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5

PARTNERS IN CRIME? COMPARING TTIP AND TISA

5 Partners in crime? Comparing TTIP and TiSA

Joachim Jachnow

In the official political rhetoric of EU institutions, such as the Directorate General for External Policies of the Union, 'TTIP and TiSA follow similar approaches and points of difference are minor,' yet the 'level of trade liberalisation is higher' in TiSA. As TTIP still deals with a 'higher number of limitations', TiSA may be 'a more effective vehicle for broader based liberalisation.' Though wrapped in the euphemistic newspeak of neo-liberal ideology, it is a revealing statement that TiSA – the Trade in Services Agreement – is also considered by its proponents to have an even greater impact than TTIP. Despite this, TiSA has captured far less public attention, as protest movements in Europe focus mainly on TTIP, and those in America on TTIP and TPP. The activists who have addressed this are warning that TiSA will indeed limit the abilities of governments much more severely than the aforementioned mega-regional trade deals. If TiSA is approved, not just national governments, but also regional and local government bodies are likely to completely lose control over the public service sector. Water supplies, public transportation, electric energy, educational and cultural institutions – every public service will be for sale, or at least forced to enter 'market competition'.

BACKGROUND OF TISA AND THE MEGA-REGIONALS

Under US leadership, 24 WTO member states, with the EU representing its respective 28 members, are currently negotiating TiSA, which is mandated to achieve 'highly ambitious' liberalisation of trade in the services sector.[1] Together, these countries are worth two-thirds of the global GDP, and more than two-thirds of the global trade in services. Like TTIP, TiSA stands for continuity with creating a 'new liberal world order' of unrestricted capitalism, which Western policy makers and strategists have been pursuing for some time.

With the economic and political implosion of the Soviet Union and its allies, which also deprived the non-aligned movement of political and economic manoeuvring space, the first major steps in this direction were made. The US managed to introduce the General Agreement on Trade and Tariffs (GATT), which was already shaped by its hegemonic economic position after WWII, into the WTO framework. The US simultaneously extended GATT through the General Agreement on Trade in Services (GATS) and

1 The other participants are: Australia, Canada, Chile, Chinese Taipei (Taiwan), Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mexico, New Zealand, Norway, Pakistan, Panama, Paraguay, Peru, South Korea, Switzerland and Turkey.

the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in order to expand the privatisation and deregulation regime in the service sector and make use of extensive patent rights in trade rules. Within that framework, the US-centred block of industrialised countries has been playing a more decisive role than ever in shaping an unrestricted capitalist world order to fit their own requirements. 'Emerging economies' and 'developing' countries alike frequently submit to the overwhelming power of the Global North, which looks to 'kick away the ladder' of industrialisation for others and open up protected economic sectors for their own corporations.[2]

Yet the WTO's formally 'democratic' structure (one member country, one vote) also created space for those countries not to necessarily challenge the dominant role of the West, but to at least contain its most far-reaching demands of privatisation and forced market opening. As a result, countries of the Global South could also retain some protective measures for their own 'development'.

