

IN-DEPTH ANALYSIS

The Trade in Services Agreement (TISA): An end to negotiations in sight?

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ABSTRACT

Launched at the beginning of 2013 by a group of World Trade Organisation (WTO) members calling themselves Really Good Friends of Services, negotiations on the plurilateral Trade in Services Agreement (TISA) are nearing an important juncture. The TISA agreement is the biggest free trade agreement currently under discussion when measured by the number of negotiating parties – 23 at present. It is designed to boost liberalisation of the global services sector, moving beyond the current, outdated GATS provisions and unlocking huge economic potential. The EU undoubtedly has important stakes in these negotiations as its economy is highly – and increasingly – dependent on the service sector. However, there remain several obstacles to the successful completion of the agreement and its effective WTO integration, with the most important of these being the inclusion of more WTO members among the signatories – and the hearts and minds of citizens.

This paper is an initiative of the Policy Department, DG EXPO.

English-language manuscript was completed on 12 October 2015.

Printed in Belgium.

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1 Introduction

Negotiations on a new treaty covering services – the Trade in Services Agreement (TISA) – aim to achieve further liberalisation and ultimately upgrade the World Trade Organisation's 1995 General Agreement on Services (GATS).

Launched in March 2013, the aim of negotiations on the proposed plurilateral Trade in Services Agreement (TISA) has been to achieve further liberalisation in the trade in services and ultimately upgrade the 1995 General Agreement on Trade in Services (GATS) of the World Trade Organisation (WTO). For a variety of reasons, no progress was achieved on the issue when negotiations were held under the WTO umbrella. Negotiations were then pursued outside the WTO framework, among a group of WTO members – currently numbering 23 – who call themselves Really Good Friends of Services¹.

To date, 14 rounds of negotiations have taken place. The most recent was held on 6-13 October 2015 in Geneva under the US chairmanship. The previous, 13th round of negotiations, which took place in July under the Australian chairmanship, served to take stock of the negotiations for the first time, and to establish the final deadline for submitting new annexes (July 2016). Since these negotiations have clearly arrived at an important juncture, it is a good opportunity to analyse the main issues at stake.

This paper will firstly try to explain the economic stakes involved in services liberalisation, both globally and for the EU. It will then describe the legal and historical background to the TISA negotiations, the current state of play in the negotiations and the main publicly known features of the future agreement. It will also try to highlight some of the contentious issues touched upon by the negotiations and will attempt to draw some tentative conclusions.

2 The importance of services

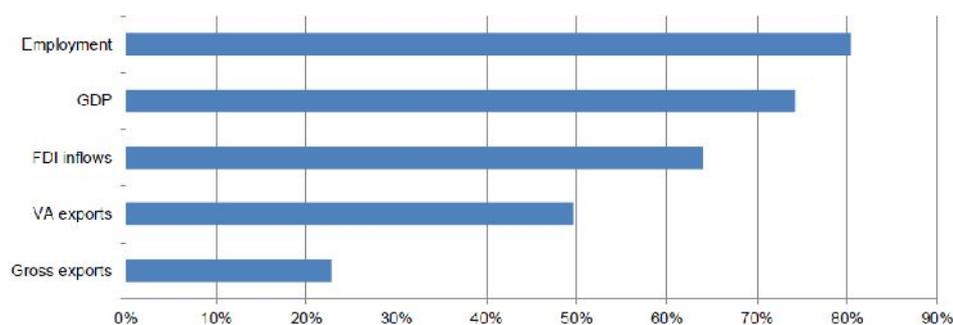
Services comprise a substantial and growing share of domestic output and employment.

Services comprise a substantial and growing share of domestic output and employment (see, for example, Marchetti and Roy, 2013). The Organisation for Economic Cooperation and Development (OECD) estimates that services account for 68 % of global GDP. In advanced economies, the sector accounts for around 75 % of production and 80 % of employment; in developing countries, services represent between 40 and 70 % of both production and employment².

¹ Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey and the United States. Uruguay and Paraguay have just left the negotiations.

² See Peterson Institute for International Economics, Framework for the International Services Agreement, April 2012, p. 21, <http://www.iie.com/publications/pb/pb12-10.pdf> (accessed 11 October 2015).

Figure 1
Share of services in the economy
(OECD average)



Source: [OECD](#)

Services play a significant role in the EU's economy, making up around three quarters of EU GDP and employing close to 70 % of the Union's labour force (cf. around 80 % in the US) (DG Trade, 2014). The services sector acts as a powerful motor for employment growth. The EU 2014 Skills Panorama predicts that employment growth in the EU from 2013 to 2025 will be driven by service sector jobs, particularly high-skilled jobs in the areas of professional services, business services and computing. Almost 7.6 million jobs are predicted to be created in this period across the EU, representing a growth rate of around 3.3 %.³

Smaller shares of the workforce are employed in the services sector in developing, emerging countries - around a third in India and in China - but the sector is continuously expanding at a strong rate.⁴ Marchetti and Roy (2013) have pointed out that the positive association between the share of GDP of the service sector and income per capita is one of the best-known regularities of growth and development economies. The World Bank has further indicated that the services sector makes a higher contribution to poverty reduction than the agricultural or manufacturing sectors.⁵

While services account for a smaller share of international trade and investment than of domestic production and employment, boosted by new information and communication technologies, cross-border trade in services has been expanding.⁶ So, it is the GATS Mode 1 where the big stakes are nowadays.

Services play a significant role in the EU's economy and are a major driver of growth and jobs.

The service sector is also expanding in emerging countries.

New information and communication technologies are boosting cross-border trade.

³ See EU Skills Panorama (2014), 'European job growth creators: Analytical Highlight', prepared by ICF GHK and Cedefop for the European Commission, http://euskills Panorama.cedefop.europa.eu/App_Controls/Documents/ShowDocument.aspx?documentid=84& (accessed 11 October 2015).

⁴ See De Micco P., 'The Plurilateral Agreement on Services: at the starting gate' [http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491477/EXPO-INTA_SP\(2013\)491477_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491477/EXPO-INTA_SP(2013)491477_EN.pdf) (accessed 11 October 2015)

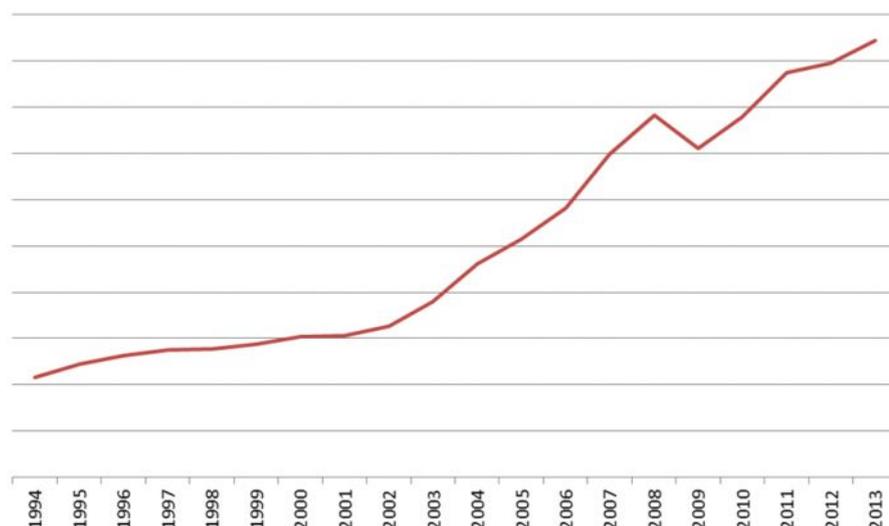
⁵ World Bank presentation, 'Role of Services in Economic Development'; Geneva, July 2012 (Data source: World Bank, 2010) via <http://unctad.org/en/Pages/DITC/Services/Global-importance-of-services.aspx> (accessed 11 October 2015)

⁶ OECD (2014), *Perspectives on Global Development 2014: Boosting Productivity to Meet the Middle-Income Challenge*, OECD Publishing, Paris. DOI: http://dx.doi.org/10.1787/persp_glob_dev-2014-en (accessed 11 October 2015)

The value of the international trade in services exceeded USD 5 trillion in 2014.

