

Results of the Public Survey on the Trade in Services Agreement ¹

1. Introduction	2
2. Contributions from business and their associations	2
2.1 Trade in services	2
2.2 Transparency	5
2.3. Subsidies, monopolies and state-owned enterprises.....	6
2.4 Other Issues	7
3. Contributions from NGO's and other stakeholders	9
3.1 General comments	9
3. 2 Priorities for the EU in the TiSA negotiation.....	11
 Annex I: Barriers to cross border trade in countries participating in TiSA.	13
Annex II: Barriers to establishing a commercial presence in countries participating in TiSA.	17
Annex III: Barriers with regard to the temporary movement of natural persons for business purposes in countries participating in TiSA.....	20
Annex IV: Barriers in accessing public procurement	22

¹ The views in this paper reflect contributions to the public consultation and may not in any circumstances be regarded as stating an official position of the European Commission.

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1. Introduction

The public consultation to request input and views of interested companies, associations and the civil society on the ongoing negotiations of TiSA between the EU and other 22 WTO members was open from May till September 2013. The European Commission received 40 contributions to the online questionnaire. Further, there were 4 contributions sent by e-mail explaining general stakeholders' position on TiSA. Out of these, 26 contributions came from businesses and their associations, including 2 SMEs.

The respondents showed interest in a broad range of service sectors given that their main areas of activities are transport (in total 9), including air transport services (3), maritime transport services (3) and other transport services (3); financial services (5), ICT services (4), architectural and engineering services (3), maintenance services (3), customs brokerage (3), construction services (2), retail and wholesale services (2), postal and courier services (2), warehousing and distribution (2), freight forwarding (2), ground handling (2), public services / services of general interest (2), audiovisual services (2), real estate services (1), publishing and printing services (1), IT services (1), legal, accounting and management consulting services (1) and performing arts (1). Most of respondents providing services, supply them in all countries participating in TiSA negotiations.

2. Contributions from business and their associations

The questionnaire for business and their associations was divided into four categories, including trade in services, transparency, subsidies and state-owned enterprises and other issues. The analysis follows this structure.

2.1 Trade in services

2.1.1 Barriers to trade

The respondents identified discriminatory measures benefiting domestic services or service suppliers and establishment requirement to supply a service as the main barriers encountered in cross-border services trade with the countries participating in the TiSA initiative. Even if to lesser extent, limitations on the number of service suppliers whether in the form of numerical quotas, monopolies, exclusive service suppliers or the requirements of an economic needs test; limitations on the total number of service operations or on the total quantity of service output expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test but also limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test, were mentioned. Further, the respondents pointed to lack of transparency in statutes and regulations, complex compliance requirements and licensing/registration requirements, data protection regulatory issues, discriminatory and excessive prudential capital requirements and fiscal and tax implications when services are performed remotely, as problematic in cross-border services trade. On the other hand, some respondents considered that cultural and audio-visual policy measures should not be referred to as barriers to trade. Annex I presents concrete measures applied in countries participating in the TiSA identified in different sectors as such barriers to cross border trade.

As regards establishing a commercial presence, difficulty in obtaining a licence or authorization and limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment are the main obstacles.

Complex and lengthy procedures between federal and provincial level, joint-venture requirements, residency requirement for senior management or board of directors, limitations to management control and economic needs test prior to establishment seem problematic as well. Even if to lesser extent, nationality condition for senior management or board of directors and treatment by state-owned enterprises were also mentioned as barriers in establishing a commercial presence. Concrete measures applied in countries participating in the TiSA identified in different sectors as such barriers to establishing commercial presence are presented in Annex II.

Difficulty in obtaining work permits and visas in certain countries turns out to be the main barrier with regard to the temporary movement of natural persons for business purposes to countries participating in the TiSA. Lack of transparency in regulations at various administrative levels, lack of recognition of professional qualifications, requirement to hire or train local workers are also high of the list of hindrances. Difficulty in obtaining licences, where appropriate and limitations on the total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for, and directly related to, the supply of a specific service in the form of numerical quotas or the requirement of an economic needs test, were also mentioned as problematic.

2.1.2 Market access

Operating globally, majority of respondents showed interest to enter the markets of all the countries involved in the TiSA negotiation and in particular of Japan and Turkey, followed closely by Colombia, Korea, Peru and the US. According to the respondents, the purpose of the negotiations should be to open up and secure the market access so that companies, when they decide to expand their business, can find open doors and good business conditions. Countries involved in the TiSA negotiation are key markets of current and possible future business customers.

Japanese retail and wholesale sector is worth about 1,250 billion euro and is one of the biggest markets in the world. It was flagged as a big untapped potential in particular for maintenance, architectural and engineering services. Also Turkey is a big and growing market, which attracts and will continue to attract investments in the distribution sector given its dynamic and consumption-driven population. Further, it would be interesting to seek onshore insurance and reinsurance access in Turkey. Colombia and Peru are countries, where more information is needed for business expansion. Accessing the direct insurance market through an onshore presence could also be interesting. Since entry into force of the EU-Korea FTA, good progress has been made, however there is untapped potential in Korean market. The US' market was also highlighted given its size.

Further, Chinese Taipei was pointed as a country of interest in particular for companies that want to produce in continental China. On the other hand Switzerland was singled out due to the geographical proximity. Finally also Pakistan was mentioned as an interesting developing market - however still a difficult place to do retail and wholesale business and to export to.

Given that standards, licenses and professional qualifications are used as barriers for market access, a great majority (almost 90%) of respondents confirmed that there is a strong interest in having mutual recognition agreements (MRAs), which present a better solution than regulatory convergence or international rules avoiding both a time consuming and costly process and any disproportionate influence of one party on the other. Even where regulatory convergence is not a requirement to the opening up of access to foreign markets, the result of such a potential convergence mainly depends on the "rapport de force" existing among the concerned countries and that might not be at the advantage of the EU. Convergence could be costly for the European business and its European clients and may reduce the range of products offered to investors and the competitive advantages of the European fund industry. On the

* other hand, international rules may provide harmonization but it takes time to develop and imply high costs of adjustments. Moreover, their efficient implementation has to be ensured.

Respondents were particularly interested in mutual recognition of training, academic levels and professional qualifications in architectural and legal sector. As regards the latter, recognition of admission and qualification requirements for lawyers was mentioned. Mutual recognition of licences to sale some specific financial services (insurance, asset management and securities, etc.) should be envisaged. MRAs in the areas of (re)insurance standards, regulations, supervisory approaches and application would be beneficial. The benefits of mutual recognition of reinsurance supervision would include a reduction of duplication of efforts by supervisors. Regulators could devote fewer resources to supervise reinsurance placed with foreign companies if there is assurance that such activities would be adequately supervised by the other regulator under a supervisory recognition agreement. Further, there would be enhanced information sharing among supervisors resulting from supervisory recognition, which would reduce the risk of regulatory arbitrage and encourage effective risk management and measurement. The respondents also called for mutual recognition of materials and articles that are in contact with food, mutual recognition of aviation security requirements and licence exemption of satellite service/terminals authorised in the host administration, including free circulation of terminals on foreign flagged aircrafts and vessels.

2.1.3 National treatment

As regards national treatment, opinions of the respondents were divided. Whereas foreign service suppliers established in Australia, Norway, Switzerland and to some extent in Costa Rica, Hong Kong and Iceland are in most sectors treated like domestic service suppliers, they encounter difficulties mostly in Pakistan but as well in Colombia, Japan, Paraguay, Peru and Turkey. Situation varies depending on the sector in Korea and the US.

The respondents noted that the countries participating in the NAFTA offer greater market access to each other in terms of provision of legal, financial, postal and air transport services putting the European companies at a disadvantage. The US-Australia FTA was also singled out for financial, postal, courier services and air transport services. As regards air transport, in the case of an absorption or acquisition, the equity cap demanded by Australia to foreign investors, from which it is necessary to request for an authorization, are higher than those required for U.S. investors thanks to the FTA. Further, Open Skies Agreements between the US and other countries gives the US cargo carriers more market access than is available to EU cargo carriers in these countries. In the same time Panama allows air transport cabotage to foreign companies as long as their respective countries have bilateral agreements with Panama. This puts at disadvantage companies from the EU.

