CIVIL SOCIETY DIALOGUE

UPDATE ON TiSA NEGOTIATIONS

Date: 10th November 2014.
Time: 14:30 - 16:30
Location: Room Sicco Mansholt, Charlemagne Building, 170 Rue de la Loi, 1049 Brussels.

Lead speakers

Mr Ignacio Iruarrizaga Díez, Chief EU TiSA negotiator, Head of Unit, Trade in Services, Directorate-General for Trade.
Ms Maria Zuber, Trade in Services Unit, Directorate-General for Trade.
Ms Nabi Siefken, Trade in Services Unit, Directorate-General for Trade.
Jan–Willem Verheijden, Trade in Services Unit, Directorate-General for Trade.

Panel Presentation

DG Trade (IID) opened the meeting by thanking all attendants for their participation. He highlighted the TiSA transparency initiative by means of a website exclusively dedicated to TiSA negotiations, which includes a number of negotiation documents proposed by the EU, including the EU offer as well as replies to frequently asked questions. He also mentioned that the Council and the Parliament receive all negotiation documents. His presentation recalled the origin of the negotiations in which the EU agreed to participate as long as there was a possibility to multilateralize the agreement, which should be based on the GATS structure to that end. Regarding TiSA offers, the intention of the parties was to have initial offers at the level of their best FTA at the time the negotiation started. The EU used the EU-Korea FTA as a benchmark for its offer. Special emphasis was put on the fact that TiSA aims at the elimination of quantitative and discriminatory measures, however does not affect the ability to regulate the provision of services in a non-discriminatory fashion. DG Trade also explained that the protection of public services in the EU offer is achieved by means of a public utilities reservation, jointly with specific reservations in key sectors: publicly funded healthcare, publicly funded education, water distribution and audiovisual services. Further explanation was given about the protection of labour standards and the functioning of the ratchet clause.

The 9th round of negotiations was active on some sectorial chapters, where market access and national treatment commitments were negotiated. In general, there was good technical process but there was also broad consensus that an acceleration of the negotiations is needed. It was also mentioned that the EU supports the entrance of more participants to the TiSA negotiations, including China and Uruguay, who have officially showed their interest. The next rounds of negotiation will be held in December and February.
**Discussion Highlights / Questions and Replies**

**Industriegewerkschaft Bauen-Agrar-Umwelt** showed their interest in the agreement and requested more information on independent professionals that would be allowed under TiSA, on the relation between labour clauses and collective agreements and on intentions regarding government procurement, particularly with respect to Hong Kong/China.

**DG Trade (IID)** explained that commitments regarding independent professionals had been taken in many Free Trade Agreements and were also included in our revised Doha offer. These commitments are usually subject to a requirement for high levels of qualifications. He confirmed that labour clauses set out that all labour laws and regulations would continue to apply, including collective wage agreements. The commitments on government procurement sought by the EU (non-discrimination for establishments) do not go beyond to what we already grant within the EU, which does not discriminate on the origin of the supplier once the supplier is established in the Union.

**European Trade Union Committee for Education** was interested to know more how the reservation on public education services applies and requested more details of the last round.

**Transitiegroep Stroopwafel** stressed its concern on the regulation of financial services, considering the recent financial crisis.

**DG Trade (IID)** explained that the Member States would have full ability to discriminate in public education since a general reservation on national treatment applies, and that no specific commitments would be undertaken in public education services. Some Member States have voluntarily decided to make commitments in privately funded education. Financial services are a good example of a sector where Member States have been able to make changes in the regulations in full compliance of the many commitments that have been agreed in the past. As long as it is not by discriminatory or quantitative measures, a market can always be regulated. Furthermore, a prudential carve-out provision for financial services would be included in the agreement allowing a party to derogate from its commitments if it is necessary to preserve the stability of its financial system.

**European Federation of Public Service Unions** demanded clarification on whether there is a reservation or an exclusion of public services, using ambulance services as an example. Likewise, it noted the lack of a civil society dialogue after the next round.

**Bureau Européen des Unions de Consommateurs** requested information about roaming, data flows and data protection.

**DG Trade (IID)** confirmed that there is a full reservation on publicly funded healthcare services such as publicly funded ambulance services. It is a reservation that EU has decided to take and TiSA will not change that. However, since other Parties decide to make commitments in this matter, it cannot be excluded from the scope of the agreement, which is the same scope of the GATS. A civil society dialogue after the next round had not been proposed before because the next two rounds were very close to each other, but the Commission always remains open to suggestions in this regard. Discussions about roaming refer to transparency mainly and are at a very early stage. On data flows, there is one general proposal raised by one participant and another one specific for financial services proposed by the EU, which is identical to the existing WTO one. Regarding the last round, improvements were made in areas such as domestic regulation, transparency, financial services, maritime transport, qualifications of professional services and competitive delivery services. **DG Trade (JWV)** mentioned the issues discussed for
the telecoms chapter of the agreement, such as reduction of foreign equity caps, universal services, access to networks and independence of the regulators.

