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**TISA AND
POSTAL
SERVICES**

The TiSA agenda for postal, courier and express delivery services is set by the Big Four members of the Global Express Association, aka the Express Association of America: DHL, Fedex, TNT and UPS, as they position themselves to capitalise on the 4th industrial revolution. Globally integrated supply chains that operate through multiple channels and are organised through digital platforms. Require seamless cross border flows of transport, goods, data, money and people. At the same time their dominance has been challenged by more flexible and dynamic operators like Amazon, who have gone from customers to aggressive competitors.

The changes they are demanding to postal and delivery systems through TiSA holds one of the keys to their survival. Public postal systems restrict their expansion, while differences in national regulations impede the efficient use of their global networks. The GATS had little effect on either, so they are both targets in TiSA. Their home countries, the US and EU are driving the TiSA negotiations on this sector, including a sectoral Annex on Delivery Services that would lock open new doors and close governments' regulatory space. Other proposed annexes are also important. The Annex on Electronic Commerce would guarantee their ability to operate globally from a centralised home base. The Annex on State-owned Enterprises would require the public Post Office to operate as a private business when selling most of its services, with limited scope for its traditional public service functions. The Annex on Domestic Regulation would affect the terms and administration of licensing and technical standards for delivery services.

Box 8.1 TiSA Objectives for Postal Services

If the US, EU and Big Four succeed TiSA would

- break down remaining postal monopolies;
- lock in existing and future postal liberalisation and deregulation;
- prevent cross-subsidisation from postal monopoly services to other delivery services;
- impose private sector practices on state-owned Post Offices, which is a common first step to full deregulation and/or privatisation;
- minimise the universal postal service obligation (UPSO) and shield private firms from related costs and responsibilities;
- subject regulatory bodies to greater scrutiny, especially when they operate the public postal service;
- erode the role and leadership of the Universal Postal Union (UPU) as the specialist international agency for postal services by adopting binding and enforceable rules on delivery services in a 'trade' agreement; and
- create conditions for the rapid expansion of global e-commerce, which could see digital platform operators like Amazon displace both the public postal system and the Big Four.

The corporate demands

Trade liberalisation is a priority for the Big Four delivery firms. As multimodal operators, they have developed interests in all modes of transport, as well as port and ground services, warehousing, government procurement of delivery services, and insurance. These are covered by the general

rules TiSA and proposed annexes on international maritime, air and/or road freight transportation annexes. But the main focus is on express delivery. Their common demands for TPP, TTIP and TiSA on delivery services include:¹

- *Removing market access barriers to trade in services;*
- *Achieving a much higher level of regulatory convergence, and alignment of standards and practices;*
- *Removing barriers to investment;*
- *Eliminating restrictions on cross-border data flows (the free flow of data across borders is critical to the express industry);*
- *Prohibiting forced localization (including in-country requirements for servers and data storage);*
- *Developing disciplines on state-owned enterprises (SOEs) and state-supported enterprises (SSE) to ensure fair competition between these entities and the private sector.*

The corporate lobby made three specific demands for TiSA:

Fair Competition/Level Playing Field. *The TISA should seek to liberalize trade in package delivery services further by ensuring a level playing field for all competitive services offered outside those supplied in the exercise of governmental authority,² particularly with respect to state-owned and state-supported enterprises (SOE/SSE). There is a need to secure more ambitious commitments and disciplines for domestic regulation and fair competition by allowing free market principles to govern the highly competitive express sector, or where necessary, independent regulation and a level playing field with competing services offered by Posts such as express mail services. Exclusions and non-conforming measures (NCMs) for postal services should be drawn as narrowly as possible, for example, by using a reasonable price/weight multiple.*

Transparency, Regulatory Coherence, and Private Sector Consultation. *To encourage greater transparency, coordination, consultation, and partnership between express delivery services and regulators, the TISA should include the establishment by each party of a national coordinating body, process, or mechanism, to ensure a whole-of government approach, regulatory coherence, and institutionalized private sector input. Parties should also include mechanisms to review the impact of current or proposed measures and provide appeal opportunities should a measure not achieve desired results.*

Integrated Approach, Particularly for Customs Processes. *The TISA should focus on removing barriers to express delivery services, recognizing that EDS faces antiquated policy environments in some countries, including onerous regulations on cross-border transport, inefficient border clearance procedures and domestic regulations that distort fair competition. To respond adequately to the nature and scope of the services this industry provides, the TISA must address the unique needs of express delivery service providers, including the need for an integrated approach for customs clearance, seamless regulation across multiple modes of transport, and commitments to immediate release, single-window, and electronic border clearance.*

Ironically, TiSA may prove more beneficial for their competitors. The Big Four are already struggling to survive the challenge from tech innovators like Amazon and Uber, at least in their current form. Because they have less sunk investment in infrastructure and long-term relationships, they can adapt their operations and move locations more easily. In a 2016 article that asked ‘Will Amazon Kill FedEx?’ *Bloomberg Businessweek* observed that ‘Amazon is becoming a kind of e-commerce Walmart with a FedEx attached’.³

1 Testimony of the Express Association of America to the Committee on Ways and Means, United States House of Representatives hearing on U.S. Trade Policy Agenda, 3 April 2014, https://waysandmeans.house.gov/UploadedFiles/The_Express_Association_of_America_040314TR.pdf.