According to the 2014 World Trade report, the value of world commercial services exports rose by 5.6 % to USD 4.6 trillion in 2013.⁷ A new statistical methodology, BPM-6, was introduced in 2005 and according to this methodology the value of the international trade in services exceeded USD 5 trillion in 2014.⁸ Since the 1980s, the sector's expansion has outpaced the agriculture and manufacturing sectors. For example, between 1994 and 2013, the value of the export of services quadrupled.⁹ It is interesting to note that the impact of the global economic crisis has been less pronounced on commercial services than merchandise trade, and the services trade has been recuperating steadily after experiencing a drop in 2008-2010.¹⁰ This can be explained by the fact that it is much more complicated to introduce protectionist measures in services than in goods, since this would require changing complex legislation or kicking out foreign providers that have already been established in the country. It is technically much easier to increase tariffs on imported goods or introduce national preferences in public procurement.

Figure 2
Growth of trade in services
1994-2013



Source: Policy Department, based on data from UNCTAD, BPM-5

Services account for around one fifth of world trade.

Services account for around one fifth of world trade, and this figure could double if the value of service inputs is taken into account. An OECD policy briefing explains that 'this is in part because the value created by services as intermediate inputs represents over 30 % of the total value added in manufactured goods. There would be no global values chains without well-

⁷ World Trade Report (2014) https://www.wto.org/english/res_e/booksp_e/world_trade_report14_e.pdf (accessed 11 October 2015)

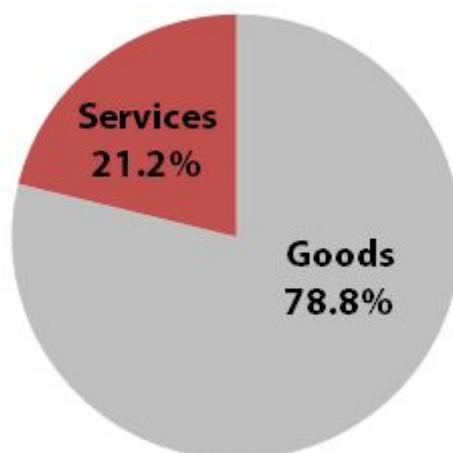
⁸ UNCTAD, BPM-6.

⁹ The value of the world's export of services was equal to USD 1083 billion in 1994 and USD 4720 billion in 2013 (source: UNCTAD, BPM-5).

¹⁰ Trade in services was showing constant growth in 1994-2002. This period was followed by sharp growth which lasted until the 2008 crisis. The impact of the crisis, however, was not very long and was less pronounced than in the case of trade in goods. The world trade in service in 2010 was almost equal to the level in 2008. Since then, the services trade has been constantly expanding and reached USD 4720 billion in 2013 (BPM-5).

functioning transport, logistics, finance, communication, and other business and professional services to move goods and coordinate production along the value chain. More efficient services sectors help to improve productivity and enhance competitiveness across the economy - in manufacturing as well as in services sectors themselves. In brief, improving services performance is a far more significant contribution to growth and employment than has traditionally been realised' ¹¹

Figure 3.
Global trade in goods and services (2014)



Source: Policy Department, based on data from UNCTAD, BPM-6

The EU is the top service trader in the world.

The European Union ranks as the top service trader in the world, if trade between the EU Member States is excluded and the bloc is treated as a single entity. Its services exports were valued at USD 891 billion (25 % of the world total) in 2013. The EU is followed by the United States (18.7 %), China (5.8 %), India (USD 151 billion, 4.3 %) and Japan (USD 145 billion, 4.1 %). The EU is also the leading importer of services at USD 668 billion (19.7 %), and is followed by the United States (12.7 %), China (9.7 %), Japan (USD 162 billion, 4.8 %) and India (USD 125 billion, 3.7 %).¹² As explained above, trade in services seems to be less cyclical than trade in goods. This has also had some positive impact on the EU's trade performance during the global economic crisis.¹³

Despite the crucial importance of services, significant barriers remain to their free movement.

There is no doubt that services are increasingly crucial for growth and employment, yet important barriers remain to their free movement, particularly "behind-the-border" barriers. Such barriers remain particularly high in the emerging and developing countries. The restrictions do not only reduce imports and affect foreign firms' access to local markets but can also significantly impair local companies' competitiveness in international markets. The latter is firstly due to the costs created by the behind-the-

¹¹ See OECD, 'Services Trade Restrictiveness Index', Policy Brief, May 2014, p 1-2, http://www.oecd.org/tad/services-trade/STRI%20Policy%20Brief_ENG.pdf (accessed 11 October 2015).

¹² Figures from World Trade Report (2014), *op. cit.*

¹³ See for example Galar, M 'Has the EU's leading position in global trade changed since the crisis?', Economic Brief, DG ECFIN, March 2015

The 1995 WTO GATS – a pre-internet treaty – has become outdated.

border barriers to domestic firms and, secondly, lower incentives for innovation created by reduced levels of competition.¹⁴

The global trade in services is governed by the 1995 World Trade Organisation General Agreement on Trade in Services (GATS). Even at its inception, this agreement was considerably less ambitious in scope and depth than the WTO General Agreement on Trade in Goods (GATT). It has since become outdated, as it precedes the internet era and is in need of an update.¹⁵

Further liberalisation of the services trade is expected to produce substantial global gains.

Further liberalisation of the trade in services, as attempted with TISA negotiations, is expected to produce gains which are both substantial and global, the latter depending on whether TISA will become a real multilateral agreement replacing GATS. These will be assessed in detail by the European Commission in a Trade Sustainability Impact Assessment but the assessment is still ongoing and the results of this are not yet known. Although the exact gains are difficult to estimate in advance, because the architecture of TISA allows participating members to choose the level of liberalisation, a 2013 study suggested that a 50 % cut in tariff-equivalent barriers for cross-border services among the negotiating partners would increase the value of the EU's export services by USD 21 billion and those of the US by USD 14 billion.¹⁶

3 Legal and historical background

3.1 The 1994 General Agreement on Trade in Services (GATS)

GATS was signed in Marrakesh in 1994.

The WTO's General Agreement on Trade in Services (GATS) was signed during the organisation's ministerial meeting in Marrakesh in 1994. At the time, the agreement was recognised as a major step forward. Rather than define a single kind of services, GATS defines the mode in which services are supplied:

- (a) from the territory of one Member into the territory of any other Member;
- (b) in the territory of one Member to the service consumer of any other Member;
- (c) by a service supplier of one Member, through commercial presence in the territory of any other Member;
- (d) by a service supplier of one Member, through presence of natural persons of a Member in the territory of any other Member.¹⁷

It defines 'modes' according to which services are supplied.

¹⁴ See OECD Services Trade Restrictiveness Index: Policy Brief, p. 6 <http://www.oecd.org/tad/services-trade/regulatory-database-services-trade-restrictiveness-index.htm> (accessed 11 October 2015).

¹⁵ See the relevant WTO webpage for the text of the agreement and related instruments at https://www.wto.org/english/tratop_e/serv_e/gatsintr_e.htm (accessed 11 October 2015).

