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## Implications of China's Possible Participation in the TiSA Negotiations

Xinquan Tu and Nianli Zhou



European University Institute  
**Robert Schuman Centre for Advanced Studies**  
Global Governance Programme

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## **Abstract**

Following the failure of the Doha Round, the Trade in Services Agreement (TiSA) negotiations originated, under the leadership of the United States, with the intention of developing new rules to promote further liberalization of services. While its prospects remain unclear, the TiSA has shown great ambition in the depth and breadth of liberalization for services trading and investment. China sincerely sought to join the TiSA negotiations simply because it is necessary in order to upgrade its industrial and economic reforms. However, China faces many challenges, including both suspicion and obstruction by the United States and its own domestic uncertainties and difficulties.

## **Keywords**

Services trade, Trade in Services Agreement, WTO, China, Doha Round.





## **I. Origin and Progress of the TiSA Negotiations**

### ***1. Genesis of the TiSA Talks***

Early in the Tokyo Round of the GATT multilateral trade negotiations during the 1970s, the United States began actively promoting negotiations on trade-in-services. Among the major achievements of the Tokyo Round, those regarding government procurement, subsidies, and product standards, were already preliminarily connected with the liberalization of such trade-related service sectors as transportation, insurance, and inspection. At the 1982 GATT Ministerial Meeting, the United States proposed prioritizing trade-in-services liberalization, i.e., to develop a work program within the framework of GATT in order to make technical preparations for multilateral negotiations in the field of services. However, the proposal failed to take shape due to indifference from European countries and the resistance of developing countries. When initiating the Uruguay Round of multilateral trade negotiations in 1986, the United States again actively promoted including trade-in-services as a topic for discussion. This time their promotion was met with success as all WTO members finally reached a consensus to include trade-in-services among the topics for discussion. After eight years of negotiations by a specialized negotiating team established under the GATT on the issue of trade-in-services, the final draft of General Agreement on Trade in Services (GATS) was finally adopted by the Trade Negotiations Committee by the end of 1993. In April 1994, the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations was signed in Marrakesh. As the first international normative framework on trade-in-services, the GATS is one of the important outcomes of the Uruguay Round negotiations, which now formally governs issues on trade-in-services through its multilateral trading system.

In 2001, the WTO launched a new round of negotiations in Doha, which was dubbed the “Development Round.” However, the negotiations, which were scheduled to end before 2005, faced difficulties and repeatedly stagnated due to wide-ranging diverse and differentiated interests between members at different levels of development. Therefore, in order to break the impasse of the negotiations, the WTO encouraged members to find alternatives to promote the Development Round of negotiations at the Eighth Ministerial Conference in December 2011.

Liberalizing trade-in-services provides enormous economic benefits to developed countries as their economies heavily rely on the service industry. Although GATS has been in place for more than 20 years, it no longer meets the demands of developed countries. One of the key factors contributing to the obsolescence of the GATS is the transformation of the international business environment, which has been transformed by technological advances, global data transfer, extensive use of the Internet, among other factors. International trade and commerce must keep up with the latest developments and as such, it is necessary to have a framework in place that provides guidance for countries to work across borders. In their exploration of new initiatives to further promote the liberalization of trade-in-services, a small number of WTO members decided that the most effective way to achieve the expected results was through an independent plurilateral agreement on trade-in-services. The goal was to make it consistent with GATS, however, only states parties participating in the negotiations would be able to benefit from the agreement’s outcomes. In other words, WTO members not participating in the negotiations would be unable to benefit from the principle of most-favored-nation treatment (MFN). Such an approach supposedly urges members to participate in the negotiations.

In December 2011, a group of WTO members calling themselves “Really Good Friends of Services” (RGF) unofficially began secret negotiations on a plurilateral agreement on trade-in-services outside the framework of the WTO, which would eventually become the TiSA. Initial members of the RGF included 16 participants; Australia, Canada, Chile, Colombia, the European Union, Hong Kong, Japan, Mexico, New Zealand, Norway, Pakistan, Singapore, South Korea, Switzerland, Chinese Taipei, and

the United States. Their relevant meetings were held in secrecy in members' diplomatic agencies in Geneva. Non-members were not allowed to sit in on these meetings, which was met with strong reproach from India, China, Brazil, and other developing countries.

Subsequently, meetings on TiSA negotiations were gradually formalized by RGF, co-chaired by the United States and Australia's ambassadors to the WTO. In early 2012, the multilateral agreement was temporarily named the International Service Agreement (ISA), but the name was not formally adopted. In the early stage of preparatory negotiations, there were controversies between RGF members as the European Union held doubts about the launch of TiSA negotiations.

For the United States, the world's largest and most competitive service provider, the liberalization of trade-in-services can bring great benefits. In the United States, the service sector generates nearly 80% of all job opportunities. Commercial services such as telecommunications, courier, computers/IT, and other related services, account for 25% of the total employment while manufacturing accounts for only about 10%.<sup>1</sup> Exporting these commercial services provides the most important potential growth engine of for the U.S. economy, for there are far more enterprises that export goods than those that export commercial services, and about a quarter of all manufacturers (only a twentieth of all commercial services enterprises) are engaged in exports.<sup>2</sup>

U.S. service exports amounted to \$578 billion USD in 2011, and \$614 billion USD in 2012, accounting for 13.9% and 14.1%, respectively, of the world's total service exports.<sup>3</sup> The relatively low level participation of U.S. commercial service enterprises is mainly attributable to various barriers to trade and investment in services in many foreign markets, including the ban on cross-border transfers of data and forced localization, unfair competition from state-owned enterprises, discriminatory treatment, laws and regulations, lack of transparency and necessary due process, and forced localization of ownership, etc. Trade-in-services can bring more quality, high-paying jobs to Americans. It is estimated that if the export proportion of the U.S. service sector reaches that of its manufacturing sector, it will create 3 million jobs in the United States. Therefore, due to the potential growth of U.S. service sector within the international market, the United States became the main promoter of TiSA negotiations. The United States is in urgent need of a new initiative that not only reduces barriers to market access, but also creates conditions for trade-in-services so as to promote the potential growth of its economy by utilizing the advantages of its service sector.

According to the Australian Services Roundtable (ASR), the industry association for the service industry of Australia, the TiSA negotiations are an important opportunity for the Australian service industry to provide high-value services in the growing global market. Statistics provided by the Australian Bureau of Statistics indicate that the service sector accounts for nearly 85% of GDP and about 80% of employment, including 93% of all employment for recent college graduates. In the past decade, Australia's service industry has experienced an increase of 2.3 million jobs, while there has only been a small increase in the resources sector and even a decline in the manufacturing and agricultural sectors. As the ASR believes that a plurilateral agreement on trade-in-services can promote the economic development of Australia, it strongly calls on the Australian government to actively participate and play a leading role in the TiSA negotiations.

As an important member of the RGF, the European Union was initially skeptical about the initiation of the TiSA negotiations. Their hesitation focused on the following reasons: first, the

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<sup>1</sup> J. Robert Vastine, *A New Form of Services Trade Agreement Moving Ahead in Geneva: The International Services Agreement*, Economic Policy Vignette, November 4, 2012.

<sup>2</sup> J. Bradford Jensen, *Overlooked Opportunities for U.S. Exports of Business Services*, Economic Policy Vignette, 2012-9-21, Center for Business and Public Policy, McDonough School of Business, Georgetown University, September 9, 2012.

<sup>3</sup> World Trade Organization, *World Trade Report 2012*, [https://www.wto.org/english/res\\_e/booksp\\_e/anrep\\_e/world\\_trade\\_report12\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/anrep_e/world_trade_report12_e.pdf); World Trade Organization, *World Trade Report 2013*, [https://www.wto.org/english/res\\_e/booksp\\_e/world\\_trade\\_report13\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_trade_report13_e.pdf).

European Union held that the TiSA negotiations would have little impact on the liberalization of the service market; second, the TiSA negotiations went against the MFN principle and were thus inadvisable; third, a multilateral agreement can be valuable only if it can attract the participation of India, China, Brazil, and other developing countries. In addition, the European Commission worried that it would not be authorized by its members to participate in such negotiations outside the framework of GATS. Therefore, it was the European Union's original hope to continue the Doha Round negotiations on trade-in-services within the framework of GATS or through additional bilateral free trade agreements, rather than to launch new multilateral negotiations. Subsequently, however, the European Union changed its stance and supported the TiSA plurilateral negotiations.

