entry, stay, work, and social security measures continues to apply (i.e. laws which underpin people's rights at work, such as the right to join a trade union, earn a minimum wage, or enjoy of collective wage agreements);
 - Trade agreements do not allow professionals from outside the EU to enter the EU temporarily if this would affect a dispute between management and workers inside the EU (e.g. a strike);

TiSA also includes commitments concerning the procedures for entry and temporary stay of professionals in the territory of TiSA parties.

The main EU objectives related to Mode 4:

- to allow EU professionals, which are among the best qualified in the world, to export services where they are most needed;
- to allow EU business to benefit from expertise and skills of foreign professionals in the global race for talent - without competing with local labour;
- for EU companies present in other TiSA countries, the ability to post their own managers and experts (so called intra-corporate transferees) to those countries is also a key enabler for investment.

Transport: maritime, air and road transport services

Transport and logistics related services cover sectors such as maritime, road and rail transport services, as well as all related auxiliary services.

For maritime, road and air services, three separate Annexes are under discussion in TiSA.

The Annex on air transport defines which air auxiliary services (e.g. ground handling and aircraft maintenance services) are covered by TiSA. Air transport services are subject to bilateral agreements and therefore excluded as is already the case under the GATS.

For maritime transport services, which are the backbone of international trade, the Annex goes beyond definitions and includes several general principles and obligations that the TiSA Parties will have to implement.

The EU wants ambitious provisions in this Annex, given its competitive domestic industry in maritime transport and that all related shipping services are essential to help European companies compete globally.

In the Annex on road transport, definitions and general provisions relating to freight transportation by road are under discussion and being advocated by some TiSA Parties.

Delivery services

Delivery services means the collection, sorting, transport, and delivery of documents, printed matter, parcels, goods, or other items by any type of commercial operator, both public and private. In TiSA – as in other sectors – the objective is to clarify rules and standards in this sector so to ensure that delivery services providers can operate around the world in an open and stable regulatory environment, and that they are not being discriminated against when operating in or entering other markets.

The EU strongly supports strong transparency provisions in the sector. The EU wants:

- a country preserving a monopoly or having a reserved area (i.e. parts of the postal market where only the incumbents were allowed to provide postal services), to clearly define it;
- regulatory independence with delivery services suppliers independent from regulators;
- to ensure that services provided within the universal services obligation are clearly safeguarded.

Other Annexes

The TiSA Parties are also discussing provisions applying to professional services, energy, direct selling, State Owned Enterprises (SOEs), and government procurement. The discussions of the various Annexes are at different stages and at this moment it is difficult to foresee which parts of the currently discussed texts will be retained in the final Agreement. The EU has made it publicly clear that it will not support any rules on patient mobility.¹

¹ <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1254>

Disciplines and sectors not covered in TiSA

Public services

No EU free trade agreement, including TiSA, requires Parties to privatise or deregulate any public service at national or local level. Under EU free trade agreements both the EU's Member States and partner countries that sign the agreements can keep public monopolies and decide how they want to regulate public services.

All TiSA Parties have excluded all "*services provided in the exercise of governmental authority*", which are services exclusively provided by governments on a non-commercial basis, such as justice, police and the military.

Furthermore, the EU has excluded from its TiSA offer:

- education services that receive any form of public funding or State support in any form;
- health and social services;
- water distribution.

Audiovisual services

As instructed in the mandate given to the Commission by EU Member States, the EU offer in TiSA does not include any commitments in the audiovisual sector. Film, TV and other audiovisual services are entirely excluded from the EU's TiSA offer.

Investment protection and Investor-to-state dispute settlement

TiSA will not include rules designed to protect investors, such as an Investor to State Dispute Settlement (ISDS) mechanism. In case of difficulties, its implementation will rely on a more classical state-to-state dispute settlement mechanism.

Data protection

TiSA will contain the same safeguards for protecting data privacy that currently exist in the GATS. This means that countries can continue to apply their confidentiality and data protection laws.

Other issues

Standstill and ratchet clauses

A *Standstill clause* in a trade agreement means that the Parties have to list all the barriers as they are at the moment of taking commitments and afterwards cannot introduce any new barriers.

A *Ratchet clause* in a trade agreement means that if – after entry into force of an agreement – a Party unilaterally removes a barrier in an area where it had made a commitment, it cannot reintroduce it anymore. Typically, these are subject to exceptions (i.e. TiSA parties exempt several sectors from the clause). For example, the EU offer contains exceptions related to public services such as health, education, and water distribution which will not be subject to standstill and ratchet.

It is important to note that in TiSA standstill and ratchet clauses *do not* apply to market access commitments. Standstill and ratchet clauses only apply to measures that allow the Party to discriminate and treat foreign services suppliers worse than domestic service suppliers.

These clauses do not in any way affect the right of governments to introduce regulatory measures or standards that treat all services providers – be it from domestic or foreign – in the same way. Therefore, TiSA Parties will remain free to introduce new laws setting minimum wages, and social, safety, quality or environmental standards, as long as these applies equally to foreign and local suppliers.

For the EU, which already offers a high degree of openness to foreign service providers, ratchet and standstill clauses make it possible to ensure an ambitious outcome in the Agreement and to secure reciprocal treatment for our service providers abroad.

Listing of commitments – a hybrid approach

TiSA Parties can set conditions or exceptions to their market access commitments, often referred to as ‘limitations’ or ‘reservations’. The scheduling of commitment can be done using two different techniques – a positive list or a negative list.

- With a positive listing approach – the Parties have to explicitly (“positively”) list in which sectors they undertake commitments.
 - As a second step, the Parties list all exceptions or conditions to the commitments, by stating the limitations they want to apply.
- With a negative listing approach – the Parties only need to complete the second step. They do not list the sectors for which commitments are taken, but only those which they want to exclude or limit by listing the reservations.

Learn more about positive and negative listing by reading this [document](#).²

In TiSA negotiations a so-called “hybrid approach” is applied: national treatment commitments are scheduled using a negative list approach while a positive list approach is applied for market access commitments.

Public transparency

In line with the EU's trade strategy – Trade for all – and the commitment to transparency, the following TiSA texts are online:

- the EU 's negotiating mandate;
- the EU's schedule of commitments;
- position papers;
- negotiating proposals tabled by the EU.

After each round of negotiations, the European Commission

- publishes factual round reports on DG TRADE's website;
- debriefs EU Member States and the European Parliament on the progress of the negotiations;
- sends all the negotiating documents to the European Parliament and to the Member States in the Council.

To date, the European Parliament has adopted two resolutions concerning TiSA negotiations³, listing a number of recommendations for the European Commission in the ongoing negotiations, which are carefully taken into account as negotiations progress.

The Commission also regularly organises meetings with representatives of business and civil society.

² http://trade.ec.europa.eu/doclib/docs/2016/april/tradoc_154427.pdf

³ - European Parliament resolution of 4 July 2013 on the opening of negotiations on a plurilateral agreement on services (2013/2583(RSP))
- European Parliament resolution of 3 February 2016 containing the European Parliament's recommendations to the Commission on the negotiations for the Trade in Services Agreement (TiSA) (2015/2233(INI))