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Implications of the Trade in Services Agreement (TiSA) for developing countries

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Implications of the Trade in Services Agreement (TiSA) for Developing Countries

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Contents

Abbreviations

Executive summary	1
1 Introduction	5
2 A snapshot of the TiSA participants	6
2.1 Economic weight of TiSA participants	8
2.2 TiSA participants' share of world services trade	9
2.3 Indirect services exports by TiSA participants vs. non-TiSA countries	10
3 TiSA within the WTO: Modular architecture, critical mass and timeline for conclusion	11
3.1 Modular structure	11
3.2 "Critical mass" of trade coverage	14
3.3 The role of timing	14
4 Reviewing the proposed content of TiSA: Issues discussed in the working groups	15
5 Areas of sensitivity in the TiSA negotiations	18
5.1 Reconciling divergent views on domestic regulation	19
5.2 Defining the regulatory boundaries for public services	19
5.3 Telecommunications and data flows	20
5.4 Institutional issues and the nature of the MFN provision	21
6 Examining the margin of preference that TiSA may provide	22
7 Changing dynamism of services markets and services trade patterns and how this may affect TiSA participants	24
8 Opportunities, distortions and/or neutral effects of TiSA for third countries	27
8.1 Regulatory heterogeneity and potential adjustment costs for countries outside TiSA	30
8.2 Potential spillover effects from existing trade agreements involving TiSA participants	32
9 Suggestions for making TiSA more development-friendly	35
9.1 Facilitating the trade of small and medium-sized enterprises in services	35
9.2 Incorporating a development and innovation focus	36
9.3 Offering capacity-building in services, especially for regulatory reform	36
10 Conclusion	37
References	40

Annexes

Annex 1: FTAs covering services among TiSA participants	44
Annex 2: FTAs covering services between TiSA participants and non-participants	45
Annex 3: Regulatory heterogeneity based on the TiSA European Union benchmark for OECD and BRICS countries	46
Annex 4: Summary of TiSA negotiating rounds	48

Figures

Figure 1: The geographical dispersion of TiSA participants	8
Figure 2: The economic weight of TiSA participants in the world	9
Figure 3: Share of TiSA services trade constituted by OECD and non-OECD participants	10
Figure 4: Domestic services value-added embodied in exports by sector: Comparing TiSA participants with the rest of the world	11
Figure 5: How TiSA would fit into the WTO GATS structure	13
Figure 6: Timeline of the TiSA negotiations	15
Figure 7: Comparing bound and applied services trade restrictiveness across countries	23
Figure 8: Evolution of regional services value-added in GDP (2000–2014)	26
Figure 9: TiSA weight in services trade (share of total services imports into each region)	26
Figure 10: Share of total services imports from TiSA: Participant countries (2010)	28
Figure 11: Share of total services exports to TiSA: Non-participant countries (2010)	29
Figure 12: TiSA participants and their preferential trade partners (2015)	34

Tables

Table 1: Services and services-related issues being negotiated in TiSA and in the TPP and CETA	17
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Boxes

Box 1: Modes of supply in services trade	12
Box 2: Methodology for calculating Regulatory Heterogeneity Index	31

Abbreviations

ASEAN	Association of Southeast Asian Nations
BRICS	Brazil, Russia, India, China, South Africa
CAFTA-DR	Central America-Dominican Republic Free Trade Agreement
CARIFORUM	Caribbean Forum
CETA	Comprehensive Economic and Trade Agreement
DDA	Doha Development Agenda
EEA	European Economic Area
EFTA	European Free Trade Association
EGA	Environmental Goods Agreement
EU	European Union
FTA	Free Trade Agreement
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GSC	Global Services Coalition
GVC	Global Value Chain
ICIO	Inter-Country Input-Output (OECD)
ICT	Information and Communication Technology
ITA	Information Technology Agreement
MFN	Most Favoured Nation
OECD	Organisation for Economic Co-operation and Development
PTA	Preferential Trade Agreement
RCEP	Regional Comprehensive Economic Partnership
SME	Small and Medium Enterprise
STRI	Services Trade Restrictiveness Index
TiSA	Trade in Services Agreement
TiVA	Trade in Value-Added
TPP	Trans-Pacific Partnership
TTIP	Transatlantic Trade and Investment Partnership
WTO	World Trade Organization

Executive summary

The 50 countries currently negotiating the Trade in Services Agreement (TiSA) share a high level of ambition regarding services trade liberalisation. Their objective is not only to reach a level of liberalisation higher than that currently enshrined in the World Trade Organization (WTO), but to go beyond it in new areas and generate greater flows of services trade. Geographically disperse and at different levels of development, TiSA participants carry an important weight globally over a number of dimensions, from gross domestic product (GDP) and population to services value-added and trade. Yet, one of the biggest fears regarding TiSA is that it will negatively impact on third countries excluded or unwilling to participate in the negotiations, particularly developing countries. Already at the margins of many of the global value chain (GVC) operations, developing countries risk being disadvantaged in several ways by TiSA, even if resulting formal discrimination is minimal.

The outcomes of the negotiations in no less than 17 working group themes and a number of overarching issues will determine largely how development-friendly the agreement will prove to be. Disagreements among participants have arisen in a number of areas that are, in fact, of high relevance to developing countries, such as: the depth of disciplines on domestic regulation and the “necessity test”; the right to safeguard public services, including through public monopolies; the scope of the definition of telecommunications services; as well as the amount of space to allow for personal data protection. In addition, divergent views have been expressed in areas that relate directly to the accession of third countries such as a forward-looking most favoured nation (MFN) provision (i.e. whether benefits from services liberalisation in future trade agreements negotiated by TiSA members with third countries would be extended to the other TiSA members or not); whether TiSA should be multilateralised, and how it will fit the existing WTO structure. The modular approach to negotiating the agreement will allow it to fulfil a double role, namely to facilitate the eventual “multilateralisation” of the agreement, possibly through incorporation into the WTO framework (a publicly stated goal of several TiSA participants), as well as the conclusion of an ambitious set of provisions in terms of market access and rules.

The ambitious goal to multilateralise the future TiSA agreement may depend on two factors: firstly, whether a “critical mass” of coverage of world services trade is reached by adhering countries and, secondly, the timing of the conclusion of the agreement in relation to other negotiating processes. The abstention of major emerging markets will have implications in terms of the definition of “critical mass” for the TiSA agreement and will be expected to complicate the desire of TiSA members to “multilateralise” the result, as it will accentuate the perceived “free rider” issue. Including China among the TiSA participants could very possibly be a game-changer to this scenario, but to date there has not been consensus to take this step towards greater inclusion.

The fact that participants have agreed from the outset that TiSA should go beyond the margins of preference already established by existing preferential trade agreements (PTAs) by locking in the current levels of unilateral liberalisation allows for the expectation of a level of liberalisation that will be substantial and unprecedented. Estimated margins of preference that this commitment represents lend ample support to this hypothesis, pointing to, among other things, significant impacts on third countries through greater services market access. Yet, the most substantial impacts of the TiSA agreement on developing countries will be likely in other areas, namely: the raising of services regulatory standards

that will need to be met by all services exporters to the TiSA region; the stimulus that the TiSA agreement will constitute to attract foreign investment, which will influence the direction and dynamism of GVC operations to countries signing up to TiSA; and the dominance that the TiSA agreement will impose on services governance.

The structure of world trade in services will not be the same after the conclusion of the agreement. TiSA participants that trade significantly with non-participants, such as Hong Kong, Panama, Pakistan, Israel, Costa Rica, Peru and Colombia, will likely experience a substantial structural change in the source – and possibly the composition – of the services they import as a result of the diversion from previous partners to parties of the agreement. Meanwhile, large emerging service providers, such as China, India, Brazil, Argentina, Russia and South Africa, will likely experience substantial losses in services they export to the TiSA area from remaining outside the agreement.

Being *de facto* bound to the TiSA standard would be the situation for many non-members if they wish to continue to trade services with the TiSA area. Existing commitments in trade agreements with services components could possibly motivate specific action on behalf of some emerging economies to align regulations with key partners. This is notably the case for Singapore, Malaysia, Thailand and Vietnam, but also China. Other major emerging economies such as Brazil, Russia and South Africa have traditionally been reluctant to engage in this process, as illustrated by the fact that they have not negotiated previous trade agreements with many, or any, TiSA participant.

Yet, besides willingness, accession may represent a notable challenge for many emerging economies. As shown by the development of a Regulatory Heterogeneity Index, the more pronounced the regulatory heterogeneity is between third countries and TiSA members, the harder it will be for outside countries to join the agreement in the future. Dissimilarities in regulations with respect to major service providers in both Europe and North America suggest that many emerging economies would need to undertake considerable reforms in order to assume obligations of TiSA. Naturally, the stronger the regulatory heterogeneity is between third countries and TiSA members, the harder it will be for outside countries to join the agreement in the future.

Failure to extend coverage of TiSA would be expected to deepen a certain segregation of services markets, which is already discernible: emerging economies have consistently shown less dependence on imports from the TiSA area, illustrating stronger ties with business services hubs outside the countries participating in the agreement. Moreover, Brazil, Russia, India, China and South Africa (BRICS) have been gaining in market share in global services value-added as well as in global services trade, and the TiSA area matters less in terms of income for the BRICS than it does for TiSA participants. However, TiSA partners matter a lot for final consumers in the BRICS, as services imports from TiSA make up a large percentage of their consumption basket.

A number of recommendations stand out to avoid the potential scenario of greater segregation of services markets:

- i) Making TiSA more “development-friendly” by including additional chapters with a development focus that currently are not on the table in the negotiating proposals. This might well have the effect of attracting more developing countries to join prior to its

conclusion and/or to accede in the future; these could include, for example, chapters on small and medium enterprises (SMEs) and capacity-building;

- ii) Linking some aspects of TiSA's implementation to the WTO-led Aid for Trade Initiative for developing-country members. This would be a logical link for those TiSA participants who are advocating its incorporation into the WTO and would also provide an incentive for joining the agreement. It would also allow countries that may be impeded by a lack of capacity to carry out the regulatory reforms necessary for opening up their services markets to engage in the TiSA negotiations and help to facilitate implementation of TiSA commitments;
- iii) Including China in the TiSA negotiations prior to their finalisation would have a significant signalling effect on other emerging economies, particularly India, which might serve to dampen the scepticism of many third countries towards TiSA;
- iv) Generating discussion on the relationship between the TiSA agreement and the services components of the mega-regional agreements that have been concluded or are under negotiation will help to alert developing countries as to the significant implications for services trade governance that these new frameworks, which encompass a significant portion of the world's services traders, will have on their economies and on world trade.

1 Introduction

The idea for a plurilateral agreement focussing exclusively on services trade arose as a result of the frustration with the slow pace of the Doha Development Agenda (DDA), especially on the part of members of the Organisation for Economic Cooperation and Development (OECD). This was propelled by the private sector and disgruntled services exporters who had not seen any movement on services liberalisation at the multilateral level for nearly two decades. With the aim of overcoming the stalemate in the DDA, WTO ministers made a commitment at the 8th WTO Ministerial Conference in December 2011 to allow greater flexibility so that negotiations could be undertaken in certain areas covered by the Doha Round with the aim of reaching “provisional or definitive agreements based on consensus earlier than the full conclusion of the single undertaking” (European Commission, 2013).

In this spirit, Australia proposed to move forward to liberalise services trade among like-minded countries, and informal talks for an “International Services Agreement” started in 2012. Following the preparatory talks, formal negotiations began in April 2013 by 22 WTO members calling themselves the “Really Good Friends of Services”. Though geographically dispersed and at different levels of development, the TiSA participants share similar objectives for services liberalisation and aim to reach a higher level of services disciplines than that currently enshrined in the WTO General Agreement on Trade in Services (GATS). Compatibility of form with GATS was envisioned from the beginning so as to facilitate the eventual “multilateralisation” of TiSA. All participants also have the shared understanding that services commitments undertaken in this plurilateral agreement will be based at the minimum on actual regulatory practice so as to ensure an outcome that is substantively and legally significant.

A future TiSA agreement, by virtue of encompassing countries representing 70 per cent of world services trade, will surely have significant impacts on services trade of non-participants, particularly developing countries currently not a part of the most dynamic regional GVC operations. Moreover, given the relevance of services inputs in agriculture and manufacturing goods, the TiSA agreement may have implications for market access not only in services but also in agriculture and manufacturing as a result of a change in overall competitiveness deriving from services.

Conclusion of TiSA will be a game-changer for international services governance. The agreement has the potential to update a two-decades-old WTO GATS agreement. How the TiSA agreement will be applied in the future will be of the utmost importance for all economies, particularly WTO developing members that are outside the current negotiations.

This discussion paper examines numerous questions relevant to TiSA and its potential impact on countries outside the agreement. Specifically, we provide a synthesis of existing information on the architecture, the content and controversies around the agreement with an emphasis on points that are relevant to developing countries. An analysis of potential impacts on third countries complements the picture: we identify opportunities and adjustment costs arising from the agreement, and distil a number of recommendations to make the agreement more development-friendly.

The rest of the paper is structured as follows. Sections 2, 3 and 4 provide an overview of existing information on the coverage, architecture and scope of the agreement. Sections 5 and 6 discuss the content of the agreement; in particular, areas of sensitivity that are relevant to developing countries. The impact of the agreement on third countries is discussed in Sections 7 and 8, where we identify countries that will be affected the most and discuss opportunities and adjustment costs that the agreement represents. Section 9 concludes with a discussion on how to make TiSA more development-friendly.

2 A snapshot of the TiSA participants

Currently, 50 countries (or 23 participants, counting the 28 members of the European Union (EU) as one) are taking part in the TiSA negotiations. These are: Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, the EU, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, the Republic of Korea, Switzerland, Turkey and the United States. TiSA participants are a mixture of developed and developing economies; 12 of the 23 participants are self-designated as developing economies.

It is notable that most of the developing countries in TiSA have previously negotiated free trade agreement (FTAs) with either the United States or the EU. The geographical representation of developing-country participants in TiSA is primarily limited to the Pacific Coast of Latin America and to East Asia. In fact, most of the developing TiSA participants are also OECD members, including Chile, Korea, Mexico and Turkey, which have already adopted key OECD codes and guidelines for investment and conduct of multinational corporations, among others.

