

Opinion of the European Committee of the Regions — The local and regional dimension of the Trade in Services Agreement (TiSA)

(2016/C 051/08)

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POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS,

Preliminary Remarks

1. the Trade in Services Agreement (TiSA) is a trade agreement which has been under negotiation since early 2013, currently between 51 members of the World Trade Organisation (WTO) ⁽¹⁾, including the EU;
2. the aim of the negotiating parties is to liberalise trade in services, since services are an important sector in the global economy. Some 68 % of manpower in the EU is employed in the services sector, with 10 million EU jobs dependent on exports of services. Liberalisation of trade in services is understood primarily to mean removing barriers to the provision of services by foreign suppliers;
3. although the TiSA negotiations are taking place outside the framework of the WTO, the agreement is intended to be compatible with the General Agreement on Trade in Services (GATS) so that it can be integrated into a multilateral agreement if other WTO members join at a later date;

General Comments

4. in its opinion of 3 July 2003 on the GATS negotiations in the WTO, the Committee of the Regions (CoR) already noted that the negotiations on trade in services were important in view of regional economic concerns (helping local businesses and in particular SMEs to access markets outside the EU) and the interests of local and regional authorities (LRAs), which often regulate services and in some cases deliver them themselves. In that opinion the Committee also expressed the view that it was not feasible to apply the principle of reciprocal market access for companies run by municipalities or regional authorities owing to their embeddedness in their own locality;
5. the same considerations obtain for the TiSA negotiations, together with the observation that the basis of public service provision is LRAs' sense of their obligations and duties towards the citizen and that therefore democratic supervision, continuity, accessibility and quality must be ensured;
6. welcomes the general approach of the European Parliament's draft report containing recommendations to the Commission on the TiSA negotiations. According to this report, TiSA 'must provide tangible benefits to consumers and grant access to the talks to interested parties so as to facilitate future multilateralization.' Consequently, 'public and cultural services, the fundamental rights to data privacy and fair working conditions and the right to regulate are non-negotiable and should be unequivocally excluded from the scope of the agreement.' Further welcomes the many references to the local and regional dimension of the TiSA negotiations made in the draft report;
7. stresses that the EU negotiating mandate for the TiSA only covers provisions relating to market access and non-discrimination of foreign service providers, and not the right of the EU, individual states and their local and regional authorities to regulate services themselves;

⁽¹⁾ WTO members currently taking part in the TiSA negotiations include Australia, Chile, Costa Rica, Hong Kong, Iceland, Israel, Japan, Canada, Colombia, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, Switzerland, South Korea, Taiwan, Turkey, the United States, and the 28 EU Member States.

General Recommendations

8. recognises that services are an important sector in the global economy, as well as Europe's economy, and that many economic benefits primarily in the private sector are likely to result from further liberalisation of trade in services through the TiSA;

9. welcomes the current discussion about the TiSA and emphasises the importance of striking a balance between the parties' need for confidentiality during the negotiations and the general need for transparency, in order to ensure that legitimate outcomes can be achieved with the involvement of all stakeholders; draws attention here to general WTO practice regarding public access to negotiating documents, a practice it expects to be continued with the TiSA;

10. welcomes the European Commission's efforts to improve the transparency of the negotiations, but nevertheless notes that although the European Commission has made the negotiating mandate publicly accessible, local and regional authorities — represented at EU level by the CoR — must be invited to take part in the European Commission's discussions at the beginning and end of the negotiating rounds;

11. endorses the provision made in the European Commission's Directives for negotiating the agreement that: 'The agreement shall confirm the right of the EU and its Member States to regulate and to introduce new regulations on the supply of services within their territories in order to meet public policy objectives';

12. affirms, with regard to public services, the relevance of referring in the negotiating Directives to Articles 14 and 106 of the Treaty on the Functioning of the European Union (TFEU) and to Protocol No 26 on Services of General Interest and calls for the autonomy of local and regional levels of government to be fully respected in accordance with Article 4(2) of the Treaty on European Union (TEU); regrets to note, however, that the terminology concerning public services used in the different trade agreements currently being negotiated by the EU (CETA, TTIP and TiSA) is not consistent;

13. emphasises that the TiSA negotiations do not cover the privatisation of public services;

14. emphasises the need to collect comprehensive and comparable data on the effects of the TiSA's provisions at local and regional level, and the need to update accordingly statistical reports and economic forecasts based on these data and impact assessments;

15. is concerned that the Sustainability Impact Assessment provided for in the EU's negotiating directives ⁽²⁾ has not yet been finalised; calls for the impact of TiSA on territorial cohesion to be considered in this assessment (territorial impact assessment);

16. draws attention to the obligation under Article 11 TFEU to integrate environmental protection requirements into EU external trade policy, in particular with a view to promoting sustainable development;

17. draws the attention of the European Commission to the particular interests of the local and regional level in relation to the TiSA negotiations. This role could be significantly strengthened if the opinion of the Court of Justice of the European Union (CJEU) on the free trade agreement between the EU and Singapore were to confirm that the TiSA has the characteristics of a mixed trade agreement, which in a number of Member States must be ratified by the assemblies representing the regional level;