¹⁶ De Micco P. (2013), *op. cit.*

¹⁷ GATS I.2

Thus 'mode I' refers to cross-border services, where the services supplied from the territory of one Member State are traded into the territory of another Member (e.g. distance training);

- 'mode II' refers to services that are consumed abroad, when the consumer moves physically from the territory of one Member State to receive the service in the territory of another Member State (e.g. tourism);

- 'mode III' refers to services supplied from a subsidiary or controlled company of a Member State located in another Member State to recipients of the latter (e.g. a hotel group);

- 'mode IV' refers to the movement of natural persons who move to another country in order to provide services within the framework of a professional activity.

GATS covers all services, except those offered by a governmental authority and air traffic rights (and those directly related to air traffic).

The scope of GATS is wide enough to cover all services, except services offered by a governmental authority and air traffic rights (and those services directly related to air traffic).¹⁸ However, the concrete rights and obligations of the agreement's Members can only be assessed by looking at their national 'schedule of commitments', which is organised according to the 12 classifications of GATS services: business services, including professional services and computer services; communication services; construction and related engineering services; distribution services; educational services; environmental services; financial services, including insurance and banking; health-related and social services; tourism and travel-related services; recreational, cultural and sporting services; transport services; and other services not included elsewhere. These twelve categories are further divided into 160 sub-sectors.

WTO Member States make specific commitments – to which sectors they will apply GATS rules, and to what extent.

Under the existing agreement, WTO Member States make specific commitments regarding which sector they will apply GATS rules to, and to what extent. Under GATS, one horizontal clause applies to all trade in services, while WTO Members may adapt their adherence regarding two other disciplines. The horizontal discipline that applies to all trade in services is the most-favoured-nation principle (MFN)¹⁹, while the market access (MA) and national treatment (NT) principles are 'adaptable' disciplines. (This differs from the WTO's General Agreement on Tariffs and Trade [GATT], under which the national treatment principle is a horizontal discipline.)

The 'most-favoured-nation' principle applies in principle to all trade in services.

The GATS' MFN principle stipulates that 'each Member should accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country'.²⁰

Concerning market access, GATS lays down that 'with respect to market

¹⁸ GATS 1.3

¹⁹ The provision is subject to specific exceptions found in a special GATS Annex (the 'list of exemptions to MFN'),

²⁰ GATS II.1.

'National treatment' and 'market access only' apply to services included in each Member's specific commitments schedules and are subject to reservations.

access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule'.²¹ Market access commitments for specific service sectors follow the same logic as the market access concessions made in the Members' 1994 schedules to the GATT (the maximum tariff level that Members have agreed to apply to every traded good). Similarly, market access concessions prescribe the minimum treatment that a foreign service or service supplier must be accorded by the WTO Member concerned. The GATS defines six ways of limiting free market access, with numerical limitations on, for example, service suppliers, the value of transactions, service operations or employees in the sector.

On national treatment, GATS stipulates that 'in the sectors inscribed in its Schedule, and subject to any conditions and qualifications set out therein, each Member should accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers'.²²

In sum, in the GATS, the MFN principle applies to all services supplied by economic actors of all WTO Members, subject to specific exceptions found in a special GATS Annex (the 'list of exemptions to MFN'), while the NT and MA only apply to services included in each Member's specific commitments and subject to the reservations detailed there.

3.2 From GATS to the TISA negotiations

Although there was progress made in some areas, the WTO's Doha Development Agenda collapsed as a result of a lack of agreement on agricultural rules and market access. Negotiations have been stalled since 2008.

After the entry into force of GATS, WTO members continued negotiations in the sectors of telecommunications and financial services, by signing additional commitments (which extended to all Member States via the MFN).

Further liberalisation in services was expected to start with 'bilateral, plurilateral or multilateral negotiations' to improve market access for services and to 'achiev[e] a progressively higher level of liberalisation'.²³ These negotiations were integrated into part of the Doha Development Agenda (DDA) in 2001, which neared completion in July 2008 at the WTO's mini-ministerial Conference in Geneva. At that conference, ministers discussed what concrete improvements they could commit to for services during an ad hoc 'signalling conference' on services.

Notwithstanding the progress made, the DDA collapsed due to a lack of agreement on agricultural rules and market access, and negotiations have been stalled since July 2008. Negotiations on services, which are less

²¹ GATS XVI.

²² GATS XVII.

²³ GATS XIX.

contentious than agricultural and 'non-agricultural market access negotiations' (NAMA) issues, have essentially been held hostage to the entire project. The Doha round was intended to be concluded with a 'single undertaking' in all WTO chapters. In December 2011, the 8th WTO Ministerial Conference recognised the DDA stalemate and provided political guidelines for reaching 'provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking'.²⁴

The US and Australia advanced the prospect of a stand-alone agreement in services, which they named the International Services Agreement.²⁵ The EU, on the other hand, has consistently referred to a potential 'plurilateral agreement on trade in services' as a way of underscoring the agreement's link to the Doha negotiations and the WTO. The idea of such an agreement, regardless of its name, was endorsed by a group of interested countries, the Really Good Friends of Services, albeit with divergent positions on its scope and architecture. This group was principally composed of developed countries, which in general already granted quite a high level of market access and applied transparent services regulation disciplines.

The Really Good Friends held several meetings in 2012 to define the architecture and objectives of the agreement. Some of them (the US foremost) wished to create a stand-alone agreement outside the WTO, while others (led by the EU) hoped for an agreement in accordance with GATS rules and linked to the WTO structure. Such a linked format would facilitate, in the medium term, the accession of the biggest, interested developing countries, without abandoning the goal of the Doha single undertaking. Several questions were debated during this exploratory phase of negotiations: how to anchor the new plurilateral agreement to GATS, whether to include the service sectors through a positive or a negative list, the scope of national treatments, market access commitments and the extent of MFN.

A compromise reached in October 2012 made it clear that negotiations would adopt the following structure:

- (1) To create a WTO-compatible agreement on the basis of GATS. This was a clear request from the European Commission, which wanted to facilitate broad participation in the agreement (especially from the BRICS) as soon as possible.
- (2) To establish a negative list on national treatment and a positive list for market access. The US would have preferred a more ambitious purely negative list.
- (3) To incorporate an advance notice for domestic regulation that is

²⁴ See WT/MIN(11)/W, -. Elements for political guidance, 21 December 2011.

²⁵ EurActiv, EU and 'good friends' weigh international services pact, 9 October 2012, <http://www.euractiv.com/specialreport-free-trade-growth/really-good-friends-mull-interna-news-515258> (accessed 11 October 2015).

The idea of an international agreement on services was endorsed by a group of interested countries - the Really Good Friends of Services.

A compromise reached at the end of 2012 paved the way for opening official negotiations.

more efficient than the GATS notification already in force.

The European Commission proposed a negotiating mandate to the Council in February 2013. This was approved one month later.

In July 2012, the Really Good Friends of Services²⁶ agreed to start preparations for the launch of negotiations on an international services agreement, which would globally advance liberalisation of services and rule-making in this area. The Commission proposed a draft negotiating mandate to the Council with a view to opening the negotiations in February 2013,²⁷ and the Council approved the mandate just one month later.²⁸ The first round of negotiations took place in March 2013. The European Parliament adopted a resolution on the issue in July 2013.²⁹

At the opening of the official negotiations, the Commission summarised in a memo the main elements of the negotiations as follows:

²⁶ At the time, the group included: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the European Union representing its 27 (Croatia only joined the EU on the 1st of July 2013) Member States, Hong Kong, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Republic of Korea, Switzerland, Turkey and the United States.

²⁷ See European Commission, 'Negotiation for a Plurilateral Agreement on Trade in Services', http://europa.eu/rapid/press-release_MEMO-13-107_en.htm, (accessed 11 October 2015).