2.1.4 Public procurement and other issues

In the course of doing business in countries of the TiSA negotiation, the respondents did not encounter any requirements or incentives either to export a given level or percentage of services or transfer a particular technology, a production process or other proprietary knowledge. However, some countries advocate achieving a given level or percentage of domestic content or even purchase, use or accord a preference to goods produced in specified countries, or to purchase goods from domestic producers. Requirements stipulating that a certain part of the service must be produced using local input are particularly true if the service is delivered to the public sector, notably in engineering services. Further, in example renewable energy production in Ontario (Canada) which benefits from a bonus scheme is tied to very strict local content requirements. In Australia at state level there are preferential measures for local suppliers. Some such incentives exist also in Turkey. Finally in Japan, many European products face a

competitive disadvantage – or even exclusion – due to limited allocation of quotas and high import duties. On top, non-tariff barriers (i.e. legal uncertainties and unjustified burdensome requirements) artificially increase the retail price for products from the EU and, thus, indirectly force retailers to buy locally.

Non-transparent procurement rules are often highlighted by companies as a significant barrier in markets outside the EU. Eleven TiSA countries are not members of the Government Procurement Agreement (GPA), namely: Australia, Chile, Colombia, Costa Rica, New-Zealand, Mexico, Pakistan, Panama, Paraguay, Peru and Turkey. Furthermore, not all GPA members have yet ratified the Revision of 2011 and many limitations remain, including in countries like Japan or the US. Examples of barriers in accessing public procurement in some TiSA countries are listed in Annex IV.

The TiSA negotiation should be an opportunity to engage with these countries and negotiate public procurement market access obligations that would allow European bidders to participate to the tenders. It should however be reminded that without better sector specific market access conditions (i.e. modes 1,2 and 3), benefits in general procurement market opening will be limited only to those sectors, which are able to fully operate in the respective countries. During the TiSA negotiation, the EU should therefore look specifically at NTBs for those services sectors which are particularly relevant in Government Procurement. Ideally of course, the TiSA commitments should go beyond those given under the GPA, e.g. giving the "TiSA-companies" equal access to sub-state level.

2.2 Transparency

Information on trade-related regulations and their administration in Australia, Canada, Switzerland and the US was judged as well accessible, in Chile, Hong Kong, Iceland, New Zealand and Norway such information is also published and readily available. Whereas the level of transparency of trade-related regulations seems to differ depending on sectors in Colombia and Korea, it was judged as insufficient in most cases in Chinese Taipei, Japan and Pakistan. However, in almost all TiSA countries and in particular in Hong Kong, Switzerland and the US but with exception of Pakistan, there are enquiry points available and accessible to interested parties (including through websites) which help making information on trade-related regulations and their administration available, however responses to the enquiries vary in quality.

In the same time, foreign companies are not always treated in the same manner as local businesses. Often they will be faced with zero-tolerance towards non-compliance with regulation (which is normal and accepted), while the attitude towards local companies will be much more relaxed (which is not acceptable, since the law should be implemented in the same way for all).

Transparent and predictable appeal, review and judicial review procedures enshrined TiSA negotiations would add significant value to market access efforts, as would focus on implementing legislation and regulation which emerge post-agreement. Currently, adequate complaint possibilities and appeal procedures already exist in Norway, Switzerland as well as in most cases in Australia, Canada, Chile, Japan and the US, but there seem to be no such procedures in Chinese Taipei.

Further, registration of a business is a cumbersome process in many countries. In view of the respondents, TiSA should ideally include binding targets on business registrations, e.g. that it should only take five days to register a business in a TiSA-country.

Finally respondents encounter also other problems when trading with TiSA countries, i.e. the US customs

* requires importers of textiles to provide the Manufacturer Identification (MID) code indicating the name and address of the producer. However, most importers to the US do not directly purchase their textile and clothing products from the manufacturer but from sales agents who are generally reluctant to disclose information about suppliers. In consequence, it is a burdensome task to deliver the data stipulated by the MID code.

2.3. Subsidies, monopolies and state-owned enterprises

Apart of general statement that subsidies are a type of measures that put companies in a clear position of competitive disadvantage, only an example of renewable energy production in Ontario (Canada) which benefits from a bonus scheme is tied to very strict local content requirements, was given. None of the respondents seems to have taken any steps to raise a matter relating to subsidies, either abroad or with the appropriate authorities in the EU. It is further unclear whether this was related to problems in getting information on the subsidy granted by the foreign authorities.

On the other hand, respondents encountered numerous cases of abuse of a dominant position of a service supplier granted a monopoly or an exclusive right in the countries involved in the TiSA negotiation.

Monopolies concerning *express delivery operators*, in particular with regards to *national postal operators* in Australia, Chinese Taipei, Colombia, the Dominican Republic, Japan, South Korea, Mexico and the US, as well as *telecommunication companies* in Costa Rica and Mexico were mentioned. In Switzerland, 19 of the 26 cantons have cantonal buildings insurers. These buildings insurers have a monopoly, granted to them in law, on writing fire and natural perils cover for buildings in their canton. In some cantons, these buildings insurers also have a monopoly on providing fire and natural perils cover for the contents of buildings. This situation means that private domestic and foreign insurers are prohibited from accessing fire and natural perils business in the majority of Switzerland and can only write this cover for buildings located in the other 7 cantons. In Costa Rica, foreign companies are excluded from labour risk and obligatory car insurances. Also in Israel, only domestic insurers are able to access the local market. The Israeli government is required to open up its insurance market to foreign insurers as part of it becoming a member of the OECD. In Mexico, *energy sector* is in the hand of two national companies. Although some efforts have been partially done in 2008 in the oil/gas sector, it is necessary to establish a regulatory framework which enhances the access of private companies to the oil as well as to the power sectors. In Costa Rica foreign investment in energy sector is allowed but under certain limitations. Investment is only permitted under concessionary basis, being ICE the unique purchaser because it holds the monopoly of power distribution. At least 35% of the equity capital must be held by national citizens. Furthermore, the power capacity of a company cannot overpass 15% of the overall power capacity of the country.

There are several exemptions from the national law granted to exclusive services suppliers or the existence of statutory laws or favourable regulatory or other measures applicable to those service suppliers. In example, there is tax discrimination in favour of Korean funds in South Korea. Due to the interpretation of the law which prohibits the publicity on alcoholic beverages, in Norway the samples of wines sent for promotional reasons are being taxed on the commercial value of the product. In the specific case of wine tasting, the Norwegian authorities do not permit to import wine if it is not through a licensed importer, which is contradictory if we take into account that the final aim of wine tasting consists of promoting a product among importers. There exists a preferential treatment, to the benefit of postal operators. The insurance activities of Japan Post have a lighter supervision than other insurance companies, domestic and foreign owned. Further, Customs and Tariff Bureau performs clearance for

Japan Post at no charge. In contrast, EDS companies must undertake customs clearance via the Nippon Automated Cargo Clearance System (NACCS), for which they pay substantial fees. Moreover, Japan Post is largely exempt from security regulations. Japan Post has also preferential tax treatment. In turn, Australian Post is exempted from reporting pre-arrival data to Australian Customs. There is a reserved area for postal for the Colombian Postal Entity 4-72. This Entity can import up to 2 kg without paying taxes as postal services. In Korea all express companies, except EMS, need to submit manifest to customs prior to flight departure or arrival of aircraft. For EMS, it is legally regulated by Commissioner order to submit manifest after shipment delivered but no submission to customs at all. Further, there is no penalty regime and payment for EMS on undervaluation for *de minimis* clearance while customs authorities impose penalty on express company for undervaluation even if the undervaluation is originally made by exporter or importer. EMS also enjoys free airport access, priority in line haul space, free toll fee as well as use of military service resource and financial support from Government. Finally, in the US postal service (USPS) is exempt from taxes and may park in any location without incurring parking tickets. USPS enjoys favourable and less costly customs procedures compared to other delivery operators, resulting in a reduced requirement for customs brokerage services

