

EPSU' contribution to the EP INTA public hearing on the Trade in Services Agreement (TiSA), 24 February 2015

Key points:

1. EPSU/PSI have concerns about TiSA (and CETA and TTIP) regarding the potential impact on quality public services, the general interest, and workers rights (including right to organise, collective bargaining, right to strike and equal treatment, e.g. 'place of work' principle);
2. We do not support further liberalisation of public services in trade agreements. All parts of trade agreements need to be 'public service / general interest proofed.' Safeguards for services exercised under governmental authority, or under for 'publicly-funded' public services market access provisions are not enough;
3. Public services such healthcare, social services, education, water and sanitation need to be 'carved out' of TiSA and other FTAs; and certainly no new commitments going beyond GATS should be made;
4. The case has not been made about the benefits of TiSA, while the latest leaked paper on healthcare on the other hand fuels concerns about the risks and potential disadvantages. A Sustainability Impact Assessment (SIA) for TiSA is lacking;
5. There is a good governance deficit in the trade debate, not only regarding lack of information and transparency, but also informed debate democratic participation and policy coherence with other objectives (e.g., the millennium and sustainable development goals, the implementation of the UN human right2water, the EU's 'common values and Principles in EU health Systems²)
6. EU should aim to strengthen solidarity-based public services rather than seek to lock-in liberalisation at supra-national levels.

Why are public services important?

1. Public services are services that are defined by the principles and values (see Annex) of universal access, affordability, democratic control, continuity, equality etc. These are reflected in the Services of General Interest (SGI) Protocol (number 26), Article 14, and also referred to in the Charter of Fundamental Rights well as Article 3 (solidarity). There is a shared responsibility of the EU and Member States to ensure access by citizens to quality public services, such as healthcare, education, water and so on. Safeguarding the special place of public services / services of general interest can also therefore be regarded as a value to be pursued within the framework of common commercial policy, as specified in Article 21 of the TFEU.³
2. Public services are key to fostering economic and social development and cohesion, equal opportunities, job creation, as well as the fair distribution of income and wealth. Ahead of the 2015 annual Davos meeting of the World Economic Forum, Oxfam issued a briefing that shows that the share of the world's wealth owned by the best-off 1% has

¹ EPSU represents more than 250 trade unions organising 8 million employees in health and social services, local and regional government, national governments and utilities. It is a member of the ETUC and the European region of the Public Services International (PSI).

² OJ 146, 22.06.2006

³ See 'Impact of TTIP on the legal framework for public services in Europe', Markus Krajewski, published by the Hans Boeckler Stiftung (HBS) October 2014

increased from 44% in 2009 to 48% in 2014, while the least well-off 80% currently own just 5.5%. The wealth of the richest 80 doubled in cash terms between 2009 and 2014. All citizens benefit from solidarity-based public services. The OECD has made calculations about the cash value of social services such as healthcare, education, social housing childcare and eldercare. The value of these services increases disposable household income on average by 29 per cent. For comparison, the share of cash benefits amounts to 23 per cent. (OECD *Divided we stand: why inequality keeps on rising* 2011 page 314).

