

English summary  
of Fafo-rapport 2017:16

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**The TiSA agreement**  
Content and consequences  
for the labour market and  
the welfare state in Norway

# The TiSA agreement

## Content and consequences for the labour market and the welfare state in Norway

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TiSA (Trade in Services Agreement) is an agreement on trade in services over which the EU and 22 other countries have been negotiating since 2013. When the TiSA negotiations are completed, the agreement must be endorsed by the negotiating countries. The objective of TiSA is to establish predictability for service trade, by having the parties commit to refraining from introduction of new discriminatory rules that block service providers in one of the countries from delivering services in another.

Norway exports services amounting to around NOK 400 billion per year. It has been the wish of the Norwegian Government to negotiate a new agreement that provides a regulatory framework for trade in services. This should ensure predictability and equality of treatment for domestic and foreign service providers. The government's aim is that TiSA should gradually become part of the WTO system.

The critics of TiSA have argued that the agreement will increase competition and restrict our opportunities to regulate services, as well as create pressure for privatization of public services. The authorities, on the other hand, respond that the TiSA agreement will mainly have beneficial effects for Norway and will not give rise to any pressure towards privatization of public services.

The objective of this report is to elucidate the structure of TiSA, the agreement's regulatory scope and the consequences that it may entail for the Norwegian labour market and welfare state. Our point of departure is the trade regime of which Norway currently is part through the EEA Agreement and the membership in the GATS agreement under the WTO. We examine the consequences of TiSA within this framework.

Trade agreements have attracted a lot of criticism for increasing globalization and giving rise to economic inequality. Nor does globalization appear to have brought more economic equality. The criticism of trade agreements has drawn on various perspectives. Some have been concerned that a skewed distribution of power between rich and poor countries causes the rich countries to benefit most from trade agreements. Others have claimed that trade agreements weaken national control and cause relocation of local workplaces, and argue that goods and services to a greater extent ought to be produced domestically and in neighbouring regions. Trade agreements have also been regarded as a tool for strong capital owners and managers who promote their own interests at the cost of workers in all countries, with no concern for workers' rights.

The WTO General Agreement on Trade in Services (GATS) was signed in 1994 and came into force the following year. Trade in services has changed considerably in nature since the adoption of the GATS agreement. In Norway, a number of public services have been privatized, including telecommunications and parts of the postal and railways sector. In concert with a number of other countries, Norway thus opted to negotiate a new agreement on trade in services.

Trade agreements are crucial for Norway. Ever since the days of the sailing ships, Norway's economy has remained open and externally oriented, and international trade has been a precondition for growth and prosperity. Norway has therefore always held a positive attitude to international agreements for regulation of trade. Such agreements ensure predictability and access to international markets. As a small country, Norway has preferred multilateral agreements that include multiple countries, rather than bilateral agreements that give larger countries a greater opportunity to put pressure on small ones, and has therefore supported the development of regulatory frameworks under the WTO. Norway's decision to participate in the TiSA negotiations is based on the explicit goal that further countries will join TiSA over time and that TiSA should be incorporated into the WTO and become a part of its framework.

GATS and TiSA are based on the principles of market access, national treatment and the most-favoured-nation principle. Providing market access means to commit to not introducing so-called quantitative restrictions, i.e. monopolies, quotas, restrictions on foreign ownership or similar. National treatment means that the rules that apply to Norwegian enterprises should also apply to foreign ones, and that these rules should not give rise to de facto differential treatment. Any disagreement between two states regarding what constitutes equality of treatment will need to be resolved through TiSA's dispute resolution system. The most-favoured-nation principle implies that a country may not discriminate against the member countries of a trade agreement. TiSA encompasses four different modes of service delivery: 1. cross-border services; 2. consumption abroad; 3. commercial presence; and 4. posting of people.

TiSA contains lists of sectors with market access and lists of reservations. Each country lists the sectors in which they commit to granting market access. This is a so-called positive list, and the commitment to provide market access applies only here. Even though a country commits to providing market access to certain sectors, it can list reservations against national treatment or unrestricted market access. These reservations are entered on a so-called negative list. A country may only list reservations that follow from the country's regulation at the time of the agreement. This is referred to as a 'freeze'. A so-called 'ratchet' mechanism is also linked to the list of reservations, meaning that if a reservation is removed, it cannot be reintroduced.

