Fact Sheet
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# Trade in Services Agreement (TiSA) and Financial Services

## Background on the TiSA negotiations

The *Trade in Service Agreement (TiSA)* is a planned free trade agreement to deregulate services. As negotiations at the World Trade Organization (WTO) have faltered for years, a group of 23 WTO members (see box), who refer to themselves as "the really good friends of services", joined together in 2012 to conduct confidential negotiations outside of the WTO.

| TiSA negotiating partners | | |
|---|---|---|
| Australia | Israel | Paraguay |
| Canada | Japan | Peru |
| Chile | Liechtenstein | South Korea |
| Taiwan | Mexico | Switzerland |
| Columbia | New Zealand | Turkey |
| Costa Rica | Norway | USA |
| Hong Kong | Pakistan | EU (all 28 Member States) |
| Iceland | Panama | |

Officially, the EU emphasizes that TiSA should be compatible with WTO law. The goal is to gain so many WTO members for the new agreement that it can later be converted into WTO law.

According to the EU, TiSA is open to all WTO members. However, several states have already expressed their opposition, including Brazil and India. Therefore, it is unclear whether enough TiSA advocates will join together to enable integration into WTO law. The "open nature" of the negotiations could also be described as doubtful. China has been denied admission to the negotiating table, despite interest repeatedly being shown, by the USA and Japan.

The objectives of the negotiating parties are contradictory. TiSA is meant to stay close to WTO laws, so that it can be integrated later. At the same time, however, the new agreement is meant to deviate from the World Trade Organization's existing General Agreement on Trade in Services (GATS). Significant here are which deviations are considered negotiable and which are not: in internal EU discussions, for instance, it was established that human rights, sustainable development and even the OECD Investment Guidelines could not be negotiated on, as they are not included in WTO law.

## General similarities to GATS

Given the desired compatibility with WTO law, there are many similarities between TiSA and GATS. This can be seen in a recently published draft agreement of the EU. This assumes the essential points and wording of GATS, particularly in terms of the following:

- **National treatment:** This requires that foreign and domestic providers are treated on equal terms.
- **Market access:** A ban on access restrictions that generally prohibit company access to markets, e.g. limits on the number of providers and products or monopolies.
- **Positive list (market access):** In the area market access liberalisation, the specific self-imposed obligations of contractual partners are to be regulated in a "positive list". This means that all sectors liberalised by a nation must be listed individually by each negotiating party. The rest remain protected.
- **Standstill clause:** This establishes the liberalisation level existing at the time the agreement has been concluded. This level may not be reduced at a later point in time, at least not without sanctions.
- **State-to-state arbitration:** In the area of legal protection, investor-state lawsuits seem to be prohibited in favour of state-to-state arbitration, as in the WTO's "Dispute Settlement". Otherwise TiSA could not be WTO-compatible.
- **Exemptions:** Some of the general provisions are the same, such as cases in which the principles of free competition can be deviated from, e.g. for security interests or health hazards.

The draft list of commitments of the EU also contains a safeguard clause for public utilities, as is used in other EU agreements, so that free market access must not be granted in this area. However, this is not comprehensive and it is unclear whether it will be accepted by the other contractual partners. Furthermore, important sectors, such as energy and telecommunications, are not included.

## General differences to GATS

The extent to which TiSA will differ from GATS is currently difficult to say, but the following points will be discussed by the negotiating parties:

- **Negative list (national treatment):** The self-imposed obligations on national treatment are be newly defined, based on a negative list. This means that in general, all areas are to be liberalised. Only those areas that are explicitly listed will be excluded from liberalisation. This should result in a greater liberalisation effect.
- **Ratchet clause:** This states that any liberalisation steps that take place *following* conclusion of the agreement are also not reversible.

- **Cross-sectoral measures:** These mainly concern checking domestic regulations, such as technical standards and licensing/qualification requirements for their incompatibility with TiSA. Public interests could quickly collide with corporate interests here. These also concern temporary residence permits for skilled personnel abroad and export subsidies.

- **Liberalisation in individual sectors:** In some sectors, substantial advances in liberalisation are to be negotiated. These sectors include: international shipping, telecommunications, electronic commerce, financial services (see below), air/road transport, professional services and postal and courier services.

## Deregulation of financial services

In addition to general rules, there are to be separate rules for financial services. So far, there are two proposals, one recently published by the EU and a recently leaked draft containing different positions. The positions of the USA reflect the interests of lobby groups like the American *Coalition of Service Industries*, but this would be no different in the EU.

The drafts envision the removal of restrictions for commercial subsidiaries and cross-border services. The following provisions would go quite far in their scope:

- **Monopoly rights:** Countries shall obligate themselves to eliminate or reduce existing monopolies. While such a provision is already included in the WTO Agreement on Commitments in Financial Services (not signed by all WTO members), it is not included in GATS.

- **New services:** The proposals of the USA and the EU regarding the provision of new services differ in their formulations. The US proposal aims at equality between foreign and domestic providers. The EU wants to go much further, however. As in the WTO Agreement, it would like to see every new financial service being allowed. Foreign providers could even be favoured over domestic providers. However, the EU proposal also allows the possibility of authorization procedures and provisions regarding legal form.

- **Non-discriminatory measures:** This goes – as in the WTO Understanding – far beyond traditional protection against discrimination, as government regulations are to be restricted. This includes a dictate to eliminate market barriers, even for measures that actually comply with the requirements of TiSA. In other words, a measure initially compliant with TiSA could once again be called into question. A prohibition restricting the existing degree of market opportunities and – in some cases – advantages that companies have enjoyed in the past would go even further.

- **Oversight measures:** The draft contains a safeguard clause for oversight measures ("prudential carve-out"), including measures to protect the financial system and investors. It is largely identical to GATS.

- **Data protection:** In as far as personal data is concerned, the EU proposes restricting the free flow of information within a financial institution. In contrast, the USA wants to allow the exchange of information across national borders without any restrictions whatsoever, while prohibiting, for example, the stipulation that data be stored in specific countries.

## Conclusion

TiSA stands for a further liberalisation, even though the disadvantages of liberalisation have become clear in many economic sectors – especially in the financial sector. The financial crisis took root due to existing liberalisation under the WTO and, to a certain extent, GATS. Stepping back from liberalisation in favour of regulation would make sense. Instead, TiSA is going in the opposite direction.

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## Further information:

European Commission: Special site on TiSA

Kelsey, Jane: Memorandum on Leaked TISA Financial Services Text

PSI: TiSA contra public services

**Publisher: World Economy, Ecology & Development – WEED e.V., Eldenaer Str. 60, 10247 Berlin**
**Contact:** Markus Henn, markus.henn@weed-online.org
**Translation from German:** Todd Dennie

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