2.4 Other Issues

2.4.1 Dispute settlement

All the respondents concurred that an efficient dispute settlement mechanism is a must in any trade agreement and favoured using of the existing WTO Dispute Settlement Understanding, bearing in mind that the ultimate objective is the multilateralisation of the TiSA. Should not that be possible, TiSA must be equipped with its own Dispute Settlement Mechanism. Some urged the TiSA participants to agree on a mechanism that will allow for an effective retaliation and called for imaginative solutions to be found. One could imagine a right to withdraw licences or obligations for the condemned country and to take additional services liberalization commitments towards the defender country (i.e. provision of new licences to EU companies). In the same time, the attention was drawn to the fact that the current draft proposal for a Regulation concerning the exercise of the Union's rights for the application and enforcement of international trade rules² does not at this stage include any retaliation power to the Commission in services sectors in case of enforcement of a panel decision favourable to the EU. This will have to be amended if the TiSA allows retaliation only in services sectors.

2.4.2 Enlarging TiSA

Seventy percent of respondents stated that it would be of interest if other countries joined the TiSA negotiation. Whereas some strongly advocated multilateral solutions over a plurilateral approach, as this would ensure wider support and encourage emerging economies (mainly BRICS and ASEAN) to join, and supported the idea that the ultimate objective of TISA is to extend this plurilateral agreement to all WTO members and transpose into the rulebook of the WTO, others while supporting the multilateral trade system under the WTO, saw in the current political circumstances great value in going beyond the existing GATS commitments by negotiating a plurilateral TiSA deal. Majority focused on including the emerging countries, namely the BRICS (in particular China and India, followed closely by Brazil and Russia and further South Africa) and the ASEAN countries. Insofar as the latter, Malaysia was pointed in the context of potential benefits in financial services. Concerning other sectorial potential benefits, Brazil, India, Russia and Argentina are important markets for industrial insurance but are all very restrictive with respect to cross-border insurance services. Azerbaijan, Kazakhstan, Brazil, Argentina or Middle East

² COM (2012) 773 FINAL of 18 December 2012

* countries are of interest as they usually have de facto or de jure infrastructure requirements (e.g. gateways). Some respondents encourage inviting countries which have already signed FTAs with the EU or other TiSA participants, like the Caribbean countries, the missing Central American countries and some Middle East Arabic countries like the UAE, Bahrain, Qatar, Jordan, Egypt...

2.4.3 Additional comments

Respondents emphasised added value of the TiSA in bringing legal certainty. Where liberalisation is the result of national legislation or practice but is not reflected in international binding agreements, inscribing commitments at existing levels would already bring a desirable legal certainty in many States. To have even greater added value, TISA should go beyond the current state of play and new commitments should be clearly inscribed in the agreement.

Beyond market access issues, many respondents stressed regulatory part of the TiSA. Public survey showed that TiSA should be the place to deal with horizontal domestic regulation disciplines (transparency of the legislation, prior consultation of stakeholders; impact assessment requirements for the regulators; right of appeal...); state-owned enterprises disciplines for a level playing field in competition; application of regulation and competition rules; access to government procurement market to allowing European service providers to bid for tenders in all TiSA countries and disciplines on cross border data flows.

The disciplines on cross-border data flows were highlighted as especially important for creating a trade agreement that is relevant for the digital economy. As more and more trade is either delivered or enabled through online, cross-border services, it is essential to create a trade obligation to permit cross-border data flows in support of trade and investment in covered services. All new trade agreements must recognize and support the growing role of digital trade. However, investment will be discouraged when consumers do not feel secure, therefore TiSA should also include provisions on electronic security services. In line with protection against forced localisation, the benefits of commercial and residential electronic security services should be free from localisation requirements under the banner of national security.

Another issue related to the development of the digital economy is the classification of evolving ICT and ICT-enabled services. The TISA must schedule commitments in a way so that they do not quickly become obsolete, since technology advances at a much faster pace than trade negotiations. For example, the latest trend in IT services is cloud computing, which is covered by GATS commitments under data processing services. Advances in technology for delivering a service or changes in the terminology used to describe a service do not change the fundamental nature of the service, so these developments should not invalidate existing commitments. Otherwise, the value of market access and national treatment commitments will be undermined in the dynamic global economy. Some very useful and relevant work was done earlier in the Doha Round on the Understanding on Computer and Related Services. This previous work could prove useful during the TiSA negotiations, especially since many TISA participants already endorsed the Understanding during the Doha Round.

If possible, revision of other classifications would also be beneficial, in particular in environmental services and in energy related services that are booming and are not well described, what discourages countries to take commitments.

For express delivery service providers, air transport is very important. Air transport is governed by a bilateral regulatory framework that is highly restrictive in terms of market access and investment. . It is important to liberalize aviation, if too sensitive for passenger air transport, cargo should be liberalized first. The investment restrictions in aviation are antiquated and should be removed.

Companies still experience national restrictions to their direct selling services as a distribution channel.. The TISA should assert direct selling as a valuable distribution service channel with the right to equal recognition and regulatory environments as other distribution channels. This would also potentially enable the opening of other forms of distribution channels in some countries in the future.

Respondents also called for enhancing global mobility. TISA members should commit to improving the ability of business professionals to travel temporarily for work. The TISA should clarify, harmonise and broaden the definition of business visitor across TISA participants, which should include functions related to providing after-sales service; participating in commercial transactions, negotiations and litigation; participating in scientific, educational, professional or business conferences, consultations or conventions; exhibiting at an international fair or trade show; engaging in research, design, marketing, market research, sales, or distribution; engaging in short-term educational programmes; and providing professional or business services.

Others highlighted the importance of taking cultural and audio-visual policy considerations into account during the negotiations and assessing the impact of any envisaged trade measures on the cultural and audio-visual sectors.

3. Contributions from NGO's and other stakeholders

3.1 General comments

The views of NGO's and other stakeholders are generally negative or cautious. Some are very critical and call for halting the negotiations; others take more nuanced approach calling for inclusion of numerous safeguards.

All stakeholders called for a higher level of transparency during the negotiations towards both the European Parliament and the stakeholders, including regular information and consultation sessions. Some of stakeholders took a very critical and outspoken tone on that issue.

In particular the stakeholders were interested in the hybrid positive and negative list approaches in the TiSA negotiation for market access and national treatment. Some called also for accelerating the work on a Trade Sustainability Impact Assessment and making it public.

Stakeholders taking defensive stance on TiSA rely on two main arguments, namely a lack of need to further liberalise trade in services and an exclusive character of the venture.

According to some stakeholders, currently there is need for more regulation, as opposed to liberalisation. Through possible ratchet and/or standstill clauses or even compensation mechanisms (in the framework of a state-investor dispute settlement), it will be almost impossible for a country to revise any liberalisation once committed to. However, restrictions on markets are often necessary to limit market forces and ensure that the interest of society is served by markets or upheld against them. Here are some examples of how regulation could be at risk from our perspective by any possible TiSA rules:

1. The US recently defended their right to comprehensively regulate derivatives as they feared that European rules might not be sufficient. Such attempts might be hindered in the future.
2. Banks such as the German savings banks (Sparkassen) might be regarded as illegitimately subsidised state enterprises.

