Memorandum on Leaked TISA Financial Services Text

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This memorandum provides a preliminary analysis of the leaked financial services chapter of the Trade in Services Agreement dated 14 April 2014. It makes the following points:

- The secrecy of negotiating documents exceeds even the Trans-Pacific Partnership Agreement (TPPA) and runs counter to moves in the WTO towards greater openness.

- The TISA is being promoted by the same governments that installed the failed model of financial (de)regulation in the WTO and which has been blamed for helping to fuel the Global Financial Crisis (GFC).

- The same states shut down moves by other WTO Members to critically debate these rules following the GFC with a view to reform.

- They want to expand and deepen the existing regime through TISA, bypassing the stalled Doha round at the WTO and creating a new template for future free trade agreements and ultimately for the WTO.

- TISA is designed for and in close consultation with the global finance industry, whose greed and recklessness has been blamed for successive crises and who continue to capture rulemaking in global institutions.

- A sample of provisions from this leaked text show that governments signing on to TISA will: be expected to lock in and extend their current levels of financial deregulation and liberalisation; lose the right to require data to be held onshore; face pressure to authorise potentially toxic insurance products; and risk a legal challenge if they adopt measures to prevent or respond to another crisis.

Without the full TISA text, any analysis is necessarily tentative. The draft TISA text and the background documents need to be released to enable informed analysis and decision-making.

1. Unprecedented Secrecy Reverses WTO Trend of Disclosure

The cover sheet records that the draft text will not be declassified until 5 years after the TISA comes into force or the negotiations are otherwise closed. Presumably this also applies to other documents aside from the final text. This exceeds the 4 years in the

super-secretive Trans-Pacific Partnership Agreement (TPPA)! It also contradicts the hard-won transparency at the WTO, which has published documents relating to negotiations online for a number of years.[1]

Secrecy during the negotiation of a binding and enforceable commercial treaty is objectionable and undemocratic, and invites poorly informed and biased decisions. Secrecy after the fact is patently designed to prevent the governments from being held accountable by their legislatures and citizens.

The suppression of background documents (travaux preparatoires) also creates legal problems. The Vienna Convention on the Law of Treaties recognises they are an essential tool for interpreting legal texts. Non-disclosure makes it impossible for policy-makers, regulators, non-government supervisory agencies, opposition political parties, financial services firms, academics and other commentators to understand the intended meaning or apply the text with confidence.

2. The states driving TISA were responsible for the WTO's pro-industry finance rules

The participants in the TISA negotiations are Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Hong Kong China, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland, Turkey, the USA and the European Union, including its 28 member states.

The leaked text shows the US and EU, which pushed financial services liberalisation in the WTO, are the most active in the financial services negotiations on TISA. The third most active participant is the renowned tax haven of Panama.

To understand the implications of the TISA proposals on financial services it is necessary to understand the comparable WTO texts. What is commonly called the Financial Services Agreement is a composite of texts:

i. the General Agreement on Trade in Services (GATS) sets the framework for rules that govern services transactions between a consumer of one country and a supplier of another;[2]

ii. the Annex on Financial Services applies to all WTO Members;[3]

iii. schedules of commitments specify which financial services each country has committed to the key rules in (i) and (ii), and any limitations on those commitments;[4] and

iv. a voluntary Understanding on Commitments in Financial Services[5] sets more extensive rules and has an ambivalent legal status in the WTO.[6]

Financial services are defined by a broad and non-exclusive list, which ranges from life and non-life insurance, reinsurance, retrocession, banking, trading derivatives and foreign exchange to funds management, credit ratings, financial advice and data processing (***see Art X.2***).

The rules apply to measures that 'affect' the supply of financial services through foreign direct investment (commercial establishment) or offshore provision by remote delivery or services purchased in another country (cross-border). They also aim to 'discipline' governments in favour of a light handed and self-regulatory model of financial regulation.

The substantive rules target what the financial services industry sees as obstacles to its seamless global operations, including:

- limits on the size of financial institutions (too big to fail);
- restrictions on activities (eg deposit taking banks that also trade on their own account);
- requiring foreign investment through subsidiaries (regulated by the host) rather than branches (regulated from their parent state);
- requiring that financial data is held onshore;
- limits on funds transfers for cross-border transactions (e-finance);
- authorisation of cross-border providers;
- state monopolies on pension funds or disaster insurance;
- disclosure requirements on offshore operations in tax havens;
- certain transactions must be conducted through public exchanges, rather than invisible over-the counter operations;
- approval for sale of 'innovative' (potentially toxic) financial products;
- regulation of credit rating agencies or financial advisers;
- controls on hot money inflows and outflows of capital;
- requirements that a majority of directors are locally domiciled;
- authorisation and regulation of hedge funds; etc.