2 This language mirrors the restrictive ‘governmental authority’ exclusion in TiSA, which only applies where the service is non-commercial and there is no competing supplier, conditions which in this context render it meaningless.

3 Devin Leonard, ‘Will Amazon Kill FedEx’, *Bloomberg Businessweek*, 31 August 2016, <https://www.bloomberg.com/features/2016-amazon-delivery/>

TISA would offer greater flexibility to Amazon and Uber through the annexes on e-commerce and air and road transport services, along with rights of entry for foreign workers employed by contractors to supply services across the border under the labour mobility annex. Likewise, they will benefit more from the future-proofing elements of TISA: binding commitments on cross-border supply of services (mode 1), supported by the stand-still and ratchet that prevents stronger regulation; technological neutrality of commitments and no regulation of new services; and a ban on localisation requirements for data or that they have a local presence in the countries where they operate. The transparency annex would guarantee them rights of input into new regulatory decisions that affect their interests, which is especially important for those that push the legal boundaries and face pressures for re-regulation.

Activist states: the EU and US

Only three parties contributed to the text on Competitive Delivery Services in 2014:⁴ the EU, the US and Turkey. This reflects a long-standing quest by the US and EU to open the postal sector to express delivery operators by rewriting the relevant parts of the GATS. However, they suggest different ways to do this, which reflect their particular regulatory approaches. The latest leaked text from November 2016 is described as a 'landing zone' and does not include country attributions, but comparisons with earlier texts show it is a middle ground between the US and EU positions. Other unnamed countries are trying to preserve more policy space. A more detailed analysis is provided in Appendix 8.

The EU approach

The EU takes a competition policy approach to the sector and seeks to restrict the scope of public postal services and the universal postal service obligation. It is historically more aggressive than the US.

In 2005, as part of the plurilateral services negotiations in the WTO, the EU proposed a reference paper on postal and courier services,⁵ which built on an earlier one from 2001.⁶ It complained that too few commitments were made in the postal/courier sector and that the current CPC classification that differentiated between public postal and private courier services no longer reflects the market reality.

The EU proposed a new classification and asked all WTO members, as a medium to long term goal, to adopt the maximum level of commitments for postal and courier services that was compatible with the Universal Postal Service Obligation (UPS0). In the short term, countries should make full commitments to open, and not discriminate on, express delivery services, handling of addressed parcels and packages, handling of addressed press products, handling of non-addressed items, and document exchange. The EU would accept a more gradual market opening, and national treatment, for handling addressed written communications and items as registered or insured mail.

The EU's position was expanded in its bilateral free trade agreements (FTAs). The agreement with the Cariforum states was the most extreme.⁷ The section on 'courier services' focused on preventing anti-competitive practices, but 'courier service' was not defined. Licences could only be required for delivering the universal service. Regulatory bodies had to be independent of suppliers, which disqualified the public postal service from regulating. Countries could define their own universal service, but it could not be more burdensome than necessary for the extent and kind of service, and had to be administered in a transparent, non-discriminatory and 'competitively neutral' way.

The more recent EU Vietnam FTA refers to postal services and is less extensive - possibly to reflect Vietnam's development status and pervasive SOEs, although Cariforum states are also from the global South. The Vietnam FTA explicitly uses the old 1991 classifications that distinguish between public postal and private courier services. The provisions cover anti-competitive practices, transparency of

4 TISA, Annex on Competitive Delivery Services, dated April 2014

5 WTO, 'Communication from the European Communities and their Member States. Reference paper on postal and courier services', TN/S/W/26

6 WTO Council on Trade in Services, 'Communication from the European Communities and their Member States: GATS 2000: Postal/courier services', 23 March 2001, S/CSS/W/61.

7 Cariforum-EC Economic Partnership Agreement 2008, Section 3.

licence requirements, and an independent regulator.⁸ Postal services are explicitly included in the most-favoured-nation (MFN) obligation, meaning agreements one party makes with a third country would have to be shared with the other party.⁹ However, there is no reference to the universal service, in contrast to the telecommunications section where the wording is similar to the Cariforum agreement.