3. Economic needs tests could be in opposition to rules that require a prior approval of financial products or services.
4. Taxation of financial products could be hindered.
5. Prohibition of the size of services might hinder position limits, e.g. in commodity markets.
6. Subsidised and/or public services monopolies such as water, wastewater and waste services could be threatened.
7. GATS rules and clauses in FTAs, which promote the liberalisation and de-regulation of finance and capital movement, made a significant contribution to the recent global financial crisis. The impacts have been felt in the EU, with the use of tax revenues to bail out banks, falling wages and high unemployment. Developing countries are also extremely vulnerable to the impact of financial crises, particularly in the wake of widespread liberalisation policies, as their ability to respond can be limited, especially where they have high levels of foreign bank presence. Yet the TISA proposes to expand upon these same rules, increasing the risk of financial and economic instability.
8. The commercialisation of health services has led to the exclusion of whole communities, particularly those with more complex needs (for instance in the United States).
9. The privatisation of water has seen private companies providing services only to high-value or low-cost consumers and denying the right of those with lower incomes to essential services. In Ghana, the commercialisation of water increased water rates beyond the means of most families and in Mauritania families spent up to a fifth of household budgets on water alone. In India, banking sector liberalisation led to a decline in lending to socially disadvantaged sectors, to rural customers and to SMEs.
10. Of course, the final effect will depend on the prudential carve-outs, too. However, these have been often rather weak in the past, for example through rules that the regulation should not be more burdensome than necessary or that they should not go against the rationale of the whole agreement (as is the case in the GATS). This does not allow for precautionary prudential measures. As the financial crisis has taught us it is often difficult to know beforehand the ideal level of regulation. In such a situation the authorities will necessarily need to apply regulation that is not always perfectly justifiable in its concrete extent. But even national treatment rules can under certain circumstances hinder necessary regulation. For example, the financial crisis since 2007 might not have happened if there had been more rules to discriminate against foreign financial products or limit cross-border financial flows.

Another concern lies with the scope and architecture of the TISA negotiations, of which the result will unlikely lead to an agreement that can be easily multilateralised, which contradicts the EU's proclaimed policy to multilateralise the agreement. The main concerns are:

1. The TISA negotiations proceed without the formal consent of the wider WTO membership.
2. The process is driven behind closed doors and as a closed club, by the so-called Really Good Friends of Services Grouping. The EU should advocate in favour of observer status by the WTO Secretariat and any interested third countries. Others who want to join the agreement will be presented with a "take it or leave it" base, which makes it de facto impossible to adequately address the specific constraints and needs of countries at different stages of development.

3. The negotiations are an attempt by a closed club with powerful countries to push ahead with a far-reaching agenda that wants to set the benchmark for GATS and other trade agreements while it will not take into account the diverse interests of other parties, especially those with less advanced services sectors. The TISA approach stands to weaken the position of developing countries in the WTO negotiations overall and in the services negotiations in particular. The TISA parties are likely to act as a bloc during any GATS negotiations.
4. Different features are making the TISA much more far reaching and thus not similar to the flexibility which GATS offers to WTO members, such as the fact that TISA is a GATS Article V agreement that requires substantial sectoral coverage, the inclusion of the articles of the Understanding on Commitments in Financial Services, the horizontal application of National Treatment, and the potential application of a negative list for making commitments.

Those supporting TiSA, considered the negotiations as an opportunity to enhance economic growth, ensure legal certainty, help to promote better practises in advisory and defence and improve the freedom of movement of professionals.

However due attention should be paid to the broader context when progressing on trade negotiations. Progress on TiSA negotiations should notably work as an incentive for any party to comply with a high level of human rights standards, in line with the EU Charter of fundamental rights, including media freedom and pluralism as part of freedom of expression and information. Additionally, national practices that may breach professional secrecy, specifically on the data protection framework should be carefully observed.

An added effort should be sought in order to reduce legal uncertainty in those countries with fragmented administrations. On the other hand, for those countries without professional organisations agreements should promote capacity building as professional bodies are key figures for enforcement of the agreements.

Further, the EU should defend the European economic and social model, which provides for a balance between the economic, environmental and social objectives of the European Union and which is well-functioning in Europe but different from models of EU's trade partners. As an example, one respondent pointed at the water diplomacy line, adopted by the Council on 22 July 2013, where the priority was clearly given to “safeguard security, development, prosperity and the human rights of water and sanitation”. It would be very much welcome to have such a kind of line to safeguard the services of general interest provided to the European citizens. If a creation an arbitration procedure, which allows compensation payments for companies from the EU, is planned - the commonwealth and the protection of environment should be taken into account.

3. 2 Priorities for the EU in the TiSA negotiation

NGOs and stakeholders took a very defensive stance defining the EU priorities in the TiSA negotiation focusing on preserving status quo under the existing *acquis* and limiting the application of the agreement in the sensitive areas such as financial services (strongly referred in context of the financial crisis) or basic public services especially those related to human rights (health, education, water, energy, housing). The TISA rules and commitments should allow the necessary flexibility and regulatory policy space that countries need to choose their own development path and (public) services while serving the interests of citizens.

The EU should, at the very least, reject a negative list approach, the inclusion of articles of the Understanding of Commitments in Financial Services, the stand still clause and the ratchet clause. The

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EU needs to favour a positive list approach and articles that allow governments flexibility in choosing which services to bring under the agreement. This would also allow excluding future services unless governments make the decision to bring them within the scope of the agreement. The minimum would be to have a strong carve-out clause that allows for any necessary regulation. There were also calls for a very cautious approach regarding the public procurement policy.

Stakeholders also called for the removal of ‘National Treatment’ clause, which undermines the ability of countries to develop their domestic service sectors. In a global context of wealth asymmetry and with a history of investor capital flight, developing countries’ domestic services sectors must be allowed to develop before they are forced to compete with foreign service providers MFN benefits transnational corporations that enjoy the advantage of scale, access to capital, distribution networks, brand recognition and technology as well as the patronage of rich countries

The EU should at least ensure a high level of protection of human rights, social rights, working conditions, and environmental standards. The TiSA should have the same provisions as in the ‘sustainability chapter’ (or social and environmental chapters) of the EU trade agreements. In this way, there will be more policy coherence with the sustainable development policy of the EU. In particular, regarding the protection of the private sphere of European citizens, it is necessary to have a certain level of cohesion on the global scale (e.g. between EU and the US), given the global nature of the Internet and the importance of cross-border business: data protection rules should not be developed in an isolated manner

Further TiSA should not include an investor state dispute settlement mechanism, and particularly none aiming at “fair and equitable” treatment including the protection of the “legitimate expectations” of investors or against indirect expropriations.

Annex I: Barriers to cross border trade in countries participating in TiSA.