²⁸ The Council declassified the mandate in March 2015, available at <http://data.consilium.europa.eu/doc/document/ST-6891-2013-ADD-1-DCL-1/en/pdf> (accessed 11 October 2015)

²⁹ European Parliament resolution of 4 July 2013 on the opening of negotiations on a plurilateral agreement on services ([2013/2583\(RSP\)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A2013%2F2583%2FRSP)) (accessed 11 October 2015)

Negotiations for a Plurilateral Agreement on Trade in services

The European Commission proposed to the Council to open negotiations on a new international agreement on trade in services. 21 WTO Members are currently participating in this initiative, hence a 'plurilateral' approach, and the EU is pushing for the agreement to comply with WTO rules so it can be 'multilateralised' at a later stage.

The origins of the initiative

To overcome the stalemate in the Doha negotiations (DDA), at the 8th Ministerial Conference of the WTO in December 2011, WTO Ministers acknowledged the impasse and made a commitment to go ahead with negotiations in certain areas covered by the Doha negotiations with the aim of reaching '*provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking.*'

In that spirit, WTO members went ahead with negotiations on trade facilitation and certain other areas. Some WTO members – originally led by the USA and Australia - started floating the idea of a stand-alone agreement on trade in services to advance the DDA negotiations amongst willing WTO members.

The participants

The participants in this initiative are the so-called 'Really Good Friends of Services'. This 'Really Good Friends' group is neither an exclusive nor a stable group of WTO members, but an ad-hoc coalition of all those WTO members that showed willingness to advance the services negotiations in the DDA. In addition to the EU and its 27 Member States, the 'Really Good Friends' is made up of some 20 other WTO members: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong China, Iceland, Israel, Japan, the Republic of Korea, Mexico, New Zealand, Norway, Panama, Pakistan, Peru, Switzerland, Turkey and the USA.

These countries are a mix of developed and developing countries and in 2010 represented around two thirds of global trade in cross-border services (excluding intra-EU trade).

The EU would welcome any WTO members which share the objectives of the agreement to join the negotiations at any time.

Main elements of the future agreement

As an outcome of the exploratory talks that took place in 2012, the 'Really Good Friends' agreed that any agreement would not simply be a Free Trade Agreement among the participants but would have the objective of being a full part of the WTO system.

1. The objective of the plurilateral trade in services agreement should be to negotiate an ambitious agreement that is compatible with the General Agreement on Trade in Services, (GATS), which would attract broad participation and which could be multilateralised at a later stage. Indeed, by staying close to the GATS, it could be easier to convince some of the leading emerging countries that were active in the DDA negotiations to join the initiative, either during the negotiations or later on.

2. The agreement should be comprehensive in scope with no exclusion of services sectors or modes of supply at the outset. Commitments taken by 'Really Good Friends' should reflect the reality on the ground, i.e. the actual level of existing liberalisation, and provide for new or improved market access.

All services sectors will potentially be covered by the negotiations, to the same extent they were covered by the GATS/DDA negotiations. However, it will be up to each participant to decide for which sector and to what extent it allows foreign services suppliers to provide services in their territory. The agreement will also include regulatory disciplines e.g. in the area of telecommunications, financial services or postal and courier services. These disciplines typically cover issues such as the independence of regulators, fair

authorisation processes or non-discriminatory access to telecommunication networks.

3. There should also be new and better rules on the basis of proposals brought forward by the participants. Members of the 'Really Good Friends' made suggestions to include new rules, covering domestic regulation (e.g. authorisation and licensing procedures), international maritime transport, telecommunication services, e-commerce, computer-related services, cross-border data transfers, postal and courier services, financial services, temporary movement of natural persons, government procurement of services, export subsidies and state-owned enterprises. This list is based on the interests expressed by individual participants in the 'Really Good Friends' group. It is not exhaustive and it does not mean it was agreed that there will be new or better rules in all the sectors listed.

Structure

1. In terms of the structure of the agreement, it was agreed that it would be based on the GATS, with some core GATS articles (including on definitions, scope, market access and national treatment, general and security exemptions) being incorporated. This would, by and large, make it possible at a later stage to integrate the plurilateral agreement into the GATS.

2. There would be additional provisions to govern how each member of the 'Really Good Friends' could take commitments. In this respect, it was agreed that commitments on national treatment would in principle be applied on a horizontal basis to all services sectors and modes of supply, i.e. the understanding on national treatment would be closer to the GATT model. Exemptions to this horizontal application would have to be listed in the countries' national schedule of commitments. Participants in the negotiations might also agree that commitments would in principle reflect actual practice (the 'standstill clause') and that future elimination of discriminatory measures would be automatically locked in (the so-called 'ratchet clause') unless an exemption were listed.

Multilateralisation: bringing the agreement under the WTO umbrella

In a first phase, the agreement will only be binding upon the participants – and therefore will not be part of the DDA as such. But the EU has ensured that the structure of the agreement provides for a credible pathway to future multilateralisation.

Two conditions are necessary for bringing the future agreement into the WTO system.

First, the type of obligations undertaken under the agreement need to be the same sort as in the GATS so they can be easily brought into the remits of the GATS. This will be ensured by relying on the same basic concepts (market access, national treatment...).

Second, the number of participants will need to reach a critical mass so that the benefits of the agreement can be extended to all WTO members.

In order to avoid free-riding, the automatic multilateralisation of the agreement based on the Most Favoured Nation (MFN) principle should be temporarily suspended as long as there is no critical mass of WTO members joining the agreement. At the same time, 'Really Good Friends' agreed to include an accession clause for interested WTO members and a pathway to the multilateralisation of the agreement, i.e. the agreement should set out the mechanisms and conditions for subsequent multilateralisation.

Next steps

The negotiations are expected to start in spring 2013, once all participants have got their negotiating mandates. The negotiations will take place in Geneva.

Source: European Commission, MEMO, 15 February 2013

3.3 The initial EU offer³⁰

The EU published its initial offer on the website of DG Trade.

With an aim to increase the transparency of the negotiations, the EU has published its initial offer on the website of DG Trade (as well as two proposals for rules and a concept paper on the architecture of the agreement), with guidelines on how to read the offer.³¹ Neither the offer nor the guidelines make for easy reading for a non-specialist.

The offer bases itself on the core text and scheduling provisions adopted by TiSA participants at the September 2013 negotiations round. According to DG Trade, it is the most ambitious initial offer ever tabled by the EU in a trade negotiation. At the start of the negotiations, it followed broadly the 'best FTA' approach (2011 EU-Korea FTA). It is an improvement on what the EU has offered in the WTO Doha negotiations in terms of harmonisation of the commitments among the 28 Member States and across relevant sectors. According to the Commission, the TiSA offer is also clearer, more compact and coherent.

The EU prioritises the digital economy.

In its offer, the EU gives strong priority to the digital economy. It offers full commitments on cross-border trade and commercial presence, and the mode 4 categories in computer and related services, as well as for all telecommunication services. No limitations apply in those sectors and they are also defined in a way that aims to be technologically neutral and future proof.

Global value chains are another priority area.

Development of the global value chains is another area of priority for the EU. Full commitments are made (modes 1, 2 and 3, as well as information and communication technologies in mode 4) in postal and courier services; in international maritime transport (modes 1, 2 and 3b), the EU also makes a far-reaching offer in business services (from packaging services to management consulting).

Strong commitments are made in a number of strategic sectors, including construction, distribution and environmental services.

Strong commitments are also made in such strategic economic sectors as construction (full commitments in modes 1 to 3), distribution (strong commitments with limited exceptions only for sensitive sectors such as pharmaceuticals or alcohol) and environmental services (full commitments in modes 2 and 3, and commitments for consultancy). The EU includes the liberalisation of financial services, making cross-border commitments in line with the GATS Understanding on Financial Services and offering strong commitments for mode 3 across all sub-sectors.³²

In Mode 4 (cross-border movement of natural persons), reservations apply.