Closer association with the OECD does not seem to have affected the willingness of other major emerging-market countries, which were designated as “key partners” for the OECD in 2007, to participate in the TiSA negotiations. This is the case notably of Brazil, India, Indonesia and South Africa, which have been participating in the work of the substantive bodies of the OECD for several years.¹ In fact, none of the large emerging markets has expressed interest in joining the TiSA discussions. On the contrary, many emerging markets have expressed strong negative reactions to this initiative.² The notable exception to this is China, which formally applied to join the TiSA negotiations in September 2013 (Drake-Brockman, 2013). China’s application is still pending due to opposition from the United States and Japan, which fear that the level of ambition China will bring to the table will not be up to standard. The case of China is particularly instructive, as China has been

1 The OECD has strengthened its cooperation with designated key partner countries (Brazil, India, Indonesia, China and South Africa) through “Enhanced Engagement” programmes, in which case these countries are involved in the OECD’s work in a sustained manner. The OECD opened formal accession talks with Colombia and Latvia in May 2013 and invited Costa Rica and Lithuania to open accession talks in April 2015. The previously opened accession process for the Russian Federation was postponed in March 2014. See <http://www.oecd.org/about/membersandpartners/>

2 “These three clauses [referring to the standstill, ratchet and MFN-forward] for a developing country like India are difficult to commit because our policies are still evolving. We cannot bind ourselves in a situation where the domestic policy space is completely taken off”, said a government official on anonymity in regards to TiSA (Mishra, 2015).

one of the few developing countries to participate in the Environmental Goods Agreement (EGA) negotiations. The different treatment of China in the two plurilateral initiatives has raised tensions. After more than two years without being admitted to the TiSA negotiations, China indicated in April 2016 that it is making a linkage between the quality of its offer for tariff reductions on environmental goods in the EGA negotiations and its acceptance into TiSA.³

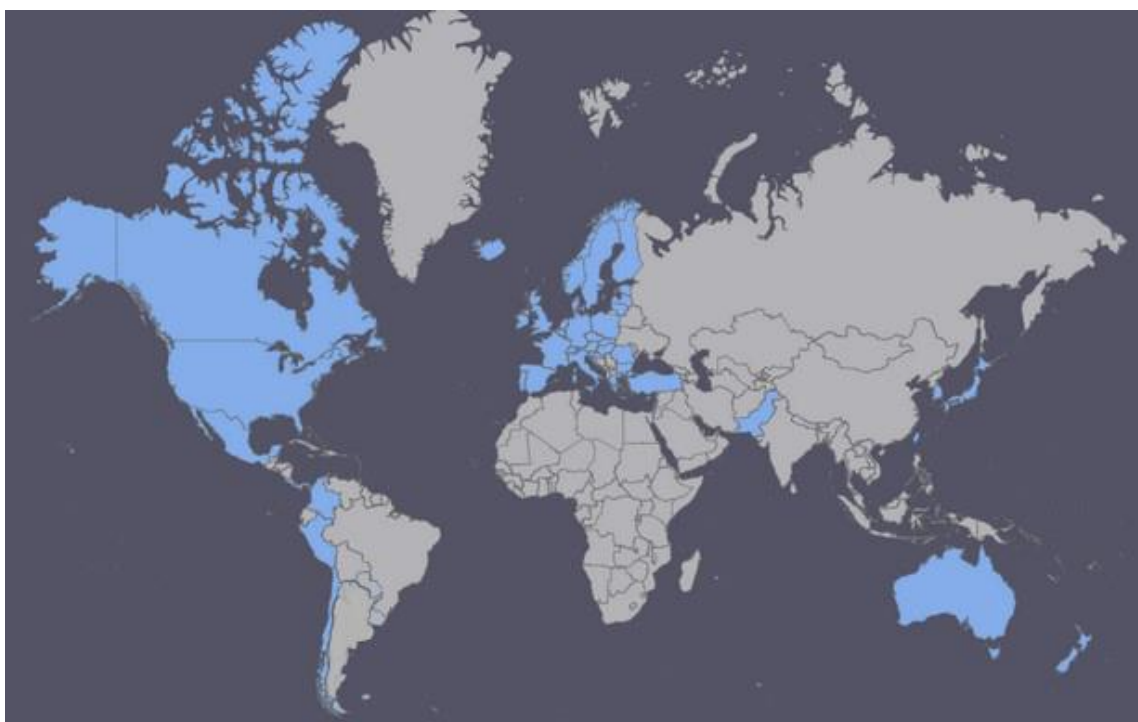
TiSA participants are widely dispersed geographically, as shown in Figure 1, though most of the developing-country participants are from Latin America. The most recent developing country to be accepted into the TiSA talks in July 2015 is Mauritius, which is notably the first and only African country to participate in these negotiations.⁴ So far, this bold step by Mauritius does not seem to have influenced any other African country to do likewise. No developing country from Southeast Asia is in the TiSA talks, despite the fact that Brunei, Malaysia, Singapore and Vietnam are all parties to the recently concluded Trans-Pacific Partnership Agreement (TPP), which can arguably be said to contain among the strongest disciplines on services to date in a major trade agreement.⁵ Also missing are developing countries from Central Europe and the Middle East, as well as many developing countries in Latin America, and developing island states in the Caribbean and Pacific regions. In fact, two Latin American countries – Uruguay and Paraguay – withdrew from the TiSA negotiations in September 2015, citing political reasons.⁶

3 See the information on this stance by China in Kanth (2016) and in the *Washington Trade Daily* from April 25 and June 3 of 2016 (<http://www.washingtontradedaily.com/>). Participants in the EGA negotiations wish to conclude these prior to the G20 Leaders meeting in Hangzhou, China, on September 4 and 5, 2016, but will not be able to do so without the cooperation of China. Thus, the blockage of China in TiSA seems to be having unexpected repercussions.

4 Mauritius joined the TiSA negotiations in March 2015. See International Centre for Trade and Sustainable Development (ICTSD, 2015).

5 On 4 October 2015, Ministers of the 12 TPP countries – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Vietnam – concluded negotiations of this high-standard and comprehensive agreement (New Zealand Foreign Affairs & Trade, n.d.). The stated goal of the agreement is to “promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in our countries; and promote transparency, good governance, and enhanced labor and environmental protections”. The text of the agreement was finalised after seven years of negotiations. The agreement was formally signed in February 2016 and is expected to be ratified by each participating country thereafter.

6 See ICTSD (2015). Uruguay participated in TiSA for a short time only between February and September 2015. The withdrawals of both Paraguay and Uruguay from the negotiations were said to have been for political motives.

Figure 1: The geographical dispersion of TiSA participants

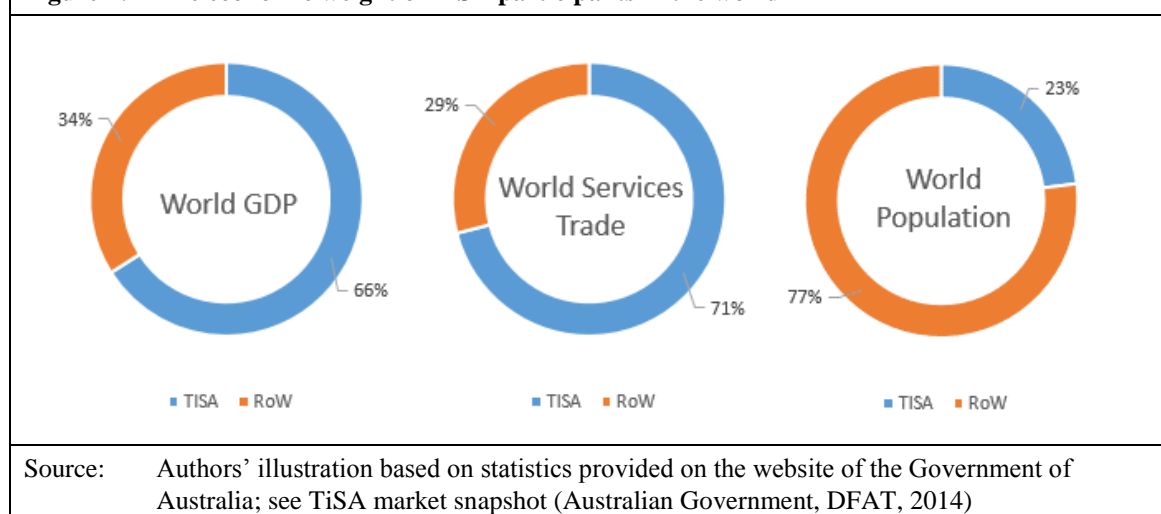
Note: TiSA participants as of January 2016.

2.1 Economic weight of TiSA participants

The 50 TiSA participants carry an important weight globally in terms of GDP and services trade, and to a lesser extent population, as illustrated by Figure 2. The combined GDP of TiSA participants is around US\$ 51.1 trillion, which represents 66 per cent of global GDP, while their GDP per capita is estimated at US\$ 32,564.⁷ TiSA participants represent not quite three-fourths of world services trade (around 71 per cent at present). Their combined population is around 23 per cent of the world total, with 1.6 billion inhabitants.

⁷ Data taken from the TiSA market snapshot (Australian Government, Department of Foreign Affairs and Trade [Australian Government, DFAT], 2014).

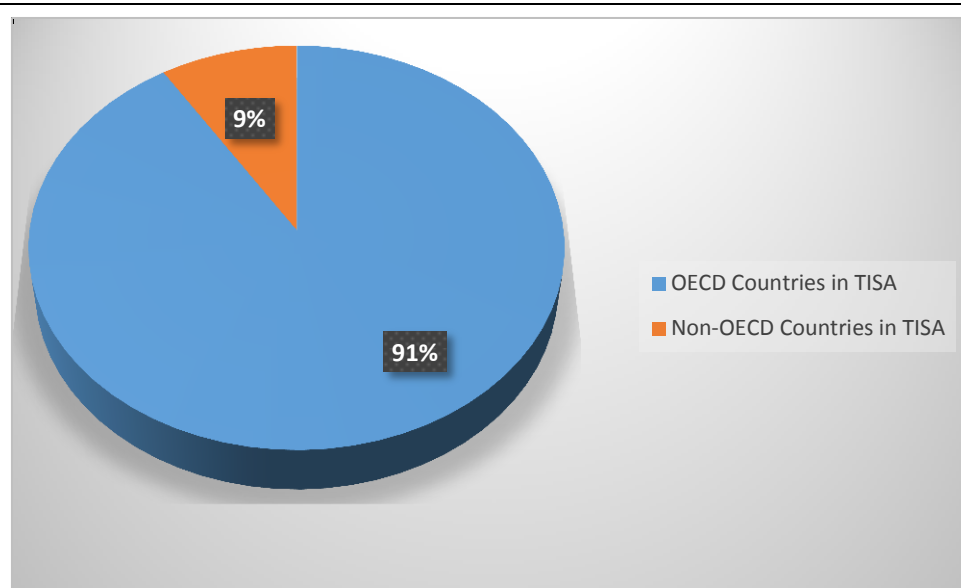
Figure 2: The economic weight of TiSA participants in the world



2.2 TiSA participants' share of world services trade

Of the more than 70 per cent of world services trade that TiSA participants constitute, OECD countries taking part in the negotiations account for the lion's share, or 91 per cent, as shown in Figure 3. The participants with the highest shares in world services trade are the EU (36 per cent) and the United States (27 per cent), followed by Japan (6.6 per cent), Hong Kong (5.6 per cent), Switzerland (4.4 per cent) and the Republic of Korea (4.3 per cent) (Sauvé, 2013, p. 10). This is partly a reflection of why members of the private-sector services coalitions in OECD member countries have been the most dissatisfied with the lack of progress in the multilateral agenda on services. The services firms and national services associations of many of the major services-exporting countries have grouped together into a Global Services Coalition (GSC), which has been advocating for a TiSA agreement for several years. The GSC continues to advocate its support for the TiSA negotiating objectives and the rapid conclusion of the agreement.⁸

⁸ The GSC includes national member service coalitions from the following countries: Australia, Canada, Colombia, the European Union, Hong Kong, China, Indonesia, Japan, New Zealand, Taiwan and the United States. The GSC puts out regular press releases in support of the TiSA negotiations, including letters to TiSA Trade Ministers in May 2015 and May 2016 (Global Services Coalition, 2015).

Figure 3: Share of TiSA services trade constituted by OECD and non-OECD participants

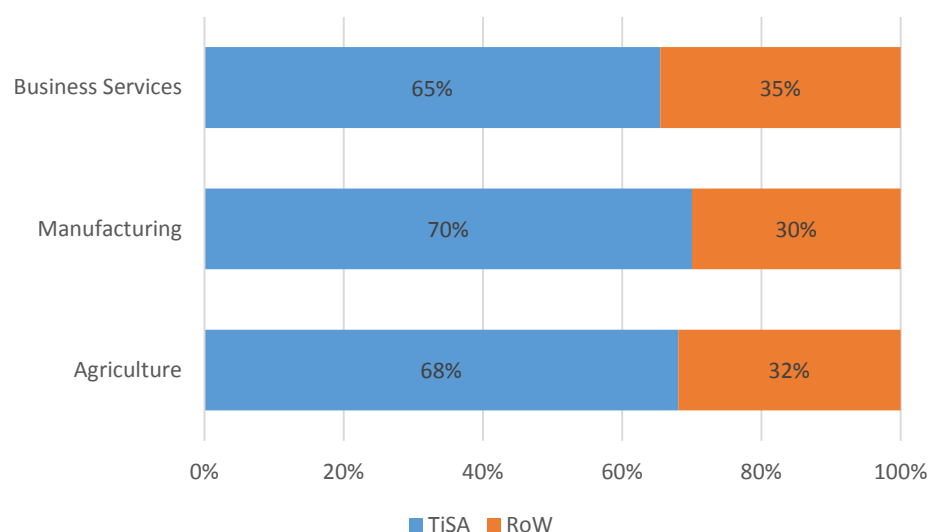
Source: Authors' illustration based on the figures in Table 1 in Sauv  (2013, p. 10)

2.3 Indirect services exports by TiSA participants vs. non-TiSA countries

TiSA participants account for the largest share of services value-added in all sectors of world exports, illustrating the importance of the agreement for the overall competitiveness of participants. Figure 4 provides an indication of the weight of TiSA participants as global indirect services exporters, using data on the domestic services value-added incorporated in exports in agriculture, manufacturing and business services in 2011. Remarkably, TiSA participants are shown to account for 68 per cent and 70 per cent of services value-added exported through agriculture and manufacturing, respectively. TiSA's share of domestic services value-added exported through business services at 65 per cent is also high, but somewhat lower than that for the other two sectors. These figures underline the significant input value that services provide to agriculture and manufacturing value chains (both in regional and international chains), and underscore the large extent to which services firms from TiSA participants are substantially involved.⁹

⁹ Calculations present total domestic services value-added embodied in the three broad export sectors. Additionally, the WTO-OECD Trade in Value-Added (TiVA) database (World Trade Organization & Organisation for Economic Co-operation and Development [WTO & OECD], n.d.) does not include all countries in the world (although it does provide a residual category for the rest of the world). Five of the TiSA participants are not covered in the TiVA database, so they are not part of these calculations (Liechtenstein, Mauritius, Pakistan, Panama and Peru). Lastly, the calculations behind the figure do not account for the differences in export structure (diversification of the export basket) of the countries, which will affect the services being exported indirectly through each of the exporting industries.

Figure 4: Domestic services value-added embodied in exports by sector: Comparing TiSA participants with the rest of the world



Source: Authors' calculations and illustration based on the WTO and OECD TiVA database (2011 figures) (WTO & OECD, n.d.)

3 TiSA within the WTO: Modular architecture, critical mass and timeline for conclusion

TiSA participants would like the architecture of the agreement to fulfil a double role, namely to facilitate the conclusion of an ambitious agreement in terms of market access and rules, as well as to eventually “multilateralise” the agreement, possibly through incorporation into the WTO framework. For this dual purpose, the EU Commission issued a concept paper containing a proposed structure for the agreement based on a modular approach. This structure is viewed as posing minimal constraints for the future evolution of the agreement’s content and membership within the WTO. However, the prospect of multilateralisation will depend critically on two additional factors: firstly, coverage, that is, whether a “critical mass” of coverage of world services trade is reached by adhering countries; secondly, the timing of the conclusion of TiSA, namely whether the novelties of the agreement will lag behind services-related outcomes of other mega-regional agreements that will also affect the global trade framework.

