

Trade in Services Agreement (TISA)

What is TISA?

The negotiations on the Trade in Services Agreement (TISA) were proposed by the US and Australia in early 2012. The TISA negotiations arose in response to the ongoing impasse in WTO trade talks, including talks to expand the General Agreement on Trade in Services (GATS). The participants call themselves the "Really Good Friends of Services" and are the strongest advocates of service liberalisation.

The agreement is intended to further liberalise trade in services and provide legally-binding rules in areas such as licensing, financial services, telecoms, e-commerce, maritime transport and professional services, which would give foreign investors and companies freely access the markets of the TISA Parties and ensure that governments do not discriminate between public and private sector service providers.

The negotiations are held in secret and details on the proposed TISA are therefore very limited. However, following a number of TISA leaks, a few of the Parties have published their initial services offers¹ and the European Commission has created a dedicated [TISA page](#). Nevertheless, TISA remains one of the most secret trade negotiations.

What countries are involved?

As of March 2016, participants in the TISA negotiations are Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey, and the United States. China has flagged interest in joining the negotiations but is so far not included. Uruguay and Paraguay left the negotiations in 2015. In the case of Uruguay it was due to public opposition to the potential serious consequences of TISA.

What is the state of negotiations?

The TISA talks started formally in March 2013. By the end of 2013, most participants had indicated which of their services markets they were prepared to open and to what extent. By February 2016, 16 negotiation rounds have taken place. The 17th TISA round of negotiation is scheduled for the second week of April 2016. Originally, TISA participants were aiming to conclude an agreement in 2014. According to reports from [Canada](#) and the [European Commission](#), TISA participants agreed on a revised work plan, which aims for agreement on key Annexes by July 2016 and agreement on the remaining

¹ [EU's services offer](#), [Norway's services offer](#)

texts by September 2016. Furthermore, two revisions of the services offers are foreseen for May and October 2016.

What services would be covered by TISA?

TISA is intended to be a broad and comprehensive agreement with no exclusion of service sectors at the outset. Potentially, therefore, all service sectors could be covered, including public services like education and health care.

Will education services be included in in TISA?

The broad scope of TISA means that education could be covered directly or indirectly. Education remains one of the least-covered sectors in the GATS because of legitimate concerns that trade liberalisation can constrain the ability of governments to effectively provide and regulate quality education. However, private sector lobby groups and several countries have been pressing for further and deeper commitments.

The EU's services offer includes significant commitments in privately-funded education services, even if the commitments vary slightly between member states because of specific exemptions taken. As a result, the EU and its member states are effectively opening the door to foreign for-profit education providers. It is worrying that the European Commission has requested the EU Member States to reconsider and limits their reservations taken in CETA for the TISA negotiations. Furthermore, the limitation for publicly-funded education is of very general character and *not defined*². EC says that the EU has followed the same approach to public services since GATS, however the limitation differs between the different agreements. In contrast to the TISA text referred above, in CETA the definition is more comprehensive³. Another problematic issue concerns the *EU's public utilities reservation*, which lacks a clear definition⁴.

² It reads *"The EU reserves the right to adopt or maintain any measure with regard to publicly-funded education services (CPC 92) and with regard to privately funded other education services (CPC 929)"*.

³ It reads *"The EU reserves the right to adopt or maintain any measure with regard to the **provision of all education services which receive public funding or State support in any form, and are therefore not considered to be privately funded.***

*The EU, except CZ, NL, SE, SK, reserves the right to adopt or maintain any measure with respect to the **provision of privately funded other education services (CPC 929), which means other than those classified as being primary, secondary, higher and adult education services.***

Where the provision of privately funded education services by a foreign provider is permitted, participation of private operators in the education system may be subject to concession allocated on a non-discriminatory basis.