Country	
Australia	<ul style="list-style-type: none"> - Reinsurers which are not based in Australia have to pay an additional 3% tax. - Local companies are required for asset management - Discriminatory measures in postal/courier: exclusive right to collect, carry and deliver letters within Australia that (subject to exceptions) weigh not more than 250 grams and for which the fee or charge is less than four times the basic postage rate (that is, \$2.40 = 4 x \$0.60). - Trust entity is not eligible to be licensed as a customs broker OR operate a warehouse.. A trustee may be licensed if the nominated entity in the Trust Deed is a natural person, company or partnership
Canada	<ul style="list-style-type: none"> -Collateral requirements for non-admitted reinsurers -The re-interpretation of the phrase "insure in Canada a risk" strongly encourages foreign insurers to establish a physical presence in Canada - Lack of regulatory convergence of (re)insurance supervision - Preferential treatment granted to Export Development Canada - CRA legislation of 2010 which includes Reinsurance to Affiliated parties as being part of the qualifying consideration for the purpose of self-assessing GST (General Sales Tax). This brings affiliated reinsurance under the purview of a taxable supply for GST purposes, while Reinsurance contracts supplied by a Canadian entity remain exempt financial services even when supplied between affiliates
Chile	<ul style="list-style-type: none"> -Restrictions for reinsurers - selling cosmetics in this country is bound to a high number of administrative burdens, such as the registration of the company, the registration of cosmetics, the authorization for the use and disposal of cosmetics and the requirement to obtain a sales certificate. - restrictions to enter ports are imposed on fishing ships that fish "highly migrating species". In addition, these restrictions have been extended to those ships which provide logistic services, supplies or fishing gear to the fishing ships (staff transport, boarding of provisions, fuel and other supplies). - Limitations on the number of service suppliers in ground handling to 3. Providers of competitive delivery services have limited choice and cannot operate their own ground handling activities at airports. - Over \$1000 per shipment, and \$2000 for export shipment have to be processed by a Customs agent - Customs Agencies are not allowed to do joint ventures with other foreign trade operators - Article 198 of the Customs Ordinance: Customs Agent can only be Chilean. 51% of the Custom Agency societies have to be Customs Brokers. - International Transportation Operators cannot enter into agreements or sponsor themselves with Customs Agents when those societies or agreements limit or involve intermediation between the Customs Agent and his principal - Warehouse owners must be preauthorized by the National Customs Director, Previous fulfillment of a series of suitability requirements, exclusive corporate purpose and capital, among others - In ground handling services, If the company does not have access to a warehouse in the primary area you cannot lend and obtain the service
Chinese Taipei	<ul style="list-style-type: none"> -Economic needs test required for cross-border direct insurance - Limitations on the number of service suppliers in Postal Services
Colombia	<ul style="list-style-type: none"> -Various barriers in telecommunications: i.e. only enterprises organized under Colombian law may receive concessions for the supply of telecommunications services within Colombia. -license requirement for reinsurers - Postal & Express delivery: Only juridical persons organized under Colombian law may supply postal services and 'mensajería especializada' (as defined in the FTA) in Colombia -Limitations on the number of service suppliers in ground handling - Limitations on the value of service transactions in postal/courier services - Limitations on the value of service transactions in customs brokerage - Limitations on the value of service transactions in freight forwarding - Limitations on the value of service transactions in warehousing - Limitations on service operations in ground handling - Discriminatory measures in postal/courier - Restriction exists for land freight transportation on weekends cargo is not allowed in the highways and there are roads that do not allow freight transport
Costa Rica	<ul style="list-style-type: none"> -license requirement for reinsurers - Discriminatory measures in postal/courier, road transport , freight forwarding , warehousing and ground handling, ie. for the Air operator, certificate following the General Aviation Law is required. - the postal operator is the only operator that has customs officers within its premises. The absence of having customs officials in the premises of other providers results in unnecessary delays related to clearance and the release of goods
Hong Kong China	<ul style="list-style-type: none"> - Insurance : With respect to Modes 1 and 2, if the supply of the service involves solicitation of business or marketing by the service supplier, only an incorporated company which maintains an office in Hong Kong China as its place of business and authorised by the Insurance Authority, or an association of underwriters which maintains an office in Hong Kong China as its place of business and approved by the Insurance Authority is permitted to carry on insurance business in or from Hong Kong, China. With respect to Mode 1, non-resident insurance companies cannot supply insurance services (including maritime, aviation and transport (MAT) insurance) through an intermediary authorised in Hong Kong, China if the supply of the service involves solicitation of business or marketing by the service supplier. - Limitations on the number of service suppliers in Postal Services

	<ul style="list-style-type: none"> - Limitations on service operations in postal services - Discriminatory measures in postal/courier
Iceland	<ul style="list-style-type: none"> -there are barriers to the provision of cross-border direct insurance services in all of the countries listed through e.g. licence requirements - Regulatory agreements are not applied properly (French funds are deemed compliant as per the agreement but in practice the regulator considers that they are not).
Israel	<ul style="list-style-type: none"> -There are restrictions on foreign lawyers requalifying as local lawyers, -Various barriers in telecommunications -Restrictions for reinsurers - Limitations on service operations in customs brokerage
Japan	<ul style="list-style-type: none"> -Foreign lawyers must have at least three years of experience of practising in their 'home jurisdiction law', at least two of which must have been undertaken outside Japan. No such requirement is imposed on local lawyers (bengoshi) in relation to Japanese law: they are considered competent to practise once they have qualified. This puts foreign lawyers at a disadvantage, particularly younger lawyers - Various barriers in telecommunications - Discriminatory measures in postal/courier : <ul style="list-style-type: none"> * the postal monopoly for the delivery of items of correspondence is too broadly defined and restricts delivery of documents by competitive delivery services * The Japan Post (JP) entities enjoy favourable treatment from the Japanese Government which remains the majority shareholder with a stake of more than one-third. JP is a post office, one of the world's largest banks and has a life insurance unit. This unit controls about 40% of the market. Japan Post enjoys favorable tax and customs treatment for competitive delivery services such as Express Mail Service (EMS). *Customs clearance: Customs & Tariff Bureau Performs clearance for Japan Post at no charge. In contrast, EDS companies must undertake customs clearance via the Nippon Automated Cargo Clearance System (NACCS), for which they pay substantial fees. Security Regulations: Japan Post is largely exempt from security regulations. * Preferential tax treatment: Japan Post has preferential tax treatment. * monopoly for engaging in postal business or in delivering "correspondence," defined as "a document expressing the intentions of the sender or communicating facts to a specific recipient." (Correspondence Law started to allow private companies to start correspondence delivery business in April 2003, but The requirements are tough and no company offers the delivery * national air freight forwarding is reserved for Japanese nationals. - operating license is required for Individual customs district for customs brokerage
Mexico	<ul style="list-style-type: none"> - Various barriers in telecommunications - Economic needs test required for cross-border direct insurance -license requirement for reinsurers - there is a large informal economy. In addition, there are still legal limitations and the over-regulated of certain sectors like telecommunications and power, which do not encourage free competition or the development of key industries. - the postal operator enjoys a higher de- minimis (USD 300) whereas other providers of competitive delivery services have to comply with a de-minimis of USD 50. - Restriction on EDC vehicles weight that can run on Federal jurisdiction roads: 11 tons gross weight - the provision of road freight services is reserved to Mexican nationals - the provision of air freight services is restricted to Mexican nationals - The provision of ground handling land services is reserved for mexican nationals - for road services, Weight limits (31.5Kg/package) on roads of federal jurisdiction -The customs dispatchers (customs agents/brokers or customs representative) can only be Mexican
New Zealand	<ul style="list-style-type: none"> - consent is required if 25% or more ownership or controlling interest is foreign - Limitation of the number of service suppliers to 2 in ground haling services
Norway	<ul style="list-style-type: none"> - license requirements for provision of cross-border direct insurance - distribution of wine, liquors and beer with a high alcoholic content must be carried out through a state owned monopoly (Vinmonopolet). Even though farmers comply with most of the requirements, those referring to part time hiring and to environmental issues are trade barriers difficult to overcome by Spanish SMEs.
Pakistan	<ul style="list-style-type: none"> - Various barriers in telecommunications - There are compulsory cessions to the state reinsurer. Insurers are obliged to offer the state-owned Pakistan Reinsurance Co (PRCL or Pak Re) up to 35% of their treaty business. Overseas facultative reinsurance must be offered to Pak Re. Mandatory localisation of funds in the country of risk is sometimes required. - Overseas facultative reinsurance must be offered to Pak Re first (Pakistan's state-owned reinsurance company)
Panama	<ul style="list-style-type: none"> - There is an insuperable discriminatory barrier whereby only Panamanian citizens are eligible to take the bar - license requirement for reinsurers
Paraguay	<ul style="list-style-type: none"> -There are cross-border registration requirements - Restrictions for reinsurers - any company that chooses to sell its products in Paraguay through an agent will have to compensate him/her at the moment their contractual relationship ends, even if the contract has expired and does not imply a breach of contract. In addition, local regulations do not establish a specific compensation system, which creates legal uncertainty for foreign companies in all industries. - Limitations on the number of service suppliers in ground handling, the provision of ground handling