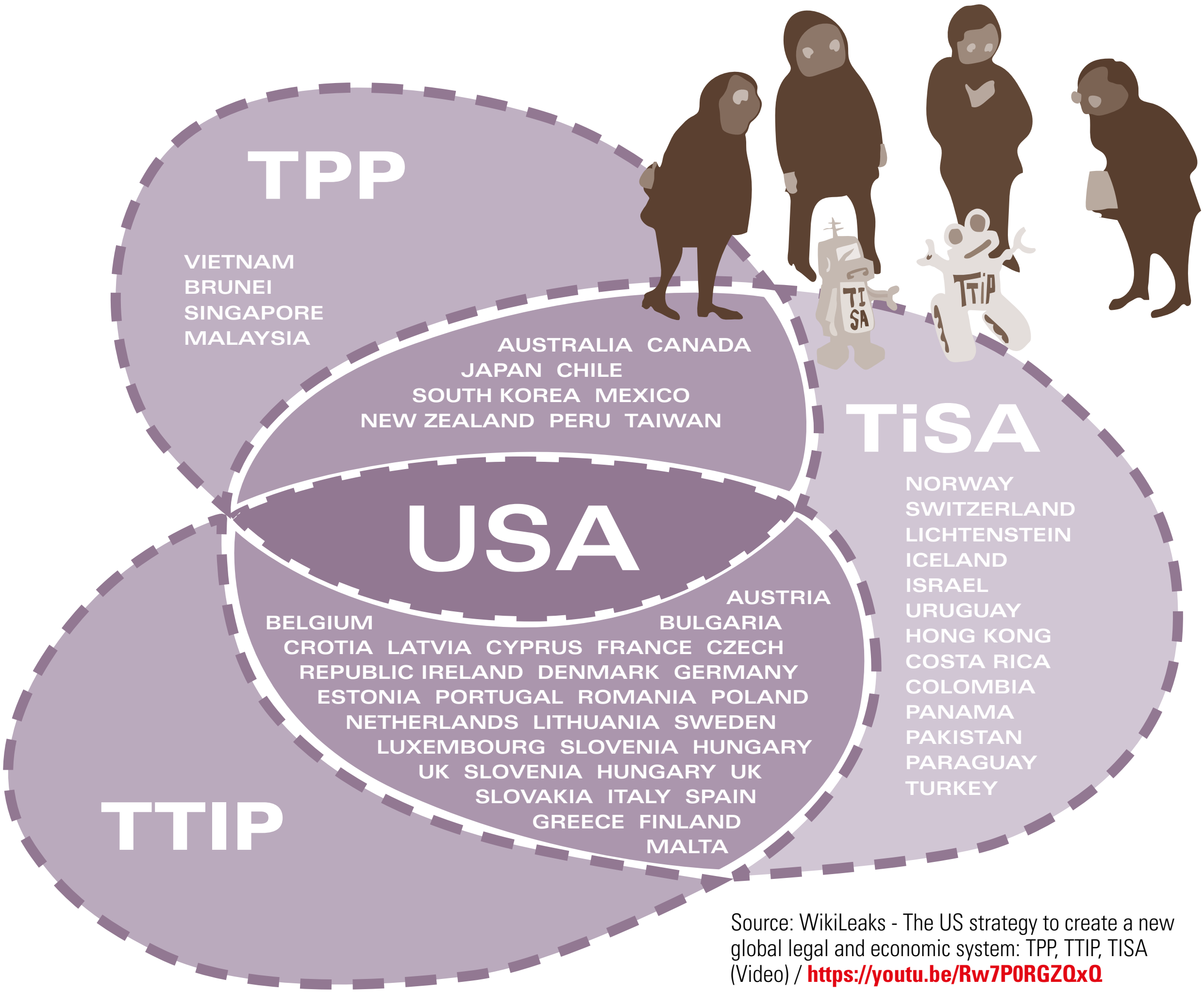
UNLEASHING 'FREE TRADE' AND CORPORATE RULE

To impose much wider 'deregulation' and empower corporate demands over domestic legislation, Western countries and their corporations pushed for extending GATT, GATS, and TRIPS to extreme limits – and when unable to achieve it within the WTO, they tried to bypass it. The Multilateral Agreement on Investment (MAI) was such a first massive attempt, and was to be implemented through the Organisation for Economic Co-operation and Development (OECD). In the 1990s, MAI – which also geographically coincided with most of the TPP-TTIP-TiSA world sphere – already contained most of the corporate wish list. MAI was defeated by massive mobilisation of the nascent 'anti-globalisation' movement against this 'race to the bottom' in environment, labour and rights, as the agreement would have established a new body of universal investment laws to guarantee corporations excessive powers to buy, sell, and otherwise undertake financial operations all over the world, severely diluting national laws and undermining democratic rule and opportunities for independent economics.

Temporarily defeated, the US-led economic block continued to push the Global South to get in line with its escalating demands, launching the WTO's Doha Development Agenda in November 2001. Again, the most 'ambitious' demands of deregulation and market-opening would be prevented, especially because of the opposition of the Brazilian-led Group of 21 (G21), 'developing' and 'emerging' countries that united against the positions of the dominant powers – the US, the EU, Japan and Canada.

