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Trade in Services Agreement (TiSA) Negotiations

Overview

The Trade in Services Agreement (TiSA) aims to further liberalize trade in services among signatories and would build on the 1995 multilateral World Trade Organization (WTO) General Agreement on Trade in Services (GATS). GATS provides a system of rules for global trade in services, and has served as a foundation for other regional and bilateral free trade agreements. TiSA negotiations seek to enhance rules and disciplines governing services trade and gain additional market access for foreign service providers.

The 23 TiSA participants, including the United States and the European Union (EU), account for about 70% of world trade in services, but do not include some major emerging economies such as Brazil, China, and India. The United States has existing or potential free trade agreements with some of the TiSA partners (see **Figure 1**).

Unlike broader trade agreements, the TiSA focuses only on services. While the negotiations are taking place outside of the WTO, the TiSA framework aims to build on the GATS. Reportedly, the agreement is being structured so it could be incorporated into the GATS in the future, making it applicable to all WTO members.

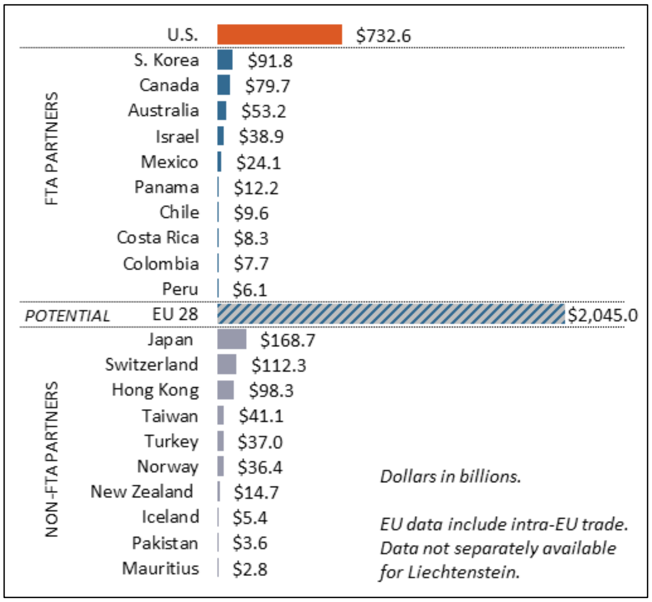
Congress set negotiating objectives to expand international competitive market opportunities for services in the Trade Priorities and Accountability Act of 2015, signed into law in June 2015 (Title I, P.L. 114-26). If the Administration makes progress toward the objectives and meets other trade promotion authority (TPA) requirements, Congress could potentially consider legislation to approve and implement a future TiSA under expedited legislative procedures if the parties reach a final agreement while the current TPA is in effect. The Trump Administration has not stated a formal position on TiSA.

Services in the Economy

"Services" refers to a growing range of economic activities, such as audiovisual; construction; computer and related services; energy; express delivery; e-commerce; financial; accounting and legal services; retail and wholesaling; transportation; telecommunications; and travel. A key part of the U.S. economy, services now account for 78% of U.S. private sector gross domestic product (GDP) and 82% of U.S. private sector jobs.

Services are an important and growing part of U.S. trade flows and global trade in general, accounting for $1,257 billion of U.S. total cross-border trade in 2016. According to the WTO, the United States is the world's single largest exporter of services (14.5% of the global trade in 2015) and the largest importer (10.2% of the global trade in 2015). Services are 34% of U.S. exports but, unlike trade in goods, every year the United States exports more services than it imports. Surpluses in services trade have partially offset large trade deficits in goods trade (see **Figure 2**).

Figure 1. TiSA Negotiating Parties' Services Exports
2016



Source: CRS analysis of WTO data.

Key Negotiating Issues

While the final scope of TiSA has yet to be determined, key provisions and areas of disagreement have emerged.

Disciplines and Rules. Some rules, such as non-discrimination among TiSA partners, would be in the core text and apply across the agreement, while others would be sector-specific. Transparency provisions are in a separate annex and are said to be similar to those in the U.S.-South Korea Free Trade Agreement, including requirements to publish current and proposed regulations and provide a period for public comment.

Unlike the GATS, which requires WTO members to apply terms to all its preferential trade partners, benefits of the commitments made by the participants in the TiSA would apply to only those countries that have signed on to the agreement. The parties may include the option for each TiSA participant to automatically extend to all TiSA participants the same benefits that it grants to other countries in future free trade deals it may enter. While the United States supports the provision, others do not.

The section on domestic regulations would establish rules related to the licensing and qualification requirements for professional services set by each party.

Rules on the movement of foreign nationals aim to facilitate people providing services through temporary entry for business purposes. As this has been politically sensitive, the

United States may make a limited offer in TiSA and not include special visas or quotas.