Some services are totally exempt from the TiSA agreement. These include services that are provided by public authorities on a non-commercial basis or not in competition with other service suppliers. This applies to, for example, the judicial system, military defence and social benefits.

In some sectors, Norway has not committed to granting national treatment and market access. Here, the authorities are not obligated to treating foreign and Norwegian enterprises equally, and they have retained full political latitude. This includes hospital services, social welfare services, primary/lower secondary education and a number of other public services.

In the sectors where Norway has committed to granting market access, the authorities may not introduce monopolies or other restrictions to market entry. In principle, all foreign service providers in these sectors should be treated as equals to their Norwegian counterparts. However, Norway has entered a number of restrictions on national treatment. This includes the right to posting of workers, which essentially has been restricted to a period of three months.

The regulations that govern residence for people who will provide services in Norway are identical in the TiSA agreement and in GATS, and stricter than the prevailing Immigration Act. Posted workers from countries that are part of TiSA (with the exception of the EU/EEA) will need to comply with the provisions in the Immigration Act on application for a residence permit, on an equal footing with posted workers from other third countries, and the provision that Norwegian wages and working conditions shall apply will need to be obeyed. Thereby, TiSA will thus not provide any opportunities for obtaining residence in Norway beyond those granted by the prevailing rules.

Increasing trade in services and use of posted workers has given rise to considerable challenges when it comes to preserving decent wages and labour conditions in Norway. In the TiSA negotiations, the Norwegian government has made the reservation that Norwegian wage levels and working conditions shall apply. However, such requirements have proven difficult to enforce. To avoid unacceptably low wages and violations of the Working Environment Act, it is crucial that the government, independently of the TiSA agreement, seeks to establish institutions and give support to organizations that enforce labour market regulations. The TiSA agreement of itself will not entail any restrictions on the opportunities to regulate working conditions, but a greater influx of service migrants as a result of increased trade may render it more difficult to monitor and enforce the provisions. It is difficult to predict the magnitude of the influx, and it may also change if countries that are currently not included in the TiSA negotiations become signatories to the agreement at a later time.

In sectors that are exempt from the TiSA agreement or in which Norway has not committed to equal national treatment and market access, the agreement will have no regulatory effects for employees. Public sector employees are largely

protected in the TiSA agreement. However, it cannot be ruled out that discussions will arise as to whether particular services connected with the public sector are protected or not.

In sectors with market access, the principle of national treatment applies, and here the TiSA agreement may restrict the authorities' opportunities to grant subsidies or support to public enterprises that are presumed to operate on competitive conditions. Disagreement may easily arise regarding what constitutes equality of treatment when the public sector operates in competition with the private sector, and such disagreement may become the subject of disputes. However, public sector business operation is already regulated by provisions that apply today, as stipulated by Norwegian legislation and as a key component of the EEA Agreement. TiSA will thus not involve any changes of prevailing regulations.

## Conclusion

The TiSA negotiations have been underway for several years, and we may assume that the parties will sign a finished agreement in the near future. The TiSA negotiations have been led by the government. When the final agreement text is ready, it will be submitted to the Storting for deliberation and approval.

In this report we have sought to give an account of the structure of TiSA, its content and the consequences it might entail for the labour market and the welfare state. In assessing the impact and consequences of a possible TiSA agreement, we have assumed that Norway is bound by its international commitments, such as the EEA Agreement and the WTO trade agreements.

On the one hand, criticism has been voiced against trade agreements in general and the consequences they entail for many countries. It is obvious that increased trade over time has spurred considerable changes in the industrial structure and working life in countries across the globe. Entire industries have closed down, often with dire consequences for the workers. As regards Norway, affiliation with the EEA has given rise to considerable challenges associated with labour migration and posting of workers as an element of the trade in services. These consequences have included social dumping, involving unacceptable low wages and violations of the Working Environment Act. The trade union movement has served as a watchdog in this area, and the authorities have enacted a series of measures to combat these violations.