Currently, a total of 23 parties composed of 51 WTO members have participated in the TiSA negotiations, including not only developed countries such as the United States, Japan, the European Union, Australia, Canada, Hong Kong, Chinese Taipei, Norway, New Zealand, South Korea, Switzerland, Liechtenstein, Iceland, and Israel, but also developing countries including Chile, Pakistan, Mexico, Panama, Colombia, Costa Rica, Paraguay, Peru, and Turkey. According to WTO statistics, trade-in-services of TiSA members accounts for roughly 70% of global exports. Though other WTO members, including China and other BRIC countries, did not participate in the TISA negotiations, in September 2013, China formally made its application to participate in the TISA negotiations. Uruguay also made such an application.

## ***2. Content and Objectives of the TiSA Negotiations***

Although the TiSA negotiations set multilateralization as a future goal, the negotiations were initially conducted in a highly closed-off manner with proceedings and all documents kept confidential. From the beginning, the European Union insisted that the TiSA be compatible with the multilateral system, and as such it was relatively more active in releasing the documents relating to the negotiations. On February 15, 2013, the European Commission issued a memorandum that would authorize its participation in the negotiations. The memorandum was entitled, "Negotiations for Plurilateral Agreement on Trade in Services as a proposal to the European Council."<sup>4</sup> It provided a general overview of the TiSA's origin and of the negotiating participants, the main elements contemplated by the future agreement, structure of the agreement, and multi-lateralization, etc.

According to the memorandum, "the objective of the plurilateral trade in services agreement should be to negotiate an ambitious agreement that is compatible with the General Agreement on Trade in Services (GATS), which would attract broad participation and which could be multi-lateralized at a later stage."<sup>5</sup> It specifically emphasized that the TiSA negotiations were not aimed at a Free Trade Agreement (FTA) among the participants. The agreement was comprehensive in scope, with no exclusion of service sectors or modes of supply at the outset. The agreement would also include regulatory provisions, such as in the area of telecommunications, financial services, or postal and courier services. The agreement would provide for new rules regarding domestic regulations (e.g., authorization and licensing procedures), international maritime transport, telecommunication services, e-commerce, computer related services, cross-border data transfers, postal and courier services, financial services, temporary movement of natural persons, government procurement of services, export subsidies, and state-owned enterprises. In terms of the structure of the agreement, it would be based on the GATS, but commitments on national treatment would in principle be applied on a horizontal basis to all service sectors and modes of supply and exemptions to this horizontal application would have to be listed in each countries' national schedule of commitments. At the same time, the memorandum also set conditions for the future multi-lateralization of the agreement: the

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<sup>4</sup> See [http://europa.eu/rapid/press-release\\_MEMO-13-107\\_en.htm](http://europa.eu/rapid/press-release_MEMO-13-107_en.htm).

<sup>5</sup> Directorate-General for External Policies, *The Plurilateral Agreement on Services*, at 14 (2013), [http://www.europarl.europa.eu/RegData/etudes/workshop/join/2013/433722/EXPO-INTA\\_AT\(2013\)433722\\_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/workshop/join/2013/433722/EXPO-INTA_AT(2013)433722_EN.pdf).

MFN principle would automatically apply upon reaching a critical mass in the number of participants to the agreement. However, the memorandum failed to specify the threshold for critical mass.

On July 22, 2014, the European Commission published, in a more comprehensive manner, the European Union's opening bid for allowing foreign (non-European Union) companies to provide services within the European Union and its proposals to the core text of the TiSA.<sup>6</sup> The proposal, which was circulated by the European Union to the other participants in March 2013, included 4 parts: Part I: General Provisions (including such principled provisions as scope, definition, market access, and national treatment); Part II: Understanding on Specific Commitments (including horizontal national treatment and specific commitments); Part III: New and Enhanced Disciplines (vacant); and Part IV: Institutional Provisions (including such Articles as Resolution of Disputes, Future participation to this Agreement, and Multilateralization, all of which are vacant).

From the information published by the European Union, as both the content and objectives of TiSA are quite open with no exclusion of service sectors or modes of supply at the outset, the future results of the agreement depend on the will and negotiation structure of the participating states. However, the European Union set very clear objectives and repeatedly emphasized that the ultimate objective of the TiSA is a multilateral agreement which should be integrated into the GATS rather than continue to be a FTA on trade-in-services. Therefore, the European Union embraced and supported anything that would expand the scope and influence of the TiSA. However, the United States did not fully support the idea. It continues to follow the strategy of initiating the Trans-Pacific Partnership Agreement (TPP); that is, to force or attract a small group of countries to join in and reach a high-level agreement for trade-in-services. The United States' primary consideration is not whether the agreement can be multi-lateralized in the future, resulting in differing attitudes between the European Union and the United States towards China's application for participation in the TiSA negotiations.

### ***3. The Current Status, Progress, and Future Prospects of the TiSA Negotiations***

The TiSA negotiations aim to reach an agreement on trade-in-services of a higher standard that will provide a remedy for the defects of the multilateral GATS rules, scale up commitments on market access, and ultimately bring GATS back to life under the WTO framework. According to information released by the negotiating parties, the main issues for the TiSA negotiations include market access, models for commitments on national treatment, enhancing or developing new disciplines on trade-in-services based on the GATS, the competitive neutrality of state-owned enterprises, and the freedom of cross-border data transfer, among others.

Parties to the TiSA negotiations reached a consensus on the following issues: the service industry of member states should be open to each other "basically with no exclusion of service sectors or modes of supply," which goes beyond their current commitment levels under the GATS; all foreign service providers and their products will receive national treatment, however, some services are explicitly excluded by an exceptions list (i.e., commitments are made to foreign investors on national treatment of industries falling outside the Negative List, which greatly differs from the current system under GATS); and the TiSA will be "multilateralized" after the completion of the plan, i.e., after the TiSA framework is established by even the most extreme liberals, the participation of other countries should be made compulsory. As the United States has the greatest demand in such "compulsory participation of other countries," the "Investor-State Dispute Settlement Mechanism" is likely to be included within

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<sup>6</sup> See <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1133>.

the final agreement. In addition, disciplinary provisions, including the “full-ratchet provision”<sup>7</sup> and the “standstill clause”<sup>8</sup> were introduced.

Mode 4, “Movement of Natural Persons,” thought to be a sensitive topic, was discussed at the TiSA meeting in May 2013. At that time the TiSA dispute settlement mechanism proposed by Switzerland was also introduced. Negotiations on the core text of the TiSA was mostly finished by October 2013. Only Switzerland and Pakistan had problems with the form of making commitments to foreign investors regarding national treatment of industries falling outside the Negative List. For Switzerland, this was a very important issue which, if not solved, would have led to Switzerland’s withdrawal from the TiSA negotiations. TiSA members did not want to see this happen. The issue was that the full-ratchet provision and the stand still clause could be applied along with the Negative List. Switzerland, which had never included the full-ratchet provision in its FTAs, wanted certain industries, including industries over which states have regulatory jurisdiction (such as education) and those industries where federal legislation can be overturned by citizens, to be exempted from the full-ratchet provision.

The principles proposed by the European Union and the United States on the information and communication technology industry (ICT) were generally accepted, but difficulties remain in turning these principles into unanimously agreed upon legal provisions. The proposal by the United States on the courier service industry was discussed at the TiSA meeting in November 2013. Reports indicated that the United States proposed a wider scope of market access than that under the U.S.-South Korea FTA. While scope of market access under that agreement included only courier services, the U.S. proposal in TiSA negotiations included courier services and other “competitive courier services,” the latter of which was defined as courier services where there was competition between a country and other suppliers, including air transport services and logistics, but excluding passenger transport and shipping. The United States and Japan’s bids on market access, which covered too narrow a scope of industries, were deemed as aspirational bids. Though the European Union’s bid was not discussed in the TiSA negotiations in November 2013, news from the European Union had it that its bids on market access covered many industries but not audio-visual services. Other TiSA members’ bids on market access were presented by the end of November 2013, which were discussed in the round of TiSA meetings chaired by the European Union starting on February 17, 2014. By the end of the negotiations on February 24, 2014, other than Paraguay and Pakistan, who failed to offer their bids on opening up their respective domestic service markets, the other 21 members had submitted their respective bids. From November 2013 to February 2014, when the meeting was not in session, negotiating parties set up a special working group to prepare the core text of the TiSA.