The Canada EU free trade agreement (CETA) has a short annex which confirms that courier services are subject to the investment and cross-border services chapters. Those commitments exclude air traffic rights for courier service suppliers,¹⁰ which are subject to the Canada EU bilateral air transport agreement. The CETA annex on temporary entry and stay of natural persons makes it clear that commitments to allow entry for contractual services suppliers covers postal and courier services;¹¹ this means a firm from one Party could use foreign contract labour to deliver postal or courier services in the other (see Appendix 3).

The EU initially proposed the more extreme Cariforum position for TiSA, but that has been moderated in the November 2016 text (see Appendix 8).

The US approach

The US is more concerned to maximise the market available to its big operators and shield them from any public good obligations. The 2014 text seeks to draw a sharp line between the postal monopoly and express delivery services by defining the manner in which the monopoly must operate, including to ensure there is no cross-subsidisation to its other activities, and to protect express deliverers from any universal service obligations. It also seeks to protect its big express deliverers from any obligations related to universal services. The US position in the first leaked TiSA annex on competitive delivery services from 2014 is based on Annex 10-B on Express Delivery Services in the TPPA. That included an explicit expectation that market access commitments would guarantee, at a minimum, a standstill on current regulation.¹² That position is not in the November 2016 text.

What's new in TiSA for postal services

TiSA provides a number of inter-related tools to achieve the industry's goals: the core text, countries' schedules of commitments, the proposed Annex on Delivery Services,¹³ and the Annex on State-owned Enterprises.

The first leaked text of the Annex, dated April 2014, promoted an integrated commercial delivery sector that blended public and private using new definitions of a postal monopoly and commercial or express delivery, with a minimal universal service monopoly. In the latest leaked text from November 2016¹⁴ they are no longer trying to redefine postal and courier services, and instead apply the core rules to both. Those rules are designed to remove restrictions on markets, including postal monopolies, and remove measures that favour local suppliers, especially public postal operators. The scheduling mechanisms in TiSA aim to maximise those obligations.

The Annex on Delivery Services would narrow the space for the public monopoly and the universal service. The Annex on Domestic Regulation would impose constraints on licensing requirements and the technical standards for those services, and the Annex on State-owned Enterprises would require public Post Offices to operate as private businesses, except when delivering an explicit public service mandate.

8 EU-Vietnam Free Trade Agreement 2016, Section IV, fn 54.

9 EU-Vietnam Free Trade Agreement 2016, Chapter II: Article 4.3.

10 EU-Canada Comprehensive Economic and Trade Agreement (CETA) 2016, Annex 9-C Understanding on Courier Services.

11 CETA, Para 9, Annex 10-E Sectoral Commitments on Contractual Service Suppliers and Independent Professionals, relating to Chapter 10: Temporary Entry of Natural Persons for Business Purposes.

12 TPP, Annex 10-B, Express Delivery Services, Para 4.

13 TiSA, Annex on Competitive Delivery Services, dated 16 April 2014; Assessment by the International Transport Workers' Federation (ITF) on the TiSA Annex on Competitive Delivery Services, June 2015. https://wikileaks.org/tisa/document/20140416_Annex-on-Competitive-Delivery/

14 TiSA, Annex on Delivery Services, dated 9 November 2016.

Public postal services

Governments know that attacks on core public services have helped sink trade in services negotiations in the past. All TiSA countries also have an obligation as members of the Universal Postal Union (UPU) to deliver a universal postal service.

Their approach in TiSA is to allow a very narrow space for a postal monopoly to deliver specified services and the universal service, within the broader competitive delivery market where the postal authority, express delivery firms, and other commercial delivery suppliers all operate. Depending on how the text is interpreted, foreign firms may be entitled to seek to deliver the universal service, and certainly to enjoy the same benefits it provides to locals. 'Non-discrimination' is important for e-commerce operators, who still use public postal services because the UPSO guarantees extensive geographical coverage and reliable networks.

Beyond that limited space, governments are being asked to lock open up their public postal services markets through their schedules and apply the same rules to all delivery services, public and private, foreign and local.

The State-owned Enterprises annex would also remove supports that help keep state-owned Post Offices commercially viable.

EU requests of Latin America on postal services

In June 2016, the EU made various requests to Latin American countries to make commitments on postal services. These requests have been leaked. They are part of a negotiating process of requests and offers that lead to the final TiSA schedules of each country. If TiSA is concluded, these schedules will supersede the GATS commitments between the TiSA parties. A country's initial and revised offers are secret unless the government chooses to release them (which only the EU and a handful of other European countries have done). That makes it impossible for unions and others to know what their governments are requesting or offering. This secrecy and lack of debate means that governments can commit to liberalise their postal services in response to pressure, or as a trade-off for some other service, without their publics or parliaments knowing.