On the other hand, however, there can be no doubt that Norway is among those countries of the world that stand to benefit from a maximally free international trade. This has been a hallmark of the Norwegian economy for centuries. Today, Norwegian industries and enterprises that provide services need access to international markets to be able to grow and compete with large, multinational conglomerates. We have seen that companies such as Telenor have succeeded

in some markets and failed in others. Predictability linked to the regulation of services will often be the decisive success factor. As a result, Norwegian authorities under various governments have sought to establish multilateral trade agreements.

The TiSA negotiations are still ongoing, but the Norwegian position is known. Our conclusions have been drawn on the precondition that no significant changes to the prevailing situation are introduced. As far as we can see, there are only minimal differences in the commitments that Norway has offered to TiSA and the obligations that follow for Norway from the 1994 GATS agreement.

Today, the Norwegian authorities' room for manoeuvre is largely circumscribed by the EEA Agreement and European integration. This community has given rise to challenges, but also to advantages. There is an ongoing debate on how Norway can make use of the latitude that exists within the EEA to ensure decent wages and labour conditions and protect key welfare institutions. The TiSA agreement will not impose any further restrictions on the room for manoeuvre that Norway today enjoys.

The TiSA agreement allows little opportunity for employees or employed service providers to come to Norway, beyond the opportunities that already exist. It is likely that increased trade in services will result in greater immigration and emigration, and the presence of a larger number of foreign service providers in Norway. These types of migration will continue to be regulated by the Immigration Act, and TiSA places no significant restrictions on this. However, increased trade in services may result in pressure on the labour market in sectors that make use of specialists and skilled workers. This may give rise to problems with enforcement and monitoring of provisions connected with wages, working conditions and other social factors.

The privatisation of public enterprises may present a problem for public sector employees and may impact on the services. The EEA rules set frameworks for how the public sector can act where public and private enterprises are in competition. The TiSA agreement stipulates that foreign and Norwegian enterprises shall be treated equally. However, large parts of what we currently consider to be public service are exempt from market access in the TiSA agreement, and the agreement will therefore have no consequences for the Norwegian authorities' room for manoeuvre in these areas. There is nevertheless an element of uncertainty attached to trade agreements such as TiSA. Even though the text of an agreement entered into today does not appear to set restrictions on politicians' room for manoeuvre, the current interpretation of the text may be challenged in the future. When new regulations are introduced, questions may arise as to whether these have the effect of restricting trade if they do not treat foreign service providers equally. Doubts may also be raised regarding what shall be considered to fall within the public sector, or what services shall have free market access pursuant

to the agreement. If such disputes should arise in the future, they will potentially need to be resolved through TiSA's dispute resolution system.

Today, Norway has an open economy with obligations towards the EEA and through the GATS agreement. Foreign enterprises represent a large element of the Norwegian economy. Our conclusion is thus that TiSA will not significantly restrict the Norwegian authorities' room for manoeuvre beyond the commitments that already have been made, and that a TiSA agreement will not entail substantial consequences for the labour market, public-sector employees or welfare services. In conjunction with other trends, the agreement may lead to increased trade in services globally, and give Norwegian enterprises greater predictability when they wish to establish themselves abroad. It has proved difficult to reach an accord on a multilateral agreement on trade in services within the WTO, and Norway has therefore participated in negotiations on TiSA. A possible alternative to a plurilateral agreement such as TiSA would be bilateral agreements with countries with which Norway wishes to establish particular trade relations. However, bilateral agreements give large countries more negotiating power than small ones. Norway has been concerned to ensure Norwegian industry conditions of trade on a par with enterprises in the EU. This objective may be difficult to achieve through bilateral agreements alone.

Norway today is a member of the EEA, and its domestic labour market has been fraught with challenges associated with an open labour market. With or without the addition of a new TiSA agreement, it is essential that politicians show the willingness and capacity to use the room for manoeuvre that is contained in the trade agreements in order to ensure that these challenges in the labour market and developments in the public sector do not create greater social and economic inequality. It is also essential that Norway, which has been a small country with an open economy for more than a century, is also guaranteed access to the global market in the future.