3.1 Modular structure

The TiSA agreement would be composed of several modules (European Commission, 2012). The first would consist of a central pillar, with its main provisions being taken from GATS. These would include the following: (i) general provisions, such as scope (GATS Article I), definitions (GATS Article XXVIII) and transparency (GATS Article III); (ii) specific commitments such as market access (GATS Article XVI), national treatment (GATS Article XVII) and additional commitments (GATS Article XVIII); and (iii) final provisions such as general exceptions (GATS Article XIV), security exemptions (GATS

Article XIV), payment and transfers (GATS Article XI) and balance of payments (GATS Article XII). Institutional provisions on accession, multilateralisation and dispute settlement are also likely to be included in the first module, since they are expected to be temporary and to be replaced by the WTO institutions and dispute-settlement mechanism upon multilateralisation of the agreement.

The second module would consist of various chapters dealing with services sectors and specific rules. Regulatory disciplines would be an integral part of these chapters, which at present number 17 in total, although it is not clear that all of these chapters will be finalised. These 17 topics include specific services sectors as well as some individual disciplines and modes of supply (see illustration of modes of services supply in Box 1).

Box 1: Modes of supply in services trade

Cross-border supply (mode 1) takes place when a service is supplied into the territory of another country without anybody moving. This is similar to trade in goods where the product is delivered across borders and both the consumer and the supplier remain in their respective territories. Financial services or brokerage services across the border are typical examples of services traded predominantly through that mode.

Consumption abroad (mode 2) occurs when the consumer moves to the territory of the supplier for the transaction to occur. Tourist services or persons travelling abroad to receive medical treatment are typical examples of that mode.

Commercial presence (mode 3) takes place through an established presence of the supplier to the territory of the consumer. This mode corresponds essentially to the establishment of facilities or permanent presence through foreign direct investment. The value of trade corresponds to the value of sales by foreign affiliates. Typical examples of such presence are telecommunications and private banking.

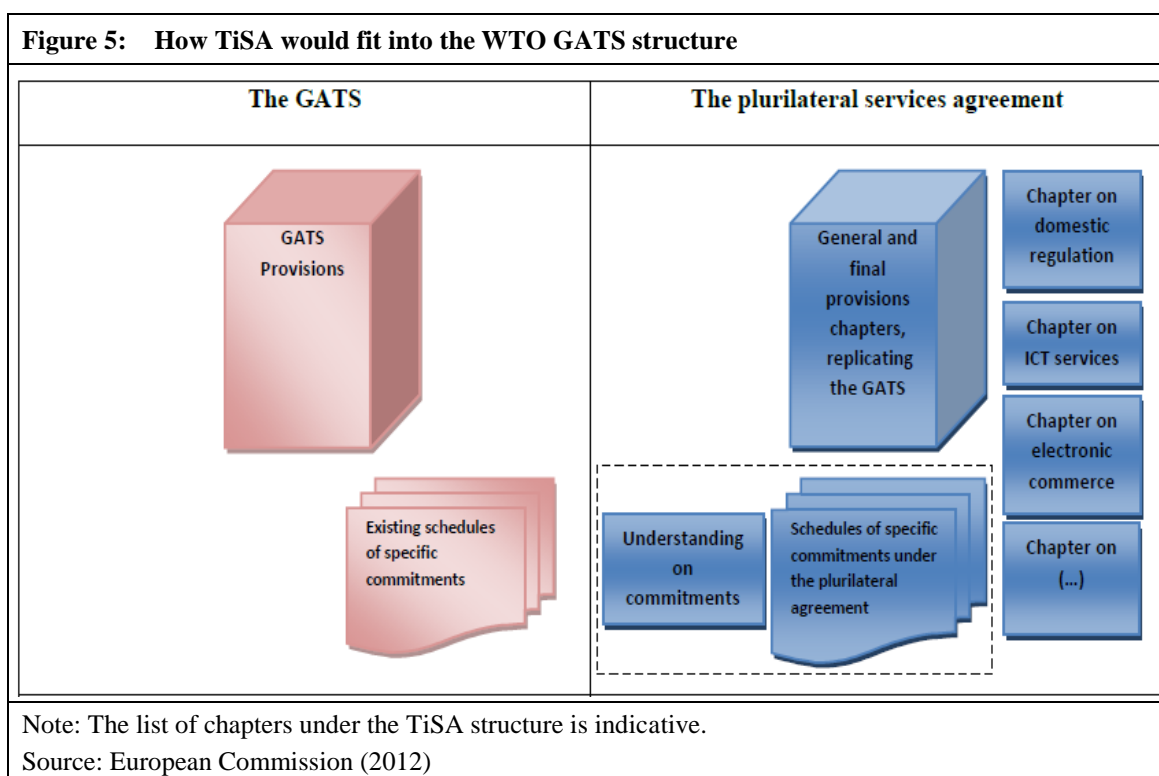
Presence of natural persons (mode 4) occurs when an individual (and not a firm, as in mode 3) is temporarily present in the territory of an economy other than his own to provide a commercial service. Mode 4 is generally understood as covering contractual services of suppliers (such as self-employed, intra-corporate transferees, and foreign employees directly recruited by foreign established companies).

The third module would consist of the disciplines to be applied to services commitments. It has been agreed that a GATS-plus provision on horizontal national treatment will be in TiSA, requiring the same treatment for foreign service providers as for nationals for all traded services and service providers, unless otherwise specified. Clauses on standstill and ratchet disciplines would also most likely be included in TiSA. Under the “standstill” clause, services commitments will be locked in at the level of the “status quo” or actual policy application, whereas under the “ratchet mechanism”, any further unilateral liberalisation or removal of discriminatory measures after the implementation of the agreement will be applied at this newly liberalised level and will become a bound commitment at this more open level (European Commission, 2013). The horizontal national treatment, standstill and ratchet mechanism disciplines will all be subject to country-specific exceptions set out in schedules of commitments. This third module will also likely include a transparency discipline. These additional disciplines applying to services commitments, if included, should serve to make TiSA a very significant agreement for services trade. However, they may also have the effect of making many developing countries more hesitant to join the agreement and undertake unilateral services liberalisation that would be bound in the future, as this might be viewed as eliminating “policy space” for government action. Nonetheless, the possibility of inscribing services

sectors by choice under the positive list approach may be expected to provide for sufficient space for public policy objectives. It is only the policy space with respect to discrimination under the national treatment disciplines that would be limited (depending upon the content of the schedule of commitments of each participant).

The fourth module would include the actual lists of commitments. These would be presented in a GATS-compatible format, but enhanced by the disciplines discussed above. The actual TiSA commitments will be scheduled under a hybrid approach rather than a purely positive list approach. In practice, this will mean that a positive list approach will apply to market access (or the voluntary choice of inclusion of services sectors within the list of commitments), whereas a horizontal or negative list approach will apply to national treatment (so that all measures negatively affecting foreign services and services suppliers will need to be made explicit in the respective lists of commitments for all sectors, including those that may not be included for market access).

Figure 5 reproduces the modular approach to the TiSA structure (European Commission, 2012). The diagram shows the two modules of the current WTO GATS in the left panel (its provisions and schedules of specific commitments), and then illustrates in the right panel how TiSA would build upon these to enhance existing GATS provisions, as well as to improve and deepen the current schedules of specific commitments, based on the proposed enhanced scheduling disciplines discussed above. Additionally, TiSA would include several sector-specific and/or horizontal thematic chapters that would consist of significant regulatory disciplines. This last module would provide new elements to the WTO GATS, although a precedent for this already exists in the form of annexes to the original GATS that deal with regulatory issues in the area of financial services and telecommunications, subsequently complemented by GATS Protocols IV and V.



3.2 “Critical mass” of trade coverage

As an important step towards being able to “multilateralise” TiSA, or apply the agreement on an MFN basis, it would most likely be necessary to reach a “critical mass” of coverage of world services trade by adhering countries. To achieve this, it will be essential to expand the number of TiSA participants either during the negotiations or following their conclusion.

Although the notion of what constitutes a critical mass is not set in stone and has been given various definitions in the WTO context, it is likely that a critical mass for TiSA would not be seen as being below 80 or 85 per cent of world services trade, significantly above the current 70 per cent represented by TiSA participants. Sauvé provides examples of the 1996 Information Technology Agreement (ITA) and the 1997 Uruguay Round Protocols of Telecommunications and Financial Services as illustrative of what an agreed critical mass percentage has been in the past (Sauvé, 2013, pp. 8–9). However, according to Nakatomi, critical mass was not discussed as a numerical benchmark in the cases of the agreements on Financial Services and Basic Telecommunications (Nakatomi, 2015). On this point, these agreements differ from the ITA, for which the 90 per cent mark of world trade by participating countries was a condition for critical mass. If TiSA is constituted as an FTA, then the concept of critical mass will be irrelevant, but if it is not envisaged to remain an FTA, then sufficient trade coverage in services by participating nations will be an important element in the construction and application of the agreement.

Currently, TiSA is being negotiated as a preferential agreement under GATS Article V (Economic Integration Agreement), and at this point there is not a unanimous view on the desirability of moving from a preferential to an MFN-applied services agreement with TiSA market access extended to all WTO members, or on how this might be done in practice. The question is slated for discussion in 2016, though this has been a stated objective of the EU and other participants since the outset of the negotiations. It will certainly be a strongly debated issue.

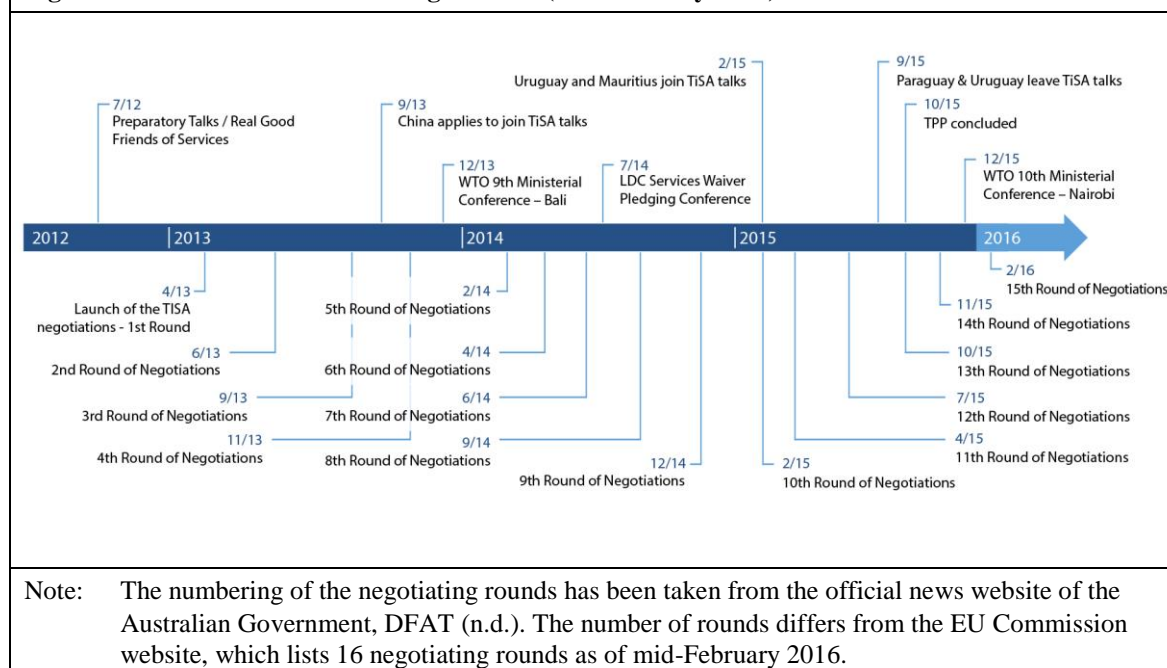
3.3 The role of timing

The TiSA negotiations have been carried out at an accelerated pace since their launch in April 2013. The timeline in Figure 6 illustrates the 15 negotiating rounds that have taken place over just two and a half years (to early 2016). These talks are held in Geneva, under a rotating chairmanship of the United States, Australia and the EU. Over the last two years the pace of the TiSA negotiations was actually accelerated, with four rounds held in 2013, five rounds in 2014 and six rounds in 2015. A stock-taking exercise was conducted by participants in July 2015, and another one took place in January 2016 to ascertain progress and set an indicative final timeline. The end of 2016 has been mentioned as a possible target date for the conclusion.

The conclusion of the TPP in October 2015 has arguably been a stimulating factor in this acceleration, as well as the projected conclusion of the Transatlantic Trade and Investment Partnership (TTIP) and the Regional Comprehensive Economic Partnership (RCEP) agreements by the end of 2016. The competitive liberalisation phenomenon for trade agreements seems to have affected the TiSA negotiations as well, in which negotiators do not want to lag behind other main outcomes that will affect the global trade framework. It

is also possible that the contents of the two other mega-regional agreements being negotiated simultaneously with TiSA, namely TTIP and RCEP, may influence the TiSA outcomes and new disciplines on services, though this is difficult to determine at present. Both the TTIP and RCEP negotiations have progressed more slowly than TiSA and have run into considerable controversy along the way, although for different reasons. Regulatory sensitivities have proved difficult to reconcile during the TTIP talks, whereas, in the case of the RCEP, negotiators debated for a long time before electing to follow the positive list modality for inscribing services commitments rather than a negative or hybrid listing approach. Given the state of slower progress, the extent of ambition for services in both of these initiatives is less clear than in the case of TiSA.

Figure 6: Timeline of the TiSA negotiations (as of January 2016)



4 Reviewing the proposed content of TiSA: Issues discussed in the working groups

The proposed TiSA would be an ambitious agreement, covering a wide range of services issues, together with several sector-specific chapters. A summary table in Annex 4 outlines the progress made at each of the rounds of the TiSA negotiations up until the end of 2015.¹⁰ These discussions have had a triple focus: market access offers and negotiations; discussions on the core text of TiSA (both GATS and GATS-plus provisions); and negotiations on regulatory disciplines for specific sectors or issues in various working groups.

TiSA offers have not been made public, but press statements and views expressed by various delegations indicate that the range of services sectors included in the market access offers is ambitious for most of the participants. Nonetheless, there seems to be

¹⁰ Information on these negotiating rounds can be found on the official news websites of the Australian Government, DFAT (n.d.) and the European Commission (n.d.).

quite a variance. As of early 2016 the core text of TiSA was understood to be nearly finalised. This was also the case with the enhanced disciplines that will accompany the services commitments. In what follows, we discuss more thoroughly the issues dealt with in working groups and compare them with the scope of other mega-regional agreements that have been recently concluded.

No fewer than 17 working groups have been set up within the TiSA negotiations with a specific focus on a wide-ranging set of services issues and sectors, many of them of a 21st century nature. These include: International Maritime Transport Services; Air Transport Services; Financial Services; Electronic Commerce; Telecommunication Services; Environmental Services; Movement of Natural Persons; Professional Services; Competitive Delivery Services/ Logistics; Government Procurement; Domestic Regulation; State-owned Enterprises; Competition Policy/ Monopoly Suppliers; Mutual Recognition; Transparency; Small and Medium-sized Enterprises; and Health Services.