Currently, the TiSA has adopted two proposals as the basis for negotiations. The first proposal consolidates the text on information and communication technologies, which includes the United States’ proposal on e-commerce. The text is a further consolidation of a proposal by Japan and Switzerland completed in September 2013, and two separate proposals submitted by the United States and Panama. The final consolidated text was completed in a meeting during November 2013. The second proposal, also recognized as the basis for negotiations in the same meeting, was Turkey’s proposal on Mode 4, which has gained support from many countries, including Switzerland and Canada.

Other proposals discussed in the round of TiSA negotiations in November 2013, include Norway’s proposal on marine transport services and Australia’s proposal on professional services. Norway’s

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<sup>7</sup> According to the full-ratchet provision, except for sectors covered in the reservation clause in the negative list, there shall not be any new departure from the agreement; any autonomous liberalization will be extended by agreement to all trading partners; any emerging service sector will be added to the list of commitments covered by the agreement.

<sup>8</sup> According to the standstill clause, the level of commitment made under the agreement by members at any time in the future shall not be lower than the current level of commitment, so that members can be prevented from adding new restrictions in the future.

proposal included feeder services provided to ships anchored in a specific port or in a country's territorial sea within 200 sea miles from its coastline. The proposal is quite controversial for the United States, who still retains provisions on restricting coastal transportation between two U.S. ports or U.S. flag ships. Australia's proposal included a new element for including computer-related services. Reports indicated Chile also made a proposal that included services outside the scope of the GATS, such as air transport services, including Aircraft on Ground (AOG) Services, e.g., repair and maintenance services for aircraft not in service, ground handling services, airport operation services, and professional aviation services. According to Chile's proposal, professional aviation services is defined as any specialized business where aircraft are not mainly used for the transportation of goods or passengers, including aerial firefighting, flight training, sightseeing, as well as commercial activities in which helicopters and elevators are used for logging and construction.<sup>9</sup>

The round of TiSA negotiations chaired by the European Union lasted for eight days, starting on February 17, 2014, and successfully concluding on February 24, 2014. The official website of the European Union marked the negotiations as the 6<sup>th</sup> round while the official website of the Department of Foreign Affairs and Trade of Australia marked it as the 5<sup>th</sup> round with those in early 2013 being the first round. In the first three days of negotiations during February 2014, members held a special discussion on the 21 initial bids to market access, and subsequently on six other topics, namely, ICT services, financial services, domestic regulation and transparency, marine transport, professional services, and Mode 4 (movement of natural persons). These topics were chosen because their supporters had put forward a text that consolidated all proposals and interpretations, which was also prepared as a draft to the text of the negotiations. Therefore, discussion on these topics focused mainly on technical issues, namely, rules for the textbook. Generally, the exchange of bids between parties is often considered as the turning point of their efforts to reach an agreement. In this round of negotiations, the basic text of the terms of the agreement was finalized and almost all TiSA members offered their own bids. Therefore, this round of the negotiations created a powerful driving force that led the TiSA negotiations on the right track.<sup>10</sup>

The seventh round of negotiations was conducted between April 28<sup>th</sup> and May 2<sup>nd</sup>, 2014, where all members agreed to discuss the text of air transport services. The eighth and the ninth rounds of negotiations in June and September 2014, respectively, continued to discuss the original relevant new or enhanced disciplinary text and negotiations on market access offers. In the ninth round of negotiations, a new proposal was put forward to include environmental services, government procurement, and direct marketing services. Members agreed to discuss market access during a break in the conference. In the tenth round of negotiations in December 2014, the TiSA members conducted a bilateral or sub group of negotiations on market access, greatly accelerating the progress of bilateral market access negotiations. Australian Trade Minister Robb Andrew said in his speech at the service trade summit that, TiSA negotiations would be completed by the end of 2015.<sup>11</sup> The tenth round of negotiations in December 2014, focused on e-commerce and telecommunications sectors, making progress in domestic regulations, transparency, financial services, business personnel probationary entrance, professional services, maritime transport, air transport and delivery services, and also in-depth discussions of government procurement, environmental and energy services proposals.

The 12<sup>th</sup> round of negotiations was conducted on April 13, 2015, under the auspices of the European Union in Geneva. Important topics included financial services, telecommunications, domestic regulation, maritime transport, and mode 4 of service trade. This round of negotiations also reviewed and summarized the progress made in the negotiations up to that point. "Market access offer"

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<sup>9</sup> Inside U.S. Trade, U.S. Seeks to Advance Rules For Express, Other Delivery Services In TISA, November 15, 2013.

<sup>10</sup> 6th round TiSA talks end in Geneva. Brussels, February 24, 2014, <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1030>.

<sup>11</sup> "I think there is no reason for not completing TISA negotiations by the end of next year." Inside US Trade, *Punke Sees TISA Acceleration; Officials Target Late 2015 for Conclusion*, Oct 3, 2014.

was also discussed. As host and chairman during the five days of negotiations, the European Union hoped to prepare for the conference which would be held in July 2015. The aim was to be able to define the coverage of the TiSA and identify critical “chronic illnesses” in each sector discussed during previous negotiating sessions. The latest round, the 16<sup>th</sup> round, was held in April 2016. Intensive inter-sessional work resulted in substantial progress in negotiations on financial services, telecommunications, temporary entry of business persons, transport and localization (FTA disciplines including local presence, senior management and board of directors, and performance requirements). Good progress was also made on market access negotiations. As of the writing of this article, parties were due to table revised offers by May 6, 2016.

Though being ultimately multi-lateralized and integrated into the WTO is one of the objectives of the TiSA negotiations, disagreements are still present among TiSA members: some members (e.g., the European Union) care much about multilateralization while others (e.g., the United States) are indifferent to it. The European Union hosted this round of negotiations with the hope of ensuring the compatibility between the TiSA and the GATS, so that TiSA would be kept open to future WTO members, making it easier to integrate the TiSA into the WTO framework. As mentioned in June 2013 by Michael Punke, Deputy U.S. Trade Representative and Head of U.S. Delegation to the WTO, “the plurilateral agreement, no matter how we look at it, is part of WTO negotiations,” which was interpreted by some analysts as a gesture that at least for now the United States does not accept the multilateralization of the TiSA. The other way to reach this objective is the automatic multilateralization of the TiSA in compliance with the WTO rule that if the trade-in-services of TiSA members covers more than 90% of that across the globe, the scope of liberalization under the TiSA will apply to all WTO members. The proportion is already at 70% and will soon exceed 90% with the participation of new members such as China. In this sense, under the principle of critical mass, the TiSA would no longer be a plurilateral agreement, but a multilateral one under the WTO framework. However, the TiSA remains a threat to non-TiSA countries before its multilateralization. Although China has applied for participation in TiSA negotiations, the United States has rejected China’s application and thus it remains unclear whether China will be able to participate in TiSA negotiations.

## **II. The Development of China’s Service Industry and its Opening-Up Strategy**

### ***1. The Opening-up Policy and the Development of China’s Service Industry***

Before the reform and opening-up, China’s service industry held an inferior global position due to its economic strategy, which gave priority to the heavy industry, and the design of its planned economy that was in little need of the service industry. During the initial stages of the reform and opening-up, the service industry had long been on the periphery of China’s economy because historically industrialization was set as the primary goal of the government. It was not until 1992, when the State Council issued the Decision on Promotion of the Tertiary Industry, that the service industry started to gain attention and support from local governments. Since then, market reforms in this sector have been promoted and accelerated. Around 1990, China started to gradually open up its services industries, in areas such as commercial retail and catering. Early in 1992, China approved the establishment of joint ventures or cooperative commercial retail enterprises in cities such as Beijing, Tianjin, and Shanghai. Up until early 2000, China approved the establishment of 182 foreign-funded banks and 414 foreign financial institutions agencies in the banking and insurance sector. In the tourism sector, foreign investors had been allowed to establish, transform, and operate hotel facilities in the form of joint ventures or operating partnerships.