3. States promoting TISA blocked critical debates in the WTO post-GFC

This combination of liberalisation of financial markets and light-handed, risk-tolerant financial regulation enabled the excesses of the powerful US and European finance industry and the growth of the shadow banking system. Various WTO Members called for a review of the rules after the financial crisis. For example, the WTO Ambassador from Barbados tabled a paper in the Committee on Financial Services in March 2011 that said:

> the crisis has served to highlight flaws in the global regulatory and compliance environment which hamper the implementation of corrective measures and in some cases make them open to challenge. Unless it is assumed that such problems will never again recur, they point to a need to review some aspects of the global rules including WTO GATS rules within which countries operate, so as to permit remedial measures to be implemented without running the risk of having them viewed as contraventions of commitments. [7]

Subsequent attempts led by Ecuador to secure a debate in the Committee were eviscerated to the point that the eventual discussion in April 2013 was meaningless.[8]

Similar concerns were expressed outside the WTO. The commission established by the President of the UN General Assembly in 2009 to review the financial crisis (the Stiglitz Commission) wrote in its interim report that trade-related liberalisation of financial services had been advanced under the rubric of these agreements 'with inappropriate regard for its consequences on orderly financial flows, exchange rate management, macroeconomic stability, dollarization, and the prudential regulation of domestic financial systems'.[9] Their final report called for the agreements to be critically reviewed.
The major players at the WTO, led by the US, Canada, Australia, Switzerland and the EU, consistently refused to accept there is any relationship between the WTO's financial services rules and the GFC. Instead, they have continued to negotiate bilateral free trade and investment treaties that lock governments more deeply into that regime and extend their obligations even further.

In many cases, the major powers have presented these demands to countries from the global South as part of a non-negotiable FTA template. Poor countries that carefully limited their exposure on financial services at the WTO have often become bound to a more extreme version of those rules and obligations through the FTAs.

4. Strategic role of TISA in WTO and FTAs

The US insisted that the negotiation of the Financial Services Agreement during the Uruguay round of the GATT continue for several years after the round had finished, until it was satisfied with the commitments that were made. The final package was estimated to cover 95 per cent of international trade in banking, securities, insurance, and information services as measured in revenue.[10]

Moves began in 2000 to expand those commitments further, as provided for in the GATS. Those talks were incorporated into the Doha round of WTO negotiations in 2001. The round stalled in the mid-2000s. Moves to advance the services negotiations through plurilateral negotiations failed.

The governments that were pushing these talks moved outside the formal WTO boundaries to pursue TISA. They call themselves the 'Really Good Friends of Services'. Their goal is to make TISA the new platform for financial services. The US has said it wants to establish new negotiating rules in TISA, get enough countries to sign on that will enable it to be incorporated into the WTO, and then have the same rules adopted for negotiations at the WTO.[11] The European Commission has said TISA will use the same concepts as the GATS so that it can 'be easily brought into the remits of the GATS.'[12]

It is not clear how that might happen. Either two thirds or three quarters of the Members would need to agree to TISA coming under the WTO's umbrella, even as a plurilateral agreement.[13] Countries like Brazil and India have been very critical of TISA, and the US has not allowed China to join. But the pressure on WTO Members will be immense. If the plan did succeed, many South governments that resisted the worst demands of the GATS and the services aspects of the Doha round will find they end up with something more severe.

If TISA remains outside the WTO its coverage will be limited to the signatories. That is dangerous itself. The countries that were at the centre of global finance and were responsible for the GFC will be bound to maintain the rules that allowed that to happen. The minimal reforms they have adopted post-GFC will become the maximum permitted regulation. Several recent IMF papers have referred to the 'state of denial' among affluent economies about the potential for further devastating crises if they maintain the current policy and regulatory regime.[14] They also point out that many developing countries that took prudent steps after their experience with the Asian Financial Crisis and similar traumas are much less exposed.[15] Yet the architects of TISA aim to force those countries to adopt the flawed rules they had no role in negotiating, either as the new 'best practice' for FTAs or through the WTO.