With limited exceptions, the Doha round negotiations remained stalled, less because of 'developing' countries' resistance to deeper services 'liberalisation' than to their unfulfilled demands, particularly towards the US, EU and Canada to concede to reducing their agricultural subsidies. Stalled at Doha, the US and the EU (lobbied by their big corporations) followed several other routes to bypassing the WTO and pushing their agenda forward.

2 Kwa, Aileen, *Power Politics in the WTO*, ed. Alec Bamford. (Bangkok: Focus on the Global South, 2003).



Source: WikiLeaks - The US strategy to create a new global legal and economic system: TPP, TTIP, TISA (Video) / **https://youtu.be/Rw7P0RGZQxQ**

INTER-IMPERIAL COMPETITION

One way of doing that was to create 'free trade' treaties, which go far beyond WTO rules, negotiated separately between industrial countries with countries of the Global South. Yet the most ambitious current project has become the implementation of the West's privatisation agenda in mega-regionals, which would encompass the better part of the planet. The negotiations for the first key treaty to achieve this – the 'Transpacific-Partnership' (TPP) between the US and major Pacific economies (decisively excluding India and China) – are by now concluded. This puts corporate Europe under additional pressure to execute a similar treaty with TTIP in order to prevent an even further re-centring of the US economy towards the Asian market, thereby putting Europe at a disadvantage.[3] From their perspective, it becomes mandatory to follow TPP's lead in order to avoid losing further ground as the United States' most important current trading partner. At the same time, TTIP is concurrent with the EU's 'Global Europe Agenda', the union's de facto manifesto for a neo-colonial race for the Global South's resources.[4] The EU and

3 The final treaty text, published by the New Zealand government (**http://tpp.mfat.govt.nz/text**), far from being comprehensible to the general public, now gives at least a complete picture about what TTIP is likely to look like in its final stage. First critical legal analyses can be found at **https://tpplegal.wordpress.com**

4 See Peter Fuchs, Global Europe – die neue Strategie der Europäischen Union zur externen Wettbewerbsfähigkeit Expertise für das MdB Büro Ulla Lötzer und die Fraktion DIE LINKE. 2007

its corporations have become both the hunter and the hunted. In this context, TTIP presently offers – following a series of other FTAs, such as the EU-India agreement – one of the most comprehensive strategies to force the Global South to finally swallow the Doha Round agenda, which will favour Europe's corporations while simultaneously acknowledging and submitting to US hegemony. As TiSA encompasses almost all countries subject to TTIP and TPP, it can be seen as the overarching framework for both.

WHO IS BEHIND IT?

While TPP and TTIP rather implicitly will influence rules on 'trade in service', TiSA is an explicit treaty on 'services', not on goods. Accordingly, while TTIP is mainly pushed forward by the manufacturing and agro-industrial sector of US, EU monopolies and their associations, the main actors behind TiSA are the financial and service industry associations. Among the most influential lobby groups are those which have also been the most important proponents of extending the 'General Act on Trade of Service' (GATS) in the past.

In the European Union and the US, TTIP and TiSA alike are most importantly promoted in the US by private business associations (acting through the US Chamber of Commerce), and in the EU by the marginally democratically controlled and, at the same time highly lobbied, EU Commission.[5] The architect of TiSA has been the corporate US Coalition of Services Industries (CSI, founded in 1982), which remains its strongest proponent. Originally a financial sector (banking and insurance) pressure group, it is now also comprised of a broad group of corporations including information technology, postal delivery, telecommunications, retail, life insurance, health, and the film industry. It counts AIG, MetLife, Citigroup, FedEx, UPS, IBM, Google, Walmart, and The Walt Disney Company as participants. Lobbying through the 'Global Services Coalition' (GSC), CSI was quickly joined by other corporations and business associations, in Europe grouped most prominently in the European Services Forum (ESF), the strongest lobbying alliance of the multinational service industry. Participating firms include British Telecommunications, Deutsche Bank, Deutsche Telekom AG, Deutsche Post DHL, Ernst & Young, HSBC, IBM Europe, Middle East & Africa, Microsoft Corporation Europe, Thomson Reuters, Zurich Financial Services and others.