As of early 2016, progress was reported in the discussion of many horizontal and thematic chapters of TiSA, some more than others. Positive advancement was particularly noted for financial services, domestic regulation and transparency, with extensive discussions having been held on telecommunications (European Commission, 2015).¹¹ Other horizontal and thematic chapters are at different stages of advancement. It has been agreed that each proposed chapter text for TiSA will remain open until the participant that has proposed it withdraws the text from consideration. Table 1 compares the issues under negotiation in TiSA with those services and service-related issues that were included in the TPP, concluded in October 2015, and in the Comprehensive Economic and Trade Agreement (CETA), concluded in September 2014 between Canada and the EU (Canada-European Union, 2014).

¹¹ These summary reports are made available on a periodic basis by the European Commission on its website.

Table 1: Services and services-related issues being negotiated in TiSA and in the TPP and CETA			
Issues	TiSA	TPP	CETA
Cross-border Trade in Services	X	X	X
Investment	X	X	X
Financial Services	X	X	X
Telecommunications	X	X	X
E-commerce	X	X	X
Maritime Transport	X		X
Air Transport ¹	X	X	X
Competitive Delivery Services/ Logistics ²	X	X	
Energy Services	X		
Environment Services	X		
Professional Services	X	X	X
Mutual Recognition of Professional Qualifications ³	X	X	X
Movement of Natural Persons	X	X	X
Intellectual Property ⁴		X	X
Domestic Regulation	X		X
State-owned Enterprises	X	X	X
Government Procurement	X	X	X
Competition Policy/ Monopoly Suppliers	X	X	X
Transparency ⁵	X	X	X
SMEs	X	X	
Cooperation and Capacity-building		X	X
Competitiveness and Business Facilitation		X	
Development		X	X
Regulatory Coherence		X	X
Environment		X	X
Labour		X	X
Notes: ¹ The TPP, CETA and TiSA negotiating proposals do not cover traffic rights, but only auxiliary services. ² The TPP covers only express delivery services and not logistics (found in the annex to the chapter on Cross-border Trade in Services). ³ Found in the TPP under Annex 10-A on Professional Services to the chapter on Cross-border Trade in Services, and in CETA under the chapter on Mutual Recognition of Professional Qualifications. Proposed in TiSA under the chapter on Professional Services. ⁴ Intellectual property is not being discussed in TiSA. It is understood that the disciplines of the WTO TRIPS agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) will apply. ⁵ The TPP additionally has a chapter on Transparency and Anticorruption that is not found in CETA. Nor has it been proposed for the TiSA negotiations. Source: TiSA texts available at Wikileaks (n.d.) and TPP and CETA agreements			

There appears to be a considerable – but not perfect – overlap between the services issues covered by the two most recent and ambitious preferential agreements (TPP and CETA) and those being discussed in the TiSA negotiations. Overlapping issues are the following: cross-border trade in services, investment, financial services, telecommunications, e-commerce, air transport, professional services, mutual recognition of professional qualifications, together with the services-related issues of movement of natural persons, state-owned enterprises, government procurement, competition policy and transparency.

TiSA participants are also examining maritime transport (included in CETA) and SMEs and delivery services (included in the TPP). The scope of the latter issue has been expanded under TiSA to include not only competitive delivery services but also logistics services. The key area of regulatory coherence has not been included in the TiSA discussions (but is present in the CETA text and is being discussed in the ongoing TTIP negotiations). TiSA negotiating groups explicitly focus on energy services and environmental services – sectors that are not accorded individual attention in the TPP and CETA, although they are included within the scope of covered services.

The sectoral coverage of TiSA may turn out to be greater than that of the TPP and CETA. Potential inclusion of specific annexes on energy services, environmental services, competitive delivery services / logistics and maritime transport in TiSA (three of which are not covered in the TPP and three of which are likewise not covered specifically in CETA) – proposals for which are under serious discussion – would indicate that TiSA could become a more ambitious and far-reaching agreement for services if deeper disciplines for these specific sectors are finalised.

However, the mismatch between TiSA and the mega-regional TPP and CETA agreements in other areas is important to highlight. The issues that have been omitted in the TiSA discussions are, strikingly, those that have strong implications for economic development, namely: cooperation and capacity-building; competitiveness and business facilitation; development; and regulatory coherence. We will discuss this further later on in this paper, but we note here that this may be one of the reasons for the lack of interest by developing countries to date in the TiSA negotiations. Ironically, even the CETA agreement, which does not include any developing-country members, has chapters addressing cooperation and capacity-building, development and regulatory coherence.

5 Areas of sensitivity in the TiSA negotiations

Given the broad scope of the horizontal and thematic issues being negotiated under TiSA, it is normal that several of them may generate disagreement among participants and that some, in particular, may be the source of sensitivities that will need to be resolved during the negotiations. Some information on areas of conflict that have come up in the negotiating rounds can be gleaned from summaries of these discussions that Australia and the EU post periodically on their websites (European Commission, n.d.; Australian Government, DFAT, n.d.). All of these areas are, in fact, of high relevance to third countries: the extent of disciplines on domestic regulation; the right to safeguard public services; the scope of telecommunications services; as well as personal data protection. In addition, divergent views have been expressed on a number of overarching issues that relate directly to the accession of third countries, such as a forward-looking MFN provision,

whether TiSA should be multilateralised and how it will fit the existing WTO structure. In what follows, we discuss the issues that appear to have created the most concern for TiSA negotiators to date.

5.1 Reconciling divergent views on domestic regulation

Discussion on domestic regulation and how to reach convergence on the types of disciplines to be applied to the ability of governments to regulate has proven to be a thorny subject in the TiSA talks, as it has become an increasingly sensitive topic over the past years in general in the area of trade. Many vocal critiques of the perceived dangers of trade agreements in curtailing the right to regulate have imbued trade negotiators with caution. Thus, the level of ambition in TiSA on domestic regulation and the “necessity test”, or, in other words, the requirement that services regulatory measures must be “administered in a reasonable, objective and impartial manner” and “not more burdensome than necessary”, is very much under debate. These discussions reflect the ongoing negotiations that have been held within the GATS Working Party on Domestic Regulation for the past two decades, as well as some of the discussions on transparency carried out during the Doha Round. Whereas some WTO members have pushed for stronger disciplines to ensure that domestic regulatory measures relating to licensing, qualifications and technical standards do not constitute unnecessary barriers to trade in services (legal mandate contained in Article VI(4) of GATS), other WTO members have shown increasing levels of caution over bound regulatory disciplines and have preferred to focus on strengthening transparency disciplines instead. It bears noting that large developing countries such as Brazil, Kenya, the Philippines and Indonesia have also voiced strong opposition in the WTO to strengthening the “necessity test” rule in GATS.

Achieving only a “best endeavour” outcome in TiSA for the necessity test would be weaker than what is contained in most of the proposals on domestic regulation made during the Doha Round. A high level of caution on the part of some is highly likely a point of tension among the TiSA governments, many of which are also under continuing public scrutiny on this issue.

5.2 Defining the regulatory boundaries for public services

Another sensitive area in the TiSA talks is that of defining the boundaries for regulations so that governments retain the ability to make decisions over critical issues in services sectors such as energy and the environment, as well as the social-oriented services of health and education when these are provided as public services. The right to safeguard public services within these sectors (and the ability to keep and introduce public monopolies for these services) will be a concern for several TiSA participants. Moreover, the degree of government involvement in these services through state-owned enterprises or regulations restricting competition in Vietnam and China – but also in Russia and Brazil – when it comes to the energy and natural resources sector will make the negotiation outcomes particularly relevant for emerging countries.

Some disciplines envisaged in TiSA, such as that of “technological neutrality” for energy services – which would require the same incentives to be applied to all types of measures

affecting trade in energy, no matter what the source – would have implications for the environment as well as for achieving climate change targets. Such a discipline would make it harder for governments to offer subsidies for carrying out renewable energy programmes, as well as to design other policies focussed on combating climate change. The extent of this type of regulatory discipline, if included in TiSA, and how it would dovetail with the outcome of the Paris Agreement from the December 2015 United Nations Conference of the Parties (COP 21) is still under debate. The lines related to health and education services seem to be drawn with more caution, and thus are more clearly defined.

5.3 Telecommunications and data flows

Although telecommunications is the sector that has known the greatest extent of liberalisation under GATS, some aspects of telecoms are proving challenging to tackle under TiSA due to the enormous changes in the telecom sector over the past two decades. It is the scope of the definition itself of telecom services that seems to be posing the biggest challenge, which is whether or not the definition of telecoms can and/or should be expanded to cover all types of transmission, given the many different platforms over which telecoms are now transmitted. This raises the need to define what is understood by “public communications services”. The question of what types of operators may be regarded as telecommunications service suppliers is also being discussed. Accepting a very broad definition for transmission as well as for operators would impart a tremendously broad scope to this chapter, and this scope has been the subject of disagreement among the TiSA negotiators. However, it is safe to assume that the regulations for telecoms will be deepened and updated in TiSA – as compared with the WTO 1997 Reference Paper – to look more like the chapters on telecoms in the Korea-United States FTA or CETA.

There is disagreement and sensitivity among TiSA participants as to how far the provision on data flows should be enshrined in the agreement as a fundamental and inviolable principle, and how much space should be left to governments to allow for personal data protection. Agreement on the boundaries around localisation requirements for data transfer is still under debate, both within and outside the TiSA area. Although the issue has most recently come to prominence due to the controversy over the new Russian data localisation legislation, it remains a global issue of sensitivity for many developing countries (e.g. in the negotiations of the China-US Bilateral Investment Treaty).¹²

While there seems to be considerable support for avoiding unnecessary barriers to data flows, several TiSA governments are concerned about retaining the ability to safeguard the use of data for privacy reasons. This is also a key area of discussion that is ongoing between the United States and the EU, after the previous “Safe Harbor Agreement” was considered to be defunct by the EU Court of Justice due to lack of compliance by the United States. Presumably, a new understanding in this area between the two large trading entities will facilitate an agreement within TiSA. However, some developing-country

¹² See the discussion on localisation policies by China in a press release from the American Chamber of Commerce in Beijing (2015).

TiSA participants are keen to include performance requirements for all modes of services supply, including for local management and board of directors, local content and exceptions. This would enable governments to impose localisation requirements on data flows (mode 1) and to impose an obligation to locate data servers within national borders (mode 3), among others. This controversial proposal is still being debated.

5.4 Institutional issues and the nature of the MFN provision

TiSA participants are divided over the future status of the TiSA agreement and whether it should be multilateralised and how. Bringing TiSA within the WTO would have the advantage of making it a part of an improved and expanded GATS, thus applying its outcomes to all WTO members. However, the practicality of following such a path may be questioned. It might prove nearly impossible to obtain a formal waiver for the incorporation of TiSA under Article IV of the Marrakesh Agreement, since this would require unanimity of all WTO members. The possibility of incorporating all or part of the TiSA agreement into the “Additional Commitments” column of the GATS schedules – similar to what was done with the Telecommunications Reference Paper – is an avenue that could be imagined without the need for a legal decision by the WTO members. This would have to be carried out on an individual country/ trading-entity basis.

Another path for multilateralising TiSA might be a collective decision on the part of all the TiSA participants to apply the resulting agreement on an MFN basis to all WTO members once they felt that the threshold was reached to meet a given “critical mass” criterion. Currently, the 70 per cent of world services trade represented by the TiSA participants would seem to fall short of this mark, but, as previously stated, there is no uniformly agreed objective measure for this question. However, such a decision would require all of the TiSA participants to be in consensus. Applying TiSA on an MFN basis in the future opens the possibility of countries “free riding” on the outcome of the agreement, bringing about two related incentive problems. First, the “free rider” outcome may strengthen the reluctance of large emerging economies to join in the negotiations in the expectation of benefiting from the liberalisation of others without having to contribute. Second, it may be viewed as reducing the benefits of the agreement itself for the TiSA participants who have negotiated and bound liberalising commitments.

The outcome of this discussion may also influence how the TiSA participants deal with the question of country-to-country dispute-settlement provisions. If and when TiSA is incorporated within the WTO, there would be no need for a separate dispute-settlement body or tribunal, as parties could make use of the dispute-settlement system of the WTO. However, if TiSA remains a stand-alone plurilateral agreement for any period of time, then there will be a need for defining and/or creating a body or mechanism to adjudicate the disputes that may arise on services trade among TiSA parties. It is noteworthy that Investor-State Dispute Settlement bodies that have generated a fair amount of tension in civil society would not be relevant in the case of TiSA in the absence of a specific chapter on investment setting out the rights and obligations of investors.

Lastly, the procedures around the accession of new members to TiSA will need to be determined. This should be the least controversial of the institutional matters, although there has not been unanimity in the past with regard to accepting new participants (witness

the still outstanding petition of China). The TiSA parties will try to converge on an open, predictable and transparent accession procedure, which they have not yet been able to do in the negotiations. These questions are on the TiSA negotiating agenda for serious discussion in 2016, and perhaps beyond.

The discussion of the MFN provision has raised questions as to how this clause would be structured and whether or not it will have a forward-looking application, that is, if any new benefits from services liberalisation in future trade agreements negotiated by TiSA members with third countries would be extended to the other TiSA members. Some TiSA participants appear to want to deal with this question as each new FTA is concluded, whereas others would prefer clear disciplines that would apply to all future FTAs. Resolution of this question may influence the way TiSA members conduct their future trade relations with third countries. Discussions are ongoing, though there is indication that the TiSA participants may be opting for an MFN-forward provision.

6 Examining the margin of preference that TiSA may provide

As the current TiSA participants make up such an important chunk of world trade in services, any liberalisation that they will agree among themselves should have a significant impact on third countries, especially developing countries. There are various ways to look at the potential impact of the liberalisation resulting from a future TiSA agreement, which will be discussed in the following section. This section examines the margin of preference that TiSA should be expected to provide for various services sectors.

This preference margin should depend in part upon the level of ambition of a future TiSA agreement. Participants have agreed from the outset that TiSA should go beyond the margins of preference already established by existing preferential trade agreements, and that existing PTA openness should serve as the basis for the start of market access offers. In addition, TiSA should be expected to lock in any unilateral services liberalisation that has taken place since these PTAs have been concluded.