5. Finance industry has captured global rule making

The development of global finance rules under the guise of 'trade' was the brainchild of senior executives of AIG, American Express, Citicorp and Merrill Lynch in the late 1970s. Their role, and subsequently a broader lobby called the Financial Leaders Group, is well documented. The former director of the WTO's services division himself acknowledged in 1997 that: 'Without the enormous pressure generated by the American financial services sector, particularly companies like American Express and Citicorp, there would have been no services agreement'. [16]

As the lobby evolved it was still led from Wall Street, but expanded to include the major insurance and banking institutions, investment

banks and auxiliary financial services providers, from funds managers to credit-rating agencies and even the news agency Reuters. They were later joined by the e-finance and electronic payments industry, which includes credit, stored value and loyalty cards, ATM management, and payment systems operators like PayPal.

The industry lobbyists have also set the demands for financial services in TISA. The Chairman of the Board of the US Coalition of Service Industries is the Vice Chairman of the Institutional Clients Group at Citi. When the industry's demands, as expressed in the consultation on TISA conducted by the US Trade Representative in 2013, are matched against the leaked text it becomes clear that they stand to get most of what they asked for. Extracts from their submissions are listed at the end of this document.

6. Examples of the Dangers of TISA

A number of the provisions in the leaked text are already in the GATS financial services instruments, especially the voluntary Understanding. However, Colombia, Costa Rica, Pakistan, Panama and Peru, which are participating in TISA, appear not to have adopted the Understanding.

The new elements of TISA build on the GATS-plus rules in Korea-US Free Trade Agreement, and those proposed in the Trans-Pacific Partnership Agreement (TPPA) and the Trans-Atlantic Trade and Investment Partnership (TTIP). The TISA parties that are not yet bound by such agreements would therefore face especially onerous new obligations.

The following selection of provisions shows some of what is new and/or dangerous about TISA. They are only a sample of the legal issues.

Binding countries to the flawed GATS model (Art X.3 and X.4)

The biggest danger is that TISA will stop governments tightening the rules on the financial sector. As noted above, this risk is greatest for countries that have not already adopted the WTO's Understanding on financial services, do not already have extensive financial services commitments with the US or EU under a FTA, or both. But it is a serious risk for all TISA parties, especially those with weak systems of financial regulation.

When the GATS was first developed governments were given some control over the extent to which the regulation of services was subject to the core GATS rules. Those core rules cover the right of foreign financial firms' to set up and operate in the host country; the cross-border supply of the broad range of financial services and products; the ability of their nationals to purchase of those services and products in another country; and the kind of domestic regulations they could adopt.

There are different ways of allowing governments to exercise control over such commitments.

The GATS gave governments flexibility to list the services that would be subject to the core rules, and further limit their exposure in those sectors (a '*positive list'* approach).

The voluntary Understanding worked on a '*negative list'* that required governments to specify what was not covered by its additional rules. This approach is increasingly common in FTAs, especially those with the US.

Under negative lists governments to bind the hands of their successors, even in the face of unforeseen new challenges. There are also high risks of error. Proposals to adopt negative lists have been resisted in the GATS, including in the Doha round.

It is not clear exactly how the schedules will work for financial services in TISA without access to the rest of the text. It is believed that TISA proposes a '*hybrid'* of positive and negative lists. The rules may guarantee foreign firms' access to a country's services market using the positive list approach; that would allow a government to specify which services and sectors will be covered by the market access rules.

However, the requirement of non-discrimination, where a foreign service supplier must be treated no less favourably than domestic competitors, would follow a negative list approach. Governments would have to state what services, activities or laws are *not* subject to that rule; special restrictions on foreign services, products or measures would only be permitted where they were explicitly listed. This would apply even in sectors that were not opened in the market access (positive) list.

A *standstill* would also apply: governments would have to bind their existing levels of liberalisation and not introduce new restrictions in the future.

There are also suggestions of a *ratchet.* When a government reduces restrictions on foreign financial firms, services or products,

those changes would automatically be locked in.

Finally, it has been suggested that there may be no provision to add new reservations to the schedules; there is such a provision in the GATS, although it is extremely difficult to use.

The leaked financial services text seems to follow this path.