As a result, a self-selected club of 'developed' and a few 'developing' countries calling themselves the 'Really Good Friends of Services' began their secret TiSA talks in Geneva. The countries among them not party to the hegemonic bloc of western industrialised countries have already undertaken far-reaching services liberalisation, bound by a tight framework of 'services liberalisation' agreements (for example, giving up protection of domestic market due to previous 'free trade' treaties). Some of them are firmly embedded in US and NATO military designs in countries such as Pakistan or Colombia, which are read in the language of neo-liberal Western think tanks as 'like-minded and capable democracies', despite their devastating and constant violation of human rights.[6]

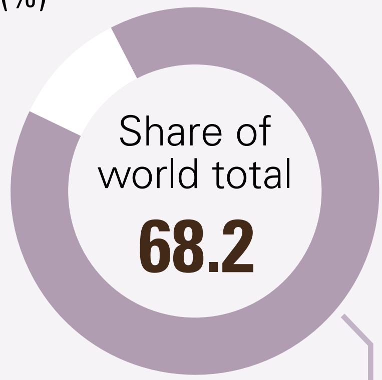
5 Accordingly, in a recent interview, EU trade commissioner, Cecilia Malmström, stated that she is not negotiating on behalf of the democratic sovereign: 'I do not take my mandate from the European people.' **http://www.independent.co.uk/voices/i-didn-t-think-ttip-could-get-any-scarier-but-then-i-spoke-to-the-eu-official-in-charge-of-it-a6690591.html**

6 Ash Jain, *Like-Minded and Capable Democracies: A New Framework for Advancing a Liberal World Order*, (New York: Council on Foreign Relations, 2013).

SHARE OF TISA PARTICIPANTS IN WORLD SERVICES TRADE (%)

Australia	2.4	Korea	4.3
Canada	3.5	Mexico	0.7
Chile	0.6	New Zealand	0.5
Chinese Taipei	2.1	Norway	1.9
Colombia	0.2	Pakistan	0.2
Costa Rica	0.2	Panama	0.3
European Union	36.4	Paraguay	0.1
Hong Kong, China	5.6	Peru	0.2
Iceland	0.1	Switzerland	4.4
Israel	1.2	Turkey	1.8
Japan	6.6	USA	26.9

Source: WTO (2013).



Of which:

Share of **OECD** country TISA participants **91.0**

Share of **non-OECD** country TISA participants **9.0**

WHAT ARE THEIR AIMS?

Samuel Di Piazza, former Chairman of the Board of CSI, openly described TiSA as a framework by which 'free market principles' govern the transnational delivery of services. Companies should be enabled to compete 'according to economic determinants that are *market-based, not government-based*.'[7] Unlike TTIP or other trade and investment agreements, TiSA focuses on 'trade in services'. Yet 'trade in services' would apply to every possible means of providing services internationally, across borders – be it physically or virtually - and also naturally influence trade in goods. Countries signing on to TiSA are obliged to meet or even exceed the 'highest level of services commitments' that they have made in any previous services trade and investment agreement. In official newspeak terminology, this is called 'best practice'. It seeks to ensure that every country is bound to the highest extent of the 'free trade' regime it already committed to, and from that point of departure, undergoes deeper 'deregulation' and privatisation processes. In this sense, TiSA is a GATS-plus, far exceeding its rules.

As evident from TiSA's leaked core text, many of its basic rules are taken from the WTO'S General Agreement on Trade in Services (GATS), so that TiSA can be exported back into the WTO easily. However, by adding new rules and modifying old ones, the democratic freedom of governments to regulate national or local services is even more restricted.