A great breakthrough in the service industry came with China’s entry into the WTO. China promised that it would lift restrictions on the entry of foreign investment and the ownership of businesses, and eliminate discriminatory practices against foreign-funded service enterprises within a few years after its accession into the WTO. This represented the most radical plan to liberalize the

service industry in the WTO. China has made binding commitments on 82 of the 149 sub-sectors of its service industry, reaching a proportion of 55%. Sheng (2012) assessed the level of the Chinese service industry's opening to the outside world under the framework of the WTO, finding that in terms of the ratio of sectors with commitments, by using the simple average method, both the level of market access and national treatment in China are close to the level of those in high-income countries.<sup>12</sup>

Despite all this tremendous progress, the openness of China's service sector still falls far behind that of its manufacturing sector and the expectations of its trade partners. In 2014, the share of China's service trade volume of GDP was only 5.86%, lower than that of the European Union, the United States, Japan, India, and other major countries, while the ratio of goods trade reached 41.55%, much higher than that of the above-mentioned major countries. Further, an important way to realize trade-in-services is to maintain commercial presence of foreign ventures (i.e., foreign direct investment (FDI)). In 2014, the ratio of FDI to GDP in China's service industry rose to 13.2% from 1.43% in 2002, while its manufacturing industry decreased to 1.08% in 2014, from the peak of 5.85% in 2002. This demonstrates that the use of FDI within China has changed in recent years. Specifically, the room and opportunity for FDI within the manufacturing industry is significantly declining, yet there is still great room and opportunity for FDI in the service industry. In 2014, FDI in China's service industry accounted for 55.4% of the total FDI in China, which was higher than the share of the service industry in China's GDP (48.2%). A large portion of the FDI in China's service industry has been invested in the real estate industry instead of commercial services. In 2012, the real estate industry's FDI accounted for 21.6% of the total FDI, while the FDI in China's service industry of the same year reached 48.2%. In other words, 45% of FDI in China's service industry flowed into the real estate industry.<sup>13</sup> According to Services Trade Restrictiveness Index (STRI), designed by the OECD to assess the openness of the service industry of a country, in China, with the exception of the construction industry which scores at an average level, the other 17 sectors are rated higher than average, meaning there are higher degrees of restrictions in these sectors than most countries.<sup>14</sup>

**Table 1: Revised Categories Frequency Index of Trade Protection in Services in China.**

	<b>Market Access Limitation</b>	<b>National Treatment Restriction</b>	<b>The Average Limitation</b>
<b>1. Commercial Service</b>	0.2773	0.4083	0.3428
<b>2. Communication Services</b>	0.4139	0.7963	0.6051
<b>3. Construction and Related Engineering Services</b>	0.4	0.4	0.4
<b>4. Distribution Service</b>	0.5369	0.8123	0.6746
<b>5. Education Services</b>	0.5891	0.287	0.4381
<b>6. Environmental Services</b>	0.4	0.9	0.65
<b>7. Financial Service</b>	0.45	0.7694	0.6097
<b>8. Health and Social Services</b>	0	0	0
<b>9. Tourism and Related Services</b>	0.507	0.855	0.681
<b>10. Recreational Services</b>	0	0	0
<b>11. Transportation Service</b>	0.4669	0.7067	0.5868
<b>12. Other Services</b>	0	0	0

Source: Bai Jie (2013, p 50.)

<sup>12</sup> Sheng, Bin (2002), Evaluation and analysis on the liberalization level of China's service commitments in the WTO, World Economy, No.8, 2002.

<sup>13</sup> Ministry of Commerce, China's Foreign Investment Report, 2013, p.13.

<sup>14</sup> See <http://www.compareyourcountry.org/service-trade-restrictions>.



**Table 2: STRD Index of Selected Countries on Selected Sectors in 2013**

	United States	European Union	Japan	Korea	China	Brazil
<b>Financial Services</b>	25	0	0	0	31.46	33.84
<b>Telecommunications</b>	0	0	25	50	50	0
<b>Retail</b>	0	25	25	0	25	0
<b>Transportation</b>	16.67	45.83	22.92	20.83	22.22	12.5
<b>Professional</b>	50	50	50	60	70	50

Source: World Bank

**Table 3: FDI Restriction Index of Selected Economies in 2013**

	US	Germany	Japan	Korea	OECD	China	India	Brazil
<b>Services</b>	0.094	0.022	0.077	0.141	0.085	0.484	0.34	0.118
<b>Retail and Wholesale</b>	0	0	0.001	0	0.022	0.256	0.238	0.025
<b>Transportation</b>	0.55	0.2	0.275	0.508	0.218	0.642	0.179	0.275
<b>Hotel and Catering</b>	0	0	0	0	0.021	0.17	0	0.025
<b>Media</b>	0.25	0.025	0.2	0.563	0.163	1	0.395	0.55
<b>Telecommunication</b>	0.11	0	0.265	0.325	0.089	0.75	0.175	0.025
<b>Financial</b>	0.042	0.005	0	0.05	0.035	0.513	0.32	0.108
<b>Business Services</b>	0	0	0	0	0.067	0.388	0.563	0.025
<b>Real Estate</b>	0	0	0.1	0	0.164	0.325	1	0.025

Source: OECD

Therefore, it is apparent that China's service industry is not yet as open to the global community as it could be. Meanwhile, disputes in such areas as e-payment, airline reservation systems, and movie distribution also indicate that China has failed to satisfactorily fulfill its promise of opening up its service industry under its WTO accession protocol. On the whole, there are two reasons for China's slow progress in opening up its service industry. First, China's service industry is relatively less competitive in the global market. Second, in many areas of the service industry, markets are monopolized by government manipulation or government-owned businesses. Even with such low levels of openness, China has had a good deal of trade deficit, which reached 198.1 billion dollars in 2014, offsetting about half of its surplus in commodity trading.<sup>15</sup> Although China has many large-scale enterprises in various service sectors such as telecom, banking, insurance, civil aviation, railway transportation, and marine transportation, most of sectors have not experienced any global competition and have grown in the relatively closed domestic markets. What's worse, they have been used to their monopolization positions in these markets, which have been achieved through authorization or permission of the central government. As a result, such monopolization further strengthens the motivation and capacity of these enterprises to seek government protection and market closure. Besides large state-owned enterprises under the direct leadership of the central government, there are many state-owned enterprises managed by local governments, in every service industry area, especially within public utilities, including water supply, gas, urban traffic, highway, tourism, culture, and media. Local government may be generally happy to bring in FDI into the manufacturing industry in order to increase local GDP and employment and save local enterprises from bankruptcy. However, they take a more conservative approach when it comes to the service industry because local state-owned service enterprises usually operate well and do not need foreign investment. Further, newly

<sup>15</sup> WTO, International Trade Statistics, 2013.

introduced FDI may increase competition and pressure to existing local service industries, resulting in replacement rather than marginal improvement of these enterprises. This is an important reason why FDI in the service industry is relatively low.

**Table 4: Change of FDI Restrictions Index in Selected Industries in China (2003-2013)**

	<b>2003</b>	<b>2006</b>	<b>2010</b>	<b>2013</b>
<b>All economy</b>	0.561	0.449	0.421	0.418
<b>Services</b>	0.659	0.507	0.492	0.484
<b>Retail and Wholesale</b>	0.75	0.308	0.268	0.256
<b>Transportation</b>	0.753	0.638	0.642	0.642
<b>Hotel and Catering</b>	0.25	0.17	0.17	0.17
<b>Media</b>	1	1	1	1
<b>Telecommunications</b>	0.875	0.75	0.75	0.75
<b>Financial Services</b>	0.683	0.542	0.533	0.513
<b>Business Service</b>	0.45	0.4	0.388	0.388
<b>Real Estate</b>	0.375	0.375	0.325	0.325

Source: OECD

However, the importance of the service industry has become increasingly prominent in current economic structural adjustments. The era of rapid growth in China's manufacturing industry is becoming irrelevant with its growth potential greatly decreasing due to the significant rise in labor costs and environmental pollution. As such, the service industry will play a greater role in economic growth and in promoting employment as China will continually depend more and more on its service industry to sustain economic growth and increase employment. As a result, the focus of government performance assessment has shifted from GDP growth to other indicators such as employment rates and environmental protection, which will largely strengthen local government enthusiasm in developing the service industry. When discussing the starting point and measures implemented by the Chinese government to develop the service industry and trade-in-services in his speech in 2013, at the Beijing International Fair for Trade in Services, Chinese Premier Li Keqiang pointed out that promoting the opening-up of the service industry is the necessary and inevitable approach to vigorous development of the industry.<sup>16</sup> This is the basic economic reason for China to apply for participation in the TiSA negotiations.

## ***2. China's Strategy for Trade Negotiations after the Third Plenary Session of the 18<sup>th</sup> CPC National Congress***

Promoting the opening-up of the service industry is not an independent policy, but rather is part of the new round of reforms and opening-up after the 18<sup>th</sup> CPC National Congress. The decision of the third plenary session of the 18<sup>th</sup> CPC National Congress provides information and great implications for opening up. Though the decisions focused on domestic structural reforms and paid little attention to opening up, there was a small but noteworthy change in policy objectives. Specifically, the words "to promote reform through opening-up," which were not included in the report of the 18<sup>th</sup> CPC National Congress, were, however, added in the decision of the third plenary session. Therefore, these changes show that China's new leadership realizes that external driving forces are necessary to attain needed reform. This decision made a significant and instant impact on China's negotiations on opening-up and trade, bringing remarkable progress to trade negotiations and policies which failed to make any new achievements since 2013.