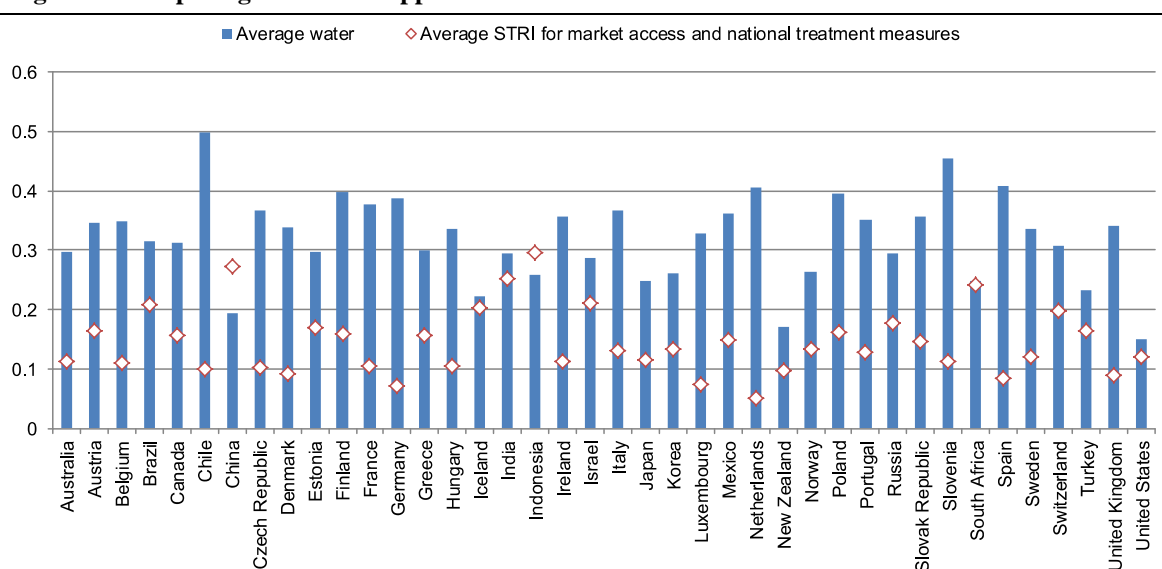
Exactly what degree of margin of preference TiSA might represent is challenging to calculate. That is an ongoing problem in services trade more generally. Although the absolute difference between the MFN rate of duties in goods and the preferential rate agreed bilaterally or plurilaterally between members is relatively straightforward as a concept, tariff-equivalent measures of services trade barriers are notoriously difficult to calculate. Sauvé (2013) has presented calculations of preference margins for several services sectors, as based on all existing services agreements (comparing GATS, the DDA offers and several PTAs) (Sauvé, 2013, p. 19). These preference margins are based on underlying work by Marchetti and Roy (2013a). These calculations show that the expected preference margins created by the PTAs already in force, as well as from unilateral liberalisation, are estimated to be quite high for most services sectors, ranging from 25 per cent in financial services and 28 per cent in telecoms and tourism to 76 per cent for health services and 79 per cent for maritime, with most sectors showing a preference margin of around 60 per cent over the original GATS commitments. Such large margins of preference would be expected to hold and to even be improved with a TiSA agreement, as the TiSA participants have agreed that they would begin negotiating from the “best” PTA

that any respective participant has signed. Therefore, the potential preference margins agreed in TiSA should necessarily be at the top end of these estimated preference margins.

TiSA participants have also agreed, however, that market access commitments would be captured or bound at the level of existing openness, or at actual levels of regulatory application. If this guideline is followed, then TiSA would be expected to go beyond existing trade agreements to achieve even higher levels of services market openness in the indicated sectors.

An indication of what this might represent for OECD countries is shown in Figure 7, taken from an OECD study (2015). Using the OECD Services Trade Restrictiveness Index (STRI), the authors measure how far applied services trade restrictiveness is from the maximum trade restrictiveness allowed by GATS. The difference between the two is called the “water in the GATS” by analogy with the “water” in tariffs, which is the difference between bound and applied tariffs (Miroudot & Pertel, 2015). An earlier World Bank study by Gootiiz and Mattoo (2009) also explored a similar question, comparing GATS commitments with levels of applied services measures of many individual WTO members, both developed and developing, based on the information contained in the World Bank Services Trade Restrictiveness Index Database (see Gootiiz & Mattoo, 2009, p. 9). It is interesting to note that even for the TiSA participants, actual services policy is considerably more open than their GATS commitments, given the additional unilateral liberalisation that has taken place over the past two decades. The earlier World Bank study shows an even wider gap between applied and bound services measures for developing-country participants. Thus, the TiSA market access results for services should lock in the considerable extent of unilateral liberalisation that has occurred since the Uruguay Round for the most important services traders in the world economy, and go beyond their commitments in existing PTAs in many instances.

Figure 7: Comparing bound and applied services trade restrictiveness across countries



Source: Miroudot and Pertel (2015)

7 Changing dynamism of services markets and services trade patterns and how this may affect TiSA participants

Given the large number of developing countries and major emerging economies that are outside of TiSA, the future agreement will be expected to have significant impacts on these third countries through affecting services market access as well as through setting higher regulatory standards in certain services sectors and disciplines, among others. This may well lead to diversion in services trade and investment for non-members, the extent of which will vary, depending upon the content of the final agreement. The lack of national services coalitions in developing countries has meant that there has been no voice of advocacy for TiSA in most of these economies, nor have they been able to share in the information streams around the negotiations.

In this section, we examine the potential impact of TiSA on developing countries from three perspectives. First, we look at the current dynamism of services markets and trade patterns of developing countries to see how these might be affected, and where opportunities from joining the agreement may be highest. Second, we provide original assessments of adjustment costs for adhering to the agreement, as reflected in regulatory heterogeneity between emerging economies outside the agreement and two broad TiSA benchmarks (one given by an EU standard and another given by a US standard). Third, we examine existing FTAs between TiSA participants and third countries and discuss possible spillovers from these regulatory standards to third countries that will be *de facto* subject to future TiSA standards.

TiSA participants represent a large share of services markets globally, but they are not among the most dynamic markets in which services are growing most rapidly. The importance of emerging markets in services is rising fast, as the country composition of services trade is experiencing a significant transformation. In fact, the relative weight of the TiSA area globally is shrinking: in the first decade of the century, the TiSA participants' share of services value-added in global GDP has shrunk by 5 per cent, whereas that of the BRICS has grown to a solid 14 per cent, according to the last data series. As illustrated in Figure 8, at the current pace of change, in 2020 the TiSA area will likely represent less than 50 per cent of world services trade. One of the non-stated objectives of the agreement may be to reverse this trend: TiSA is expected to give a boost to the share of the TiSA area in global services trade, thus, also injecting dynamism to the domestic markets of its members.

The finalisation of TiSA will be expected to impact not only on the expansion of services trade itself between members and *vis-à-vis* outside countries, but also on the expansion of trade in goods and agricultural products. As illustrated earlier, in Figure 4, the TiSA area accounts for 68, 70 and 65 per cent of the global indirect services exports contained in exports of agriculture, manufacturing and business services, respectively.¹³ This seems to indicate that the TiSA area has a comparative advantage in producer services that are integrated in different value chains, as well as in final services. This fact highlights the relevance that the agreement will probably have, not only for services trade itself but also

13 The percentages only cover the domestic services value-added incorporated in own exports, without considering the services value-added incorporated in other countries' exports.

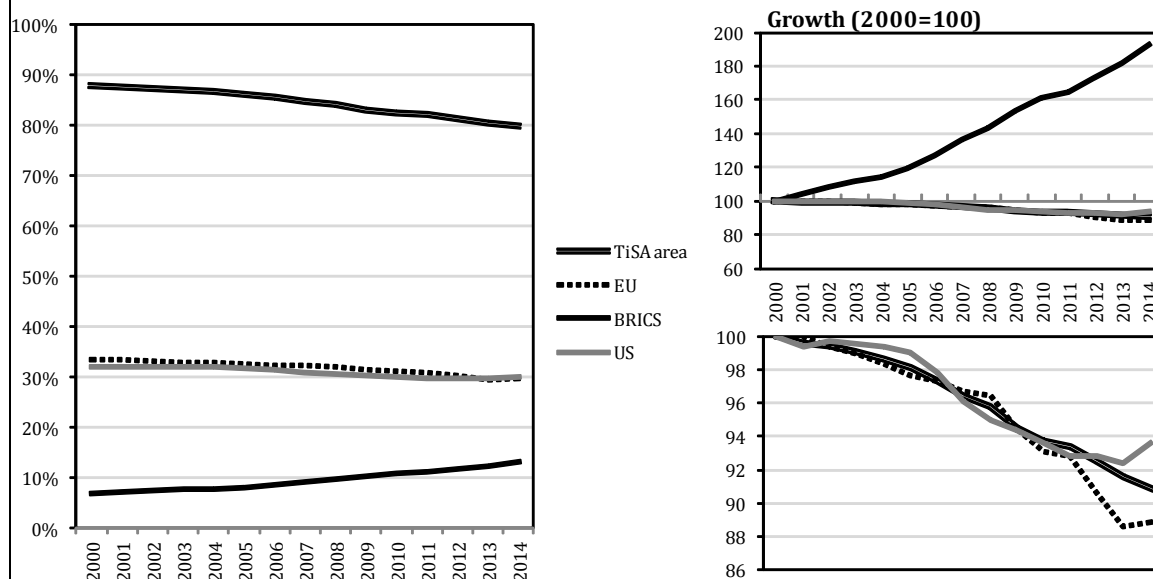
for trade in goods and agricultural products, as services are key inputs into both. Therefore, competitiveness of both services and goods should be affected after the conclusion of TiSA, with corresponding implications for the insertion into GVCs by firms from outside countries. Given the investment attraction provided by TiSA, this will likely make it harder for firms from developing countries outside the agreement to break into GVC structures. New and enhanced investment flows to activities within the TiSA region will influence the operation of value chains to take place more within the region, accentuating the already skewed nature of these GVC patterns and isolating those on the periphery even further. Thus, the present concentration of services value-added in world trade made up by the TiSA members may be accentuated even further.

Delving further into the question of “Who does TiSA matter more for?” gives some inkling on opportunities that the agreement represents for participants as well as non-participants. In order to assess these, we look at imports originating from the TiSA area as a share of total imports into the different regions (BRICS, TiSA and the world). The shares are illustrated in Figure 9, both for final and intermediate services consumption. This aims specifically at illustrating the extent to which TiSA matters for firms as opposed to final consumers.

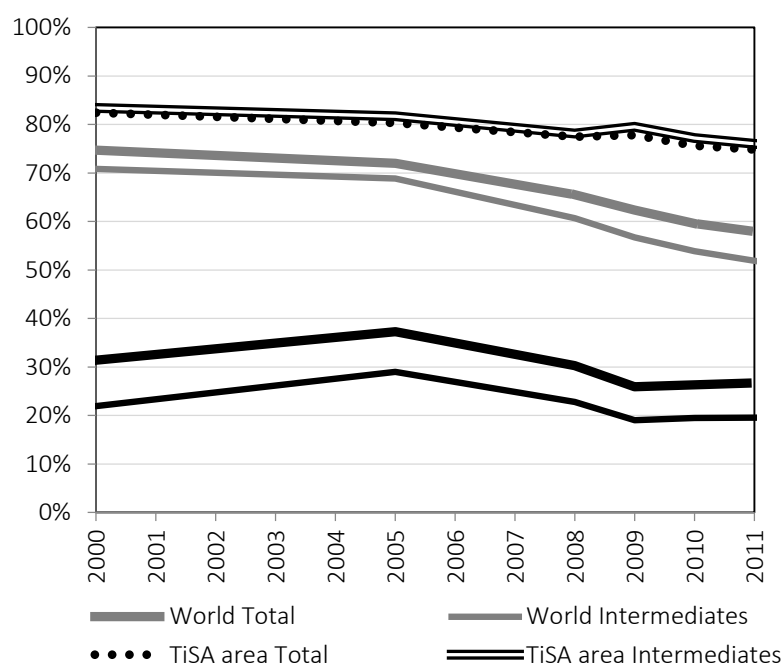
From a regional perspective, the services trade of TiSA participants matters immensely for other TiSA participants, whereas it matters considerable less for the BRICS. As of 2011, TiSA’s share of services imports from the TiSA area itself was around 80 per cent, whereas the BRICS’ share of services imports from the TiSA area was around 30 per cent. That many of the BRICS have opposed the agreement is – at least partly – explained by the fact that these countries rely less on TiSA services markets than those countries participating in the negotiations. In global terms, TiSA’s share in global services imports was around 60 per cent.

Turning to the question of what agents in the economy will be more affected by TiSA (firms or individuals), the picture is not the same in the different regions. Within the TiSA area, the agreement covers roughly as much of the import basket for firms as it does for final consumers – both curves in the graph are at the same level. In contrast, for the BRICS, TiSA partners matter significantly less for firms than for final consumers – there is a 10 per cent gap between total and intermediate services imports during the period 2000–2011. Intermediate services are, after all, the types of services where industrialised countries exhibit their stronger advantage, thus firms in BRICS have already identified other alternatives to TiSA partners for these services in their respective regions. So, at present, although the opportunity that the TiSA agreement presents for developing countries in terms of greater access to services markets is substantial, this opportunity is not as pronounced for the BRICS.

More worryingly, TiSA could potentially deepen a certain segregation of services markets that is already discernible. Since 2005, emerging economies have consistently recorded decreasing shares of intermediate imports from the TiSA area, illustrating stronger ties with business services hubs outside the countries participating in the agreement. Business services exported by emerging economies are growing and becoming sophisticated enough to compete with the dominant Western providers. Manufacturing production networks and shared regional cultures foster these ties among emerging economies.

Figure 8: Evolution of regional services value-added in GDP (2000–2014)

Source: Authors' calculations based on World Development Indicators (World Bank Group, 2015a)

Figure 9: TiSA weight in services trade (share of total services imports into each region)

Note 1: World figures refer to the aggregate of countries covered by the OECD Inter-Country Input-Output (ICIO) model, that is, according to Trade in Services database TSD v8.9 (World Bank Group, 2015b), approximately 92 per cent of world services imports of a known origin or destination. TiSA figures do not include members that are not covered, that is, Liechtenstein, Panama, Pakistan, Peru and Mauritius.

Note 2: OECD ICIO tables cover the years 1995, 2000, 2005 and 2008–2011, indicated with vertical gridlines.

Source: Authors' calculations based on OECD ICIO tables (2015 version) (Organisation for Economic Co-operation and Development [OECD], 2015)

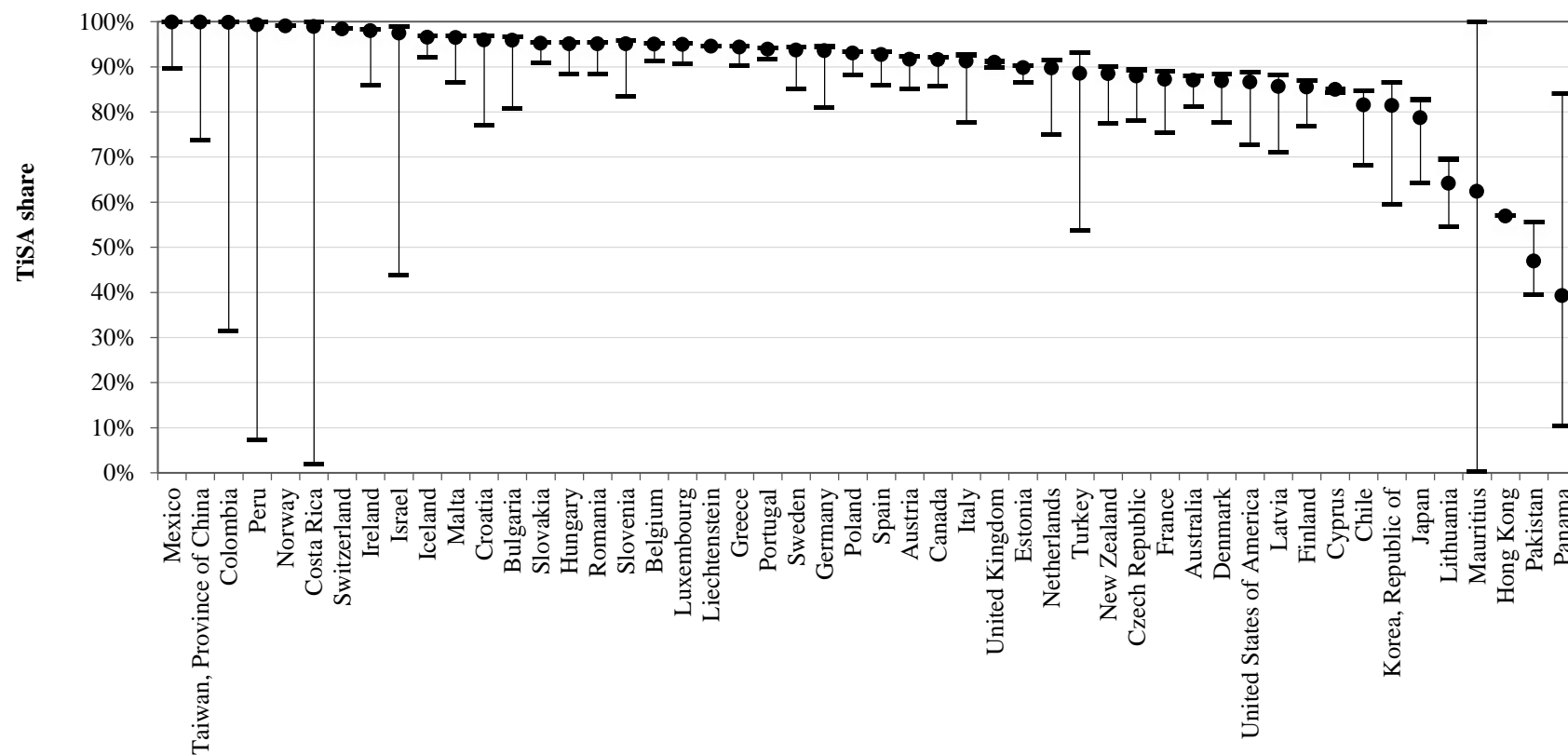
8 Opportunities, distortions and/or neutral effects of TiSA for third countries

The future TiSA agreement clearly provides room for both opportunities, as well as potential distortions for countries that remain at its margin. However, some effects may only be neutral. China's accession to TiSA ranks high in this debate, given its previous request to join the TiSA negotiations in October 2013 and its status as the second largest developing-country exporter of services. Having China inside TiSA rather than outside might be thought to make a considerable difference to the potential attractiveness of TiSA to other emerging markets and developing countries.