	<p>services is reserved for the national directorate of civil aviation</p> <ul style="list-style-type: none"> - Limitations on the value of service transactions in postal/courier services - Limitations on the value of service transactions in customs brokerage - Limitations on the value of service transactions in freight forwarding - for ground handling DINAC (National Directorate of Civil Aviation), reporting to the Ministry of Defense, is the company authorized to provide ramp services at all airports in the country. - Terrestrial express cargo shipping does not exist. The express industry regime is not yet supported in terrestrial shipping - The Customs Act (December 2004), enables the Express Shipping Operator to release cargo of up to \$ 1000 value, with previous payment of taxes (de minimis \$ 100). But this it is not applied, despite having the law, Regulatory Decree and Customs Resolution 819, December 2010. - No nationality restrictions exist for shareholders. <i>Companies Act</i> also allows for board members to be citizens or foreigners. It only requires the chairman of the board to be Paraguayan or a legal resident in the country - To be an Express Shipping Operator, Customs law requires to be a Judicial entity
Peru	<ul style="list-style-type: none"> - Limitations on the value of service transactions in postal/courier services - There are no quotas or limitations in the number of express shipping service providers; however, to be authorized as such must comply with document and infrastructure requirements with Customs and the Ministry of Transportation and Communications who issue operation authorizations. If the operation is protected by international agreements, it must fulfill the requirements established in those agreements. The Ministry of Transportation and Communication is the entity in charge in Peru - Express Shipping Operator must be a legal entity. <i>The figure of a joint venture is not regulated by law</i> - the editorials are very concerned about the high level of piracy in the country and the extended and highly performing distribution networks which permit to put on sale pirated books even before the original books have been commercially launched in the country.
Switzerland	<ul style="list-style-type: none"> -Various barriers in telecommunications - Work Permit requirement for staff consultancy missions
The Republic of Korea	<ul style="list-style-type: none"> -Restrictions for reinsurers -the service industry is, generally speaking, highly regulated and protected against foreign competition. This is the case in the financial industry, especially in the banking sector as well as in certain commercial distribution segments which are exposed to foreign competition - Limitations on the number of service suppliers in Road Transport Services - Limitations on the number of service suppliers in warehousing services - Limitations on the value of service transactions in customs brokerage - tax discrimination vis-à-vis foreign funds -- Limitations on the value of service transactions in s postal/courier services - Discriminatory measures postal/courier services favouring the Korean providers by: <ul style="list-style-type: none"> *delivery of a customs manifest after delivery whereas other providers of competitive delivery services have to provide a customs manifest prior to departure (for export) or arrival (for import) of goods in the country; * no payment of penalties in the case of undervaluation of imports whereas other providers of competitive delivery services have to pay penalties; * other benefits: free use of airport facilities, military resources and financial support from government. - the scope of EDS are regulated either by Aviation law or Commissioner order as below The article 2(Definitions), subparagraph 38 of Aviation Law stated that the term 'commercial document delivery service' means the commercial business of delivering documents related to export and import, etc. falling under the provision to Article 2 (2) of the Postal Service Act and accompanying samples by aircraft, to meet the demand of others. Article 1-2 (Definitions) subparagraph 1 of Commissioner order stated that 'express delivery company' who runs the business of delivering commercial documents and other samples using foreign trade vessels, foreign trade aircraft or border-crossing vehicles is registered at the director of customs office - favourable treatment for EMS: <ul style="list-style-type: none"> A.IB/OB manifest requirement for de minimis All express companies need to submit manifest to customs prior to flight departure or arrival of aircraft. For EMS, It is legally regulated by Commissioner order to submit manifest after shipment delivered but no submission to customs at all. B. No penalty regime and payment for EMS on undervaluation for de minimis clearance while Customs is imposing penalty on express company for undervaluation even if the undervaluation is originally made by exporter or importer. C. Various favourable treatment in operations <ul style="list-style-type: none"> - monopoly for collection, sorting, transportation and delivery of domestic mail up to 350grams and 10 x service rate - The scope of de minimis clearance is limited to goods used for either private consumption or commercial sample only. Proposal : Customs allow any and all goods carried by express company except customs controlled goods in pursuant to the article 259 of customs act. - for in-house brokerage there are Three types of customs brokerage : a. Private brokerage b. in-house brokerage, c. corporate brokerage, At least 5 certified customs brokers required to operate it. Among three, In-house brokerage can handle the shipment carried or storage or loading/unloading by him/herself - for road transport services, Business license approval is required by Ministry of Land and Transportation and No additional business license allowed since 2007. - for warehousing services, business license approval is required by customs based on cap-and trade permit system.

<p>Turkey</p>	<ul style="list-style-type: none"> -There is an insuperable discriminatory barrier whereby only Turkish citizens can become Turkish lawyers and only Turkish lawyers can advise on Turkish law -Various barriers in telecommunications - The Turkish branch of a German parent company needs to hire five Turkish employees in order to be able to get one working visa for one German employee. - Limitations on the value of service transactions in customs brokerage - Limitations on service operations in customs brokerage - Discriminatory measures in postal/courier - Discriminatory measures in customs brokerage
<p>USA</p>	<ul style="list-style-type: none"> - Various barriers in telecommunications - Collateral requirements for non-admitted reinsurers. Cross-border non-US reinsurers operating into the US are generally required to post 100% reinsurance collateral for US ceding companies to receive credit for the Reinsurance they have purchased in their financial statements. By contrast, US ceding companies can gain full credit for reinsurance from US licensed reinsurers which do not face any statutory reinsurance collateral requirements insurance and reinsurance sector.: - Unequal treatment of European insurers whose affiliate transactions would effectively become subject to double taxation. - The draft FACTA regulations and draft model agreements include some life insurance companies as foreign financial institutions. European insurers have a low incidence of US policyholders and present a low risk of tax evasion. However, compliance will create a significant burden. - Doing business in the U.S. involves several non-permissible activities, esp. in the states of New York and California (e.g. hosting of trade shows, discussion of specific reinsurance product terms and prices regarding risks located within New York and California etc. - General Tax considerations irrespective of state: certain business activities may lead to the classification of a so-called permanent establishment of the foreign insurer for tax purposes - A lack of regulatory convergence of (re)insurance supervision - States are competent in the regulation of distribution and sales of alcoholic beverages and liquors. Depending on the state, direct distribution can be reciprocal, restricted, illegal or a crime. These restrictions especially create unfair market conditions when local producers are exempted from these limitations. - Limitations on the number of service suppliers in freight forwarding services: * U.S. Department of Transportation (DOT) approval needed in granting Foreign Air Freight Forwarding licenses - Limitations on the value of service transactions in postal/courier services - Limitations on the value of service transactions in customs brokerage - regulatory barriers for selling funds (e.g. following the adoption of the Dodd Frank Act, French asset managers developed disclaimers describing that their funds are not intended for US clients) - Discriminatory measures in postal/courier: * Letter mail delivery restricted to U.S. Postal Service (USPS) * U.S. Postal Service (USPS) is exempt from taxes and may park in any location without incurring parking tickets * USPS has monopoly over access to mailboxes and delivery of letters under 12.5 ounces, at 6 times the rate of the first ounce rate of first class mail, with the exception of extremely urgent letters *Foreign entities cannot own more than 49% of a U.S. airline - Discriminatory measures in customs brokerage * Customs Brokers must obtain a license to operate in one or more of 42 different regions and there is no provision for a national license Customs Brokers are required to pass a test administered by U.S. Customs and Border Protection (CBP) * Only U.S. citizens are eligible to obtain a broker's license and brokerage company must be an U.S. entity * USPS enjoys favorable and less costly customs procedures compared to other delivery operators, resulting in a reduced requirement for customs brokerage services

Annex II: Barriers to establishing a commercial presence in countries participating in TiSA.