<sup>16</sup> See [http://www.gov.cn/ldhd/2013-06/01/content\\_2416836.htm](http://www.gov.cn/ldhd/2013-06/01/content_2416836.htm).

Between April and May of 2013, the China-Iceland and China-Switzerland FTA talks were successfully concluded. China also successfully signed FTAs with South Korea and Australia in 2015. In July 2013, China agreed to enter into BIT negotiations with the United States on the basis of pre-established national treatment and negative list, thus resuming the long stagnated talks. The BIT talk between China and the European Union also officially commenced in November 2013. In August 2013, the Shanghai Free Trade Zone was officially set up as the pilot zone for the new round of reforms and opening-up. In December 2013, China made a great contribution to the conclusion of the agreement at the ninth WTO Ministerial Conference in Bali. In January 2014, China agreed to join the plurilateral negotiations on environmental-related products. In August 2014, China officially initiated the FTAAP negotiations at the APEC conference. It was in such a background that China made its application to participate in the TiSA negotiations, which was not as unexpected as other countries had thought.

This succession of high-profile moves shows the determination and confidence of China's new leadership in promoting opening-up. China no longer passively responds to the requirements of developed countries, but take initiatives to actively participate and even launching new initiatives. Examples in this regard include China's participation in the negotiation on environmental-protection products and its initiation of FTAAP negotiation within the APEC conference. What's more, China no longer avoids direct negotiations with developed countries, but rather is willing to accept higher standards on openness, indicating its determination to realize higher levels of openness as well as its confidence in confronting challenges. China no longer solely adheres to a multilateral system; but accepts bilateral, regional, plurilateral, as well as multilateral systems so as to promote liberalization through a combination of multiple channels. In particular, it no longer rejects plurilateral agreements led by developed countries. As a result, China has now become the only major emerging economy to participate in negotiations on GPA, ITA, TiSA, and environmental goods.<sup>17</sup> Therefore, the application for participation in the TiSA negotiations is not a hasty action, but an initiative as a part of the new round of reforms and opening-up of the Chinese government.

### ***3. Possible Implications and Motives of China's Accession to the TiSA***

#### ***A. The Potential Impact of the TiSA for China***

Although China has become a major country in trade-in-goods, it still faces great challenges and lacks competitiveness in trade-in-services. According to the 2013 World Trade Report, 11.2% of total exported goods in the world came from China. In contrast, China only contributed 4.4% of the total global services exports and had a good deal of trade deficit as well.<sup>18</sup> Despite many problems in China's service industry, China is now attempting to further liberalize its trade-in-services, in order to develop, promote, and cultivate its service industries through expanding external markets and by introducing competition. Therefore, participating in the TiSA negotiations is a great opportunity as well as a big challenge for China.

First, by acceding to the TiSA, China can provide greater room for the development of its trade-in-services by obtaining market access to other TiSA members whose mission is to reduce barriers to market access among its members. If the agreement is reached after China's accession, a broader market will be open to various sectors of the service industry in China, some of which still have relative competitiveness, especially labor- and resource-intensive sectors such as foreign project contracting, labor services exports, and ocean transportation. Broader market access will provide

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<sup>17</sup> *China Getting More Active and Pragmatic in Trade Talk*, Financial News, July 7, 2014, <http://www.ftchinese.com/story/001057110>.

<sup>18</sup> World Trade Organization, *World Trade Report 2013*, [https://www.wto.org/english/res\\_e/publications\\_e/wtr13\\_e.htm](https://www.wto.org/english/res_e/publications_e/wtr13_e.htm).

China's traditional advantageous service industries with greater external development space and is also conducive to the upgrades and reform of these industries.

Second, by acceding to the TiSA, China can promote the opening up of its domestic service market, which will bring in foreign competitors and further promote the development of industry. Attempts to reform and open investment and financial services have already started, as demonstrated by the Shanghai Free Trade Zone established in 2013. Greater openness of China's service industry will promote the competitiveness and development of the whole service industry by breaking down domestic monopolies, introducing competitors equipped with advanced technologies, and strengthening the competition within the domestic service industry. In addition, these foreign competitors will bring in more advanced technologies and experience that can be drawn upon to upgrade and reform the domestic service industry as well as introduce innovative services that will add to the diversity of the service market of China.

Third, acceding to TiSA will give China a chance to be an active participant, rather than being marginalized, when it comes to making rules on trade-in-services. Through its participation in the TiSA, China can actively achieve its own interests, instead of passively waiting for the conclusion of the TiSA negotiations to accept established rules that it played no part in creating. Furthermore, if new rules on trade-in-services are made under the TiSA, there will be a full ratchet effect. If China fails to accede to the TiSA during the rule-making process, the country will face a difficult dilemma after the agreement is finally concluded. Acceding later will force China to passively follow established rules; not acceding will cause China to be marginalized, all of which will have adverse effects on China's service industry.

Finally, China can further promote economic efficiency by acceding to the TiSA. Through participation in the TiSA negotiations, China will take a bigger step towards liberalizing trade-in-services, which will also be conducive to improving China's economic efficiency. On one hand, greater openness of the market will attract competition from more foreign enterprises, providing domestic consumers with more options for high quality services at lower prices, thus increasing consumer surplus. On the other hand, foreign competition will force Chinese service enterprises to reduce costs and improve service quality and competitiveness by learning from the advanced technologies and experiences of foreign enterprises. In addition, market openness will foster the effective and efficient allocation of economic resources by promoting intensive development and increasing services exports with comparative advantage while importing services without comparative advantage.

However, it will also be a great challenge for China to accede to the TiSA since it has set high standards and objectives with respect to liberalization of trade-in-services and the current development in China's service industry is still at a relatively low level.

First, China's service industry will face enormous pressure from the high-level of market openness required under the TiSA. Currently, China has made binding commitments in nearly 100 of the 155 service sectors in the GATS, representing a much higher proportion than that of most developing countries. Though China's market openness for the service industry is not low as a whole, some service sectors continue to struggle with relatively low international competitiveness. Therefore, if China is to further open its markets beyond present levels, further studies and considerations should be made on whether or not the country has the ability to bear the inevitable pressure that comes with further opening its service markets. If the opening up fails to be orderly and planned, there will be adverse impacts on China's service industry.

Second, the new form of commitment on market opening required under the TiSA can also have implications for China's service industry. In the course of the current TiSA negotiations, commitments on national treatment are to be made in the form of a negative list, which is completely different from the practice under the GATS. Although it is just a form of commitments on market opening, compared to a positive list, a negative list greatly reduces the foreseeability of service commitments by means of

which markets should be open to those newly emerging service sectors that did not exist at the time when the commitment was made. Currently, attempts are being made to decide how commitments on market access should be made as a negative list in the institutional reform conducted in Shanghai Free Trade Zone. Though such attempts can provide certain references regarding the implementation of specific TiSA negotiation rules, there remains huge risks for China's service industry.

Third, China will face challenges in changing the regulatory policies of its domestic service industry. Since the TiSA is designed to achieve high-level liberalization of trade-in-service, TiSA members will be greatly constrained from protecting their own service industries. However, up till now, China's service industry is still plagued by insufficient transparency in regulatory policies and excessive support for particular service sectors. Hence, if China accedes to the TiSA, it will have to make corresponding adjustments and changes to its current regulatory policies that are aimed at protecting particular service sectors and improve transparency in corresponding procedures for administrative approval.

Fourth, the TiSA may potentially influence certain relevant laws and regulations. Due to the relatively low level of development of China's service industry, institutional protectionism over certain public welfare sectors, such as postal services and health care, have created market monopolies within these sectors. After accession to the TiSA, China will need to amend these laws and regulations. Meanwhile, there will be higher standards for corresponding security systems.

Finally, acceding to the TiSA negotiations will potentially impact China's economic and information security. In terms of economic security, China's economic independence may be weakened by the high-level liberalization of trade-in-services, as required under the TiSA. If foreign-based transnational corporations gain control and dominance over important service sectors such as communications, finance, and transportation, China will face a loss of economic decision-making autonomy and sustain certain damages to its economic development. In addition, competition from foreign service enterprises may hugely impact newly emerging service industries that are still in their infancy and may lead to China's dependence on these industries, which is not conducive to the development and success of emerging domestic industries. As for information security, the free cross-border transfer of data required by the TiSA may constitute a threat to citizens' privacy and national security.