One of TiSA's major departures from the WTOs GATS model, and where it also goes beyond TTIP, is that it makes much wider use of 'negative listing' towards 'national treatment'. The national treatment rule is essential to WTO rules and FTAs outside the WTO: It obliges governments to give foreign corporations

7 CSI 2013: Notification of Request to Testify, International Services Agreement Hearing, March 12, 2013 European Political Project: A conversation with Pierre Defraigne, 22 April 2015, **http://corporateeurope.org/power-lobbies-economy-finance-international-trade/2015/04/**

the 'best treatment' given to similar domestic investments for services, giving big corporations a massive advantage over smaller, local service suppliers.[8]

Under TiSA, 'national treatment' would apply to all measures and sectors unless they are explicitly excluded beforehand. This means that, for example, from the German educational system to UK health care or Pakistan's water supply, 'national treatment' would outlaw subsidies or other protective measures for domestic or local service suppliers. This means that any material support for public services would have to be explicitly exempted, or otherwise equally distributed to private corporate services competitors. This 'list it or lose it' mechanism greatly threatens public goods and commons up to the degree that there will be no regulation at all in the future if not negotiated now during the secret talks. Once negotiated, peoples' representatives will have no say over exempting certain services – even those still to be invented. The treaty's language is telling: Typically, 'citizens' are reduced to 'consumers' in the TiSA drafts, and water or education become commodities, not human or civil rights.

8 Deborah James, from the 'Our World is Not for Sale' network, has suggested that this 'non-discrimination' of the 'National Treatment' clause should be better called 'must give foreigners their colonial historical advantages' clause. This is certainly also true in an indirectly colonial context, such as the takeover of local municipal suppliers in Southern Europe by the big corporations of the North.

DEREGULATING AND PRIVATISING THE LOCAL

Based on what is known at this time, experts agree that TiSA exceeds even TTIP when it comes to binding local government bodies to a one-way privatisation regime. As subnational entities (regional governments or municipalities) are not even invited to take part in the secret negotiations, they do not have the right to insight into the drafts. That they will not be asked for their consent at a later stage, but are nevertheless legally bound to the treaty, again reveals the dictatorial nature of TiSA.

The very negative outcomes of turning over water and energy supplies, health care, waste management, public transport and other services (since the 1980s and 1990s neo-liberal tide) to private, profit-driven investors has led many municipalities all over the world to reverse their politics and take back control over privatised services. Popular demand and civil activism have successfully promoted remunicipalisation (for example of local water and electric plants). The experience of the past years has been very important, and has demonstrated that privatisation is reversible and in the public interest. TiSA threatens this possibility for remunicipalisation even more severely than TTIP, as TiSA would prohibit public monopolies at the regional and local levels (while TTIP apparently leaves some room for interpretation on this point).

The 'standstill' and 'ratchet' mechanism of TiSA would freeze current service privatisation in all participating countries, outlawing political change from 'market-based' to public provision of services. While the 'standstill' clause prohibits the takeover of sectors that are already open to private sector competition by public hands, TiSA's 'ratchet' clause would also make future decisions to privatise public services irreversible, thus destroying the very foundations of democratic rule.

ONE STEP FORWARD, TWO STEPS BACK:

Deregulating Re-Regulation

In other major political fields, the mega-regional treaties aim to undo re-regulation and counteract recent political decisions – international agreements among them. TiSA not only deliberately deregulates the finance sector, reverting even the modest efforts of recent years to regulate capital flows in order to prevent future crises, for example, in the banking sector [see leaflet n°10 by Constantin Groll]. Leaked drafts also show how TiSA would deregulate international markets concerning other essential policy areas, which for years have been subject to regulation attempts for the greater good.

While, for instance, international efforts are made to come to climate accords to prevent the worst outcomes of industry-induced climate change, TiSA negotiators are secretly raising new, severe limits on energy regulation to the benefit of global energy corporations.[9] TiSA is also clearly aiming to 'harmonise' national environment protections downward, to the lowest degrees. Friends of the Earth has thus pointed out TiSA as 'an environmental hazard', as public services protecting the environment are in danger of being privatised. Again, TiSA's

9 https://wikileaks.org/tisa/TiSA-Annex-on-Energy-related-Services-QA/page-1.html

use of negative listing concerning 'national treatment' obligations appears to severely endanger environmental regulation, as it rules out the future adoption of new measures and amendments to existing environmental policies, in case they would threaten corporate profits.[10]

The same is true for almost any other service that is not exempted in the first place, from national pension funds to subsidies for the local creative industry. TiSA puts a whole range of issues back on the table, which have been just recently defeated by democratic opposition because they threaten civil or even human rights. Most of the Anti-Counterfeiting Trade Agreement's (ACTA) contents for instance, are now snuck back in through TiSA, which sets the new standards.

