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**WHO IS  
REWRITING  
THE RULES  
FOR GLOBAL  
COMMERCE**

The 12-country Trans-Pacific Partnership Agreement (TPP)<sup>1</sup> and the TransAtlantic Trade and Investment Partnership (TTIP) between the United States of America (US) and European Union (EU) were derailed by a wave of resistance from people's movements, including international and local trade unions. The US has formally withdrawn from the TPP and informally abandoned TTIP for now. TiSA has become increasingly important as the 'last man standing' of the mega-regional deals, with various of TPP texts transferred across to TiSA in 2016.

But TiSA is in trouble too. In December 2016, the TiSA negotiations were unofficially suspended for two reasons: the EU had been unable to settle a proposal on the controversial issue of data privacy; and other countries did not know or trust what the Trump administration would do. Leaks also show that the negotiating texts were far from any possible conclusion. But there is no room for complacency, with a real risk that negotiations could suddenly starting up again- unless critics, including UNI Global, make that impossible. The current paralysis in the negotiations provides a vital window to educate and mobilise affiliates and their members on TiSA, and to challenge the participating governments and corporate lobbyists at national, regional and international levels to abandon the deal.

## The 'Really Good Friends of Services'

Rich countries with large or sophisticated services firms and governments that are ideologically committed to neoliberalism have long pushed for 'gold standard' global rules to govern services. The plan dates back to the late 1970s when corporate lobbyists in the US, led by American Express, Citi and AIG, wanted to remove restrictions on their growing international operations, especially on foreign investment and flows of data and money. They rebranded regulation of their activities as 'barriers to trade' and convinced the US government to push for negotiations to liberalise 'trade in services' as part of the Uruguay round of trade talks from 1986 to 1994. The US got the other OECD countries on board, but they met strong resistance from the global South. The resulting General Agreement on Trade in Services (GATS), which forms part of the World Trade Organization (WTO) raft of agreements, fell short of their ambitions.

A new round of services negotiations was launched in 2000, as provided for in the GATS.<sup>2</sup> These talks were incorporated into the Doha round of WTO negotiations from 2001. A group of countries called the Friends of Services pushed hard for more deregulation and liberalisation. The talks became paralysed for several reasons: an international civil society campaign against the corporate takeover of services; continued resistance from countries of the global South to the expansion of the GATS, especially as richer countries refused to open their doors to temporary services workers; and the 'single undertaking' that involved trade-offs between agriculture, goods and services within the broader Doha mandate.

A frustrated subset of countries, now named the **Really Good Friends of Services**, pursued a multi-pronged strategy to circumvent the stalemate. They organised plurilateral talks among themselves in the late stages of the WTO's Doha round. Outside the WTO, they pressured the global South to agree to stricter rules and much more extensive commitments on services in bilateral and regional free trade agreements (FTAs). The texts of new generation mega-agreements- the TPP, the TTIP, and the EU Canada agreement (CETA) – advanced their quest for new 'gold standard' rules, while reflecting the parties' particular sensitivities and interests. Such differences are also apparent in TiSA.

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1 Australia, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore and US, who are all participants in TiSA, plus Brunei Darussalam, Malaysia and Vietnam.

2 GATS Article XIX.1

The TiSA negotiations were launched in 2013 on the physical margins of the WTO. Table 2.1 lists the 23 parties negotiating TiSA (counting the EU as one) as of December 2016 when negotiations were informally suspended. Several countries from the global South joined the talks (Colombia, Costa Rica, Mauritius, Panama, Pakistan). Singapore, Uruguay and Paraguay left, Uruguay after a strong union-led national campaign.<sup>3</sup> The US has blocked China from participating.<sup>4</sup>

**Table 2.1 TiSA Negotiating Parties (\* joined later; # withdrew)**

Australia (AU)	Mexico (MX)
Canada (CA)	New Zealand (NZ)
Chile (CL)	Norway (NO)
Chinese Taipei (TW)	Pakistan (PK)
Colombia (CO)	Panama (PA)
Costa Rica (CR)	Paraguay * #
European Union (EU) (28 countries)	Peru (PE)
Hong Kong China (HK)	Singapore #
Iceland (IS)	South Korea (KR)
Israel (IL)	Switzerland (CH)
Japan (JP)	Turkey (TR)
Liechtenstein (LI) *	United States of America (US)
Mauritius (MA) *	Uruguay * #

The first round of negotiations was held in Geneva in March 2013. By December 2016 there had been 21 rounds, hosted by the US, the EU or Australia. The later rounds were held within the WTO buildings and serviced by the WTO secretariat, even though TiSA has no WTO mandate.