As regards mode 4, reservations apply. The EU proposes commitments for mode 4 categories of intra-corporate transferees and business visitors for each sector committed under mode 3. Service sellers categories are

³⁰ This section bases itself on exchange of information with DG Trade officials.

³¹ See DG Trade, 'The EU Publishes TiSA Position Paper', <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1133>, (accessed 11 October 2015).

³² See WTO financial services website for more information on the Understanding https://www.wto.org/english/tratop_e/serv_e/finance_e/finance_e.htm (accessed 11 October 2015).

The EU makes no commitments in either the audiovisual or airline transport sectors.

Horizontal market access reservations apply to public utilities, and sectoral limits to national treatment for water distribution, publicly-funded education and social services apply.

included for each sector where there are commitments in modes 1, 2 or 3.

As instructed in the mandate given by the EU Member States in the Council, the EU offer does not make any commitments in the audiovisual sector. Airline transport (except for auxiliary services) is also excluded. Reservations on public services exist. Services supplied in the exercise of government authority are excluded from the scope of the agreement and the EU has included a horizontal market access reservation on 'public utilities' (listed in Part I of the offer) and sectoral limitations exist on national treatment on water distribution, publicly-funded education and health and social services. See section 5.2 on concerns expressed by some experts and civil society representatives on the issue of public services.

4 Negotiations in motion: Where are we now and what is at stake?

4.1 Current participants and format

Currently, 23 WTO members participate in the negotiations.

The negotiations are currently carried out between 23 WTO members. Aside from the EU, these include Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey and the US. Uruguay and Paraguay have just left the negotiations table.

The talks began in Geneva.

These talks were born in Geneva and the negotiation rounds and the work between the rounds take place there. The negotiations are participant and consensus-driven. They are also rather informal in their set-up and coordinated by rotating chairs - Australia, the US and the EU. The format of the negotiations is comparable to regular Free Trade Agreement negotiations, with working groups running in parallel. The bulk of the negotiations is carried out on the technical level, although the negotiation rounds also include an ambassadors' session. The meetings usually take place in the respective diplomatic representations of the chairs. The chairs act as the secretariat to the negotiations.

They are consensus- and participant-driven.

Although the negotiations are not carried out under the WTO umbrella and the WTO secretariat does thus not assist the process, there are apparently regular informal contacts with the WTO secretariat. More formally, the chairs also report on the ongoing negotiations to the WTO Council of Trade Services after every negotiating round, often attracting criticism from WTO members not participating in the process.

By the end of October 2015, 14 rounds of negotiations will have taken place.

By the end of October 2015, 14 rounds of negotiations will have taken place. At the time of the writing of this paper, the most recent round of negotiations had taken place from 6-13 October 2015 under the US chairmanship. The preceding 6-10 July round had served as a stocktaking exercise, aimed to energise the negotiations. It was also to decide on the so-called perimeter of the agreement but the latter element was finally left

The July 2015 round served as a stock-taking exercise – the first since the launch of the negotiations.

A consensus is emerging on the perimeter of the agreement.

open. July 2016 was set as the final deadline for new annexes. This will allow the US to table a text on state-owned enterprises (SOE), since they had to wait for the conclusion of the negotiations on the Trans-Pacific Partnership (TPP). A text on SOEs is very important for China, in case they join TISA one day. This may be interpreted as the possible condition for the US to unblock China's accession.

By now, an understanding has emerged on the issues where there is traction and where there is not, although - due to the informal and consensus-based approach of the negotiations - no issues will be dropped but some may fall aside in the negotiations. No deadline has been set for the finalisation of the negotiations but as the dynamic has been promising, some senior officials have expressed the view in private conversations that these could be finalised as early as the end of 2016.

4.2 The emerging structure of the agreement

TISA is likely to be divided into four parts.

It seems that the TISA agreement is due to be divided into four parts. The horizontal provisions and the principles of the agreement would be covered by Part I. This part should follow the structure of the GATS agreement and in principle also mirror the definitions of GATS. The intention behind following the GATS structure is to make it possible to multilateralise the agreement at a later stage, provided critical mass is achieved (see discussion below).

Horizontal provisions would be included in Part I.

Part II of the agreement would determine the scheduling of the parties' commitments on market access.

In the second part of the agreement, the parties would determine the scheduling of their commitments on market access (i.e. which specific sectors of the market will be opened to foreign competition) and national treatment (provisions on non-discrimination and exemptions to it). In order to list the commitments, the partners use the so-called 'hybrid approach', by which market access commitments are subject to a positive list (only the sectors defined will be opened for foreign competition) and national treatment to a negative list (what is not listed as exceptions is liberalised). Hybrid listing represents a substantial step forward from the GATS approach through which positive listing has been applied both to market access and national treatment, as well as the traditional EU approach which has until very recently relied on positive listing. It is because of the Comprehensive Economic and Trade Agreement (CETA) that the EU agreed for the first time to open market access in the services sector on the basis of a negative list. Exclusions include public services such as publicly funded health care, publicly funded education and other social services, as well as water distribution, audiovisual services and some air services. As for TTIP, it seems that a 'hybrid list approach' would be used, but it should be kept in mind that negotiations on market access for services have hardly begun. Standstill (prohibits imposition of new restrictions) and ratchet clauses (bans the reintroduction of a trade barrier that it had previously unilaterally removed) are applied to national treatment to those services where the partners have made commitments in order to build on the created dynamic of liberalisation. In TISA, standstill and ratchet only apply to limitations to

Part III would include the 'regulatory' or thematic annexes.

national treatment and not to market access.

The third part of the agreement would comprise the so-called thematic or regulatory annexes on the sectors negotiated, which may become chapters of the agreement later in the negotiations. A large number of these annexes have been proposed. These include: domestic regulation (licensing and qualifications requirements and procedures and potentially technical standards); transparency (in the meaning of article III GATS); Mode 4 (entry and temporary stay of natural persons); telecommunication; e-commerce; localisation requirements; financial services; maritime transport (commitments in this area, in particular cargo handling, warehouse services, possibly cabotage services); air transport (limited scope, mainly handling services and aircraft maintenance services); road transport (proposal by Turkey and Mexico); delivery services (EU, US proposal on postal services, including universal service); distribution/direct selling; professional services (main focus on recognition of professional qualifications); energy (proposal by Norway and Iceland), environmental services (Canadian proposal to liberalise trade in environmental services); government procurement (EU proposal on public procurement of services); patient mobility (Turkish proposal). The final agreement is unlikely to include all of these issues, since some proposals have not received support from other negotiating parties and can be expected to fall aside. According to European Commission sources, some areas are already reasonably well-advanced, and these include domestic regulation, financial services, telecommunication, e-commerce and temporary movement of natural persons (Mode 4).

Part IV would detail institutional provisions.

Part four of the agreement would be devoted to the institutional provisions relating to the agreement. These will be tackled at a later stage. The EU position is that the agreement should be moved into the fold of WTO but should that not happen, the EU would prefer a light institutional set-up that would be close to the WTO. It is also worthwhile to note that the intention of the participants is to furnish the agreement with a state-to-state dispute settlement mechanism as is the case with GATS and other WTO agreements. There will be no state-to-investor dispute settlement mechanism for TISA. Some experts have suggested that, since it is difficult to adopt sanctions in the area of services, it would be necessary to cross-retaliate in goods. The annex of the agreement would include participants' individual schedules of the commitments in the specific sectors covered by the agreement.

The Annex would include the parties' individual commitments schedules.

5 Main areas of controversy and criticism

As have other high-profile trade negotiations, TISA has attracted a fair share of public criticism and controversy.