The 'best practice' (from a civil rights perspective, usually the worst) becomes the marker. While in the US, for example, there are no comprehensive data protection laws, the EU will be forced to give up their own protections by signing TiSA, as it aims to overcome exceptions in GATS that still protect certain non-tariffed trade barriers, with data protection one among many others. Banks or insurances, for instance, would be allowed to transfer even personal data freely over the globe and trade with it, which would also be true for the IT and communications industries.[11]

As described above, neither TTIP nor TiSA came out of the blue. Both have been grown out of GATT/WTO negotiations, where the major industrial nations and their corporations failed to achieve their most far-reaching goals to assure global dominance over national sovereignties and extend their legal regime for capital, goods, services, data, etc. in their interest. Thus, TTIP and TiSA are essentially complements to each other and to other mega-regionals (for example, CETA). The convergence of these treaties could also be seen as part of a double strategy: if one of them fails, the other ones still might get through. As TiSA has been borrowed from an essential part of the GATS rules, the intention to re-implant it in the WTO fold is quite clear. It would apply fast-tracked pressure to the whole WTO membership to accept the 'new gold standard' of '21st century trade agreements', which does not foresee any 'development provision' or other protective measures, which in the past could have at least softened the disastrous social impact of 'free trade' regimes. Going from bad to worse, even these little provisions are not saved within TiSA's core text.

10 Analysis of the 'Annex on Environmental Services' **https://wikileaks.org/tisa/Analysis-TiSA-Annex-on-Environment-related-Services/Analysis-TiSA-Annex-on-Environment-related-Services.pdf**

11 Burcu Kilic & Tamir Israel, Analysis: Leaked TISA Annex on Electronic Commerce. **https://wikileaks.org/tisa/ecommerce/05-2015/analysis/Analysis-TiSA-Electronic-Commerce-Annex.pdf**

OVERARCHING TTIP AND TPP:

TiSA's Imperial Stranglehold

While the Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) have by now received attention and the mobilisation of a broad transatlantic and transpacific opposition, TiSA is the largest component yet of the 'Big Three' of geo-strategic neoliberal trade deals being advanced under US leadership. Together, the three treaties form not only a new legal order in favour of transnational corporations but, as Julian Assange put it, a 'grand enclosure', which excludes China and all other BRICS countries. US President Obama has been frank about that final geopolitical goal of 'these kinds of agreements make sure that the global economy's rules aren't written by countries like China; they're written by the United States of America.'

In this context, TiSA appears to be not simply more aggressive than TTIP, as it attempts to enforce irrevocable privatisation of public services. Geo-strategically, TiSA has a much wider reach than TTIP and TPP, including almost all countries of the latter two, while including several more, some of them already tightly entangled by economic and military treaties (Israel, Norway, Pakistan, Colombia, Turkey), or playing a key role in the financial sector (Hong Kong, Liechtenstein, Luxembourg, Panama, Switzerland). In any case, TiSA in combination with TTIP and TPP, and 'Free Trade agreements' with the Global South, will put enormous pressure on BRICS and 'developing' countries to accept their impositions and likely force them to adapt them as the new standard for the WTO in the long term.

While TTIP and TPP, like other '21st century Free Trade Agreements', have been named 'corporate dominance deals', as they provide the para-legal framework for a continually uncontained power of corporations, TiSA could additionally be baptised as the 'Magna Carta' of global corporate governance, officially promoted as the 'new liberal world order'. While resistance against TTIP has been steadily growing, and there are still realistic chances to stop its enactment, more attention should urgently be directed towards TiSA, as it could be yet another open door for TTIP's worst designs, in some aspects even surpassing them.