Access to a country's financial market

The US has made specific proposals for the scheduling of commitments on financial services.

Under ***Art X.3.1*** parties must list their commitments to allow foreign financial service suppliers from TISA countries to establish a presence in their country.

Their commitments to allow the supply of financial services across the border would apply only to a truncated list of financial services in ***Art X.8***. These mainly relate to insurance and a range of auxiliary services, plus electronic payments and portfolio management services; they do not include mainstream services involving banking and trading of financial products.

Those commitments would be made in accordance with Art I-3 of the main TISA text, which is presumably based on a positive list.

Hong Kong China wants to make it clear that parties can put limitations on the extent to which they are committing a particular financial service, as permitted in the GATS. This proposal implies that the US does not want to allow governments to impose any limitations on a sector they agree will be covered by those rules.

Without the rest of the agreement it is unclear what rules would apply if the US proposal were not adopted. Presumably Art 1-3 of TISA would apply to financial services just like all other services.

Not discriminating against foreign firms

The US proposal for ***Art X.3.2*** involves commitments not to discriminate against financial services from other TISA countries, known as national treatment. This paragraph only applies to financial services that are supplied across the border. Those commitments are again limited to the services listed in ***Art X.8***.

There is a cross-reference to Art II-2 of the main TISA text, which has not been leaked.

On its face, it looks like this provision restricts national treatment of

financial services to those cross-border services, unless a TISA country says it also applies to foreign direct investment (establishing a commercial presence). But that is impossible to verify.

It seems likely that the commitments for national treatment use a negative list, but again that is impossible to verify.

Standstill

So far, this analysis suggests that TISA parties can decide what financial services to commit to these rules, but the US wants to limit the extent to which they can pick and choose within those sectors.

The crucial provision is ***Art X.4,*** which would apply a *standstill* to a country's existing financial measures that are inconsistent with the rules. That means governments must bind their existing levels of liberalization for foreign direct investment on financial services, cross-border provision of financial services and transfers of personnel. The current rules will be the *most* restrictive of financial services that a government would be allowed to use. They would be encouraged to bind in new liberalization beyond their status quo.

Australia wants to keep more flexibility, with the standstill to apply from the date TISA comes into force. That would allow governments to adopt new regulations before that date, thereby securing themselves more regulatory space than they have now. It also expressly allows for the rollover of such measures.

It is not apparent from the leaked text whether a ratchet applies to lock in any new liberalisation of financial services.

Art X.7 (commercial presence) and ***Art X.8*** (cross-border trade) show the EU and US are taking a hard line by saying that these scheduling arrangements define a country's commitments on a financial service or sector. Australia wants the broader ability to list conditions and qualifications on the services listed in the schedule (similar to what Hong Kong China proposed in Art X.3.1).

The implications are huge. The aim is to secure much more extensive levels of commitments than exist in the GATS, or were promised in the Doha round, or even exist in most FTAs. It would also commit governments to maintain the current failed system of financial regulation. A TISA party could be sued if it sought to tighten financial rules that were put in place during the last three decades, which were marked by reckless or ill-considered liberalisation or deregulation. In the realm of financial services, this is high risk indeed.

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Expedited Availability of Insurance (Art. X.21)

Article X.21 requires regulatory procedures to be designed to expedite the ability of licensed insurers to offer insurance services across borders and in country. Examples of expedition include a time limit for disapproving an insurance product, after which the product must be allowed; exempting various kinds of insurance from requiring product approval; and allowing unlimited new products.

The GFC illustrates the implications. Credit default swaps (CDS) were one of the innovative products at the core of the crisis. Swaps operate as a form of insurance: the buyer of the swap accepts the risk that a borrower might default and pays up if they do, in return for receiving income payments. An estimated 80 percent were 'naked' CDSs, where the investor taking the insurance does not even own the asset being insured[17] – they were basically betting on whether insured assets owned by someone else would fail. Around $60 trillion was tied up in CDSs in 2008.[18] AIG, a key instigator of the financial services rules, held $440 billion exposure to CDSs when the bubble burst, and was bailed out by US taxpayers.