Country	
Australia	<ul style="list-style-type: none"> - Telecommunications & Transport= Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares. The Chairperson and a majority of directors of Telstra must be Australian citizens and Telstra is required to maintain its head office, main base of operations and place of incorporation in Australia. Investments by foreign persons in existing Australian businesses, or prescribed corporations, the value of whose total assets exceeds \$A50 million in the following sectors: (i) The telecommunications sector; (ii) The transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided either within, or to and from, Australia; etc. - the Government can impose specific limits on, or requirements relating to, foreign investment in the following areas: • Newspapers; • Broadcasting; • Telstra (see above); • CSL; • Qantas Airways Ltd; • Australian international airlines, other than Qantas; • Urban land; • Federal leased airports; and • Shipping. - the Australian law rules that FDI proposals must be notified to the local Administration by the parties involved in an absorption or acquisition in order to get the approval from the Ministry of Treasury (all sectors). - the Australian law limits foreign investors' ownership to a maximum of 15% of the company's total stock, no matter how many foreign companies or individual owners are involved. This limitation of 15% also applies to their voting rights (all sectors). - limitations on foreign ownership in airports, banks, civil aviation, telecommunications and shipyards. --Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in customs brokerage - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in), ground handling - Treatment by State Owned Enterprises in postal/courier - Australian Post exempted from reporting pre-arrival data to Australian Customs
Canada	<ul style="list-style-type: none"> - Complex and lengthy procedures between federal and provincial level exist in the area of insurance and reinsurance - Onerous approval requirements on foreign insurers - Difficulties arising from dealing with multiple regulatory jurisdictions -Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier -Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in customs brokerage - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in), ground handling
Chile	<ul style="list-style-type: none"> - Establishment for insurers is subject to economic needs test --Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in customs brokerage - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in road transport - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in warehousing - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in), ground handling
Chinese Taipei	<ul style="list-style-type: none"> - there is no national customs brokerage license - licenses are granted per local customs district. - Joint Venture requirements in customs brokerage
Colombia	<ul style="list-style-type: none"> - Establishment for insurers is subject to economic needs test - Several barriers in telecommunications - Treatment by State Owned Enterprises in postal/courier, There is a reserved area for postal for the Colombian Postal Entity 4-72. This Entity can import up to 2 kg without paying taxes as postal services
Costa Rica	<ul style="list-style-type: none"> - Treatment by State Owned Enterprises in postal/courier - Treatment by State Owned Enterprises in road transport, freight forwarding, warehousing and ground handling - Joint Venture requirements in postal/courier, customs brokerage road transport, Freight forwarding and ground handling
Hong Kong China	<ul style="list-style-type: none"> -Obtaining a licence or authorisation for customs brokerage is difficult - Treatment by State Owned Enterprises in postal/courier
Israel	<ul style="list-style-type: none"> -Several barriers in telecommunications
Japan	<ul style="list-style-type: none"> - there are restrictions on opening subsequent branch of law offices. In most cases these restrictions apply to both foreign and local lawyers - Japan Foreign lawyers (gaiben) wishing to practise in Japan need to complete a complicated registration process -there is no national customs brokerage license - licenses are granted per local customs district

*	<ul style="list-style-type: none"> - Several barriers in telecommunications - Outlet opening: Before opening a retail store operators have to go through a lengthy and non-transparent permission process which involves authorities at both the national and regional level. Moreover, many towns have set in place restrictive land use plans which make it nearly impossible to obtain the allocation of plots for construction of new retail outlets. In addition, the Large Stores Law, internationally criticised, allows the authorities to refuse permission if nearby small and medium retailers could be negatively affected - Licenses: The Japanese food import permits system (under the Food Hygiene Law) is of protective nature as it clearly disadvantages foreign trading companies. These have to cope with unpredictable and time-consuming processes (One striking example: Food imports to Japan are restricted due to the limited resources of quarantine bureaus (e.g. only 2 officers at Tokyo Port) and the obligation to provide detailed scientific analyses and specific formalities). Moreover, the Pharmaceutical Affairs Law stipulates importers to Japan to apply for "Import licenses" and "Import sales licenses" for products such as fragrances. The process of obtaining these licenses is cumbersome (up to two years!) and uncertain – if refused then the item cannot be imported. Japan is applying a strict liquor wholesale licensing under the Liquor Tax Law. The allocation of licences is very time consuming and lacks transparency. Moreover, liquor prices are controlled by tax authorities (National Tax Agency). Due to external influence and unfair practices European retail and wholesale companies are being disadvantaged. - Treatment by State Owned Enterprises in postal/courier
Mexico	<ul style="list-style-type: none"> - senior managers and board directors of the insurance sector must be either nationals or residence. - Several barriers in telecommunications
New Zealand	<ul style="list-style-type: none"> - The law establishes that a specific authorization is needed when foreign investment in a company implies: -A participation in a company holding which owns "special or sensitive land" (public parks, sea beach, certain islands or any land over 5 hectares). -The acquisition of certain assets with a significant value (over 25% of a company's equity, assets worth over \$NZ 100 million, etc.). The authorization process is long and very complex.
Pakistan	<ul style="list-style-type: none"> -Several barriers in telecommunications - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Joint Venture requirements in ground handling
Panama	<ul style="list-style-type: none"> -Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in customs brokerage - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in road transport - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in warehousing - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in), ground handling
Paraguay	<ul style="list-style-type: none"> -Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in warehousing
Switzerland	<ul style="list-style-type: none"> - the administrator for a local subsidiary has to be resident - Several barriers in telecommunications - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in customs brokerage - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in), ground handling
The Republic of Korea	<ul style="list-style-type: none"> -Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Treatment by State Owned Enterprises in postal/courier - Favorable treatment for EMS A.IB/OB manifest requirement for Deminimis All express companies need to submit manifest to customs prior to flight departure or arrival of aircraft. For EMS, It is legally regulated by Commissioner order to submit manifest after shipment delivered but no submission to customs at all. B.Penalty No penalty regime and payment for EMS on undervaluation for deminimis clearance while Customs is imposing penalty on express company for undervaluation even if the undervaluation is originally made by exporter or importer. C.Various favorable treatment in operations - Free airport access, Priority in linehaul space, Free toll fee - Use of military service resource - Financial support from Government USA: U.S. Postal Service (USPS) is exempt from taxes and may park in any location without incurring parking tickets. USPS enjoys favorable and less costly customs procedures compared to other delivery operators, resulting in a reduced requirement for customs brokerage services
Turkey	<ul style="list-style-type: none"> - It is forbidden for a law firm to have more than one office. Although this condition is applied to both Turkish and foreign firms removing the restriction would be desirable in allowing firms to establish a solid commercial presence (for example having an office in Istanbul and in Ankara). - Limitations on advertising Turkey There is a need to liberalise advertising and marketing regulations for legal services providers - administrative procedure are often burdensome for mechanical engineering companies - Several barriers in telecommunications - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in customs brokerage

	<ul style="list-style-type: none"> - Treatment by State Owned Enterprises in postal/courier - Treatment by State Owned Enterprises in customs brokerage
<p>USA</p>	<ul style="list-style-type: none"> - Several barriers in telecommunications - telecoms sector: Foreign investment in the US is governed by the Committee for Foreign Investment in the US (CFIUS): http://www.treasury.gov/resource-center/international/Pages/Committee-on-Foreign-Investment-in-US.aspx The limitations are many and they are well documented. Almost all of our competitors are foreign owned so the playing field is level. In the early 2000s CFIUS started to play a more active role in partnerships with other government agencies regarding National Security. As a result, over the last 10 years (or so) the US Government has used either one of the many changes in ownership structure of the telecommunication infra structure providers or their entry into the US to get them to sign a National Security Agreement with Dept of Defense & Dept of Homeland Security - The legislative amendment on FDI (FINSIA Bill) implies an increasing scrutiny over foreign investment in this country and the risk that it can become a barrier to FDI in the US. In addition, there is still a concern about the legal economic costs related to the need to provide detailed information from the beginning of operations and the confidentiality of such information (all sectors). - regulations differ from state to state. In the field of reinsurance European companies are at a disadvantage to US companies, which can operate in any state of the European Union once they have obtained a license in one of them. - Practising as a solicitor: foreign lawyers can practice in 31 states as a 'foreign legal consultant' which permits the practise of their home law with some restrictions. In some cases the application procedure is overly bureaucratic, and the rules often impose a minimum number of years post qualification for the lawyers (normally five years) which is a barrier for younger lawyers. Temporary practice as a foreign legal consultant: only 6 states have a rule to permit foreign lawyers 'temporary and limited services in the United States'. - jurisdictions - Lack of uniformity in state insurance regulation with respect to – amongst others – group supervision, the regulation and taxation of placements by surplus line insurers etc. - Tax issues; e.g. some activities may lead to the classification of an establishment of a "quasi-subsubsidiary" for tax purposes even though the employee of a non-admitted reinsurer is only staying in the U.S. for business purposes for a longer period (e.g. 4 weeks) in the same hotel/apartment (please see also 2.1.1) - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in postal/courier - Limitations to foreign capital/limitations to management control/residency or nationality requirements for senior mngt/BOD in customs brokerage - Treatment by State Owned Enterprises in postal/courier - Treatment by State Owned Enterprises in customs brokerage - Joint Venture requirements in customs brokerage

Annex III: Barriers with regard to the temporary movement of natural persons for business purposes in countries participating in TiSA.