The negotiating texts and documents are secret. Most information that is publicly available is from leaks posted on Wikileaks,<sup>5</sup> Greenpeace,<sup>6</sup> Associated Whistleblowing Press,<sup>7</sup> and *bilaterals.org*,<sup>8</sup> which hosts the most recent documents from the November 2016 round. At the beginning of negotiations, the US asked other negotiating parties to agree to the same terms of secrecy as the TPP: not releasing any negotiating documents and related communications between the parties (aside from the final text) for four years after the agreement comes into force; each country could decide what information to share internally on a confidential basis.<sup>9</sup> Cover sheets of leaked TiSA documents show the US extended the four years' non-disclosure in TPP to five years for its own TiSA documents.<sup>10</sup> It is not known which, if any, TiSA parties responded to the US request. Norway, Switzerland and the EU have publicly released their own initial and revised offers of commitments along with some other documents they have tabled, and the EU has published edited summaries of each round.<sup>11</sup> The New Zealand government says it made no written commitment to secrecy, but still refuses to release any documents.<sup>12</sup>

3 Viviana Barreto and Daniel Chavez, 'TiSA and state-owned enterprises: Lessons from Uruguay's withdrawal for other countries in the South', Transnational Institute and Comercio Redes, 2017, <https://www.tni.org/en/publication/tisa-and-state-owned-enterprises>

4 *China's Economic Transformation: Lessons, impact and the path forward*, Peterson Institute for International Economics, October 2015, PIIIE briefing 15-3, 15

5 <https://wikileaks.org/tisa/>

6 <https://ttip-leaks.org/2016/09/20/greenpeace-netherlands-leaks-tisa-negotiation-texts-publishes-analysis-of-energy-annex-during-geneva-negotiations-2/>

7 <https://data.awp.is/filtrala/2014/12/17/19.html>

8 <http://www.bilaterals.org/tisa>

9 <https://ttip-leaks.org/favez/letter-by-the-us-ambassador-seeking-written-confirmation-by-participation-of-three-rules-of-confidentiality/>

10 eg. [https://wikileaks.org/tisa/document/20151006\\_Annex-on-State-Owned-Enterprises/](https://wikileaks.org/tisa/document/20151006_Annex-on-State-Owned-Enterprises/)

11 <http://ec.europa.eu/trade/policy/in-focus/tisa/>

12 New Zealand Secretary of Foreign Affairs and Trade to Jane Kelsey, 26 October 2016.

# Exclusion of the Global South

While TiSA's negotiating parties claim common cause and point to the participation of several countries from the global South, the Really Good Friends are predominantly wealthy countries. This is significant for at least three reasons.

First, there is a lot of rhetoric that the expansion of e-commerce and global value chains will create opportunities and help close the gap for the global South, especially for small and medium enterprises.<sup>13</sup> But TiSA would prohibit policies that are traditionally used to promote development and benefit local businesses and local jobs. These include subsidies and protections for infant industry from competition; establishing a local presence, with flow-on economic benefits to employment, input suppliers, domestic spending and tax revenue; requirements that foreign investors transfer technology and use local content; and use of local computing facilities that can justify building capacity and infrastructure. TiSA's emphasis on cross-border services and data storage encourages provision from offshore hubs that are unlikely to be located in most developing countries, and where they are they can easily be relocated. Already there is a trend to 're-shore' production to home countries once automation becomes cheaper than offshore labour.<sup>14</sup>

Second, the GATS<sup>15</sup> and the Doha negotiating mandates<sup>16</sup> say that developing countries are entitled to special and differential treatment when making trade in services commitments and developed countries must make commitments that will genuinely deliver economic benefits to the South. Least-developed countries (LDCs) are entitled to even greater flexibility. The GATS rules governing other free trade agreements say special flexibilities are *mandatory* when those agreements are between developing and developed countries.<sup>17</sup> Yet TiSA has no special and differential treatment or development flexibility. As with the WTO, any developing countries acceding later could be asked to make even higher commitments than the originating TiSA parties.<sup>18</sup>