Despite being relatively less known compared to some other high-profile trade negotiations that the EU and its closest global partners are currently carrying out (TTIP, TPP...), the TISA agreement negotiations have attracted a fair share of public criticism and controversy. This chapter will try to highlight those issues, albeit not in much detail due to the limits on the scope of this paper.

5.1 Multilateralisation

Negotiators intend to make TISA into a multilateral agreement – an aim that may be difficult to achieve.

The longer the negotiations remain in their current format, the less 'multilateral legitimacy' the agreement will be seen to have ... and the dimmer its prospects for WTO integration.

There is a clear need to include more members at the negotiating table to achieve a critical mass.

TISA was proposed as such by the US and the negotiations are currently carried out as an FTA based on GATS Article V (economic integration). As already mentioned above, there is an eventual aim to multilateralise the agreement, once a critical mass of WTO members is achieved.

The respected services expert Pierre Sauvé expressed the view in a recent publication that:

'TISA holds considerable promise as a potentially innovative preferential services trade agreement pursued under the aegis of Article V (Economic Integration) of the GATS, prospects of its eventual incorporation into the WTO architecture seem significantly less compelling for reasons, both procedural and substantive'.³³

The author has suggested that the following formal factors predict 'a difficult migratory journey':

- The negotiations are carried out without the formal assent of the broader WTO membership;
- They are proceeding outside the WTO's umbrella;
- The WTO secretariat does not have formal observer status, despite that fact that the WTO should become the Agreement's ultimate custodian;
- The Really Good Friends of Services negotiate as a closed club without allowing observers from third countries.

The author argues that the longer the negotiations retain their current format, the lesser will be the 'agreement's perceived multilateral legitimacy and the dimmer its prospects for later WTO anchoring'.³⁴ It is worth noting that none of the main emerging economies and key reluctant players during the Doha round (Brazil, India, Russia, China) and strategically important ASEAN economies are currently involved in the negotiations. China has asked to join but its participation has been vetoed by the US. Some experts have suggested, however, that should the US decide to withdraw its veto, some of the other emerging nations may follow its lead. That having been said, there is currently no sign of any change in the situation, and the departure of Uruguay and Paraguay from the negotiations gives cause for concern with regard to the EU's objective of attracting more participants and reaching critical mass, and indeed the future prospects of the agreement.

Hence, there is a clear need to include more members to achieve the necessary critical mass. The countries currently participating in the talks

³³ Sauvé, P. (2013), 'The Plurilateral Agreement on Service', [http://www.europarl.europa.eu/RegData/etudes/workshop/join/2013/433722/EXPO-INTA_AT\(2013\)433722_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/workshop/join/2013/433722/EXPO-INTA_AT(2013)433722_EN.pdf) (accessed 11 October 2015).

³⁴ *Ibid*, p. 18

account for close to 70 % of the world services trade, and around 90 % of this is provided by the participating OECD countries. The non-OECD countries in the process account for less than 10 % of trade. The three previous critical mass agreements negotiated before and successfully anchored in the WTO - the Information Technology Agreement and the basic telecoms and financial services agreements - have each claimed over 90 % of trade in the relevant areas. This gives an indication of what kind of sector coverage is necessary for the ultimate WTO migration.³⁵

Pierre Sauv  also warns of possible architectural dissidence with the GATS. He suggests that the more the negotiators deviate from the GATS architecture, the more difficult the eventual WTO migration will be.

5.2 Controversy in thematic areas

Public services and data protection are the two main points of controversy for the public and the media.

Although TISA deals with a wide range of sensitive issues, controversies around the agreement have mainly centred on two issues: public services and data protection.

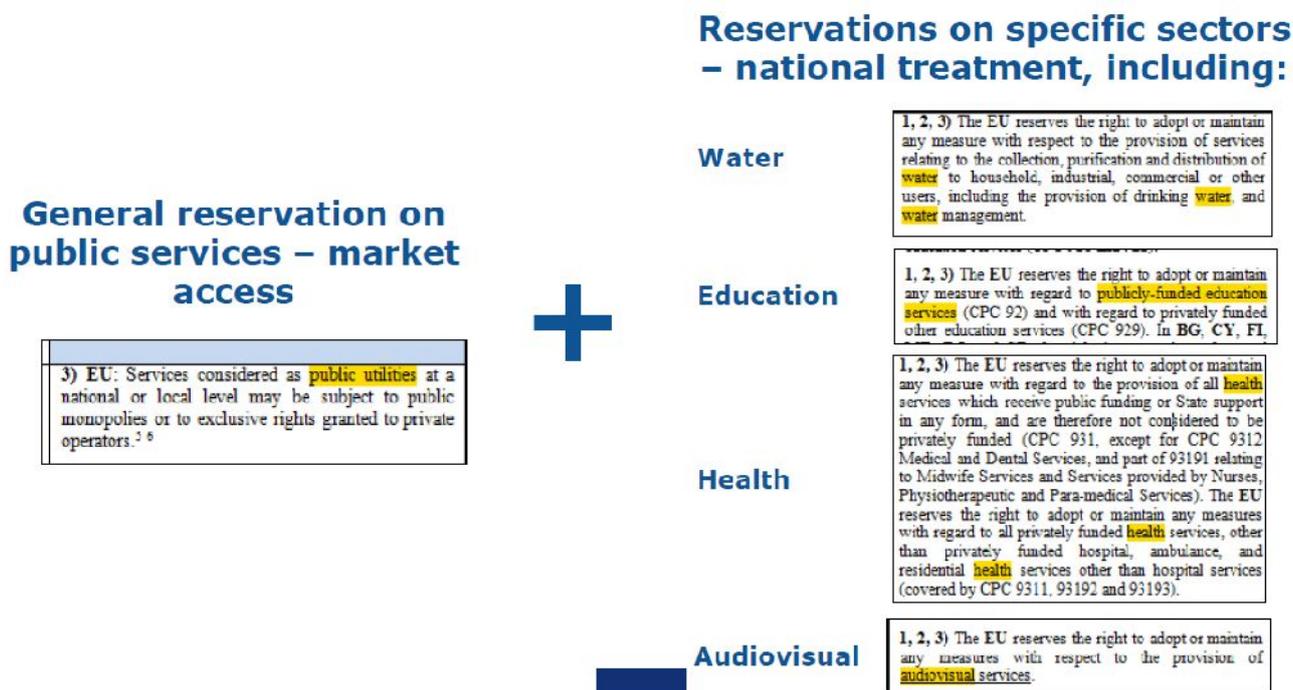
Public services

Article I:3 of the GATS excludes services 'supplied in the exercise of governmental authority' from the scope of the agreement. However, from the EU's point of view, this GATS provision is not designed to carve out all public services but only those provided on a non-commercial and non-competitive basis like military, police or fire brigade services. Therefore, the EU adds additional provisions to its commitments when negotiating preferential trade agreements. The EU's approach to protecting public services is based on a horizontal reservation that stipulates that 'public utilities' may be subject to public monopolies or exclusive rights granted to private operators. This reservation applies to all sectors except telecommunications and computer and related services. The Commission has further excluded from its TISA commitments publicly-funded health and social services; publicly-funded education; water collection, purification, distribution and management services; film, TV and other audiovisual services; and air transport (except for ground handling and aircraft maintenance services). Figure 4 describes the Commission approach.

³⁵ *Ibid*, see discussion on p 10

Figure 4

The EU offer: how are public services protected?



Source: European Commission

The EU's approach to excluding public services from trade agreements has been criticised by various civil society organisations.

In addition, Commissioner Cecilia Malmström and the United States Trade Representative Michael Froman issued a joint statement on public services on 20 March 2015.³⁶

And yet, the EU's approach to excluding public services from the trade agreements has come under criticism by various civil society organisations.