Country	
Australia	– Maritime Transport Services – International transport (freight and passengers) - Establishment of registered company for the purpose of operating a fleet under the national flag of Australia: nationality requirements for ownership and registration of vessels as defined by the Shipping Registration Act 1981. In general, many countries do impose nationality requirement in the maritime transport services
Canada	- companies which are involved in the exploration and exploitation of oil and gas in the Provinces of Newfoundland - Labrador, and Nova Scotia and the Territory of Nunavut have to comply with employment requirements
Chile	Restrictions for customs brokers
Colombia	- Several barriers in telecommunications
Hong Kong China	- working permits/visas should be obtained by foreigners for all sectors
Iceland	- Printing & Publishing: Residency requirement for publishing of newspapers or magazines within the national territory. Residency requirement for editors
Israel	- Several barriers in telecommunications
Japan	- Several barriers in telecommunications – Telecommunications - board members and auditors in NTT and the Regional Companies are required to have Japanese nationality. - there is an ownership limitation of 1/3 for non – Japanese in NTT and the Japanese state has to maintain 1/3 of the shares in the NTT holding.
Mexico	- Several barriers in telecommunications - Customs agents and dispatchers must have Mexican nationality
Pakistan	- Several barriers in telecommunications
Panama	-There is an insuperable discriminatory barrier whereby only Panamanian citizens are eligible to take the law bar - The Labor Code establishes that no less than 90% of the company's general staff and no less than 85% of its technical personnel must be nationals or foreigners married to nationals or foreigners who have resided in Panama for over 10 years (all sectors). - According to its Constitution, retailing is reserved exclusively to Panamanians, nationalized Panamanian for over 3 years and foreign legal entities allowed to do it - Fishing of certain species such as tuna or shrimp as well as radio broadcasting are business activities reserved to domestic investors. -The Constitution bans foreigners from acquiring public or private domestic land within the limit of 10 Km from the country's border
Switzerland	- Restriction on number of working visas in order to post non-Swiss individuals. -- Several barriers in telecommunications
The Republic of Korea	- Following the implementation of the EU-Korea Free Trade Agreement in 2012, progress on the implementation of Stage II on liberalisation of the legal services sector remains unclear despite coming into force in July 2013. There is lack of a detailed and clear cut vision of what this might look like operationally from the regulatory authorities. - information and clarification of appropriate law business friendly arrangements for taxation, business structuring and business registration of UK firms entering the market under the FTA is also outstanding.
Turkey	- There is an insuperable discriminatory barrier whereby only Turkish citizens can become Turkish lawyers and only Turkish lawyers can advise on Turkish law -- Several barriers in telecommunications - Restrictions for customs brokers - Collective Asset Management - The majority of the members of the board of directors of an investment company must have Turkish nationality.
USA	-Quota of H1B and other visas in the USA - US is restrictive on bringing in foreign nationals into the US. H1-B visas are capped at 65,000 per fiscal year and this visa category is often oversubscribed within the first week of the fiscal year. L1 visas are not capped in the same way but an employee must have worked for the company for 12 months prior to entry to the US. It is important to note that this is not really a discriminatory measure benefitting domestic suppliers as they are subject to the same limitations should they wish to bring in foreign nationals. This is mainly skill set issue, the company is not restricted from "growing their own" in the US, however should they fail to do that the restrictions come in to play when you try to bring in folks from the outside. - Obtaining visas for performers to travel and perform in the USA is a burdensome, lengthy and costly procedure. A performing arts organisation who wishes to make use of a fast track procedure for one or more of its employees has to invest a substantial part of its revenue, simply to be able to obtain the visa in time to be able to perform in the USA. The visa policy of the USA is therefore a real hindrance for performing arts organisations to accept invitations from presenters in the USA. When one considers the rules applicable in the EU, there is clear advantage for performers from the USA to come and tour to Europe (for periods of less than 3 months). - the access to information and lack of transparency in regulations. Central access points, such as sector of performing art has been advocating for in Europe, in every country would facilitate the temporary

	<p>movement of people</p> <ul style="list-style-type: none"> -Requalification: the rules for solicitor eligibility to take the bar exam vary widely between states which in some states poses a significant barrier. There is a particular issue in the state of New York, as lawyers who have not taken a law degree must complete an LLM at an American Bar Association-approved law school in the US in order to be eligible to take the bar exam due to legal education duration requirements. All lawyers should be eligible to take the bar exam regardless of their route to qualification. Other states, such as Illinois, impose a minimum practice requirement before taking the bar (5 out of the last 7 years) and some allow access on the basis of the solicitor qualification regardless of route/experience such as California. The legal education duration requirement should be removed so that a valid legal education is recognised regardless of time constraints. Lack of transparency in regulations at various administrative levels - no existing agreement for the recognitions of professional qualifications of EU professional services (architects, accounting & auditing, engineers, etc.); difficulty for the professionals to find out the specific procedure, on case by case, when they exist. - Several barriers in telecommunications - despite the amendment to the Helms-Burton Bill, foreign companies can still be affected by this bill - Off shoring. The provision of telecomm services for US networks from outside the US is a complex, multi-faceted issue that crosses commercial, social and political arenas. Simplifying it is hard but if you take the National Security Agreement (NSA) as an example; The restrictions on off shoring are not particularly arduous; personnel screening, a lot of log keeping, notifications, must get approval if not off shoring to an OECD country or India, etc - Restrictions for customs brokers
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Annex IV: Barriers in accessing public procurement

Country	
Australia	The bidding procedures are long and expensive because the companies are obliged to submit a fully detailed technical offer in the preliminary phase. The state of Victoria requires local content and other states like South Wales and Western Australia establish preferences for local companies and price advantages.
Canada	Foreign companies can be excluded at provincial level from certain sensitive sectors such as construction, naval reparations, urban transport equipment and components, defense, telecom equipment and telecom services. Furthermore, local content and local presence are also required
Chinese Taipei	The publication of the bidding documents is too short-noticed. The economic conditions always prevail over other aspects, like the technical ones.
Costa Rica	Even if the law establishes that foreign companies are submitted to the principle of reciprocity, in practice it is not being implemented in any sector
Israel	There are measures in place which give a preferential treatment to national companies. In all sectors, local providers benefit from a prize advantage of 15%.
Paraguay	in accordance to the Public Procurement Regulation, international tenders are only compulsory either when it is stipulated in an international agreement or in a loan agreement signed with a multilateral institution or there are no local offers or the national offers are insufficient or the national offers are not valid. (all sectors)
The Republic of Korea	Language barrier - except a brief description in English of the procedure and documents; the relationship with the administration is done in Korean. Limitations on public procurement: Korea and the EU have signed the WTO Agreement on Government Procurement, with exemptions that exclude many sectors, such as telecommunications, airports, railways, energy and national security among others. In other sectors there are contracting conditions established by law which exclude foreign companies involved in business activities such as construction, engineering and architectural design, if they are not establish in Korea. Companies are also obliged to hire a minimum number of technicians with Korean qualification. The inscription in a public register of companies with capacity to contract with Administration is also requested
USA	The access to the public procurement market is difficult due to the application of certain protectionist measures (Buy America , Buy American, Fly America etc....), which give a preference to local competitors.