Third, TiSA is a blatant power play by rich countries to design a 'gold standard' deal that works for them and their corporations, then export it back to the WTO, and by-pass resistance from the global South to expanding the GATS.<sup>19</sup> The leaked core text says parties must consider ways to incorporate rights and obligations under TiSA into the WTO 'as soon as possible'. Any TiSA party can raise such a proposal and the joint committee of the parties would take a decision 'as necessary'.<sup>20</sup>

This 'multilateralisation' process might occur in several ways. The EU initially proposed a modular approach. TiSA has been structured to mirror the core GATS text, with the new rules and obligations contained in a series of annexes and countries' schedules of commitments. When enough WTO members were recruited to TiSA to reach a critical mass, the EU said they should propose the adoption of TiSA as a plurilateral WTO agreement.<sup>21</sup> A plurilateral agreement would not bind all WTO members, but over time the text would become the new norm, and developing countries would be pressured to comply with rules they had no role in negotiating. Meanwhile, individual WTO members could unilaterally add more liberalised TiSA commitments to their GATS schedules at any time.

The US (at least pre-Trump) preferred to cherry pick specific parts of TiSA and push them into the WTO. By 2016 the EU seemed to have adopted the same strategy, leading moves in the WTO to launch negotiations on e-commerce at the Buenos Aires ministerial in December 2017.<sup>22</sup> Adopting

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13 World Bank, *World Development Report 2016: Digital Dividends*, Washington DC, 2016

14 Michael Belfiore, 'Automation brings manufacturing back home', *AutomationWorld*, 13 April 2016, <https://www.automationworld.com/article/technologies/robotics/automation-brings-manufacturing-back-home>

15 GATS 1994, Article 4.3 says: 'Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial need'. That is reiterated in GATS 1994 Article 19 relating to further negotiations under the GATS.

16 Paragraph 26 of the WTO Hong Kong Ministerial Conference Declaration 2005 recognised that LDCs should not have to make any new commitments beyond those already made in the GATS.

17 GATS 1994, Article 5

18 TiSA, Article IV:9 and IV:10, Core text, dated November 2016.

19 The historical transition from GATS to TiSA is examined in Jane Kelsey, 'From GATS to TiSA: Pushing the trade in services regime beyond the limits', *European Yearbook of International Economic Law*, 7, 2016, 119-152.

20 TiSA, Article IV.11 and IV.12, Core text, dated November 2016.

21 European Commission, 'Negotiations for a Plurilateral Agreement on Trade in Services', Memorandum, 15 February 2013, [http://europa.eu/rapid/press-release\\_MEMO-13-107\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_MEMO-13-107_en.htm?locale=FR)

22 'WTO's Discussions on Electronic Commerce', Analytical Note, SC/AN/TDP/2017/2, January 2017, South Centre, Geneva

the '21<sup>st</sup> century' rules of the Really Good Friends and Team TiSA could have massive and potentially irreversible negative impacts on the global South, their workers and their communities, and is being strongly contested by the Africa group and the Least Developed Countries in the WTO.<sup>23</sup>

## The corporate lobby

### Team TiSA

TiSA's official corporate cheerleaders call themselves **Team TiSA**. According to its website, Team TiSA is 'dedicated to promoting and advocating for an ambitious agreement which eliminates barriers to global services trade, to the benefit of services providers, manufacturers and farmers, and consumers globally'.<sup>24</sup> Workers don't rate a mention. The full membership is set out, by sector, in Table 2.2. The tech sector, telecoms and finance are the driving forces, along with logistics and e-retail. That is consistent with the sectoral base of the six co-chairs: Citigroup (finance), MetLife and Liberty Mutual (insurance), IBM (tech), UPS (express delivery, logistics), Walmart (retail, e-commerce),