Art X.21 is a license for similar disasters. As the GFC showed, governments can be slow and reluctant to regulate financial products, especially if they are complex and the insurer or the entire industry is pressuring them. The transparency provisions, described below, add to their leverage. Often regulators will only discover the dangers of an insurance product when it is too late. There is growing pressure to shift from regulating in ways that welcome and tolerate risk-taking to regulation that judges financial services providers and products on their merits. This provision would help to shield insurance products from that trend.

Data processing and transfer (Art X.11)

The entire services lobby wants to stop governments from requiring data to be processed and stored locally. The firms that dominate cloud-based technology are mostly US-based. US firms also dominate the information and communications technology sector in general. The right to hold data offshore is especially important for the finance industry because finance *is* data. The US insurance and credit card industries have been especially vocal in their opposition to 'localisation' requirements.

Art X.11 has two proposals. One is from the EU and Panama and is couched in negative terms: a party shall not prevent such transfers. The state's right to protect personal data, personal privacy and confidentiality is limited by an obligation not to use that right to circumvent the provisions of TISA. This is a catch-22: the government cannot adopt any privacy etc measures if they arguably

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breach any provisions of TISA. But they could have taken such measures anyway!

The US proposal is much more direct. It wants a blanket right for a financial services supplier from a TISA party to transfer information in electronic or other form in and out of the territory of another TISA party for data processing where that is an ordinary part of their business. It is hard to think of a form of financial service where data processing is not part of the business. This obligation is stated in a positive, unfettered form. There is no pretence of any right for the state to protect personal privacy and data.

At first sight that protection might be found in ***Art X.18***, as proposed by the US and EU. But the provision is negatively worded: nothing shall be construed to require a Party to disclose information regarding the affairs and accounts of individual consumers. That means TISA does not affect states' ability to require disclosure of information, presumably to the government, about individuals. It is not concerned with protecting personal privacy or preventing those who hold the personal data from abusing it for commercial or political purposes.

When data is held offshore it becomes almost impossible for states to control data usage and impose legal liability. Protecting data from abuse by states has become especially sensitive since the Snowden revelations about US use of domestic laws or practices to access personal data across the world.

Effective and transparent regulation (Art 16)

Again there are two proposals, one from the EU and Trinidad, and a more extensive version from the US. Both require prior consultation on proposed new regulation 'to the extent practicable' with 'all interested persons' or, for the US more explicitly 'interested persons and [state] parties'.

In addition to ensuring they have a reasonable opportunity to comment, the US says the final decision should, to the extent practicable, address in writing the substantive comments from interested persons on the proposed regulations. Equally, where an application from a financial service supplier to supply a financial service has been declined, they should be informed of the reasons.

This may sound pretty reasonable until it is put in context. Recall how capture of the regulatory, supervisory, and other public oversight agencies by the finance industry contributed to the GFC.[19] The risk-based model of financial regulation and the Basel II standards for prudential regulation of banks allowed the industry itself to become the front line regulators. The resources and

capacity of regulatory agencies were depleted, as was their knowledge and confidence to engage in active regulation.

The US also wants all financial regulation to be administered in a 'reasonable, objective and impartial manner'. But they are highly subjective criteria and provide fertile grounds for contest and if necessary a dispute.

Transparency needs to be seen as part of a broader spectrum of industry influence. Pressure on regulations by deluging them with arguments and studies, and demanding explanations, is reinforced by requests for consultations from their patron states and if necessary threats of a dispute. The aim is to 'chill' or stifle the regulator. If the intervention is considered necessary and important enough, the industry can push its patron state to bring a dispute.

Giving more power to the industry will make it very difficult to restore more direct regulation, including for precautionary reasons. That is why the industry wants these provisions. The avenues through which they or their parent states will be able to exercise leverage is not clear, but TISA is likely to provide peer review by other parties and a mechanism for them to request consultations, as well as the enforcement mechanisms.

Prudential Measures (Art X.17)

This is a standard provision in financial services agreements. Defenders of the GATS financial services agreement and advocates of TISA describe it as a carveout that protects governments' ability to regulate for prudential reasons. But it doesn't. It is only a weak defence that a government can argue if it is subject to a dispute. There are many practical problems with discharging the burden of proof.

More problematically, the article is comprised of two sentences that contradict each other. If a government takes a prudential measure that is inconsistent with the agreement, it cannot do so as a means to avoid its commitments under the agreement! So any prudential measures must be consistent with the other provisions in the agreement.