Yet, developing countries' accession to TiSA is not only about China. Because of their geographical position, history or economic structures, a number of TiSA participants have strong ties with services markets in developing countries other than China, and vice versa. These are countries that appear less frequently in the discussions, yet are likely to affect the outcomes and, most importantly, be affected substantially by the agreement. Which ones are they?

Figure 10 ranks TiSA members by shares of imports coming from within TiSA. Towards the right of the first panel, one can select those countries that are less dependent from TiSA service providers: a larger share of their imports is sourced from non-participants. These are participant countries that will likely experience a substantial structural change in their services trade as a result of the agreement: trade is expected to be diverted from some more-efficient trade partners or natural partners towards TiSA members. Hong Kong, Panama and Pakistan are in this category along with probably Israel, Costa Rica, Peru and Colombia, although the picture is much more noisy for the latter.

Figure 10: Share of total services imports from TiSA: Participant countries (2010)



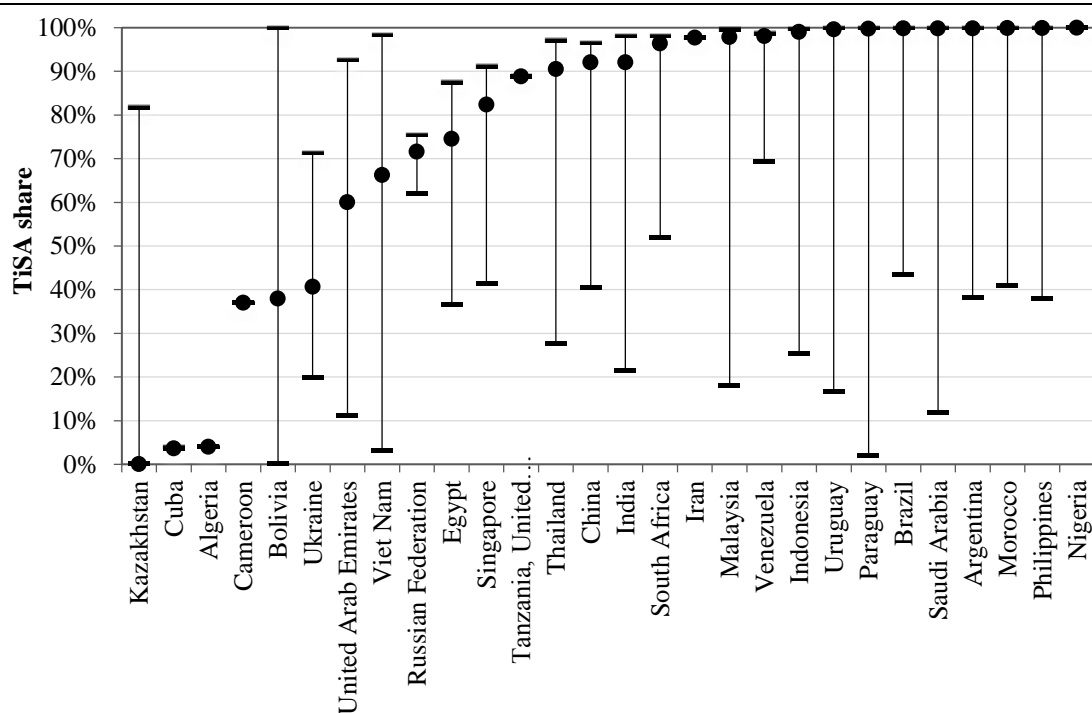
Note: Countries are ranked according to services imports from TiSA members, as a share of total imports of known origin. The upper confidence interval corresponds to the share if all other imports from unknown origin come as well from the TiSA area, and the bottom interval if none of the unknown flows come from the TiSA area.

Source: Authors' calculations based on World Bank Group (2015b)

Brazil and India arise as the obvious poles competing with TiSA for the services trade of a number of these participants. Before dropping out of the negotiations, Uruguay and Paraguay were also in the same category as countries in the right part of the panel (see Figure 11), likely diverting existing trade from other Latin American countries, notably Brazil. This consideration may have contributed to political pressure and the decision of these two former TiSA participants to drop out. Of the large players, Japan and the United States stand out with non-negligible shares of trade with non-participants relative to the rest; much of their extra-TiSA trade being in fact with China and India.

Moving out of the TiSA area, the picture is much noisier in terms of trade statistics by origin and destination. Nevertheless, there are cases that stand out. Figure 11 ranks non-TiSA members by shares of exports to TiSA participants. Towards the right of the panel, countries face a greater diversion risk from the agreement: first, because the competitiveness of their exports *in relative terms* will deteriorate due to falling trade costs within TiSA, and second *in absolute terms* because a large share of their exports currently sold into the TiSA area might face higher barriers to entry, given the new higher standards of the agreement. Those countries will likely experience structural changes in their services trade as well, as a result of the agreement. Besides China and India, Brazil, Argentina, Russia and South Africa are also in this category. These emerging markets appear to have a lot to gain from acceding to TiSA. We note that these countries will still be able to import from TiSA providers, even if they are not part of the agreement. However, they will experience costs when these imports are tied to the operation of value chains involving their firms with TiSA participants. In such cases, they will probably be obliged to adopt TiSA's higher standards for services imports that would be incorporated in other goods and services for domestic consumption or into subsequent re-exports to the TiSA area.

Figure 11: Share of total services exports to TiSA: Non-participant countries (2010)



Source: Authors' calculations on Trade in Services database TSD v8.9 (World Bank Group, 2015b)

8.1 Regulatory heterogeneity and potential adjustment costs for countries outside TiSA

Dissimilarity in services regulation causes delays in negotiations and can increase the implementation cost of trade agreements. Although clearly more pronounced outside the TiSA area, disparities in services regulation are also noteworthy among TiSA participants, even within the EU. Looking into this variation is meaningful. Negotiations are expected to be more challenging in sectors where regulatory differences between countries are greater. They will also be more intense between members that deviate with respect to the stronger participants, such as the United States and the three major European markets: the United Kingdom, France and Germany. More relevant for the topic of our study is the fact that differences arguably reflect the degree of difficulty for developing countries to join the agreement.

This degree of difficulty can be partly assessed through examining the “regulatory heterogeneity” between TiSA participants and third countries. The methodology used to calculate our Regulatory Heterogeneity Index is explained in Box 2. The index takes the largest TiSA economies as the benchmark for the regulatory standard. Annex 3 shows these regulatory differences with respect to EU and North American benchmarks, respectively. Observed differences in trade restrictions recorded in each country and sector, as contained in the OECD STRI database (2011), are compared against these two benchmarks (OECD, n.d.). Binary differences are aggregated in the simplest fashion into a single score per country and services sector, which is then mapped onto heat matrices over these two dimensions.¹⁴ The darker values indicate a higher regulatory heterogeneity with respect to the benchmark. No colour in the box indicates a similarity of regulations with the given benchmark.

The further away from a given regulatory “norm” for a country’s services regulations (either that of the EU or the United States), the more difficult it will be presumed for that country to make the necessary liberalisation commitments that are demanded of it to join the agreement. Although this has not been examined in the past in major trade negotiations, it may be one indicator that governments could use pro-actively going forward to try and access the relative difficulty of entering into a trade negotiation with a given partner. Services regulations that deviate widely between trading partners could be a predictor of the relative difficulty of finalising an agreement.

¹⁴ This exercise has clear limitations, such as the fact that all regulatory differences are weighted against the benchmarks of two major economic groupings only, and that heterogeneity accounts also for regulation that is more liberal than the benchmark. Yet, in its simplicity, the picture it yields is highly suggestive and provides interesting implications.

Box 2: Methodology for calculating Regulatory Heterogeneity Index

The source of the regulatory observations is the OECD STRI database reporting on *de jure* services trade restrictions in 18 services sectors for the 34 OECD member countries plus Brazil, China, India, Indonesia, Russia and South Africa.

The Regulatory Heterogeneity Index builds on similar work by Nordås and Kox (2009). Regulatory heterogeneity in this exercise is recorded relative to two sets of benchmark observations, yielding two indices. The first benchmark consists of the regulation in place in the United States, whereas the second is the most frequently encountered regulation in the three major EU countries: the United Kingdom, France and Germany.

Notice that the largest part of the OECD database reports binary observations on the existence of a certain type of restriction k in country i . For example, on the question “Is licensing required for a foreign provider to operate in country i ?”, the two answers recorded are yes ($s_{ik} = 1$), and no ($s_{ik} = 0$). The benchmark s_k^B in the first case will be the regulation in the United States, and in the second case, the most frequently encountered answer in the three major European countries; that is, if in two of the three countries, licensing is required, then the benchmark will be $s_k^B = 1$. Differences x_{ik} are reported for each piece of regulation as $x_{ik} = |s_{ik} - s_k^B| \in \{0,1\}$. In other words, if the regulation is different in country i then $x_{ik} = 1$, if not, then $x_{ik} = 0$. For non-discrete observations, such as foreign equity limits, the setup is the same, except that the binary indicator of difference x_{ik} turns to 1 only if the *deviation* of s_{ik} from the benchmark exceeds one standard deviation calculated over the entire sample: $x_{ik} = 1$ if $|s_{ik} - s_k^B| > \text{std}(s_i)$. The aggregate index R_i is the average of the binary observations of differences

$$R_i = \frac{\sum_k x_{ik}}{n} \in [0,1]$$

Where n is the number of measures included in the database. Notice that R_i corresponds also to the share of measures where differences are recorded in i relative to the benchmark.

Several interesting observations emerge with respect to the BRICS (plus Indonesia), which have also been included in the OECD database and are shown together with the OECD members in Annex 3. First, the services regulations of these emerging economies are quite dissimilar to those of TiSA participants. This is especially the case for China, Indonesia and India, where the highest possible level of heterogeneity (darkest value) is shown in various services sectors. The highest regulatory heterogeneity in China takes place in banking, legal services and telecommunications. For Indonesia, this is also the case for banking, and for India the case of banking and telecommunications.

The fact that the BRICS have dissimilar regulations in many sectors with respect to the two TiSA benchmarks suggests that they would have a challenging time assuming obligations of TiSA without undertaking considerable reforms. Therefore, the impact of TiSA services liberalisation could be significant, especially for these countries, as would the difficulty of adhering to TiSA in the future. This suggests that differing regulatory standards may be one of the biggest impacts of the TiSA agreement.

These regulatory divergences will affect dramatically the prospect of developing countries joining the future TiSA agreement. Some will be expected to face high adjustment costs in this process due to these regulatory disparities; the best example being China. The Chinese services trade regulation deviates in all sensitive sectors with both the United States and Europe by substantially more than any other economy. The same is not true for all emerging economies. In particular, Brazil, South Africa, India and Indonesia, although still exhibiting differences, have roughly comparable levels of regulatory differences in many sectors as do other TiSA participants with respect to the two benchmarks. For

example, professional services regulation differs much more between the United States and Israel, Austria or Poland than between the United States and Brazil or South Africa. The degree of regulatory differentiation of the United States itself with respect to the EU in air transport or audiovisual services is substantially greater than between Europe and Indonesia or Brazil. Therefore, for many of these emerging economies, one can argue that political considerations hold a greater weight in explaining their decisions to abstain or actively oppose a plurilateral agreement in services.

From the outset, it is noteworthy that regulatory heterogeneity among TiSA participants themselves may likely generate frictions in the process of agreeing on a common denominator in many services sectors during the negotiations. Although there does not appear to be much heterogeneity among EU members, as would be expected, potential frictions in the TiSA negotiations should mainly be expected to occur with respect to Switzerland, Australia, Canada, New Zealand, Mexico, the United States and Turkey, all of which show high regulatory heterogeneity in different sectors *vis-à-vis* the EU. In the cases of Chile, Korea and Japan, there is considerable regulatory coherence with the EU TiSA benchmark.

Sectors such as telecommunications, professional services, broadcasting audiovisual services and maritime transport stand out in both matrices as showing considerable variation between European and American services regulations. These are, in fact, some of the most sensitive services that are being negotiated, not only in the context of TiSA, but in all multilateral and bilateral fora. Yet, sensitivities are not identical on the two sides of the Atlantic. Deviations of TiSA participants with respect to the United States are more pronounced than with the EU, and particularly intense in some sectors such as telecommunications, broadcasting, maritime and air transport, sectors on which the United States is expected to place greater emphasis. The US regulations for telecommunications and air transport are relatively liberal – a starting point that would legitimise American pressure for further reciprocal liberalisation in the context of TiSA. By contrast, the US regulations for broadcasting and maritime transport are considerably more protective; hence, one would expect either an abstention or pressure for derogations that not all TiSA partners may be happy about. Major European countries are, on the other hand, expected to focus also on professional services such as legal, architectural, and accounting and auditing and to insist upon a convergence of regulatory practice more in line with their benchmark.

8.2 Potential spillover effects from existing trade agreements involving TiSA participants

Some of the regulatory heterogeneity with respect to third countries will have to be taken into account in TiSA negotiations, even without considering future formal accession. Spillover effects can be expected, given that a large number of TiSA participants already have preferential agreements covering services trade with non-participants. Thus, third countries might *de facto* be subject to those TiSA standards that will be applied to all providers equally, without distinguishing by origin; these are the countries illustrated in the map of Figure 12 under the category “PTA with services provisions with a TiSA participant”. This group is mainly located in Asia and South East Asia, although there are some countries in this situation as well in the Americas, Europe and Africa.