The leaks reveal that the EU has asked Chile, Costa Rica, Mexico, Panama and Peru to make broad commitments on 'postal services', usually based on the old 1991 classification. In other words, the EU asked countries to commit services that are provided by their national postal administration to the TiSA rules. Sanya Reid Smith explains the implications of the EU's request that Costa Rica liberalises its postal services for foreign investors (technically 'establishing a commercial presence' or 'Mode 3'):

in addition to this meaning more competition for postal services in Costa Rica, if it is privatised and the privatisation turns out to be problematic, it cannot be renationalised back to a public monopoly. [...] While the EU in other sectors seems to only want commitments in mode 3 for non-public services, the EU has no qualms asking for liberalisation of the postal sector including for public services. It may have done this since Costa Rica already opened the postal sector to US companies in its USFTA, so the EU is just asking to be given the same market access as US companies already have. Costa Rica did not liberalise postal services at the WTO or in its EU or EFTA FTAs, so agreeing to the EU requests in this sector would involve further liberalisation including to companies from additional TiSA countries.¹⁵

The target countries revised their offers after receiving these requests from the EU and others. Those second revised offers, dated August 2016, have also been leaked, and show varying responses to the EU requests: Chile made no changes; Peru added courier services in mode 3 (foreign investment), but not for cross-border postal or courier services, or any postal services, as the EU had asked. These requests and offers are an ongoing process that would begin again if the TiSA negotiations resume.

15 Sanya Reid Smith, 'Some of the implications of a few of the requests by the EU to these TiSA countries', 7 October 2016, https://wikileaks.org/tisa/analysis/20161007_TISA_Analysis-on-Market-Access-Requests/20161007_TISA_Analysis-on-Market-Access-Requests.pdf.

The Universal Postal Union

As with telecoms, TiSA would undermine the specialist international organisation that is responsible for postal services, the Universal Postal Union (UPU). The EU has previously tried to do this directly. In a 2005 paper during the GATS 2000 negotiations, the EU recognised that the Universal Postal Convention and its regulations are binding on all Member States of the UPU. It then proposed that:

These agreements should be transmitted, as far as it is necessary, into GATS schedules of commitments in order to ensure coherence between the two agreements and to provide a dispute settlement mechanism to the sector. Therefore, it is crucial that all WTO Members reflect their UPU obligations under their GATS schedules.¹⁶

This indicates that the EU believes at least some UPU obligations are inconsistent with the market access and non-discrimination rules of the GATS. The EU also suggested the relationship between the UPU and the GATS might be clarified through a reference paper, similar to that for telecommunications, which would describe the scope of the universal service and areas that are reserved and not reserved for the public postal administration. The EU proposal would have made the WTO responsible for interpreting and enforcing *both* the UPU obligations and the GATS rules and commitments on postal and courier services. The EU makes no equivalent proposal in TiSA. But simply having more extensive, binding and enforceable rules on postal services in TiSA would erode the UPU's leadership responsibilities, and circumscribe the future development of future policy and regulatory proposals in the UPU.

Impacts on UNI's postal unions and workers

Postal workers in the public sector have been under pressure from decades of deregulation, privatisation and globalisation, and competition from express delivery and courier firms that push down wages and conditions. Temporary and contract workers have minimal bargaining power over their income, lack basic conditions such as sick pay and holiday pay, and carry the burden of social insurance, healthcare and pensions. Unions struggle to find new ways to organise and bargain collectively.

TiSA would intensify these trends. For postal workers, this would mean ...

- competition from contract workers from express delivery operators and courier firms, and from the bogus 'self-employed' workforce of AliBaba and Amazon, squeezes wages and conditions of postal workers in the public sector even further;
- postal labour is replaced by automation and by artificial intelligence, such as drones and unmanned vehicles, including for deliveries across the border;
- the scope of public postal services is reduced, meaning fewer jobs, lower union numbers and less bargaining power, and loss of public sector protections, as sick pay and holiday pay, the burden of social insurance, healthcare and pensions are shifted onto workers;
- public postal services are run like private businesses under private sector conditions, with constant churning, short-term contracts and casualisation; and
- entry of foreign delivery workers employed under inferior terms of employment create conditions for labour exploitation and social dumping.

¹⁶ WTO Council on Trade in Services, 'Communication from the European Communities and their Member States: GATS 2000 Posta/courier services', S/CSS/W/61, para 5 and page 4.