⁴ *"In all Member States, services considered as public utilities at a national or local level may be subject to public monopolies or to exclusive rights granted to private operators.*

Public utilities exists in sectors such as related scientific and technical consulting services, R&D services on social science and humanities, technical testing and analysis services, environmental services, health services, transport services and services auxiliary to all modes of transport. Exclusive rights on such services are often granted to private operators, for instance operators with concessions from public authorities, subject to specific service

The lack of clarity of the public utilities reservation put the education sector in a vulnerable situation because it is not included in any of examples listed in the public utilities reservation. Furthermore, from the EU-Singapore FTA the *EU does not seem to consider education a public utility* as there is no footnote to the public utility clause in privately-funded education services, whereas this is the case for other public services including health and social services. Another point concerns the *linkage between education services and e-commerce*, which becomes increasingly important with the developments around e-learning and electronic education materials.

Similarly, Norway's services offer contains substantial commitments in privately-funded education services and thereby Norway opens up to private education providers. The offer does include a limitation for primary and secondary education, which are "public services functions". However, there is no definition of "public services functions". Accordingly, the reservation remains ambiguous and open to conflicting interpretation. Moreover, the limitation is restricted to primary and secondary education and no such limitation is granted in the case of early childhood education, higher education and adult education.

In various leaked documents related to TISA negotiations, several countries have proposed including private education services in the agreement. Australia, New Zealand, Colombia and Norway are supporting the coverage of private education under "professional services" in TISA. The inclusion of private education would grant private education companies broad new rights and restrict the ability of governments to regulate private providers.

But aren't public services usually excluded from trade agreements like TISA?

The GATS agreement does contain a general exemption for "services supplied in the exercise of governmental authority" that will likely be retained in TISA. However, this exemption is extremely narrow and open to conflicting interpretations because these services are defined as those that are provided on a non-commercial basis and not in competition with one or more services providers. In other words, if any part of a country's education system is provided on a commercial or for-fee basis, or if there are private schools that operate, education may not benefit from this general exclusion. Given that most education systems do in fact contain a mixture of not-for-profit and commercial, public and private provision, it is unlikely that the education sector would benefit from this general exclusion. Furthermore, TISA is a much more far-reaching agreement than the GATS, however the governmental authority exception is not similarly upgraded and this is very problematic as services are affected in so many interlinking ways in the different chapters throughout the proposed agreement.

What risks does TISA pose for education?

Including education services in any trade agreements raises significant concerns. Trade rules are legally binding and can have the effect of locking-in and intensifying pressures of commercialisation and

obligations. Given that public utilities often also exist at the sub-central level, detailed and exhaustive sector-specific scheduling is not practical.

This reservation does not apply to telecommunications and to computer and related services."

privatisation. For instance, rules around market access can limit the ability of countries that make commitments on education services to restrict the entry and regulate the operations of private and for-profit schools and institutions. TISA is aimed at ensuring “competitive neutrality” or a level-playing field between public and private providers, meaning governments could not treat public schools more favourably.

Trade agreements can also adversely affect the ability of authorities to ensure the quality of education provided. TISA, like GATS, is intended to promote free trade in services by guaranteeing open markets for all. However, by granting unfettered market access to all foreign education enterprises, governments could very well usher in a flood of providers of questionable quality.

Are there are other risks?

Commitments made in TISA around other service sectors could also have an effect on provision of education. Education systems in many parts of the world have suffered because of the global financial crisis and subsequent recession. TISA aims to liberalise the financial services sector in ways that will weaken regulations designed to prevent another crisis.

What is Education International doing about TISA?

EI is actively monitoring the TISA negotiations and demands that education and other public services are carved-out from the scope of the agreement.

What can national affiliates do?

If your country is involved in TISA talks, it is crucial to talk to the relevant government officials, MP as well as politicians at regional and municipality level and explain why education and other public services should be excluded from the scope of the agreement. Given that the Parties will exchange new services offers in the forthcoming months, it is important to contact your government officials and make public statements on the potential dangers of including education and other public services in TISA. For affiliates in countries that are members of the WTO but that are not engaged in TISA, EI recommends to meet with officials to get guarantees that they will not join the negotiations.