Source: Department of Foreign Affairs and Trade website – **www.dfat.gov.au** - **https://www.dfat.gov.au/trade/negotiations/services/trade-in-services-agreement.html** / CC BY 3.0

INDEX OF ACRONYMS

ACP	African, Caribbean and Pacific
ACTA	Anti-Counterfeiting Trade Agreement
AGOA	African Growth and Opportunity Act
AGP	Agreement on Government Procurement
AMS	Aggregated Measures of Support
AoA	Agreement on Agriculture
APEC	Asia-Pacific Economic Co-operation
ARA	Advisory Referendum Act
ASEAN	Association of Southeast Asian Nations
BIT	Bilateral Investment Treaty
BRICS	Brazil, Russia, India, China, and South Africa
CAP	Common Agricultural Policy
CDS	Credit Default Swaps
CETA	Comprehensive Economic and Trade Agreement
CSI	Coalition of Services Industries
DDA	Doha Development Agenda
DDR	Doha Development Round
DFQF	Duty-Free, Quota-Free
EAC	East African Community
ECIPE	European Centre for International Political Economy
EGA	Environmental Goods Agreement
EAHC	East African High Commission
EPA	Economic Partnership Agreement
ESF	European Services Forum
FAN	Friends of Anti-Dumping
FAO	Food and Agriculture Organization
FET	Fair and Equitable Treatment
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
FTAAP	Free Trade Area of the Asia-Pacific
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GFC	Global Financial Crisis
GDP	Gross Domestic Product
GVC	Global Value Chain
GI	Geographical Indication
GM/GMO	Genetically Modified/ Genetically Modified Organism
GEMC	Group of European Mining Companies
GPA	Agreement on Government Procurement
GSC	Global Services Coalition
GSP	General Preferencial Scheme
GSP+	General Preferencial Scheme Plus
GVC	Global Value Chain
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICS	Investor Court System
ICSID	International Centre for Settlement of Investment Disputes
IIA	International Investment Agreements
IMF	International Monetary Fund
IFC	International Finance Corporation
IP	Intellectual Property
ISDS	Investor-State Dispute Settlement
ITA	Information Technology Agreement
ITUC	International Trade Union Confederation
JEC	Joint EPA Council
LDC	Least Developed Countries
LVC	Local value chain
MA	Market Access
MAI	Multilateral Agreement on Investment
MERCOSUR	Southern Common Market *Mercado Común del Sur (es)*
MFN	Most Favoured Nation
MTA	Mega Trade Agreement
NAFTA	North American Free Trade Agreement
NAMA[1]	Friends of Ambition; also
NAMA[2]	Non-Agricultural Market Access
NATO	North Atlantic Treaty Organization
NIEO	New International Economic Order
NMB	Nairobi Ministerial Declaration
NSG	Nuclear Supplier Group
NTB	Non-Tariff Barriers
OECD	Organisation for Economic Co-operation and Development
OPEC	Organisation of Petroleum Exporting Countries
OTC	Over the Counter
OWINFS	Our World Is Not for Sale
PAP	Processed Agricultural Product
RCC	Regulatory Cooperation Council
RCEP	Regional Comprehensive Economic Partnership
RMI	Raw Material Initiative
RoO	Rules of Origin
RTA	Regional Trade Agreement
RVC	Regional value chain
S&D	Special and Differentiated Treatment
SACU	South African Customs Union
SAP	Structural Adjustment Program
SCM	Subsidies and Countervailing Measures Agreement
SDG	Sustainable Development Goals
SDT	Special and Differential Treatment; also S&T
SOE	State-Owned Enterprises
SP	Special Products
SPP	Sustainable Public Procurement
SPS	Agreement on the Application of Sanitary and Phytosanitary Measures
SSG	Special Safeguard
SSM	Special Safeguard Mechanism
SUNS	South North Development Monitor
SVE	Small and Vulnerable Economies
TAFTA	Transatlantic Free Trade Agreement
TBT	Agreement on Technical Barriers to Trade
TFA	Trade Facilitation Agreement
TFEU	Treaty of the Functioning of the EU
TiSA/TISA	Trade in Services Agreement
TNC	Transnational Corporations
TPP	Trans-Pacific Partnership
TRIMS	Agreement on Trade-Related Investment Measures
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights
TTIP	Transatlantic Trade and Investment Partnership
UDHR	Universal Declaration of Human Rights
UNECA	United Nations Economic Commission for Africa
UNEP	United Nations Environment Program
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UPOV	International Union for the Protection of New Varieties of Plants
VCLT	Vienna Convention on the Law of Treaties
WTO	World Trade Organization

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AUTHOR Joachim Jachnow
DESIGN Ricardo Santos
PRODUCTION HDMH sprl

Brussels, January 2017
Funded by the German Federal ministry for economic Cooperation and Development.