18. points out that under Article 3(1) TFEU the common commercial policy constitutes an integral part of the Union's exclusive competences. However, where trade negotiations have implications for the Member States' competences the division of competences in those negotiations must also be clarified at an early stage with reference to the subsidiarity principle;

⁽²⁾ See point 10 in: <http://data.consilium.europa.eu/doc/document/ST-6891-2013-ADD-1-DCL-1/en/pdf>

Proposals

19. the CoR supports the approach of using a 'negative list' of spheres excluded from the agreement with regard to non-discrimination, while a 'positive list' of policy areas to be covered by the TiSA would be used in the context of market access;

20. would expect that data-friendly strategies, even if they are essential for businesses and for growth, be used only in so far as they do not violate citizens' right to appropriate privacy protection (i.e. comprehensive, unconditional protection of personal data), and therefore calls for an unconditional blanket exclusion of measures to protect privacy in the processing and transfer of personal data and to protect the confidentiality of personal records and accounts, in line with and building on GATS Article XIV. On no account should the agreement apply to data protection measures as long as the EU has not introduced a comprehensive legal framework governing data protection that reflects the current state of digitisation;

21. opposes any encroachment on the sovereignty of national governments and LRAs, especially in the spheres of education, culture, theatre, libraries, museums and finance, as well as labour protection, environmental protection, data protection, publicly funded social and healthcare services, licensing of healthcare facilities and laboratories, waste management facilities and power stations, consumer standards, standards relating to social cohesion, schools and publicly-financed education services, and other, privately-financed education services, as well as public procurement provisions;

22. opposes restrictions to cross-subsidisation of undertakings under the same local authority where they exceed the restrictions existing under EU and national law;

23. calls for the adoption of a revision clause on the potential re-examination of the agreement and for the adoption of rules into the agreement, so that decisions on liberalisation of a service can be reversed at any time;

24. is opposed to the inclusion of clauses that oblige authorities to fix the degree of liberalisation achieved at the time of the agreement (standstill clause), that prohibit a liberalised service from being returned to the public sector (ratchet clause), and that make any new service subject to automatic and complete liberalisation (safeguard clause);

25. highlights that the TiSA should only set minimum standards without restricting the right to apply higher standards;

26. calls for a social chapter to be included in the TiSA laying down social protection standards, in particular labour standards, based on the relevant ILO conventions, without this chapter rendering the multilateralisation of the TiSA impossible;

27. calls for the country of destination principle to be upheld where standards differ, including especially Mode 4 services (temporary free movement of service suppliers or of employees sent out by a supplier), to ensure that rules on qualifications and on labour and collective bargaining laws continue to apply in the host country; the temporary free movement of service suppliers or of employees sent out by a service supplier must on no account be used to prevent strikes or circumvent existing collective bargaining laws (by hiring temporary workers);

28. calls for the government right to regulate in the public interest ('right to regulate') of European, national, regional and local authorities to be fully recognised in the negotiating text and trusts that regulatory cooperation will not be allowed to undermine democratic legislation or regulations at any level or to hamper the legislative process;

29. insists that the TiSA should include the option of judicial review with regard to respect for human rights in the context of trade in services;

30. calls for legal disputes affecting compliance with this agreement to be referred to the public courts at the place of the defendant's registered office, and for proceedings to be conducted in the defendant's language and governed by the laws in force in the defendant's country; the right of appeal must be safeguarded; mechanisms for settling disputes between states should draw on the mechanism currently in place within the WTO; this agreement should not contain a mechanism for settling disputes between investors and states;

31. suggests that consideration be given to including provisions for online consumer protection in the agreement, with particular reference to fraudulent business operations, as well as a special jurisdiction regime for consumer transactions following the model of the Brussels I Regulation;
32. expects the universal service principle to be safeguarded, so that for instance people living in remote regions, border areas, islands or mountainous areas enjoy the same standard of service and do not pay more than people living in urban areas;
33. opposes the classification of municipal and regional provisions on land use and regional development or land-use plans as non-tariff barriers to trade;
34. welcomes the explicit exclusion of audiovisual services from the negotiations, but regrets that this does not also apply to cultural services; is consequently concerned that it is difficult to distinguish cultural services and calls for protection of local linguistic and cultural diversity, paying particular attention to the interests of minorities, as well as copyright and intellectual property;
35. is categorically opposed to commitments relating to financial services that would conflict with existing EU measures to regulate financial markets and products;
36. urges that a second public hearing be held on the Trade in Services Agreement and expressly calls on the European Commission to take into account the findings of this hearing and of the previous consultation in its concluding assessment of the provisions set out in the agreement;
37. calls for the TiSA negotiations to be conducted in an open manner to enable developing countries and least developed countries to be included if they so wish;
38. points to the need for a multilateral approach in a world that is becoming more interconnected;
39. calls for trade rules to be negotiated that contribute both to making trade fairer and more equitable, and to sustainable development and welcomes in this context the announcement made by the European Commission in its Trade strategy, that European Trade policy should be in line with the Agenda 2030 on Sustainable Development.

Brussels, 4 December 2015.

*The President
of the European Committee of the Regions*
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