**Table 2.2 Team TiSA by sector**

IT and telecoms	Finance	Retail & Logistics	Others
AT&T	Ace Group	Amway	<i>Media/entertainment</i>
BSA/ The Software Alliance	Aflac	EBay Inc	21 <sup>st</sup> Century Fox
Cisco Systems Ltd	AIG	Express Association of America	Motion Picture Association of America
Computer & Communications Industry Association	American Council of Life Insurers	Fedex	The Walt Disney Company
Consumers Electronic Association	American Insurance Association	National Retail Federation	<b>Professions &amp; consultants</b>
Computer & Communications Industry Association	Citigroup	Retail Industry Leaders Association	C&M International
Express Association of America	Council of Insurance Agents and Brokers	UPS	Cassidy, Levy & Kent
Google	JPMorgan Chase	Walmart	Council for Global Immigration
HP	Liberty Mutual	<b>General Corporate Lobby Groups</b>	Deloitte
IBM	Mastercard	Coalition of Services Industries	King & Spalding
Information Technology Industry Council	Metlife Inc	Council for Global Immigration	Kyle House Group
Intel	Property Casual Insurers Association of America	Emergency Committee for American Trade	Manchester Trade
Microsoft	Prudential	National Foreign Trade Council	Sandler Travis & Rosenberg
Oracle Corporation	Visa International	United States Council for International Business	White & Case
Software and Information Industry Association		US Chamber of Commerce	<b>Healthcare</b>
TechAmerica			Alliance for Healthcare Competitiveness
Verizon			<b>Agri and manufacturing</b>
Western Digital			American Farm Bureau Federation
			<b>Security</b>
			Chubb Corporation
			Tyco

These lobbyists enjoy privileged access to governments, negotiators and the WTO, giving credence to the view that TiSA is not just being written for the corporations, but indirectly by them. The US has a system of advisory committees whose members have access to draft texts as cleared advisers. For example, the US Chamber of Commerce, Express Association of America, UPS, Fedex and DHL Global Mail all sit at the table of the US Department of State in its Advisory Committee on International Postal and Delivery Services. As of March 2014 (during the TPP, TiSA and TTIP negotiations) the 41 members of the Advisory Committee on International Communications and Information Policy included representatives from Oracle, Boeing, Google, Facebook, AT&T, Yahoo,

23 Ravi Kanth, 'Africa Group's Deadly Blow to E-com Thematic or Negotiating Issues talks', TWN Info Service, 25 October 2016, <http://www.twn.my/title2/wto.info/2016/ti161021.htm>

24 [www.teamtisa.org](http://www.teamtisa.org)

Microsoft, Cisco, Verizon, Consumer Electronics Association, Lockheed Martin, Telecommunications Industry Associations and the Satellite Industry Association.<sup>25</sup> Legislators have no equivalent access or influence. Beyond a token presence,<sup>26</sup> critics of the TiSA agenda, including global, regional and national unions, are excluded (and ignored).

## Cross-country coalitions

Various coalitions of corporate interests are also key players, giving the same corporations multiple voices and forums. The US **Coalition of Services Industries (CSI)** includes most of the individual members of Team TiSA. It is part of the **Global Services Coalition (GSC)** whose Vice-President for Global Trade Services is from Fedex. The GSC has been pushing the digital trade agenda and singled out 'the new so-called "21<sup>st</sup> century issues" such as cross-border data flows, so-called forced localisation requirements, and competition from state-owned and state-sponsored enterprises (SOEs).'<sup>27</sup> It has supported the inclusion of China in the TiSA talks, but only if China commits to their required level of ambition.

The global coalition has issued a series of TiSA-specific statements urging a rapid and ambitious deal.<sup>28</sup> Two of these in mid-2016 targeted domestic regulation, transparency in licensing procedures, financial services, delivery services, telecommunications and e-commerce (particularly data flows and prohibitions on requirements to hold data locally). The GSC also sought coverage and commitments on 'new services' (those that do not yet exist), removal of all 'barriers' at subnational levels of government, and minimisation of reservations that maintain a country's policy space.<sup>29</sup>

Other countries in the Global Services Coalition include **national coalitions** from nine other TiSA parties: Australia, Canada, Colombia, the EU, Hong Kong, Japan, Mexico, New Zealand, Taiwan, and the UK (the City). This spread gives the GSC access to many national governments, as well as international institutions, including the WTO.

The **European Services Forum** was first set up to influence the GATS 2000 negotiations. It bills itself as 'a major voice of the European services industries'<sup>30</sup> whose main stake lies in the liberalisation of the services markets in connection to the WTO GATS negotiations and the EU bilateral trade negotiations.<sup>31</sup> The Forum was an early promoter of TiSA and plays an active lobbying role across the EU's many negotiations. Members include British Telecom, DeutschePost DHL, Deutsche Telekom, Groupe La Poste, Inmarsat, Oracle, Tata Consultancy Services and Telenor. Major finance sector players include the CityUK and the European Banking Federation,<sup>32</sup> BusinessEurope and Digital Europe. There are also sectoral groups<sup>33</sup> such as finance, postal and express delivery,<sup>34</sup> distribution/retail services,<sup>35</sup> telecommunications,<sup>36</sup> and shipping<sup>37</sup>.

