

Why TiSA negotiations should be halted

NGO statement

17 November 2015 (updated)

The undersigned organisations protest against the current non-transparent TiSA negotiations because of the following concerns, and call for a halt of the negotiations.

1. No model for trade agreements

We reject that TiSA should become a model for all trade in services negotiations in other trade agreements since TiSA is being negotiated without participation of the majority of developing trading partners. TiSA should not be integrated in any GATS negotiations through multilateralisation since TiSA draft texts liberalise services sectors in a far reaching way, much beyond the GATS model. For instance, TiSA does not allow "each party to retain the sovereign right to choose which sector to open to foreign competition and to what extent" as the draft European Parliament report by rapporteur Viviane Reding (dd. 25 September 2015) with recommendations to the EC on TiSA negotiations pertains (Art. 1. (a) viii), because GATS Art. V requires from plurilateral and bilateral services agreements substantial sectoral coverage, and elimination of substantially all existing as well as new discriminatory measures

2. Lack of transparency and accountability

TiSA is being negotiated in different rounds without due public transparency towards citizens nor citizens input. In contrast to the TTIP negotiations, for instance, the EC website <http://ec.europa.eu/trade/policy/in-focus/tisa/> does not provide updates on the EU positions in the latest rounds nor provides information as recommended in the draft European Parliament report (Art. 1. (i) iii) such as fact sheets and factual round-by-round feedback reports.¹ The lack of public transparency about the draft negotiation texts contributes to a lack of political and public discussions and accountability about the negotiations, and a lack of balancing public interests against the business interests pushed through vast non-transparent lobbying. The lobby influence of the services industry, and the promotion of the services industry offensive interests by the EC negotiators, as reflected in the draft European Parliament TiSA report, has excessively dominated the TiSA negotiations at the expense of the public interest of citizens, and protection of social and environmental interests or defensive economic interests, leading to an unbalanced EU negotiation mandate and positions. The

¹INB: The EC finally produced a briefing on the negotiation round of 6-13 October 2015 without explaining its positions: http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153917.15.pdf (viewed 17 November 2015).

draft transparency clause in TiSA will strengthen the right of the industry to influence the legislative processes through provisions for commenting, and for authorities to consider the lobby comments (US demand), before deciding on a legislation.

3. Restricting democratic decision-making

The right to regulate will be further restricted and 'disciplined' as exposed by TiSA draft negotiation texts such as those on domestic regulation, market access, the core text, the prudential carve out for financial services, etc. TiSA will result in an attack on democratic decision making, especially as regards public interests, due to:

- a) Standstill clauses will prevent a country to go back to previous levels of liberalisation and regulations once it makes treaty commitments, even if the treaty has negative consequences. Ratchet clauses will result in automatic commitment of new (national treatment) liberalisation towards all TiSA Parties, which excludes parliamentary ratification processes. Any standstill and ratchet clause in TiSA are unacceptable.
- b) TiSA aims to eliminate future decision-making about national treatment of foreign services and their suppliers due to a 'negative listing' without political debate about the consequences. The purpose of TiSA is to eliminate so-called barriers of trade which are mostly regulations, and therefore TiSA 'disciplines' or prohibits particular laws (e.g. through the market access rules) and regulatory measures. TiSA articles about domestic regulation (in the core text and in the Annex) will restrain how authorities can apply licencing and qualification requirements, and perhaps technical standards (EU is considering this), which affects the quality of services to citizens. For instance, when qualification requirements need to be "reasonable" and "impartial", this leaves a lot of interpretation whether or not democratically decided policies can be respected when in favour of for instance vulnerable groups.

The draft report by the European Parliament (dd. 25 September 2015) with recommendations to the EC on TiSA negotiations calls for retaining the right to regulation but undermines such calls for instance by requesting far reaching market access measures that restrict the right to regulate.

4. No protection of workers' rights

TiSA does not include a binding and enforceable chapter on sustainability. The violation of the fundamental ILO conventions or convention on environment is without any sanctions while many TiSA negotiating parties have not ratified all core ILO labour standards. The ratification, implementation and effective application of all ILO-Core labour standards is imperative for any participant of the agreement, as well as a monitoring process that involves trade unions. Moreover, the TiSA negotiations take place without the input of a sustainable impact assessment (SIA), which has been delayed by the EC. This undermines a balanced input and weighing by the negotiators of the different interests, especially social and environmental impacts. A TiSA treaty is not acceptable when no monitoring and SIA is foreseen after a TiSA agreement starts to be

implemented, and with no modification or suspension clause related to negative sustainable impacts.