Market Access. Commitments to provide market access are being negotiated under a positive list: each party identifies individual sectors to be opened, but may identify carve-outs or reservations within those sectors. National treatment obligations, to treat foreign and domestic service providers equally, are negotiated under a more comprehensive negative list: obligations apply to all categories of the liberalized sectors listed in the agreement, unless a party specifies exceptions.

Government Procurement. TiSA participants are discussing whether to include disciplines on government procurement to complement the WTO Agreement on Government Procurement (GPA). Most TiSA participants, including the United States and EU, are active or observer parties to GPA.

Potential Sectors. The list of sectors to be included in TiSA as annexes is not final; many are considered sensitive or controversial amongst and within negotiating parties.

Audiovisual and Express Delivery. Given the competitiveness of U.S. industry in these sectors, the United States supports their inclusion. Some other countries have traditionally opposed including either one.

E-commerce/Digital Trade. Participants aim to establish clear rules and disciplines, while drafting the agreement broadly enough to capture technological change. TiSA would likely address trade barriers such as localization requirements, consumer online protection, interoperability, and international regulatory cooperation, among other provisions. Digital trade and cross-border data flows impact business opportunities for a broad range of industries, including transportation. One potential obstacle is the EU's reluctance to discuss cross-border data flows, a key U.S. negotiating objective, under TiSA.

Financial Services. TiSA would likely build on the commitments in the GATS financial services annex. The United States aims to include provisions on cross-border data flows and localization requirements. The annex would potentially benefit from other TiSA provisions, like transparency.

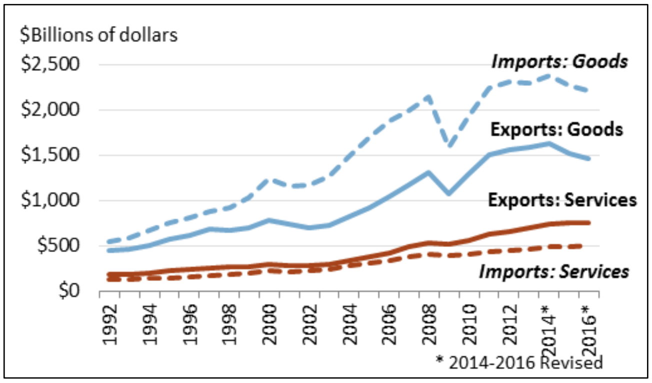
Professional Services. TiSA would likely not require explicit mutual recognition agreements (MRAs), but may facilitate the process for interested parties in recognizing foreign professionals and expedite their licensing.

Maritime Services. While many would like to include these, the United States and some other parties likely would oppose it. A U.S. market access offer has not included this sector or would be limited to those port services, as allowed under existing U.S. law.

Telecommunications. TiSA would likely build on the GATS telecommunications annex and commitments made by parties to facilitate trade and open markets to competition.

Exceptions. Like GATS, TiSA would not apply to "services supplied in the exercise of governmental authority." TiSA would not constrain a government from taking measures for prudential reasons; to protect national security or maintain public order; to protect human, animal, or plant health; to prevent fraud and deception; or to protect individual privacy. In contrast to the United States, the EU and some other parties seek to exempt yet-to-be-defined "new services."

Figure 2. Total U.S. Cross-Border Trade in Goods and Services



Source: Analysis by CRS of U.S. Bureau of Economic Analysis data.

What are supporting views? Many in the business community support TiSA as an opportunity to increase consistency and predictability among trading partners, to eliminate trade barriers, and to strengthen and update multilateral rules on trade in services beyond the WTO GATS.

What are opposing views? Opponents of trade in services liberalization, including some labor unions and civil society groups, are concerned about the potential impact of TiSA on the authority of national, state, and local governments to regulate services.

What is the current status? 21 rounds of TiSA negotiations occurred 2013 through 2016. Parties cancelled the December 2016 ministerial meeting, and no negotiations have been scheduled for 2017. The Trump Administration has not stated an official position on TiSA. In response to questions on TiSA from his Senate Finance confirmation hearing, U.S. Trade Representative Robert Lighthizer wrote, "Maintaining a vibrant U.S. services sector and expanding U.S. services exports is vital to a healthy economy and a key objective of U.S. trade policy. If confirmed, I look forward to working with you to pursue our services trade priorities."

Issues for Congress

As part of its oversight of trade negotiations, Congress may monitor progress on the TiSA negotiations. Congress could examine the economic implications of a potential TiSA; compare the TiSA provisions with the priorities established in TPA and with U.S. free trade agreements; or consider whether TiSA should include other parties with large, fast-growing service sectors, such as Brazil, China, and India.

For more information see CRS Report R43291, *U.S. Trade in Services: Trends and Policy Issues*, by Rachel F. Fefer, and CRS Report R44354, *Trade in Services Agreement (TiSA) Negotiations: Overview and Issues for Congress*, by Rachel F. Fefer.

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