In addition to collective lobbying, major corporations have pushed their own sectoral interests. Later chapters of this report look at the aggressive demands from the financial, telecoms and delivery lobbies.

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25 <http://www.state.gov/e/eb/rls/othr/2014/223376.htm>

26 Jean-Baptiste Velut, 'What Role for Civil Society in Cross-Regional Mega-Deals? A comparative analysis of US and EU trade policies', Papers in Political Economy, no.55, 2016, paras 34-42, <http://interventionseconomiques.revues.org/2839?lang=en#tocto3n1>

27 [http://www.servicescoalition.org/images/2013\\_GSC\\_Communique\\_Oct\\_31stcompressed.pdf](http://www.servicescoalition.org/images/2013_GSC_Communique_Oct_31stcompressed.pdf)

28 <https://servicescoalition.org/about-csi/global-services-coalition>

29 [https://servicescoalition.org/images/2016\\_Global\\_Services\\_Summit/GSC\\_Statement\\_-\\_July\\_2016\\_-\\_Final\\_Draft.pdf](https://servicescoalition.org/images/2016_Global_Services_Summit/GSC_Statement_-_July_2016_-_Final_Draft.pdf)

30 <http://www.esf.be/new/who-we-are/>

31 <http://www.esf.be/new/tisa/>; <http://www.esf.be/new/wp-content/uploads/2012/03/Seminar-on-Plurilateral-Services.pdf>

32 Deutsche Bank, HSBC, Standard Chartered Bank, Zurich Financial Services, European Banking Federation, European Savings Banks Group, the City UK.

33 <http://www.esf.be/new/who-we-are/members/by-sector/>

34 Deutsche Post DHL, European Express Association, Groupe La Poste, PostEurop,

35 Ecommerce Europe, EuroCommerce, Foreign Trade Associations, Seldia European Direct Selling Association

36 British Telecommunications, Deutsche Telekom, Inmarsat, Orange, Telenor, European Public Telecommunications Network Operators' Association, European Satellite Operators Association,

37 European Community Shipowners' Association

# The state of play

It became clear during 2016 that problems facing TPP would increase the importance of TiSA, symbolically and strategically. The TPP was concluded in February 2016, but the Obama administration never had the numbers to pass it in Congress. In October 2015, the US belatedly tabled a text on SOEs in TiSA that was drawn from the TPP. A TPP-style e-commerce text was already tabled. The Obama administration also announced plans to use TiSA to secure an additional obligation from the TPP parties to allow financial services data to be held offshore,<sup>38</sup> which some members of Congress had made a pre-condition for their support.

The TiSA parties set a target to conclude the agreement at a ministerial meeting in early December 2016. Presumably, they wanted to sign the deal before Obama left office. Leaked texts from November 2016 show a serious attempt to achieve this by dropping some extreme proposals and reaching compromises on others. However, many matters remained unresolved. There could be no TiSA unless the US and EU both agreed on the text, meaning they would have had to finesse their major points of dispute, notably on the maritime transport annex and sub-federal regulation of financial services on the US side, and the privacy protections for e-commerce and commitments never to regulate 'new services' for the EU. That didn't happen.

The EU's position was the most problematic for the other parties. Team TiSA insisted that any genuinely '21<sup>st</sup> century' deal would have to allow unfettered movement of data, including financial data across borders; have rules that protected digital platforms and internet-enabled commerce from future regulation; and enable delivery and logistics operators to reorganise their global supply chains freely through whatever new technologies emerge. The EU refused to sign away the right to regulate new services in the future. It also could not agree a position internally about privacy protections and would not commit to allow data to be held offshore without them. That made it impossible to meet the December deadline.<sup>39</sup> There were murmurings that TiSA could proceed without the EU, but this lacked credibility.<sup>40</sup>

Then Donald Trump was elected US President. Unlike the TPP, TiSA was under the radar throughout the presidential election campaign. However, TiSA parties were unwilling to negotiate with the US without knowing Trump's position. The December ministerial meeting was cancelled and officials conducted a 'stocktake' instead.<sup>41</sup>