In the long run, the advantages of China's accession to the TiSA outweighs the disadvantages: it can foster the globalization and development of China's service industry by providing more market space for Chinese service enterprises; it will promote reform, restructuring, and upgrades to China's economy while avoiding falling into the middle-income trap. What's more, China can gain maximum benefits from accession to the TiSA by drawing on advantages while avoiding disadvantages. For example, China can put forward proposals in the TiSA negotiations according to its own needs and interests and actively conduct domestic institutional reform.

### ***3. China's Motives for Accession to the TiSA***

The Chinese government fails to clearly identify its motives and purposes in desiring accession to the TiSA. However, from the above analysis, a clear conclusion can be drawn that accession to the TiSA is an inevitable choice for China given the course of the new round of reform and opening-up launched under the 18<sup>th</sup> National Congress of the CPC. Accession is motivated by the country's wish to realize needed transformation and upgrading to its economic structure by promoting reform through further opening up and vigorously developing its service industry. It is also driven by China's aspiration to actively participate in the construction of the international economic system and to expand China's influence all over the world. These motivations and objectives are not only rational for its economy but also consistent in its policy.

However, China's abrupt change of attitude toward the TiSA has created suspicions among some countries, especially the United States, regarding China's motives for accession. When the United States first initiated the ISA, China and other emerging countries such as India, Brazil, and South Africa, were suspicious of it and even opposed it, worrying that the ISA would damage the Doha Round of negotiations.<sup>19</sup> Yet a year or more later, China dramatically changed its position. Thus, some people in the United States believe that the China does not wish to join the negotiations in order to open its service industry and promote the success of the TiSA negotiations, but rather to stall or even to block the negotiations. This conspiracy theory can only come from a place of ignorance to China's significant strategy changes for reform and opening up, as embodied by the decisions of the 18<sup>th</sup> National Congress of the CPC.<sup>20</sup> Compared to previous Chinese leaders' prudent attitude towards opening the economy, where economic priority was given to domestic economic balance, new leaders are more audacious in their plans concerning opening up and reform. The change in China's trade talk strategy, as mentioned above, has fully proved this point. Joining the TiSA is a firm but somewhat hasty adventure, rather than a deliberate conspiracy.

Though the TiSA negotiations are not yet complete and its progress kept secret, it is generally expected that negotiations will end with an ambitious high-level agreement on liberalization of trade-in-services. However, since the current development and openness of China's service industry is still at a low level, China will face practical difficulties and risks if it accedes to the TiSA. What's more, only a year or more later, when China's preparatory research, domestic coordination, and international negotiations could hardly be said to be sufficient, China changed its position and began to apply for accession to TiSA. Given these factors, the United States, after the initial surprise, misunderstands China's application for accession to the TiSA as a conspiracy. On the contrary, these factors all the more demonstrate China's new leaders' eagerness to find a breakthrough for opening up and accelerating domestic reform. China's motives for accession to the TiSA are summarized below.

First, China seeks to promote the development of the domestic service industry through reform and opening up. The country's experience during the first five years prior to its entry into the WTO has shown that international rules and treaties are very conducive to promoting reform and industrial development by breaking the obstruction of domestic interest groups. China's experience after its entry into the WTO also demonstrates, from the opposite perspective, that domestic reforms cannot proceed smoothly without being spearheaded and pushed by opening up. In industries dominated by state-owned enterprises, powerful interest groups have formed that not only have a strong motivation and the ability to obstruct further liberalization and reform, but can even cause regression. In addition to the firm determination of China's new leadership, moderate use of external pressures will be helpful in accelerating its reform policies. Therefore, the value and necessity of external pressures in the service industry becomes all the more prominent as the presence and power of monopolies and interest groups within a given industry become stronger. Therefore, China has focused on speedily opening up of the service industry in its BIT negotiations with the United States and the European Union and in its application for accession to the TiSA.

Second, China seeks to accelerate the development of the service industry so as to foster the adjustment of the country's industrial and economic structure and to sustain the steady growth of the economy and employment opportunities for its citizens. After 30 years of development, China's service industry is ready for rapid development in terms of resource conditions and market demand. On the contrary, in the manufacturing industry, the rapid growth of which has come to an end, will mainly rely on technological innovations for improvement of productivity in the future. As a result, the service industry has to take over a huge amount of resources and market share that used to belong to the manufacturing industry, especially labor resources, which have undergone tremendous changes

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<sup>19</sup> G. Hufbauer, et al., *Framework for the International Services Agreement*, Washington D.C., Peterson Institute for International Economics, PB12-10. 2012.

<sup>20</sup> Jacob Koch-Weser, *Should China join the WTO's services agreement?*, USCC Economic Issue Brief No. March 11, 2014.

in structure, age, and knowledge, and thus should be absorbed by the service industry on a larger scale. Therefore, accelerating the development of the service industry can not only foster economic restructuring and growth, but also strengthen social harmony and stability. Now that the conditions have been fulfilled with regard to both resources and market, one of the most important ways of developing the service industry is by strengthening the competition, the most effective way of which is to promote the opening up of the industry. This is especially true in the current situation where China's service sector is plagued by low international competitiveness and severe monopolization. In this sense, opening-up the service sector will not only spur domestic enterprises to improve competitiveness, but also promote the development and improvement of the service sector as a whole.

Third, China seeks to have more say in restructuring global economic governance. The weak performance of the WTO, which now has 160 members, in trade negotiations has shown that in the absence of strong leadership, multilateral agreements have insurmountable defects. For instance, even such small-scale multilateral agreements as the Bali Package are made rather difficult to implement due to the obstruction by some individual members. Thus, it is a natural choice for developed countries, led by the United States, to initiate large-scale FTAs or plurilateral agreements outside the framework of the WTO. Though China should still aim for a multilateral system as the core, it does not need to reject other possible ways of promoting the liberalization of trade and investment, especially when it has determined to launch a new round of reforms and opening up, which also shows China's intention to cooperate with countries with the same or similar policy orientation. Since China is the most willing and able among all major developing countries to open itself up to the world, it does not want to be excluded from the decision-making process and will cooperate with developed countries in matters of international governance rules. Examples on this point include China's BIT negotiations with the United States and the European Union, and China's accession to plurilateral agreements including the GPA, the ITA, the TiSA, and the Environmental Goods Agreement. Further, compared to a FTA or RTA, a plurilateral agreement is more compatible with a multilateral agreement and more likely to be converted into a multilateral agreement. Moreover, as multilateralization has been set as the future objective and path of the ITA, the TiSA, and the Environmental Goods Agreement, China's accession to these plurilateral agreements is also consistent with its support and belief in multilateralism. Hence, in order to truly act as defender of the interests of developing countries, it is better for China to accede to these plurilateral agreements, participate in the rule-making process, and promote the early realization of multilateralization, instead of excluding itself from them by denouncing them as antics in the rich men's club.

### **III. Current Progress of China's Accession to the TiSA**

#### ***1. The Significance and Implications of China's Accession on the TiSA Negotiations***

On September 29, 2013, China's mission to the WTO sent each TiSA participant a letter on its application for participation in the TiSA negotiations. Earlier, China and other BRIC countries had been unanimously opposed to plurilateral negotiations on trade-in-services, and criticized the secrecy of the TiSA negotiations. However, at the Bali ministerial meeting in December 2013, China was seen as taking an important strategic step, showing its intention to realize the automatic multilateralization of the TiSA and its integration back into the framework of the WTO. It did so by fostering the gradual growth of TiSA membership to achieve critical mass. For its own national interests, China also hopes to promote its domestic reform and economic transformation by virtue of participating in the TiSA negotiations.