3. Public services for the poor can quickly become poor public services, in terms of quality of service and employment. Trade policy can exacerbate trends towards two-tier and unequal systems. For example, a recent World Health Organisation (WHO) report points out the risks: *"Opening the health sector to trade reform processes have split purchasers and providers and have seen increasing segmentation and fragmentation in health-care systems....The Commission considers health care a common good, not a market commodity. Underlying these reforms is a shift from commitment to universal coverage to an emphasis on the individual management of risk. Rather than acting protectively, health care under such reforms can actively exclude and impoverish.."* (page 95) http://www.who.int/social_determinants/thecommission/finalreport/en/.
4. On the other hand, there is much evidence on the other hand that shows how publicly-funded, solidarity based public services foster social justice, cohesion, welfare, and sustainable and long-term growth
 - *Why We Need Public Spending*⁴ (PSIRU 2014): this shows how public investment in social and other infrastructures lays the foundation for long-term, sustainable and cohesive growth.
 - The OECD (*Doing better for families*, 2011) argues that direct public financing in childcare leads to more efficient management by the public authorities, economies of scale, better quality at national level, more efficient training of teaching staff and fairer access than the system of paying benefits to parents.
 - The OECD study (*Closing the gender pay gap*, 2012) shows too that public spending in childcare (and eldercare) has an additional impact on gender equality: *"In particular, access to childcare facilities for young children is the main factor influencing the participation of women in the labour market, increases in public spending on these services being linked to increases in the full time employment of women."*
 - Research (*The Body Economic – Why Austerity Kills*, David Stuckler and Sanjay Basu, 2013) on health and social spending also emphasises the impact that investment in these areas has not just on those who benefit from these services but in relation to the economy as a whole: *"Health, education and social protection programs have among the highest fiscal multipliers. In the case of the health sector, public investment boosts the economy by more than three dollars for every dollar spent."*
 - A recent study of 25 EU countries (*Does investment in the health sector promote or inhibit economic growth?*<http://www.globalizationandhealth.com/content/pdf/1744-8603-9-43.pdf>) estimated the positive impact of public spending overall – fiscal multiplier of >1, calculating an overall public spending multiplier of 1.6 for period 1995-2010 and even higher multiplier (4.3) for health spending in particular.

⁴ <http://www.epsu.org/a/10489>

Are TiSA members negotiating liberalisation commitments in public services, and why would they want to?

5. We hear mixed messages about this. On the one hand we hear that the EU aims an ambitious level of liberalisation in all services going beyond previous GATS commitments and deepening into new, non trade areas such as regulatory cooperation; but simultaneously we are told that the EU is only pursuing the same policy on public services that it has followed during the last 20 years, and indeed that public services are safeguarded (at least in the EU - although, why would the EU not also want to safeguard public services (and their development) in other countries)?
6. The leaked paper on healthcare in the TiSA negotiations (<http://www.epsu.org/a/11147>) show however that the scope of the TiSA negotiations is very broad. There are many reports and positions that argue that there is a real risk that public services will find there way into any agreement, e.g.,
 - TiSA versus public services, PSI Special Report, by Scott Sinclair/ Hadrian Mertins-Kirkwood (2014): http://www.world-psi.org/sites/default/files/documents/research/en_tisaresearchpaper_final_web.pdf.
 - The Really Good Friends of Transnational Corporations Agreement, PSI Special Report, PSI/ Our World is Not for Sale, by Ellen Gould (2014): <http://www.world-psi.org/en/psi-special-report-really-good-friends-transnational-corporations-agreement>.
 - Briefing on US TISA Proposal on E-Commerce, Technology Transfer, Cross-border Data Flows and Net Neutrality <http://www.world-psi.org/en/briefing-us-tisa-proposal-e-commerce-technology-transfer-cross-border-data-flows-and-net-neutrality> by Jane Kelsey, University of Auckland and Burcu Kilic Public Citizen. This analysis argues that US proposal If approved would consolidate data repositories to the benefit of the US government, transnational companies and third party commercial interests.
 - Analysis of the leaked financial services Chapter June 2014 which argues TiSA may lock in and extend their current levels of financial deregulation and liberalisation <https://wikileaks.org/tisa-financial/analysis.html>
 - ITUC/ETUC (September 2013): Joint ITUC-ETUC statement on the goals and principles of the Trade in Services Agreement (TISA), <http://www.ituc-csi.org/trade-in-services-agreement-risks>.
 - AK (June 2013): Demands on the Plurilateral Services Agreement (PSA/TISA), http://www.akeuropa.eu/en/publication-full.html?doc_id=298&vID=43.
 - International Civil Society Letter opposing TiSA (September 2013), <http://www.ourworldisnotforsale.org/sites/default/files/Letter%20from%20345%20Groups%20Against%20Proposed%20TISA%20-%20Sept%202013.pdf>.
 - Public services in bilateral free trade agreements of the EU by Markus Krajewski (2011) http://www.epsu.org/IMG/pdf/PublicServicesFTAs_FinalVersion.pdf.
7. The European Commission has said that the 'publicly funded' part of public services will be safeguarded, but this implies that the 'private' part may be covered. What would be aim of doing this other than to stimulate competition and growth in 'private' services? In any case, the distinction between 'publicly' and 'privately' funded services is very problematic. How do you distinguish the two parts (i.e., what criteria of funding 100% or less, do you take into account costs of training doctors or supplying infrastructure, what about subsidies and tax benefits?). And how do you change the mix of public and private if the 'private' part is commitment in a trade agreement? And what is meant by 'private',

also the non-profit sector? Non-profit provision of public services has a long tradition in many countries.