In February 2017, President Trump effectively withdrew the US from the TPP.<sup>42</sup> Although TiSA was not mentioned, the executive order expressed a clear preference for bilateral rather than plurilateral deals, which would allow the US even more leverage.<sup>43</sup> The serious risks that cross-border digital trade poses to brick-and-mortar jobs in services and greater offshoring should have caused them to withdraw from TiSA as well, but there is no evidence they have made that connection. As of April 2017, the position on TiSA is still unclear. There have been mixed messages from Trump himself. He promised a summit of major tech companies in a post-election speech that his administration would make 'trade across borders' much easier.<sup>44</sup> Yet, *Bloomberg* notes that 'Trump has a prickly relationship with the industry. He differs with many tech CEOs on immigration, internet security and regulation and on government investment.'<sup>45</sup> Some 100 tech companies, including Google, Apple,

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38 TPP parties not in TiSA would be pressured to sign side-letters to the same effect.

39 'Hazards ahead for TiSA talks', *Politico*, 24 October 2016

40 'EU ambassador skeptical of value, possibility of TiSA deal without the EU', *Inside US Trade*, 16 November 2016

41 'TiSA Ministerial Cancelled, Officials to Prepare for 2017', *ICTSD*, 24 November 2016, <http://www.ictsd.org/bridges-news/bridges/news/tisa-ministerial-cancelled-officials-to-prepare-for-2017>.

42 <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/january/US-Withdraws-From-TPP>

43 <https://www.whitehouse.gov/the-press-office/2017/01/23/presidential-memorandum-regarding-withdrawal-united-states-trans-pacific>.

44 'Trump promises tech companies he will "make it a lot easier for you to trade across borders"', *Inside US Trade*, 14 December 2016, <https://insidetrade.com/trade/trump-promises-tech-companies-he-will-make-it-lot-easier-you-trade-across-borders>.

45 'Trump meets with tech chiefs among worries on trade', *Bloomberg*, 15 December 2016, <https://www.bloomberg.com/politics/articles/2016-12-14/trump-tells-tech-titans-he-s-here-to-help-you-folks-do-well>.

Microsoft and Facebook joined the legal challenge to Trump's ban on entry for people from seven Muslim-majority countries.<sup>46</sup>

The ongoing delay in announcing a position on TiSA suggests an internal battle inside the administration. Powerful members of the Trump Cabinet are from Wall Street and the energy industry, both major lobbyists for TiSA, and advisers are close to the tech industry.<sup>47</sup> The incoming US Trade Representative Robert Lighthizer dodged questions about TiSA while being questioned by Congress.<sup>48</sup>

If the Trump administration does re-engage with TiSA, it is likely to demand the substantial revision of texts agreed so far and the introduction of new controversial proposals. Some of the text that was dropped in 2016 could well resurface.

The US and other countries also seem likely to insist that the EU tables its position on data and privacy before negotiations resume. There are suggestions that the European Commission has developed language on cross-border data flows, but there is no political will to engage the issue until after the German elections in September 2017.<sup>49</sup>

What happens next is speculation. As of July 2017, the negotiations are effectively suspended and no new rounds have been scheduled. The longer this continues, the harder it will be to recapture the momentum. The corporate lobbies and many of the Really Good Friends are pushing for negotiations to resume as soon as possible. It is critical to keep the pressure on to ensure that does not happen. The current roadblocks provide important action points and potential alliances for the strategy to stop TiSA. The successful union-led campaign in Uruguay that saw that government withdraw from the TiSA negotiations provides a brilliant precedent.

Whatever happens to TiSA, there is still an urgent need to understand the underlying agenda because the TiSA texts, drawn largely from the TPP, are already being repackaged and appearing in new forums, including the EU Japan free trade agreement and the WTO.

## Entry into force

Assuming that TiSA negotiations do resume and they reach an agreement, the text would then be signed, followed by ratification in each party. The leaked text from November 2016 shows they have not decided how many countries must ratify TiSA before it could come into force, but it proposes two-thirds of the original signatories.<sup>50</sup> Although the deal would lack political or commercial meaning without both the US and EU, the formula is not weighted to reflect that reality (by contrast, both the US and Japan had to be original parties to the TPP).