5. Threats to public services

TiSA draft texts expose threats to public services, the quality of its services, the universal access to public services and the rights of public service workers:

- a. The public utility clause² which the EU offers to include in its market access commitments does not secure an entire and broad exclusion of public services, and is absolutely insufficient. The EU's public utility clause only aims to achieve the ability to keep and introduce public monopolies at any level of government³ and applies only to market access commitments and not to national treatment, domestic regulation or investment protection. Moreover, the EU's inclusion to reserve the right to adopt or maintain "any measure" relates only to national treatment and does not apply to some particular privately funded public services such as hospitals or ambulances. TiSA draft texts have no comprehensive and unequivocal clause included in the core text of the agreement to explicitly exclude public services from the general scope of the agreement and applicable to any services considered as public services and services of general (economic) interest (SG(E)Is) by European, national, regional or municipal authorities, irrespective how these services are funded and provided. Such an exclusion clause is to apply to all modes of supply, regulatory disciplines, provisions on investment protection as well as all market access and national treatment obligations. The EU has to explicitly respect the principles laid down in Article 14 TFEU and Protocol 26 and take into account the specific regulatory regimes public services are subject to, the social purpose they pursue, the function they play in society and the specific obligations imposed on service providers in the public interest.
- b. The EU's TiSA draft offer of commitments includes privatised public services for which some member states allow (partial) liberalisation so that they will be covered by TiSA disciplines, including education. Failures of privatisation have recently resulted in bringing privatised public services, such as water distribution, back in the hands of (local) authorities, and this must be possible in the future. The TiSA draft texts do not contain explicit language that countries can 're-municipalise' privatised services, which makes nationalisation or monopolisation of such services impossible or very difficult, depending on commitments and potential provisions of their review and modification.

² See the EC draft offer of commitments on limitations on market access, footnote 5 : education services are not covered.

³ European Commission, Report of the TiSA negotiation round taking place 6-13 October 2015, 29 October 2015, http://trade.ec.europa.eu/doclib/docs/2015/october/tradoc_153917.15.pdf (viewed 17 November 2015): The EU had to "explain" that its public utilities reservation on Market Access is to achieve the ability to keep and introduce public monopolies at any level of government.

- c. The EU has been opposing in the TiSA negotiations a clause that stipulates that “[n]othing in these [domestic regulation] disciplines prevents Parties from exercising the right to introduce or maintain regulations in order to ensure provision of universal service”. Such EU position is unacceptable as it undermines EU policies and regulations about universal access to public services.

6. Right to modify undetermined

It is not clear whether TiSA negotiators will come to a reasonable agreement to review and modify commitments. No TiSA agreement can be approved without clear articles how commitments can be modified and how to avoid that undue compensation is required by TiSA partners. GATS Art. XXI has rules for negotiating modification of schedules, without which TiSA cannot be compatible with GATS and TiSA cannot be ‘multilateralised’ with GATS members.

7. Dangerous liberalisation of sensitive sectors

The TiSA negotiations aim at broad liberalisation of sectors that are too sensitive from a public interest perspective to be included, such as:

- a. Public procurement which can play an important role in industrial, economic, social and environmental policies. The EU rules on public procurement are to be shielded from any TiSA rule.
- b. Financial services and financial prudential carve out: TiSA negotiations do not take into account how the restricting TiSA rules and the GATS prudential carve-out, which is much weaker than the prudential carve-out negotiated with Canada in CETA, will result in further risky speculative financial services and trading, and destabilisation financial flows with negative social and economic consequences or even new financial crises.
- c. Environmental and energy services need to be shielded from any agreement until effective climate change and environmental protection agreements have been negotiated.
- d. The transfer of personal and other data processed in different services sectors is being negotiated without sufficient protection of privacy safeguards such as a comprehensive and unambiguous horizontal self-standing provision, based on Article XIV of the General Agreement on Trade in Services (GATS), that fully exempts the existing and future EU legal framework for the protection of personal data, from any provision of the TiSA agreement.

The undersigned:

Attac Germany

Attac Ireland

Both Ends

Education International (EI)

European Federation of Public Service Unions (EPSU)

FNV (Federatie Nederlandse Vakbeweging)

German NGO Forum Environment & Development

Global Justice Now

Keep Ireland Fracking Free

SOMO (Centre for Research on Multinational Corporations)

TNI (Transnational Institute)

Union Syndicale Fédérale

War on Want

WEED - World Economy, Ecology & Development (Germany)

WEMOS - Health for all