Firstly, the 'public utilities' clause is seen not as solid as it could be. Four types of criticisms to this clause have been made in different declarations by civil society organisations and lobbies: firstly, 'public utility' has not been clearly defined and is as such open to legal challenges; secondly, the scope of the clause is not wide enough because it only covers monopolies and special rights by leaving out economic needs tests and other market access limitations; thirdly, the exception is only limited to Mode 3, which allows the interpretation that cross-border provision of services (Mode 1) would be permitted; fourthly, it only covers market access and does not allow domestic providers to be treated better than foreign providers.

Secondly, some commentators have also expressed the view that the horizontal carve outs of 'publicly funded' health and education services are not sufficient to protect these, and that a clear definition of 'publicly funded services' is needed.

³⁶ Joint Statement on Public Services, European Commission- Statement, 20 March 2015, http://europa.eu/rapid/press-release_STATEMENT-15-4646_en.htm (accessed 11 October 2015).

Privately funded services of general interest do not seem to be covered by the EU's approach.

The cross-sectional nature of public services raises further concerns about the efficiency of the EU approach.

The idea of a 'golden clause' that would fully exempt services of general interest from the agreement has been floated by many stakeholders.

TISA will contain the same safeguards for protecting privacy that currently exist in the GATS, according to DG Trade.

Social Platform, one of the biggest social lobbies of its kind, writes - for example - in a letter to the Trade Commissioner that 'we consider that what the Commission and the United States (US) propose (horizontal reservation for a wide range of public services, exclusion of sensitive sectors from EU liberalisation commitments, Member States' right to regulate how services have to be supplied) is not enough to protect public services.' They point out that public services/services of general interest are not always publicly funded, since 'in some Member States, many social, health and education services which are of general interest are privately funded or supported by a hybrid of public and private funding'.³⁷

Thirdly, the issue of cross-sectionality of public services has been mentioned by some commentators. Some service sectors related to health or education are covered by other service categories and are not thus covered by the horizontal public service carve-out. For example, midwives and veterinary services are covered under business services.

Social Platform has suggested the inclusion of a 'golden clause' for services of general interest in TISA (and also in TTIP), so that 'nothing in these agreements shall be interpreted as implying any right for any party to undermine, call into question or put in jeopardy the right of national, regional and local public authorities to regulate Services of General Interest complying with EU rules'.³⁸

The idea of a 'golden clause' seems to have been picked up by the INTA rapporteur who in her working document on TISA argues that although the 'negotiating text demonstrates the EU's political will to widely exclude public services, it could be said more clearly, more simply and less equivocally by means of a gold-standard clause'.³⁹

The Commission, however, maintains that its approach on public services has been working since 1995 and that it has never undermined the EU's or its Member States' right to regulate public services.

Data protection

DG Trade explains on its website that TISA will contain the same safeguards for protecting privacy that currently exist in the GATS, in that countries can continue to apply their confidentiality and data protection laws.

The relevant GATS article (Article XIV) reads as follows:

³⁷ Citations in this paragraph from the letter by Social Platform on TISA and TTIP to Commissioner Malström, 10 April 2015, http://www.socialplatform.org/wp-content/uploads/2015/04/20150410_SocialPlatform_letter_Commissioner-Malmstrom.pdf (accessed 6 October 2015).

³⁸ *idem*.

³⁹ See European Parliament, 'Working document on Recommendations to the European Commission on the negotiations for the Trade in Services Agreement (TISA)', 2015, <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FNONSGML%2BCOMPARL%2BPE-567.486%2B01%2BDOC%2BPDF%2BV0%2F%2FEN> (accessed 11 October 2015).

'Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail, or a disguised restriction on trade in services, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any Member of measures: (...) (c) necessary to secure compliance with laws or regulations which are not inconsistent with the provisions of this Agreement including those relating to: (...)

(ii) the protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts';

The Commission maintains that for the transfer of financial data, all existing EU and national laws on the protection of privacy will continue to apply, and that TiSA will not affect these.

The TiSA talks' approach to provisions concerning data has been inspired by the language of the recent EU free trade agreements.

According to the DG Trade website, the TiSA talks tackle provisions on transfer of data, which are inspired by provisions in the existing EU FTAs, such as the one with South Korea. The website provides an extract from the EU-Korea Free Trade Agreement (Article 7.43): 'Each Party, reaffirming its commitment to protect fundamental rights and freedom of individuals, shall adopt adequate safeguards to the protection of privacy, in particular with regard to the transfer of personal data'.⁴⁰

A US proposal on e-commerce in 2014 sparked intense public controversy. The proposal does not appear to be supported by the EU negotiators.

Public controversy was sparked when a 2014 US proposal on e-commerce, technology transfer, cross-border data flows and net neutrality was leaked. It was seen as aiming to facilitate cross-border data transfers and data-processing (including personal data) across all services sectors, including financial services, without limitations.⁴¹

The controversial US data flow proposals appear not to have received the support of the EU negotiators and have not been discussed for a year. The EU seems intent on following up on the file once its own internal regulation is in place.⁴²

The European Parliament's LIBE committee has suggested incorporating a comprehensive and unambiguous horizontal self-standing provision, based on Article XIV of GATS, that would fully

The European Parliament's LIBE committee has drawn up an opinion for the INTA TiSA report. The opinion mirrors the recommendations made for the TTIP negotiations. Its key requests are: (...)

(b) to incorporate, as a key priority, a comprehensive and unambiguous horizontal self-standing provision, based on Article XIV of the General Agreement on Trade in Services (GATS),

⁴⁰ See DG Trade, In focus: Trade in Services Agreement (TiSA): Questions and answers, <http://ec.europa.eu/trade/policy/in-focus/tisa/questions-and-answers/>, (accessed 6 October 2015).

⁴¹ See for example <https://wikileaks.org/tisa/ecommerce/05-2015/analysis/Analysis-TiSA-Electronic-Commerce-Annex.pdf> (accessed 11 October 2015)

⁴² In January 2012, the European Commission proposed a comprehensive reform of data protection rules in the EU, and the completion of this is one of the policy priorities for the Commission in 2015.

exempt EU legal frameworks for the protection of personal data (both existing and future) from the agreement.

that fully exempts the existing and future EU legal framework for the protection of personal data from the agreement, without any condition that it must be consistent with other parts of the TiSA, and to ensure that the agreement does not preclude the enforcement of exceptions for the supply of services which are justifiable under the relevant World Trade Organisation rules (Articles XIV and XIVbis of the GATS);

- (c) to ensure that personal data can be transferred outside the Union only if the provisions on third-country transfers in EU data protection laws are complied with; to negotiate on provisions which touch upon the flow of personal data only if the full application of EU data protection rules is guaranteed and respected;
- (d) to oppose the provisions with regard to the protection of personal data in the US draft TiSA chapter on e-commerce.⁴³

5.3 Transparency issues and the public opinion

Although TISA negotiations are held behind closed doors and between a limited number of WTO members, significant efforts have been made by the Commission to increase their transparency.

Transparency issues are regularly evoked in relation to the negotiation of the TISA agreement, be it by the media, experts or members of the civil society.

The TISA negotiations are indeed held behind closed doors and between a limited number of WTO members, as described in previous chapters. However, significant efforts have been made by the European Commission to improve the transparency of the negotiations. In addition to regularly consulting and informing the EU Member States, the European Commission - as discussed above - keeps the European Parliament members regularly informed during the course of the negotiations. The Council and the European Parliament receive all negotiating documents. Consultations are held on a regular basis with representatives of civil society and stakeholders. The negotiating mandate was declassified by the Council in March 2015, and the EU's initial offer and some concept papers were published on the DG Trade website in July 2014.