The TISA negotiations were an opportunity to revise this exception and provide a meaningful protection for the right of governments to regulate for precautionary and remedial reasons. Instead, TISA extends countries' exposure to the rules and then repeats the same impossibly circular language.

Harmonising financial regulation

The US and EU appear to be in dispute about the extent to which financial regulation should be harmonised. The EU, supported by the Trans-Atlantic finance industry, wants a harmonised system. That would pull back some of the post-GFC regulatory changes in the US, such as the new requirements and restrictions on the finance industry under the Dodd-Franks Act (formally the Dodd-Franks Wall Street Reform and Consumer Protection Act).

The services offer from the EU in its negotiations with the US for the Trans-Atlantic Trade and Investment Agreement (TTIP) was leaked this week. The explanatory note from the European Commission says:

> The draft TTIP offer does not contain any commitments on financial services. This reflects the view that there should be close parallelism in the negotiations on market access and regulatory aspects of financial services. Given the firm US opposition to include regulatory cooperation on financial services in TTIP it is considered appropriate not to include any commitments on financial services in the EU's market access offer at this stage. This situation may change in the future if the US show willingness to engage solidly on regulatory cooperation in financial services in TTIP.[20]

In other words, the EU is playing hardball in TTIP to force the hand of the US. Whatever ends up in TTIP is also likely to end up in TISA.

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Extracts of demands from the US Industry

US Securities Industry and Financial Markets Association[21]

- Suppliers should be able to choose their corporate form (*e.g.*, a 100%-owned subsidiary, a branch or a joint venture) and be treated no less favorably than domestic suppliers (i.e., national treatment).
- Other measures, such as the protection of cross-border data flows and transfers, and the inclusion of investor-state dispute settlement commitments, the ability to store and process data from a central regional location, rather than establishing a local facility is essential.
- Buying and selling financial products across borders, participating in and structuring transactions, and providing investment advice, without establishing a commercial presence and without being subject to separate licensing and approval requirements that generally apply to firms commercially present in a market.
- Permit consumers traveling outside their territories to utilize any capital markets related service in the other Party's jurisdiction
- Agree not to adopt or maintain measures that prevent or restrict transfers of information or the processing of financial information, including transfers of data by electronic means, or that prevent transfers of equipment, where such transfers of information, processing of financial information, or transfers of equipment are necessary for the conduct of the ordinary business of a financial service supplier.
- Each Party should permit temporary entry into their territories for persons who supply capital markets-related services to work with clients or to staff a commercial presence.
- At a minimum ensure that commitments in any comprehensive trade and investment agreement reflect the level of market access afforded under their domestic laws.
- The competitiveness of financial services firms depends on their ability to innovate, often rapidly in order to meet the special needs of customers by developing and offering new products and services. Ensure that regulators allow private firms to meet these needs, while maintaining appropriate prudential supervision.
- Regulators should: (i) propose regulations in draft form and provide interested parties the opportunity to comment on such draft regulations, where practicable; (ii) make publicly available the requirements that suppliers must meet in order to supply a service; and (iii) enforce laws and regulations on a non-discriminatory basis, according to fair and transparent criteria.
- A strong investment chapter that applies equally to financial services investors, including with respect to core protections and investor-state dispute settlement, is vital. Such core protections would include ensuring that suppliers could establish a commercial presence, protection from expropriation, dispute settlement, and the free transfer of capital.
- TISA might include consultation among capital markets participants and regulatory authorities which would lead to the development of a list of regulatory obstacles where recognition arrangements could be developed.

US Chamber of Commerce[22]

Financial services

- Establish the right of foreign financial services firms to invest in another TISA party using the corporate form of their choice, without restriction on the establishment of a new commercial presence or the acquisition (in part or in full) of an existing enterprise in another TISA country.

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- Guarantee national treatment for foreign companies in the financial services sector to ensure that TISA parties afford foreign enterprises and investors the same treatment as domestic investors for regulatory and other purposes.
- Grant foreign financial services firms the right to provide cross-border services without establishing a commercial presence and without being subject to separate licensing and approval requirements that generally apply to firms with a commercial presence in a market.
- Permit dissemination and processing (within country and cross-border) of financial information to provide clients with services necessary for the conduct of ordinary business.
  - Allow consumers to travel outside their home country to obtain any capital markets related service.