**EuroCommerce** expressed their support for the agreement, highlighting the merits of following the GATS architecture. It commented on the Services Trade Restrictiveness Index of the OECD which shows the potential of an ambitious agreement.

**DG Trade (IID)** noted that the Commission is trying to contribute to the debate with events such as this civil society dialogue. He emphasized the competitiveness of the EU, which has a very open STRI and amounts for a quarter of worldwide trade in services.

**European Services Strategy Unit** requested more information on the possibilities of reverting privatizations of public services as well as more detail on which categories of professionals are likely to be opened, and questioned whether universal services were considered as a "target".

**Industriegewerkschaft Bauen-Agrar-Umwelt** asked questions regarding entry from professionals from third countries and also about plans regarding dispute settlement mechanisms in TiSA.

**DG Trade (IID)** explained that TiSA would not restrict the EU’s ability to reverse privatization, but that adequate compensation would have to be provided in accordance with the legal system of each Member State. The EU’s offer on mobility of professionals reflects the commitments in KOREU, hence it does not include Contractual Services Suppliers and Independent Professionals for now, but adding these categories may be considered later but will depend on other offers and negotiations. These measures would only benefit citizens or permanent residents of the TiSA parties. Parties have a right to preserve and confer particular treatment in respect of the provision of universal services in postal, so there can be positive discrimination. At this stage, there has been limited discussion on dispute settlement. However, before negotiations started, it was agreed between the parties that no investor-state dispute mechanism would be included in TiSA.

**Confédération des Syndicats Chrétiens** raised their concerns about the fact that private sector may attract the best professionals in detriment of the public funded sector. It also questioned whether incorporating TiSA in GATS would imply giving MFN advantages to non-parties and asked if TiSA would mean the end of the Doha Development agenda in services.

**DG Trade (IID)** noted that dual systems are a policy choice that remains on each Member State, completely independent from trade agreements. The EU aims for multilateralization of TiSA. Most WTO members have low commitments in GATS, but the most active ones are the TiSA parties plus a few key others such as China, Brazil, India and some ASEAN countries. Therefore, if some specific WTO members join the TiSA negotiations, the benefit to free riders would not be a major concern. In fact, a waiver for Least Developed Countries is being analysed in order to help them to insert themselves in the services market. Multilateralization is the aim precisely to not undermine the DDA by taking services out of the WTO.

**International Federation of Actors** enquired about the treatment of audiovisual services and the offering of bundled products. It also questioned whether the UNESCO Convention on Cultural Diversity was being considered.

**DG Trade (IID)** highlighted that, although not extended to all cultural services, the reservation on audiovisual services is a long standing contention of the EU since the GATS. The existing track record in this regard is being followed and there are no intentions to change it. Audiovisual services are to be protected in any form they
may be commercialized. The EU is interested in allowing its operators to provide a wide range of services. The UNESCO Convention is not part of the negotiations, but it informs our negotiating position.

**European Economic and Social Committee** emphasized the need for impact studies and monitoring systems.

**DG Trade (IID)** informed that a sustainable impact assessment of TiSA was being undertaken, but noted that it is a very complex case, due to the lack of good statistical data on trade in services and the absence of economic models for performing such estimations (notably the value of bindings) when it comes to services trade.

**Centre National de Coopération au Développement- 11 11 11** was interested in knowing in which sectors was the EU expected to give more market access and if there was an intention to include environmental or labour standards in TiSA.

**Transitiegroep Stroopwafel** requested information on TiSA’s approval process and expected duration of the agreement.

**DG Trade (IID)** explained that the EU was one of the most open parties and that, therefore, they are expecting other parties to open their markets to bring them closer to our level of openness. Labour and environmental standards are not being negotiated in TiSA and are not in GATS scope either. Implementation processes and duration of TiSA are not being discussed yet.

**European Digital Rights** asked for more information on telecom and data protection in relation to TTIP.

**European Services Strategy Unit** enquired about the relation between TiSA and the Doha round and also about the expected deadline for finalizing the agreement. It also asked if the offer shows a specific reservation for reversing privately funded services.

**DG Trade (IID)** informed that discussion on data protection and data flows is very similar to TTIP negotiations and that data protection is not being negotiated. In this respect, he referred to the statement of Commission President Juncker that data protection will not be “sacrificed in the altar of free trade”. Regarding the Doha round, it was noted that only a few WTO Members are active in services and that, in fact, they are following the request for being creative raised by the WTO Ministerial Conference. At this moment it is not possible to assess the duration of the negotiations. The possibility for renationalisation of public utilities is built in the general reservation on public utilities. In case of such reversion, the relevant rules of the Member States would apply and it would not be connected to TiSA.