Of the large emerging economies, India, Indonesia and China already have agreements with some TiSA members, whereas others such as Russia, South Africa and Brazil do not. The

depth of services provisions in these existing agreements varies substantially, and in the cases of shallow agreements on services, these may not lessen the extent of regulatory heterogeneity. For example, China's agreement with Australia includes provisions of unprecedented depth in services for an emerging economy, which may lessen regulatory differences over time. This is not the case with India or Indonesia. A number of South East Asian countries are in the same situation of having negotiated only fairly shallow trade agreements on services, whereas Africa is entirely isolated in that landscape.

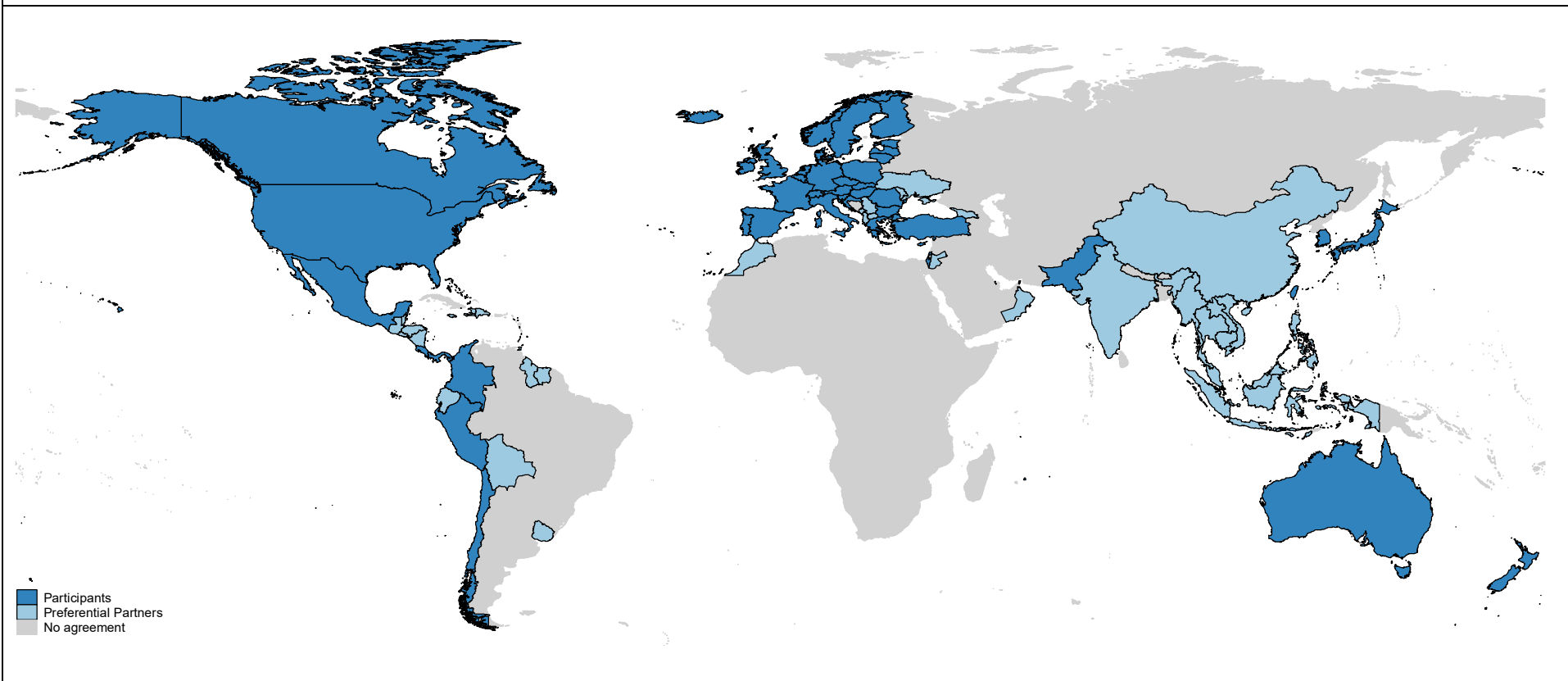
Nearly all TiSA participants have several FTAs already in place, not only among themselves but also with outside countries. It is interesting to speculate on the types of possible spillover effects that such agreements might produce after the finalisation of TiSA. The table in Annex 2 lists the existing PTAs covering services that have already been negotiated by TiSA participants among themselves, highlighting in addition agreements between two or more TiSA participants that also cover non-TiSA participants. These might be thought of as agreements whose parties would have a better chance of benefitting from any positive spillover effects from TiSA. Among them, for example, are the non-TiSA parties to the TPP agreement and the ASEAN-Australia-NZ FTA. Parties to these latter agreements that are not participating in TiSA may *de facto* be bound to the TiSA standard if they wish to continue being able to trade services with TiSA members, despite their existing trade agreements.

Looking at the existing agreements between TiSA participants and non-participants may also help to identify "natural partners" that might be expected to take part in TiSA negotiations or to adhere to a future TiSA. This could be the case of Singapore, which has FTAs with more than half of TiSA participants. It could also be the case for Malaysia, Thailand and Vietnam. Interestingly, China also has trade agreements either in place or negotiated with 11 of the current TiSA participants, and therefore it could logically be expected to have shown the interest in the negotiations that it has in the past. This is not the case for any of the other BRICS or major emerging economies, which have not negotiated previous trade agreements with many, or any, TiSA participant, and thus have not been a part of the emerging new disciplines on services.¹⁵

It is difficult to impossible to predict the extent of the discriminatory impact of TiSA on countries that are outside of the agreement, even those that have existing PTAs with TiSA parties, as this will depend upon the actual outcome of the final agreement and the liberalising content of the commitments. Together, these will determine the nature of possible discrimination. It is true that, in general, PTAs for services tend to be less discriminatory than those for goods. Whereas PTAs for goods can easily discriminate against non-members through the application of different tariffs, this is not the case for services. In practice, it will be difficult for TiSA parties to maintain two different sets of regulations that they will apply on the one hand to their TiSA partners, and on the other hand to non-members. Most of the regulatory changes for services that will be carried out by the TiSA members will likely be applied to all countries alike – so, *de facto*, many of the regulatory improvements and liberalisation will be available on an MFN basis. To the extent that this is the case, all third parties will then be affected in the same way by TiSA.

15 In this category, we would include Brazil, India, Russia and South Africa in particular, as well as Indonesia, though Indonesia is party to a few trade agreements by virtue of its participation in ASEAN.

Figure 12: TiSA participants and their preferential trade partners (2015)



Source: Authors' illustration of data from the Regional Trade Agreements Information System (World Trade Organization, n.d.); OAS SICE Foreign Trade Information System (n.d.); and governments' websites

9 Suggestions for making TiSA more development-friendly

As we commented in an earlier section of this paper, the content of the proposed TiSA agreement does not appear to contain, at present, any chapters that would be considered “development-friendly”. This is somewhat surprising, given the stated objective of participants to broaden the existing number of countries in the negotiations and future agreement. Contrasting the proposed TiSA text with that of the finalised TPP and CETA agreements is revealing in this regard, as both of these recently-concluded agreements have incorporated several chapters with an SME and development focus.¹⁶

Developing countries and emerging economies that would be asked to take significant steps to reform their services regulations, adopt new and deeper services disciplines and liberalise their services markets under TiSA, would expect to have concerns about the adjustment costs needed to bring about these changes as well as the expertise required to implement new regulations and possibly create or strengthen regulatory institutions. They would also be concerned about how their services firms could have greater knowledge of – and access to – the commercial leaders of GVCs. And they would be desirous of taking advantage of possible capacity-building assistance to train their officials and the private sector about the ways to better implement and make use of the agreement.

Unfortunately, none of these concerns seems to have been thought about in the current TiSA proposals. To attract a larger number of participants and adherents to TiSA, we suggest that some “development-friendly” elements be added into the negotiating mix. These elements could include those discussed below, among others.

9.1 Facilitating the trade of small and medium-sized enterprises in services

Such a chapter would contain elements that would require TiSA members to have publicly accessible websites with information designed for SMEs to help them take advantage of the agreement and to provide information on parties that would like to invest or do business. This would allow the SME in question to easily find commercial partners in other TiSA members in order to propose its service expertise. The website would also contain information on the foreign investment regime of members, business registration procedures, employment regulations and taxation information. A committee on SMEs could also be envisaged for the TiSA members that would meet periodically to review concerns of SMEs and try to support and assist SME services exporters, including with respect to training programmes, trade education, trade finance and establishing good business credentials. The committee could also be tasked with exploring opportunities for SME export counselling, assistance and training programmes.¹⁷

16 The “development character” of TiSA will not solely be determined by the chapters in the agreement but also by the type of agreed steps in the attached schedules of commitments, such as the transition or phase-in periods for bringing into effect agreed liberalisation (if any) and the extent of non-conforming measures or allowed-for national treatment for the various services sectors. However, we do not have this result at present, as the schedules of services commitments will not be available until the agreement is finalised.

17 It should be noted that these elements are exactly those that are included in Chapter 24 of the TPP on “Small and Medium-sized Enterprises”, particularly with regard to the SMEs from the developing TPP

9.2 Incorporating a development and innovation focus

The TiSA participants could consider incorporating a chapter into the agreement that would focus specifically on development concerns and take into account the different levels of economic development in services. A specific chapter with a development focus has been included in both the TPP and CETA. Issues that could be highlighted for a services development chapter in TiSA include: enhancing opportunities for women to participate in the services economy through the creation of specific skills-promotion programmes and/or networks; promoting joint research and innovation activities aimed at developing relevant expertise and managerial skills in new services product areas; and facilitating public- and private-sector partnerships in which private services firms, including SMEs, could bring their expertise to cooperative ventures with government agencies. TiSA could specifically target developing members for these initiatives, which would be maintained under review by a “Committee on Development” that would be tasked with facilitating activities in this area.

9.3 Offering capacity-building in services, especially for regulatory reform

One of the biggest challenges of emerging economies and developing countries that have not been a part of major trade agreements covering services to trade is the effort that will be required to bridge the “regulatory gap” between their regulations in services and the higher regulatory standards of the more developed TiSA members that will result from the agreement. Including a chapter on cooperation and capacity-building for services, especially regulatory reform, could be an extremely important drawing card to attract countries to sign onto TiSA. Such a chapter could envisage activities that would go beyond what is included in the TPP chapter in this area, which is primarily limited to information-sharing and enhancement of donor coordination. In contrast, a TiSA chapter on capacity-building could create a mechanism or channel to provide assistance for services regulatory reform to developing members who are willing to liberalise their services sectors but who would require regulatory strengthening to carry this out.

Regulatory reform and strengthening in services is one of the most challenging aspects of modern trade. Assistance could be facilitated under TiSA through the channel of a “Committee on Cooperation and Capacity-building”, which would match the needs of developing TiSA members in specific services sectors with regulatory experts in more advanced members. Commitments to open services sectors in need of regulation under TiSA could be made contingent on the provision of such regulatory assistance and would become effective only after regulatory bodies had been sufficiently strengthened.

To enhance the relevance of the TiSA agreement to the WTO framework, TiSA negotiators could incorporate a specific link within a capacity-building chapter to the WTO-led Aid for Trade Initiative that seeks to mobilise donor resources to address the supply-side and trade-related constraints identified by developing countries that constrain their ability to engage in international trade. Services have not been a major focus of the

members. Under the TPP, the Committee on SMEs is tasked with meeting within one year of the date of entry into force of the agreement, and periodically thereafter.

Aid for Trade Initiative since it began in 2007, despite their importance for economic growth, productivity, employment and participation in trade. Developing countries should find considerable relevance to their needs should such a link be included between TiSA and this key WTO initiative.

10 Conclusion

A future TiSA agreement, by virtue of encompassing countries representing 70 per cent of world services trade, will have significant impacts on services trade of non-participants, particularly developing countries currently not a part of the most dynamic regional or GVC operations.

The impacts of TiSA, as discussed in this paper, could be twofold: first, on services market access, and second on the setting of higher regulatory standards in certain services sectors and horizontal issues. The TiSA agreement will certainly create diversion in services trade and investment for non-members. The extent of this will vary, depending upon the content of the final agreement.

Diversion from market access is likely to be the smaller of the two expected impacts. This is because it will be difficult to discriminate between services suppliers under mode 1 or cross-border trade, where controls will likely not be allowed on digitised trade. Discrimination through mode 3 should be minimised if, as expected, the TiSA participants adopt the origin requirement of “substantial business operation”, under which a firm from any country in the world may benefit from the agreement as long as it sets up a legitimate and qualifying commercial presence in one of the TiSA member countries. Diversion from mode 4 commitments, or movement of natural persons, is not likely to be that significant if the content of commitments on temporary entry does not vary significantly from existing GATS commitments or offerings already contained in existing PTAs by the TiSA participants.

It will be a different story, however, in the area of regulatory standards and investment attraction. The higher standards that the TiSA agreement will set in the numerous individual sectors as well as thematic issues that are being negotiated – depending upon how many of these are actually finalised – will serve not necessarily as *de jure* barriers to trade for third countries, but may become *de facto* barriers. As it will be difficult to impossible to apply different sets of regulatory disciplines to trading partners, TiSA parties will most likely apply the resulting regulatory disciplines on an MFN basis. However, these regulatory disciplines will certainly be more advanced than those in the WTO GATS.

The regulatory disciplines in TiSA will likely mirror to a large extent those that have been negotiated in the most recent PTAs concluded by the United States and the EU. These would be the TPP and/or the Korea-United States FTA agreements for the United States (with only the latter in effect), and CETA between Canada and the EU. TiSA should draw upon these precedents, which encompass deeper disciplines and higher regulatory standards than any existing trade agreement that has been negotiated with or by third countries. These higher regulatory disciplines will nearly certainly be applied on an MFN basis, given the difficulty of practising discrimination in national laws and regulations once adopted.

However, by their more advanced nature, these TiSA regulatory standards (such as possible strengthened prudential requirements or greater acceptance of qualifications for professional services providers among the TiSA parties) will make it harder in practice for firms from developing and other third countries to access the markets of TiSA members.

Another major source of trade diversion will be the effect that TiSA has on investment flows. By creating a larger market space for the world's major services exports, the TiSA parties will act as a magnet for future investors eager to benefit from investment and trade under common trade rules and regulatory standards in an expanded economic space among dynamic trading partners. This should divert potential investment flows away from third parties, creating a higher demand for investment in services or in products heavily incorporating services inputs within the TiSA region, thus stimulating economic growth and trade.

Lastly, TiSA will make it harder for developing countries and others outside the agreement to break into GVC structures. The investment attraction provided by TiSA will influence the operation of value chains to take place more within the region, accentuating the already skewed nature of these GVC patterns and isolating those on the periphery even further. Thus, through the influence TiSA will have on investment flows and GVC patterns – even without being explicitly discriminatory in its application – the agreement should increase the concentration of services trade and investment among its members and accentuate the disparities in world trade.