Each country has to satisfy its constitutional requirements for adopting the agreement. These vary. In some countries, the executive (governing party/ies) holds the final authority; others require approval by the legislature and possibly a referendum. Every stage of ratification matters politically, as the opposition from some European Member States showed with CETA.<sup>51</sup>

The US and EU processes are especially fraught. Because the US would not agree to anything in TiSA that requires changes to its domestic law, it is not clear whether the agreement would need Congressional approval. If it does, TiSA would benefit from the Fast Track authority granted to Obama that means Congress has to vote 'yes' or 'no' to trade agreements and cannot pick apart the text.<sup>52</sup> No-one knows yet how the current Republican-dominated Congress would view TiSA. Presumably they would be supportive, as many Team TiSA corporations are their political donors; they may still object that too many concessions were made during the negotiations. Other Republicans might

46 'Nearly 100 Tech Companies Join Forces in Court to Oppose Donald Trump's Immigration Ban', *Forbes*, 6 February 2017, <http://www.forbes.com/forbes/welcome/?toURL=http://www.forbes.com/sites/mattdrange/2017/02/06/nearly-100-tech-companies-join-forces-to-oppose-donald-trumps-immigration-ban/&refURL=https://www.google.com.au/&referrer=https://www.google.com.au/>

47 'Peter Thiel, Trump's Tech Pal, Explains Himself', *New York Times*, 11 January 2017

48 'Lighthizer does not rule out resuming TTIP talks, non-committal on TiSA', *Inside US Trade*, 20 March 2017

49 'EU decision on data flow language in TiSA not expected until fall; U.S. position still unknown', *Inside US Trade*, 13 February 2017.

50 TiSA, Article IV:16, Section IV – Administrative and Institutional Provisions, Core text, dated November 2016.

51 Stewart True and Scott Sinclair, 'EU Parliament ratifies CETA (only three dozen more votes to go)', 15 February 2017, <http://behindthenumbers.ca/2017/02/15/eu-parliament-ratifies-ceta-three-dozen-votes-go/>

52 Ellen Brown, 'Fast-Tracking TiSA', *Counterpunch*, 12 June 2015, <https://www.counterpunch.org/2015/06/12/fast-tracking-tisa/>



oppose more offshoring and the loss of brick-and-mortar jobs, but the low profile of TiSA makes that less likely than for the TPP.

The domestic US process known as ‘certification’ would be equally important. Before the US notifies completion of its domestic processes and its agreement to ratify TiSA for a particular country it would require that country to implement the *US understanding* of its TiSA obligations. In the past, the US has required other countries to revise their proposed laws, and even written the laws for them, in ways that effectively change the ‘final’ text.<sup>53</sup> The Trump administration could be expected to exploit that leverage to the full for TiSA.

Ratification would also be problematic in Europe where TiSA has been more controversial. The European Parliament set several red lines when it granted the European Commission a negotiating mandate,<sup>54</sup> but the Commission dismissed them as unachievable.<sup>55</sup> Commission officials initially said that TiSA would be treated as a mixed agreement because it covers some matters that fall with Member States’ responsibilities; that would mean the final text requires the consent of the European Parliament and ratification by Member States according to their national procedures.<sup>56</sup> Such consensus could prove difficult. However, the European Court of Justice ruled on the EU-Singapore free trade agreement in May 2017 that the EU had exclusive jurisdiction to enter agreements covering subject matter similar to TiSA,<sup>57</sup> aside perhaps from TiSA’s more extensive e-commerce chapter. To date, Brexit appears not to have affected the progress of the negotiations, but it could also make the bargaining over schedules more complex.

Again, these political pressure points provide strategic opportunities for UNI Global and its allies.

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53 see [www.tppnocertification.org](http://www.tppnocertification.org)

54 ‘TiSA: EP toughens safeguards concerning services of general economic interest’, *EU Trade Insights*, 4 February 2016, <http://www.borderlex.eu/eutradeinsights/tisa-ep-toughens-safeguards-concerning-services-of-general-economic-interest/>.

55 Daniela de Vincenti, ‘Parliament sets red lines for TiSA negotiations’, 4 February 2016 <https://www.euractiv.com/section/trade-society/news/parliament-sets-red-lines-for-tisa-negotiations/>; Christophe Kiener, EU Chief Negotiator for TiSA to International Trade Committee (INTA) of the European Parliament, 30 June 2016.

56 ‘Hazards ahead for TiSA talks’, *Politico*, 24 October 2016, <http://www.politico.com/tipsheets/morning-trade/2016/10/hazards-ahead-for-tisa-talks-217012>

57 Opinion 2/15 of the European Court of Justice (Full Court), **Opinion pursuant to Article 218(11) TFEU**, 16 May 2017, ECLI:EU:C:2017:376