

# Public Services and Trade Rules: Preserving Policy Space for Innovation

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# Public services and trade treaties

- confining public services within existing boundaries,
- increasing the bargaining power of multinational corporations, and
- locking in future privatization

# Insufficient carve-out for public services

- GATS excludes services provided "in the exercise of governmental authority."
- But defined as "any service which is supplied neither on a commercial basis nor in competition with one or more service suppliers."



# The governmental authority exclusion, then and now

- "GATS explicitly excludes services supplied by governments." DG Mike Moore, 2001.
- "non-economic services of general interest" are "essentially equivalent to GATS definition of services carried out in the exercise of governmental authority." EC Reflections Paper, 2011

# Beyond Non-Discrimination

- GATS prohibits public monopolies and exclusive service suppliers in committed sectors.
- Governments cannot restrict or require “specific types of legal entities” through which to supply services.
- applying ‘pro-competitive’ regulation to previously socialized services

# GATS options to preserve flexibility

- Make no commitments in a sector
- Horizontal limitation, particularly important against “Market Access” commitments
- Withdraw commitments (under Article XXI must negotiate compensatory adjustment to schedule).



# Enter the TISA

- Self-selected group of only the most committed, high level of secrecy
- Top-down approach to national treatment (list it or lose it)
- Deeper commitments (>90% coverage?) undermine utility of Article XXI
- Standstill and ratchet

# Additional TISA elements?

- Government procurement
- Subsidies: countervailing actions against subsidies?
- Domestic regulation: disciplining non-discriminatory regulation



# Comprehensive protection for public services

Universal, affordable, quality public services are an indispensable goal of development, to which trade is a means.

Preserving the ability to innovate - to renew, restore, and expand - public services is vital.

Structural changes to trade treaties are required.

The TISA is moving in the opposite direction.