The difficulty of concluding TiSA will depend to a large extent on the degree of regulatory heterogeneity among its participants. The study shows that there is a nucleus of regulatory similarity among countries in North America, as well as among the principal members of the EU. However, there is a large gap between these two regulatory standards, particularly in certain sectors. This will complicate the negotiation of regulatory disciplines in the areas under negotiation. Also, the greater the divergence in regulatory standards between third countries and TiSA participants, the more challenging it will be for these countries to become a part of the future agreement.

For those third countries that already have a large amount of services trade with TiSA participants, the risk of trade diversion for their economies will be lower. It will diminish further for those developing countries that have already negotiated trade agreements with some of the major TiSA economies (United States, EU, Japan), where these trade rules may be fairly similar. However, the more advanced regulatory disciplines of the TiSA agreement will require them to adopt these standards if they wish to retain their attractiveness for future investors. Thus, they will *de facto* be required to adhere to the content of the TiSA agreement, without having been parties to its negotiation.

Fears that the accession of emerging economies and developing countries into the agreement will entail costs in terms of depth of liberalisation are widespread; yet, we argue that this need not be the case. The examples of the recently concluded TPP mega-regional trade agreement shows that there are ways of rendering the future agreement more development-friendly without compromising the very principles that motivated it. And TiSA could potentially go further. For example, by explicitly addressing information gaps that challenge trade by SMEs and providers from developing countries; by supporting skills-promotion programmes and services innovation; or by including

provisions on public-private partnerships, negotiators would go a long way towards making the agreement more appealing to developing countries. Capacity-building and assistance on regulatory reform would also be particularly relevant in that respect, while links to the WTO-led Aid for Trade Initiative would provide a strong financial incentive for third countries to undertake the necessary reforms after joining the agreement.

One of the greatest challenges, however, of a potential opening to third countries is restoring confidence in the services liberalisation process, especially after the failure of successive rounds of discussions on services in the WTO over the past two decades and the strong sensitivities of emerging economies on a number of these sectors. We argue that including China in the TiSA negotiations prior to their finalisation would have a significant signalling effect on other emerging economies, particularly India, which might dampen the scepticism of many more countries towards TiSA. This would be a bold first step towards a greater opening – a step that stands to add enormous value to the future agreement.

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Annexes

Annex 1: FTAs covering services among TiSA participants (as of November 2015)

	AU	CA	CL	TW	CO	CR	EU	HK	IS	IL	JP	KR	LI	MU	MX	NZ	NO	PK	PA	PE	CH	TR	US
Australia		O	X								X	X			O	X				O			X
Canada	O		X		X		O		O		O	X			X	O	O		X	X	O		X
Chile	X	X			X	X	X	X	X		X	X	X		X	X	X		X	X	X		X
Chinese Taipei																X			X				
Colombia		X	X			O	X		X	O	O	O	X		X		X			X	X		X
Costa Rica			X		O		X		X				X		X		X		X	X	X		X
European Union		O	X		X	X			X	O	O	X	X		X		X		X	X			O
Hong Kong			X						X				X			X	X				X		
Iceland		O	X		X	X	X	X				X	X		X		X		X		X		
Israel					O		O																
Japan	X	O	X		O		O					O			X	O				X	X		O
Korea	X	X	X		O		X		X		O		X		O	O	X			X	X		X
Liechtenstein			X		X	X	X	X	X			X			X		X		X		X		
Mauritius																							
Mexico	O	X	X		X	X	X		X		X	O	X			O	X			X	X		X
New Zealand	X	O	X	X				X			O	O			O					O			O
Norway		O	X		X	X	X	X	X			X	X		X				X		X		
Pakistan																							
Panama		X	X	X		X	X		X				X				X			X	X		X
Peru	O	X	X		X	X	X				X	X			X	O			X				X
Switzerland		O	X		X	X		X	X		X	X	X		X		X		X				
Turkey																							
United States	X	X	X		X	X	O				O	X			X	O			X	X			

Note 1: The "X" indicates FTAs in force, while the "O" indicates FTAs that have been concluded and are not yet in force (such as the TPP) and FTAs that are currently being negotiated

Note 2: In the case of Iceland, Liechtenstein and Norway, the indication of a PTA in services with the EU corresponds to the European Economic Area (EEA). Thus, not all members of the EU are actually included.

Source: Based on Marchetti and Roy (2013b). Updated based on Regional Trade Agreements Information System (WTO, n.d.), OAS SICE Foreign Trade Information System (n.d.) and official government websites

Annex 2: FTAs covering services between TiSA participants and non-participants (as of November 2015)	
Australia	ASEAN-Australia-NZ* – China (not yet in force) – Gulf Cooperation Council (not yet in force) – Malaysia – Singapore – Thailand – TPP*
Canada	Honduras – TPP*
Chile	China – Central America* – Trans-Pacific Strategic Economic Partnership* (Brunei, Chile, New Zealand and Singapore) – TPP*
Chinese Taipei	El Salvador and Honduras – Guatemala – Nicaragua – Singapore
Colombia	Northern Triangle
Costa Rica	Chile and Central America* – China – Singapore – Dominican Republic and Central America – CAFTA-DR* – Central America and the EU*
European Union	Albania – CARIFORUM – Central America* – Former Yugoslav Republic of Macedonia – Georgia – Montenegro – Moldova – Serbia – Ukraine
Hong Kong	China
Iceland	Singapore – Ukraine – EEA* – EFTA – EFTA-Central America* – China – Faroe Islands
Israel	–
Japan	Brunei – India – Indonesia – Malaysia – Philippines – Singapore – Thailand – Vietnam – TPP*
Korea	ASEAN – India – Singapore
Liechtenstein	Singapore – Ukraine – EEA* – EFTA – EFTA-Central America*
Mauritius	-
Mexico	Central America* – TPP* – Uruguay
New Zealand	ASEAN-Australia-NZ* – China – Malaysia – Singapore – Thailand – Trans-Pacific Strategic Economic Partnership* (Brunei, Chile, New Zealand and Singapore) – TPP*
Norway	Singapore – Ukraine – EEA* – EFTA – EFTA-Central America*
Pakistan	China – Malaysia
Panama	EU-Central America* – Singapore
Peru	China – Singapore – TPP*
Switzerland	Singapore – Ukraine – EFTA – EFTA-Central America*
Turkey	-
United States	CAFTA-DR* – Bahrain – Jordan – Morocco – Oman – Singapore – TPP*
<p>Note: The asterisk (*) indicates those agreements in which two or more TiSA participants take place along with non-TiSA participants.</p> <p>Source: Regional Trade Agreements Information System (WTO, n.d.), OAS SICE Foreign Trade Information System (n.d.) and official government websites</p>	

Annex 3: Regulatory heterogeneity based on the TiSA European Union benchmark for OECD and BRICS countries																	
Benchmark: European Union (Germany, France, UK)																	
	Audiovisual – Broadcasting	Audiovisual – Sound recording	Construction services	Courier	Computer services	Distribution	Banking (Commercial)	Insurance	Accounting and auditing	Architecture services	Engineering services	Legal services	Telecommunications	Air transport	Maritime transport	Rail freight transport	Road freight transport
China																	
Russian Federation																	
Indonesia																	
South Africa																	
India																	
Mexico																	
United States																	
Turkey																	
Brazil																	
Iceland																	
Chile																	
Canada																	
Australia																	
New Zealand																	
Switzerland																	
Slovenia																	
Italy																	
Israel																	
Japan																	
Norway																	
Poland																	
Greece																	
Spain																	
Luxembourg																	
Finland																	
Hungary																	
Portugal																	
Korea																	
Sweden																	
Estonia																	
Austria																	
Belgium																	
Denmark																	
Slovakia																	
Czech Republic																	
Netherlands																	
Germany																	
United Kingdom																	
Ireland																	
France																	

Annex 3 (cont.): Regulatory heterogeneity based on the TiSA European Union benchmark for OECD and BRICS countries																	
Benchmark: United States																	
	Audiovisual – Broadcasting	Audiovisual – Sound recording	Construction services	Courier	Computer services	Distribution	Banking (Commercial)	Insurance	Accounting and auditing	Architecture services	Engineering services	Legal services	Telecommunications	Air transport	Maritime transport	Rail freight transport	Road freight transport
China																	
India																	
Iceland																	
Indonesia																	
Austria																	
Poland																	
Israel																	
Brazil																	
Finland																	
Turkey																	
Switzerland																	
Spain																	
Belgium																	
Greece																	
South Africa																	
Russian Federation																	
Slovenia																	
Italy																	
Sweden																	
France																	
Norway																	
Mexico																	
Japan																	
United Kingdom																	
Australia																	
Czech Republic																	
Denmark																	
Chile																	
Luxembourg																	
Ireland																	
Portugal																	
New Zealand																	
Korea																	
Slovakia																	
Netherlands																	
Germany																	
Estonia																	
Hungary																	
Canada																	
Note:		Notice that not all TiSA countries are taken into account for the benchmark, as not all of them are covered by the OECD exercise.															

Annex 4: Summary of TiSA negotiating rounds	
1st Round (27 April– 3 May 2013)	Chair: US. Participants produced a first draft core negotiating text. They agree on July as the deadline for tabling initial market access offers under the condition that sufficient progress be made in the June round on the core text. Discussions on temporary entry of business persons are held during one full day. Discussions on financial services also were held.
2nd Round (24–28 June 2013)	Chair: EU. Liechtenstein joined the negotiations. Ongoing discussions around the inclusion of provisions from GATS in the core text of TiSA. Initial discussions on Australia's proposal for an Annex on Professional Services. New proposals were tabled on financial services and domestic regulation. Preliminary discussions on e-commerce and maritime transport services were complemented by presentations from industry in the margins of the meeting on developments in the ICT [Information and Communication Technology] and maritime sectors.
3rd Round (16–20 September 2013)	Chair: Australia. More than 120 negotiators and sector-specific government experts attended. Significant progress was made on the core text. Thus, participants agreed to a window for tabling initial market access offers of 4–30 November. Early offers tabled by the United States and Japan enabled the commencement of market access negotiations. Discussions also progressed on new and enhanced disciplines.
4th Round (4–8 November 2013)	Chair: US. Negotiations focussed on advancing new and enhanced disciplines (trade rules) on ICT services, financial services, professional services, temporary entry of business persons, maritime transport services and domestic regulation. There were new proposals on air transport services, competitive delivery services, energy services and subsidies. The EU was the third party to table an initial market access offer. Other parties confirmed offers will be tabled by the 30 November deadline. Further progress was made on the core text with the provisions on scheduling commitments now largely finalised.
5th Round (17–24 February 2014)	Chair: EU. Market access negotiations commenced in this round with three days of dedicated discussions – 21 of the 23 TiSA parties tabled their initial market access offers. TiSA parties also continued discussions on new and advanced disciplines (trade rules) for ICT services, financial services, domestic regulation and transparency, maritime transport, professional services and temporary entry of business persons. They agreed to move from proposals to negotiating texts for all of these disciplines.
6th Round (28 April–2 May 2014)	Chair: Australia. More than 140 negotiators and sector-specific government experts attended. There was good progress in discussions in all areas, including on new and enhanced disciplines (trade rules) for financial services, domestic regulation and transparency, e-commerce and telecommunications, and maritime transport. TiSA participants agreed to move to a negotiating text for air transport. Market access negotiations also continued. The Global Services Coalition organised a substantial industry presence in the margins of the negotiations, and Australia's Ambassador and Permanent Representative to the WTO participated in a public information session hosted by the International Center for Trade and Sustainable Development.
7th Round (23–27 June 2014)	Chair: US. The negotiations focussed on advancing the new and enhanced disciplines (trade rules) for e-commerce and telecommunications, financial services, professional services, domestic regulation and transparency, air and maritime transport, and temporary entry of business persons. Solid progress was made in all areas. There were further discussions on the competitive delivery services and road transport proposals. Market access discussions continued with TiSA participants agreeing to make market access negotiations an increasing focus of the negotiations going forward. To support Australia's objective of increasing opportunities for professional service suppliers, there was a presentation by the International Bar Association on trade in legal services in the margins of the round.

Annex 4 (cont.): Summary of TiSA negotiating rounds	
8th Round (21–25 September 2014)	Chair: EU. Negotiators made positive progress on further developing new and enhanced disciplines (trade rules) for temporary entry of business persons, financial services, maritime and air transport services, domestic regulation and transparency, e-commerce and telecommunications, and professional services. There was also a discussion of new proposals, including on environmental services, government procurement and direct selling services. Negotiators discussed raising the level of ambition in various sectors. Participants agreed to progress market access discussions intersessionally.
9th Round (1–5 December 2014)	Chair: Australia. There were more than 200 negotiators and sector-specific government experts. Good progress was made in advancing the enhanced disciplines (trade rules) for e-commerce and telecommunications, domestic regulation and transparency, financial services, temporary entry of business persons, professional services, maritime and air transport services, and delivery services. There was also further discussion of proposals on government procurement, environmental and energy services, and the facilitation of patient mobility. Participants reported on progress in bilateral market access discussions held since the September Round and committed to advance these further in 2015.
10th Round (9–13 February 2015)	Chair: US. The Round was the first attended by Uruguay, which became the 24th Party to join the TiSA negotiations. Negotiations focussed on advancing the enhanced disciplines (trade rules) for temporary entry of business persons, domestic regulation and transparency, e-commerce and telecommunications, financial services, professional services, and maritime and air transport services. There was also a discussion of new proposals for government procurement, delivery services, patient mobility and road transport. The Round was characterised by increased attention on bilaterals and small group meetings, with participants involved in a series of sectoral and market access meetings to facilitate progress in the negotiations.
11th Round (13–17 April 2015)	Chair: EU. Negotiators made good progress on further streamlining the disciplines (trade rules) in the domestic regulation and financial services annexes. Parties had productive discussions on telecommunications, temporary entry of business persons and maritime transport services and committed to undertake additional intersessional work in these areas.
12th Round (6–10 July 2015)	Chair: Australia. This round included a stocktaking exercise – a milestone on the path towards concluding the TiSA negotiating process. Negotiators continued to make good progress on streamlining the disciplines (trade rules) in the core text of the agreement, as well as in the annexes on domestic regulation and financial services. There were productive discussions on e-commerce, telecommunications, temporary entry of business persons, and maritime and road transport services, and committed to undertake additional intersessional work in these areas. Participants agreed to a deadline for notifying any new annexes (31 July 2015), and a timeframe for tabling completed market access offers (15 September 2015). At an Ambassadors' session on the final day of negotiations, Mauritius joined as the 25th TiSA Party.
13th Round (6–13 October 2015)	Chair: US. The round was the first attended by Mauritius, which joined in July as the 23rd TiSA participant. Building on the July stocktaking exercise, participants continued market access negotiations and held productive discussions on e-commerce, telecommunications, temporary entry of business persons, domestic regulation, financial services and delivery services. Participants noted that there had been less progress on public health and road transport. A proposal on state-owned enterprises was also introduced, the final new annex notified in accordance with the 31 July deadline agreed to by Parties in July. Parties also agreed on a work plan to guide negotiations for the next six months, including intensified intersessional work to move the negotiations on annexes closer to conclusion.
14th Round (29 November –4 December 2015)	Chair: EU. Progress was made on domestic regulation, transparency and financial services, reflected also in the agreement text. There were productive discussions on temporary entry of business persons and market access negotiations continued. Pakistan became the final TiSA participant to table its market access offer. Participants committed to intensified market access discussions in 2016, looking forward for a close conclusion.
Source: Trade in Services Agreement (Australian Government, DFAT, n.d.)	

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