Insurance

- Mandate that regulatory and supervisory bodies allow full market access and national treatment for all lines of insurance, including personal and commercial.
- Guarantee that domestic insurance regulation is made applicable to all companies equally in a given market, regardless of nationality.
- Establish clear disciplines to level the playing field between government-affiliated insurance entities and the private market within a reasonable time frame, including with regard to taxation, subsidization, or the provision by the government of any other commercial economic advantages, with such government-affiliated insurance entities subjected to supervision by the same regulatory authority as private companies.
- Prohibit the improper delegation of regulatory authority to non-governmental entities that dilute confidentiality and process protections accorded through governmental administrative procedures.
- Support the creation of a regular annual insurance dialogue on implementation.
- Subject to reasonable levels of protection, secure the right to cross-border transfer of customer and employee data for legitimate business purposes including the provision of more efficient and cost-effective service.

US Coalition of Services Industries: … we recognize the necessity of certain regulations (e.g., for national security, data protection, prudential reasons), there should be parameters and limitations for their application. For example, prudential carve-outs should limit the scope of allowable prudential measures to non-discriminatory measures that are subject to a rule of "least trade and investment distorting" (or something along those lines). Similarly, capital requirements should not be used as disguised barriers to entry or competition with domestic suppliers of comparable services (e.g., financial services, insurance).

Information processing: when an act, policy or practice of a relevant authority seeks to restrain cross-border data transfers or processing, that authority must demonstrate that the restriction is not an unnecessary restraint of trade or investment in light of alternative means by which to achieve the objective of protecting the identity of the customer, security of the data or the performance of prudential oversight.[23]

The American Insurance Association wants 100 percent market access for the insurance suppliers of a TISA party in the markets of all the other parties, including freedom from discriminatory treatment, the absence of quantitative restraints and investment restrictions, the freedom to choose the form of legal entity through which they operate in a given jurisdiction, and the ability to provide insurance on a cross-border basis. This means strong disciplines on behind-the-border measures that indirectly restrict or limit market access, including state-owned enterprises, and discriminatory

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measures and regulatory schemes that operate as disguised trade restrictions. Prudential measures must be nondiscriminatory and no more restrictive than necessary to achieve prudential objectives.[24]

Visa wants to ensure the electronic payment industry's access to foreign markets, to ensure that foreign governments maintain a competitive marketplace through transparent regulation, and to ensure that electronic payments providers maintain control over, and are able to freely move, information cross-border.[25]

Bloomberg Financial Information Services believes the new approach to scheduling commitments will expand its level of access to countries markets, and wants no exemptions for financial information and data processing services.[26]

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1 http://www.wto.org/english/tratop_e/serv_e/finance_e/finance_e.htm
2 http://www.wto.org/english/docs_e/legal_e/26-gats_01_e.htm
3 http://www.wto.org/english/tratop_e/serv_e/10-anfin_e.htm
4 http://wto.org/english/tratop_e/serv_e/serv_commitments_e.htm
5 http://www.wto.org/english/tratop_e/serv_e/21-fin_e.htm
6As of 2009, the 33 countries whose current schedules reference the Understanding include: Australia, Austria, Bulgaria, Canada, Czech Republic, Finland, Hungary, Iceland, Japan, Liechtenstein, New Zealand, Norway, Slovak Republic, Sweden, Switzerland, and the United States, as well as the European Communities members as of 1994 (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain and the United Kingdom.) The only developing nations that utilized the Understanding were Aruba, Netherland Antilles, Nigeria, Sri Lanka (for banking not insurance), and Turkey. Additionally, eight countries (Cyprus, Estonia, Latvia, Lithuania, Malta, Poland, Romania, and Slovenia) were in the process of revising their commitments to match the EC schedule.
7 WTO Committee on Trade in Financial Services, 'Communication from Barbados: Unintended Consequences of Remedial Measures taken to correct the Global Financial Crisis: Possible Implications for WTO Compliance', JOB/SERV/38, 18 February 2011, para 3; discussed in 'Remedial actions to tackle crisis not WTO-compliant?', SUNS, No. 7116, 25 March 2011
8 Committee on Trade in Financial Services, Report of the Meeting held on 20 March 2013, S/FIN/M/76, 19 April 2013
9 *Report of the Commission of Experts of the President of the United Nations General Assembly on Reforms of the International Monetary and Financial System*, *Preliminary Report*, 2009, 87
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