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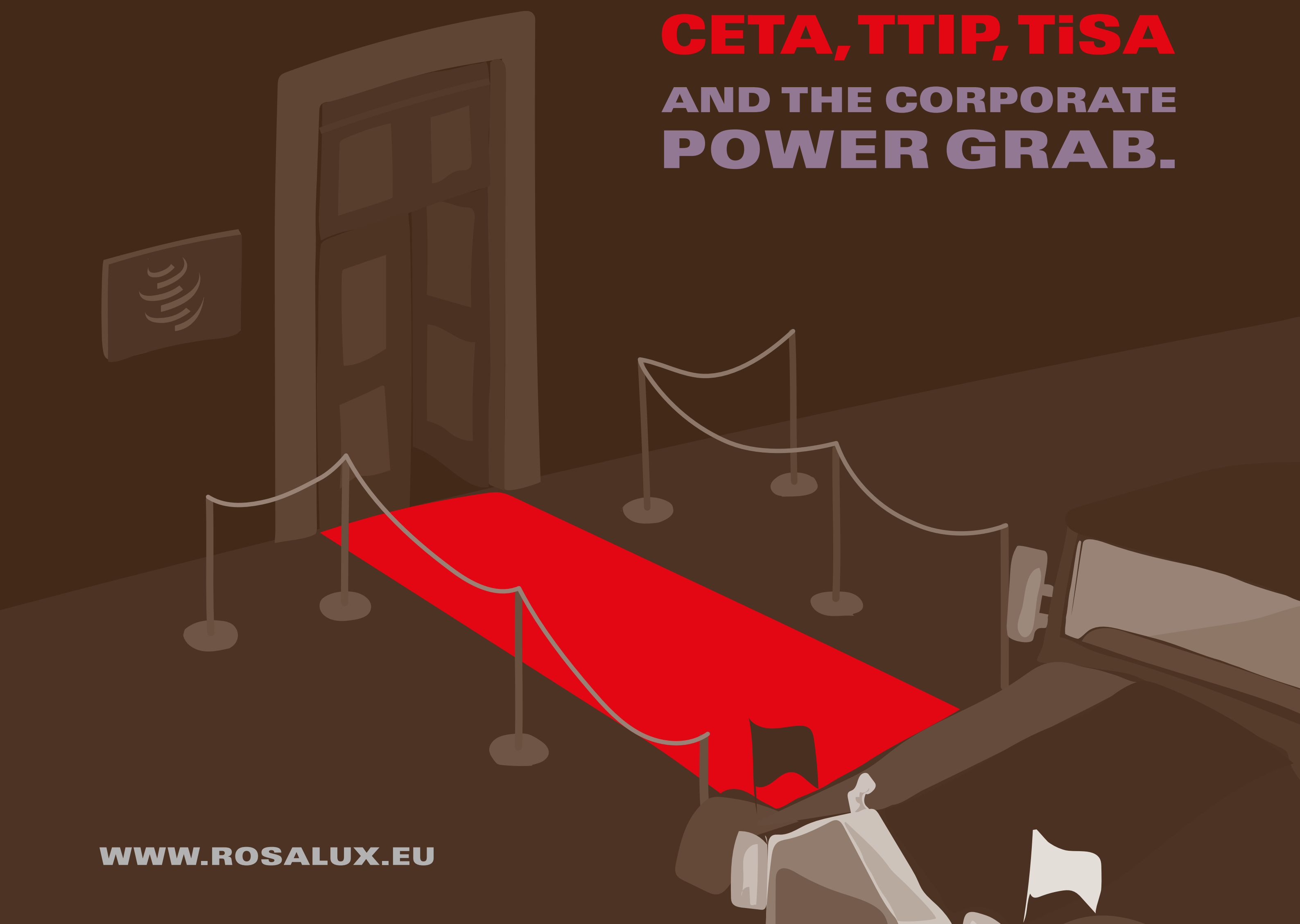

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