This does not mean that more could not – or should not – be done.

This level of openness that is indeed unprecedented in trade negotiations does not, however, necessarily mean that more could or should not be done. In a decision of 6 January 2015 concerning the negotiations on the Transatlantic Trade and Investment Partnership (TTIP), the European

A more proactively transparent approach to the

⁴³ Please refer to LIBE draft opinion on the matter, available at <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2f%2fEP%2f%2fNONSGML%2bCOMPARL%2bPE-567.479%2b01%2bDOC%2bPDF%2bV0%2f%2fEN> (accessed 6 October 2015).

negotiating process could increase the agreement's legitimacy in the eyes of citizens.

Ombudsman pointed out 'that a proactive approach to transparency could make the negotiating process more legitimate in the eyes of citizens'.⁴⁴

A 2014 PEW study on global views on trade and investment showed that although internationally the public has remained of the view that in principle trade is beneficial, scepticism about the actual benefits of trade is on the rise, particularly in advanced economies. While the vast majority of populations in advanced economies thought in 2014 that trade was a good thing, only 44 % of the respondents believed that trade created jobs, one of the main selling points of international trade from an economist's point of view. Even less (25 %) supported the statement that trade raised wages and decreased prices (28 %). It is also worth noting that the decline in confidence in the benefits fits into the growing⁴⁵ public distrust of Europeans of both the EU itself and global institutions in general. As famously said by the leading intellectual Ivan Krastev, there is a growing feeling that the people can change governments but they cannot change the policies.

An open and efficient communication strategy about the concrete benefits and risks of trade deals is also necessary to gain public legitimacy.

The battle for public hearts and minds is not yet lost, however. Other studies have shown that the beliefs about trade are not as deeply rooted as about other economic policies (e.g. government spending or employment). A 2011 German Marshall Fund working paper says:

'In the end, what people think about trade may not be as important as what their leaders do with trade to improve their citizens' lives. The evidence from public opinion suggests that if trade is seen as again improving people's lives, as it was in the immediate post-World War II era, then people will again support trade liberalization'.⁴⁶

Hence, adopting an efficient and open communication policy about the practical benefits and risks of trade deals - and how these risks would be mitigated - is fundamental for increased public legitimacy.

⁴⁴ See the decision on the own-initiative inquiry at <http://www.ombudsman.europa.eu/en/cases/decision.faces/en/58668/html.bookmark> (accessed 11 October 2015).

⁴⁵ See 'Developing Nations are Generally More Positive about Certain Trade Benefits', <http://www.pewglobal.org/2014/09/16/faith-and-skepticism-about-trade-foreign-investment/trade-16/> (accessed 11 October 2015).

⁴⁶ Stokes, B (2011) 'Public Opinion on Trade Policy', working paper, Transatlantic Task Force on Trade, GMF

6 The European Parliament and TISA

The Treaty of Lisbon has substantially bolstered the European Parliament's role in trade policy.

Almost all trade agreements are subject to the Parliament's approval.

The Parliament has interpreted the Lisbon treaty so as to maximise the institution's ability to influence trade agreements negotiations.

The Parliament's INTA committee receives all the negotiating documents.

To express its opinions on the negotiations, INTA issues committee reports and resolutions.

The Treaty of Lisbon substantially bolstered the role of the European Parliament in trade policy by giving it codecision powers. The Parliament's powers in regard to bilateral and international trade agreements negotiated by the EU were strengthened too.

Article 218(6) TFEU lays down the procedure for Parliament's consent for concluding international agreements. Parliament's approval is needed for agreements that cover aspects to which the ordinary legislative procedure applies. In practice, that means that almost all trade agreements are subject to Parliament's approval. Under this procedure, the Council authorises the opening of negotiations and adopts negotiating directives on the basis of recommendations by the Commission, which in turn negotiates the agreement. At the end of the negotiations, the Council can adopt a decision to conclude the agreement only after Parliament has given its consent by a simple majority (TFEU 218(6))⁴⁷. The Council therefore plays a substantial role in shaping trade negotiations given that it adopts the negotiating directives and assists the Commission in the negotiations (Article 207(3) TFEU).

However, the Parliament has interpreted the Lisbon treaty in a way that has allowed it to maximise its capacity to not only be well informed throughout the course of the negotiations but also to influence the process. According to the treaty provisions, the Commission must keep both the European Parliament and the Trade Policy Committee informed of the progress of trade negotiations (Article 207(3) and 218(10) TFEU). This provision increases the European Parliament's room for manoeuvre and the Parliament has been both proactive and effective in taking a number of steps aimed at ensuring its competences are used.

The Commission keeps the Parliament informed by sending to the INTA committee all the negotiating documents at the same time as they are sent to the Council TPC. The Commissioner for Trade appears in front of the INTA committee on a regular basis to inform the members of the course of the negotiations and the chief negotiators report to the INTA thematic monitoring groups.

The INTA committee's main instruments to express its opinions on the negotiations are Committee reports and resolutions that are drawn up regularly throughout the course of the negotiations. On 4 July 2013, the European Parliament's plenary adopted a resolution on the opening of the negotiations on a plurilateral agreement on services (2013/2583), which

⁴⁷ For a more detailed discussion of the European Parliament's role in trade policy after the entry into force of the Lisbon Treaty see Armanovica, M and Bendini, R (2014) 'The role of the EP in shaping the EU's trade policy after the entry into force of the Treaty of Lisbon', in-depth analysis, Policy Department, DG External Policies, European Parliament, http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2014/522336/EXPO-JOIN_SP%282014%29522336_EN.pdf (accessed 11 October 2015).

A monitoring group for TISA has existed since September 2014.

was tabled by INTA then Chair Vital Moreira (S&D, PT) on behalf of the INTA committee. This resolution can be seen as the Parliament's 'mandate' in that it laid down certain priorities that the negotiator needs to take account of in order to secure the Parliament's consent once the agreement is concluded.

INTA has appointed a rapporteur to follow up the TISA negotiations - Ms Viviane Reding (EPP; LU). She is drawing up a report under rule 108(4) of the Parliament's Rules of Procedure, and the DEVE, ECON, EMPL, IMCO, TRAN, REGI, LIBE, and FEMM committees have decided to give their opinions.

A monitoring group for TISA has existed since September 2014. It meets on a regular basis after every negotiating round under the leadership of the TISA rapporteur and includes shadow rapporteurs from all the other political groups. These groups serve as a forum for two-way dialogue whereby the negotiators brief the members and the members in turn scrutinise the process and express their concerns.

7 Tentative conclusions

The TISA agreement is the biggest free trade agreement currently under negotiation. It is designed to boost liberalisation of the global services sector, beyond the current, outdated GATS provisions - and in so doing unlock huge economic potential. The EU undoubtedly has important stakes in these negotiations as its economy is increasingly - and highly - dependent on the services sector.

TISA negotiations cover a wide array of services, from telecommunications to financial services, from domestic regulation to transparency. There already seems to be a consensus emerging on the future shape of the agreement, as the negotiations are well advanced. Once finalised, the participants hope to bring the agreement into the fold of the WTO.

There are several obstacles on the way to the successful completion of the agreement and its effective WTO integration. The inclusion of a sufficient number of other - and many reluctant - WTO members among the signatories and winning over the hearts and minds of the public, count as some of the most important challenges.

In recent years, the European Parliament's INTA committee has carved out a role that allows it to play a fundamental part in promoting the interests and defending the rights of European citizens in these negotiations. The negotiations are touching upon a number of sensitive issues that are of concern for European citizens - protection of public services and personal data figure prominently among them.

Last but not least, it should not be forgotten that an efficient and open communication strategy on the concrete benefits and risks of trade agreements - including TISA - is fundamental for the public legitimacy of the EU's trade policy.