China's accession to the TiSA will increase the total trade-in-services among its members to 75% of that of the world and will have a great impact on TiSA negotiations. Above all, it will weaken the opposition to the TiSA by other the BRIC countries. The BRIC countries claimed that the initiation of TiSA negotiations resulted in a "dual" trading system, posing a threat to the WTO and hindering the

Doha Round negotiations on trade-in-services. China's accession will also break the unity of the BRIC countries against the TiSA and may even force India, Brazil, and South Africa to consider accession. At present, India is in a wait-and-see stage. In his response to Aaditya Mattoo, Research Manager, Trade and Integration, at the World Bank, on whether India would consider acceding to the TiSA, Indian Minister for Commerce and Industry, Rajeev Kher, said that his country was not against the idea of acceding to the TiSA talks, but it would not make a hasty decision before a complete analysis of the advantages and disadvantages of its accession. Finally, China's accession will attract the accession of other Southeast Asian countries, particularly ASEAN countries, some of whom have said that if China accedes, they are likely to follow suit. As the most dynamic economy in the world, which is highly integrated into the global value chain, the ASEAN region is a very important target for the TiSA. Moreover, there are three ASEAN members (Singapore, Malaysia, and Vietnam) who have participated in TPP negotiations but not acceded to the TiSA (Singapore joined but subsequently withdrew). Their attitude towards the TiSA played a critical role in China's next move in the TiSA.

On one hand, the accession of China and ASEAN members (if and when it happens) may inject new vitality into the field of trade-in-services under the framework of the WTO, and will inevitably have spillover effects. On the other hand, it will help speed up the multilateralization of the TiSA so that it can be integrated back into the framework of the WTO and the WTO can once again attract the world's attention. China's participation in TiSA negotiations may be good news for the whole of the WTO, but not for the ongoing Doha Round negotiations. TiSA negotiations are likely to have undermining effects on its counterparts in the ongoing Doha Round negotiations, for they have been among the major topics of contention of which the Doha Round has struggled. These struggles in turn became a major impetus for initiating the TiSA negotiations. Although at present there is only a slim chance of the TiSA negotiations being multilateralized, if China and ASEAN members accede in subsequent negotiations, the TiSA negotiations may be integrated under the framework of the WTO, and replace its counterparts in the Doha Round.

## ***2. Positions of TiSA Members on China's Application***

Most TiSA members are optimistic about China's application. For example, according to the opinion of the European Union, like in any other negotiation, it is riskier to exclude China than to include it in the TiSA negotiations. At the Global Services Summit in October 2013, Jean-Luc Demarty, Director-General of Directorate-General for Trade of the European Commission, said that "though we are not a gambler, we also need to take some risks" and that in his opinion, "no risks will only lead to greater risks and little achievement." In his opinion, China cannot miss the opportunity to accede to the TiSA, because the aim of its accession is promoting reform of its domestic service sector. Meanwhile, he also stated that China should make pledges to reach the same level of commitment as the other TiSA members. In addition, the European Union holds that China needs to play a more active part in the ITA negotiations.<sup>21</sup> The European Union welcomes China's accession to the TiSA negotiations partly because the European Union longs to make a multilateral agreement. In accordance with Article 13 of the Joint Statement on Strengthening the China-EU Comprehensive Strategic Partnership for Mutual Benefits and Win-Win Situation, jointly released by the two members at the end of March 2014, the European Union showed strong public support for China's participation in the TiSA negotiations, and held that China's accession is an important step towards the multilateralization of the TiSA.

Contrastingly, the United States remains suspicious of China's motives for participating in the TiSA negotiations and its willingness and ability to fulfill its previous commitments. Since the United States attributes the current stagnation of the negotiations on the ITA to China's failure to meet expectations set by the United States and the European Union by giving too long a list of sensitive

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<sup>21</sup> Inside U.S.-China Trade, U.S. Signals Greater Caution On China's Bid To Join Services Deal Than EU, November 6, 2013.



products, these countries worry that China's accession may also lead to the stagnation of the TiSA negotiations and may weaken its objectives. In light of the current course of the TiSA negotiations, the commitments made by members are basically higher than that in the GATS, while previous commitments made by China are thought to be "not especially ambitious."<sup>22</sup>

At the end of October 2013, U.S. Trade negotiation representative Michael Frohman put forward five assessment factors for whether China can participate in the TiSA negotiations, including China's position in negotiations on the bilateral investment treaty (BIT) with the United States, the progress of investment reforms in China's Shanghai Pilot Free Trade Zone, reform policies that may be announced at China's Third Plenary Session of the 18<sup>th</sup> CPC Central Committee, whether China has made active high-level commitments to trade-in-services in previous negotiations, and whether China has fully implemented the WTO's ruling on the China-U.S. dispute on electronic payment services.<sup>23</sup>

Before the TiSA negotiation session in November 2013, China had made explicit rejections of such assessment factors put forward by the United States in bilateral meetings between the two countries. Though China is still in negotiations with the United States regarding these factors, the United States remains quite disappointed about the achievements of China's reforms in the liberalization of trade and investment in China's Shanghai Pilot Free Trade Zone. The United States worries that the Chinese government may focus on reform in the pilot zone and pay no attention to reform outside the zone.<sup>24</sup> The United States is not satisfied with the level of China's commitment to trade-in-services made in the Doha Round as well as other negotiations on the liberalization of trade. What's more, it accuses China of having failed to fully implement the WTO's ruling on the China-U.S. dispute on electronic payment services. China's performance in the BIT and ITA negotiations between the two countries will demonstrate whether or not China can change the attitude of the United States. While the United States is in bilateral negotiations with China, it is also in discussions with other TiSA members to assess whether China can accede to the TiSA negotiations. Further, the U.S. Congress and domestic stakeholders are in consultations regarding the possibility for China's accession.

Meanwhile, other TiSA members have accused the United States of setting unnecessarily harsh preconditions on China's accession because the assessment factors were not applied to the accession of other TiSA members. The European Union also holds that it is unnecessary to set differentiated, "special conditions" for China's accession. According to Western media, Australia has the greatest expectations for China's accession, for the growth of Australia's service industry is dependent on the Chinese market.

China failed to participate in the TiSA negotiations in February 2014. Thus, it remains to be seen whether or not China can accede to the TiSA negotiations, which is largely dependent on the attitude of the United States. Consequently, in the current situation, if China wants to secure its ticket to the TiSA, the biggest challenge is to dispel the United States' suspicions about its motives for accession to the TiSA.

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<sup>22</sup> Shawn Donnan, *China Seeks to Participate in TISA Negotiations*, <http://www.ftchinese.com/story/001052637>, last accessed on September 24, 2013.

<sup>23</sup> Lu Zhenhua, *Secret TISA Negotiations: China Participates in the New Game of Making Rules on Trade in Services*, 21st Century Business Herald, January 1, 2014.

<sup>24</sup> Inside U.S. Trade, *Official: Shanghai FTZ Has Yet To Yield Major Results, Could Stall Reforms*, November 15, 2013.

## IV. Prospects for China's TiSA Accession and Post-Membership Strategies

### 1. *Can China accede to the TiSA, and when?*

The initial design of the TiSA has not set any preconditions for states' accession. The TiSA should be open to all countries willing to accede. Only in this way can the agreement better achieve its self-proclaimed goal of future multilateralization. Among the 8 newly added members to the 16 original members (Singapore has dropped out), including 5 developing countries, none has encountered any barriers to accession. Therefore, it is obvious that the five preconditions proposed by the United States for China's accession are not consistent with the principles and spirit of the TiSA and China's firm rejection of them is both proper and understandable.<sup>25</sup>

However, under the decision-making mechanism of a plurilateral agreement, where decisions are made on the basis of unanimous consent of all members, as long as an existing member of the agreement fails to agree to the accession of a new applicant, the applicant can be excluded from accession to the agreement, because there are no rules for the protection of applicants. Therefore, in the final analysis, whether China will be able to accede to the TiSA ultimately depends on whether China and the United States can reach an agreement or whether China decides to meet the preconditions proposed by the United States. Of course, it also depends on whether other TiSA members can exert enough pressure on the United States and force it to give up or relax these preconditions.

What's more, China basically met the five preconditions proposed by the United States in October 2013. The decision made at the Third Plenary Session of the 18<sup>th</sup> CPC Central Committee in November 2013, exceeded the expectations of the mainstream international community, with its measures and scope for reform comparable to those of the Third Plenary Session of the 11<sup>th</sup> CPC Central Committee. Though the first package of Negative List put forward by Shanghai Free Trade Zone was disappointing, the second package of measures announced in July 2014, demonstrated China's determination towards economic reform and opening up. In the U.S.–China Strategic and Economic Dialogue in July 2014, China expressed its intention to complete the negotiations on the text of the U.S.–China BIT, which could be counted as a major breakthrough. As for the China–U.S. dispute on electronic payment services, the WTO expert group released its report indicating that China has already adjusted its measures. What seems unsatisfactory to the United States is the insignificant effect of these adjustments which cannot be completely attributed to China, but partly to a different understanding of the WTO ruling by both parties to the dispute. Thus, if the United States is, in effect, dissatisfied with the report, it can continue to apply to the WTO for arbitration.