8. The EC's 'Quick Facts' on TiSA published for the 10th round of negotiations in December 2014 mentions explicitly that the EU will seek to establish rules in TiSA reducing administrative barriers for services providers especially as regards obtaining licences, which it places under the heading of 'red tape'. Licencing requirements, authorisation schemes, requirements for professional qualifications, planning measures, price controls, transparency requirements etc are not 'barriers' to trade but necessary instruments to regulate the provision of public services, where continuity and long-term planning is very important. Indeed, such requirements - and public oversight in general - needs to be strengthened, not weakened (and e.g., a draft Transparency Directive is needed not the draft 'Trade Secrets' Directive).
9. Furthermore, how will the 'public' and 'private' parts be shaped in new areas of public services where the 'public' part is yet to develop? Long-term care is an example of new service development in response to Europe's ageing population. A recent joint report from the Social Protection Committee (SPC) and the European Commission on long-term care recommends that long-term care should be integrated into social protection systems for equity and efficiency reasons. Will this not be more difficult in countries where governments commit these services? EPSU considers that this not only is a problem for the countries concerned (who will have difficulty in reversing these commitments), it is also a problem for Europe – and beyond. In other areas such as energy we see remunicipalisation taking place, not least in order to be better able to respond to challenges of climate change (see *Re-municipalising municipal services in Europe* PSIRU, May 2012 (EN/RU) www.epsu.org/a/8683)

A broad exclusion of public services is needed and the EU should refrain from extending commitments in services covered already by GATS

10. In our view to fully safeguard public services they need to be taken out of the trade negotiations. A carve out for public services such as healthcare, social services, education, water and waste services is needed, in the same way as for audio-visual services. We see no justification for adding in TiSA (or CETA and TTIP) any new commitments for market access in public services that go beyond GATS. Indeed, there is a case for making it easier to undo commitments made in GATS. We hear that both Bolivia and Ukraine would like to undo commitments in healthcare, but that their 'hands are tied.'
11. A carve out of public services would be in line with the affirmation in the 2004 White Paper on Services of General Interest (SGI) that "*international trade agreements should not go beyond the positions agreed within the European Union*".^[1] Beyond market access, there are other areas where we have concerns. We understand that TiSA does not include ISDS,⁵ but what about regulatory cooperation, public procurement/concessions, state owned enterprises (SOEs), labour standards and employment protection? A 'horizontal' reading of all these provisions is needed to ensure public service and workers concerns are fully taken into account.
12. The aim of the EU is to be a 'social market economy' i.e., a mixed economy. Today we see that remunicipalisation / insourcing of services is taking place, e.g., in water and

^[1] White Paper on SGI COM (2004) 374, p.20

⁵ EPSU first took a position against ISDS in a joint position agreed with Canadian trade unions in 2009 (see <http://www.epsu.org/a/6087>)

energy and that more and more evidence points to the efficiency and effectiveness of public services. Trade agreements should not get in the way of these democratic processes and therefore a broad carve out of public services from trade agreements is necessary. EPSU considers that the EU should focus on objectives and joint actions to maintain and improve the access of all people to quality health, education and other public services, and not on liberalization and market opening.

Annex

| Public services principles | |
|----------------------------|--|
| Solidarity | Sharing of costs and risks between people, regions |
| Universality | Access to services irrespective of status |
| Continuity | Investment, maintenance of service |
| Equal access | No discrimination, proximity |
| Affordability | 'Reasonable' prices (social / progressive tariffs, limits on profits..) |
| User rights | Information, redress |
| Concertation | Social dialogue, user groups |
| Democratic control | Transparency (freedom of information), monitoring, regulation, evaluation, proximity |