As to the third assessment factor, namely, whether China has made high-level commitments on trade-in-services, China has made relatively more bold commitments in this area than other major developing countries both in the WTO and the China-Switzerland FTA. Recently, the United States has repeatedly complained about China's performance in the WTO and ITA expansion negotiations, alleging that China's uncooperative stance has caused the stagnation of the negotiations. However, compared with India's failure to participate in the ITA expansion negotiations, China has taken a much more positive stance. What's more, different people may have different opinions on whether the Negative List put forward by China is too short or too long. Just as it is quite natural for the United States to expect China to open its market to the extraordinarily strong IT industry of the United States, so it is quite understandable for China to reserve room for future development of its own IT industry. Therefore, there is no insurmountable barrier between the United States and China. At the APEC Economic Leaders' Meeting in November 2014, China and the United States reached a consensus on issues relating to ITA expansion. If a breakthrough can also be achieved in the China-U.S. BIT negotiations, China might expect to accede to the TiSA a while after that.

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<sup>25</sup> Inside U.S. Trade, China Categorically Rejects U.S. Preconditions to Participation in TiSA, November 22, 2013.

## **2. Challenges Facing China in the TiSA Negotiations & Strategy Recommendations**

Though China has demonstrated a firm determination to open its service industry and to accede to the TiSA, it still faces many challenges before these goals can be actualized and is in need of good domestic and international coordination as well as thoughtful negotiating strategies.

The first challenge facing China is, of course, obtaining a ticket to participate in the TiSA negotiations. Though there are no insurmountable obstacles between China and the United States, as mentioned above, considerable efforts need to be made before a consensus can be reached. In addition to continuing communications with the United States, China should strive for support from existing participants, especially from the European Union and Australia, who can be of some assistance by way of exerting pressure on the United States. As the European Union has always had high expectations for the multilateralization of the TiSA, for the realization of which China's accession is without a doubt critical, the European Union will thus be more willing to accept China's accession. If the Chinese government can maintain effective communication with the European Union and show enough sincerity and determination, the European will support China by persuading the United States to accept China's application as soon as possible. Meanwhile, the Chinese government should publicly express its willingness to accept the existing negotiating principles and agreement framework and promise to make ambitious high-level commitments. At this stage, it is most important for China to publicize its position.

China should also set out to prepare the negotiating scheme and bid lists to be presented upon the United States' acceptance of its application. In fact, China lacks experience in negotiating on trade-in-services. In line with the requirements of the TiSA negotiations, participants should be proactive in providing their bid lists instead of other participants providing their offers. During its negotiations on accession into the WTO, China's schedule of concessions and commitments on trade-in-services had basically been a summary of the offers from other parties, with some adjustments made to these offers on the basis of an analysis of whether they were reasonable and bearable for the domestic service industry. Subsequently, China made further commitments in other FTA negotiations, such as the China-Switzerland FTA negotiations and the Doha Round negotiations on trade-in-services, none of which are of a high level and have been tested under tough situations. While the China-Switzerland FTA has little influence due to its low coverage and trade-in-services failed to be discussed in depth in the Doha Round negotiations, the majority of the TiSA members have made high-level commitments to trade-in-services in existing FTAs or have started unilaterally opening of their respective service sectors. For them, the bid list for TiSA negotiations, which is mainly a combination of existing unilateral, bilateral, or regional commitments, is much easier to prepare.

For China, it is beyond the capacity of the Ministry of Commerce and requires the contribution and cooperation of competent administrative authorities from various industries to offer its schedules of specific commitments to access to the service industry. However, under no pressure from offers of other countries, competent administrative authorities of various industries are always inclined to offer the minimum bid necessary in order to reduce risk. Worse, interest groups in various industries that have been used to trade protection, may actively try to influence the decision-making process of relevant departments. In addition, there is still one more practical difficulty—almost all local governments have a large number of state-owned enterprises covering all sectors of the service industry, including finance, tourism, construction, highways, commerce, education, health care, water, and gas supply, public transportation, etc., all of which tend to have a strong local influence, with some in monopoly positions.

By comparison, there are few local state-owned enterprises in the manufacturing industry, which has created conditions for local governments to actively open the manufacturing sector to FDI. This is not the case in the service industry, which is bound to create obstacles to the opening of the service sector and will no doubt create enormous pressure on the Ministry of Commerce for greater coordination.

Nonetheless, the good news is that the Shanghai Free Trade Zone has begun the development of a negative list, which can be used as an important reference. In the new package of the negative list released in 2014, more than half (73 out of 139) of the special management measures are related to the service sector. Although this list is released by the Shanghai Free Trade Zone, it has been formulated by several relevant authorities in China. We can conclude from this that since these measures can be implemented in the Shanghai Free Trade Zone, they can also be extended across the country. However, since these measures are only voluntary unilateral experimental measures and do not have the binding power of international rules, China should still carefully study how to transform them into its position in international negotiations. In addition to the negative list, relevant achievements of the China–U.S. and China–EU BIT negotiations can also provide the basis for the formulation of China’s bid list for the TiSA negotiations. After all, all current BIT negotiations involve foreign investment’s market access to various service industries, and thus commitments made in BIT negotiations are not different in nature from those in TiSA negotiations. Taking into account the full-ratchet provisions and the practice of plurilateralization of the highest FTA bid, both of which constitute the basis of the TiSA, commitments made in BIT negotiations can automatically become, or at least be drawn upon as a basis for, TiSA negotiations. Moreover, since the United States and the European Union are the main offering parties to China’s TiSA negotiations, bids on market access to the service industry offered in BIT negotiations are natural reflections of China’s proposed bid in TiSA negotiations. Given the close relationship between the TiSA and BIT negotiations, maintaining close communication between those departments of the Ministry of Commerce that are responsible for BIT negotiations and those for TiSA negotiations should be a primary goal. Further, other relevant ministries should also be fully aware of the close relationship between the two negotiations.

Third, in addition to developing the bid list, China should also conduct serious studies on the consequences of its offer. Impact of the offer on China’s economic and trade interests should be taken into account. In other words, China should evaluate the competitive advantage of its service sector and assist sub-sectors in entering the international market. In addition, considerations should be made on the strategies for negotiations; that is offers should not be made entirely on the basis of the bids from the other states but by taking aim at sensitive industries or relatively weak industries, such as movement of natural persons and shipping, so that China can have more leeway to offer its bids.

Fourth, China should also carefully consider the relationship between the TiSA negotiations and the Doha Round negotiations. Presently, due to the stagnation of the Doha Round, China has begun to actively participate in regional negotiations, and in particular plurilateral negotiations, including negotiations on TiSA, the Agreement on Government Procurement, the Environmental Goods Agreement, and the Information Technology Agreement expansion negotiations. All these plurilateral negotiations are driven by developed countries and mainly reflect the interests of developed countries in terms of market access as well as trade competitiveness. In spite of its strong interest in market access to these areas, China is in a disadvantageous position when compared with developed countries, which also puts the country on the defensive during negotiations. What’s worse, the relatively low level of China’s present commitments on market access puts it in the disadvantageous position of being asked to bid. Always, in such a position, China has very limited gains and enormous losses due to these plurilateral agreements. China is left with very little room to make an offer for market access to developed countries, which are already at a relatively high level of openness, while there are no other developing countries in such plurilateral agreements that have such low market access but huge market potential.

The purpose of China’s participation in the negotiations for these plurilateral agreements is to foster the liberalization of trade and promote domestic reforms by increasing openness. As a major country with a big market, China should have brought its “large country effect” or “leverage effect” into play over the course of its trade liberalization, which should have promoted the trade liberalization of other countries. This, however, has not been brought into play through China’s current trading strategy. What’s worse, as one of the possible negative consequences of participating

in these plurilateral negotiations, China may lose its ability to utilize this strength or make offers in future multilateral trade negotiations. This is particularly true in the case of the TiSA negotiations. As the service sector is the priority in the next round of opening up and can also be said to be China's biggest bargaining chip in trade negotiations. If China uses up all its bargaining chips in the TiSA negotiations then, in future multilateral negotiations, it will be more difficult to demand developed countries' concessions, especially on issues concerning the interests of developing countries (including China), such as agriculture, differential treatment, technical assistance and rules negotiation, thus leading to the increased loss of appeal and drive for multilateral trade negotiations. In all analyses, China should seriously consider how to deal with the relationship between multilateral negotiations and TiSA negotiations.

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