An international "Trade in Services Agreement" (TISA)?

Why this Proposed Free Trade Agreement (FTA) in Services is Dangerous to Democracy, Development, and the Public Interest, and Must Be Stopped!

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What is the proposed TISA?

At the beginning of 2012, about 20 members (counting the EU as one) of the World Trade Organization (WTO) calling themselves "The Really Good Friends of Services" (RGF) launched secret unofficial talks towards drafting a treaty that would further liberalize trade and investment in services, and expand "regulatory disciplines" on all services sectors, including many public services. The "disciplines," or treaty rules, would provide foreign services providers free access to domestic markets at "no less favorable" conditions than domestic suppliers and would restrict governments' ability to regulate services. This would essentially change the regulation of many public and privatized or commercial services from serving the public interest to serving the profit interests of private, foreign corporations.

Real negotiations have started in March, with an aim to have "major progress" by the time of the December 2013 Ministerial of the World Trade Organization (WTO) in Bali, Indonesia, and then to finalize a very ambitious agreement on far-reaching services liberalization and disciplining government activity the following year. The Really Good Friends of Services currently include Australia, Canada, Chile, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Panama, Pakistan, Peru, South Korea, Switzerland, Taiwan, Turkey, the United States, and the 27 member states of the European Union.

Where did that crazy idea come from?

The ISA negotiations largely follow the corporate agenda of using "trade" agreements to make privatization non-reversible, and to promote mergers and acquisitions and deregulation, in order to ensure greater corporate control and profit making of national economies and the global economy. The proposed agreement is the direct result of systematic pressure by transnational corporations in banking, energy, insurance, telecommunications, transportation, water, and other services sectors, working through lobby groups like the US Coalition of Service Industries (USCSI) and the European Services Forum (ESF). In fact, in the early 1980s, the financial lobby started to press for what would become the General Agreement on Trade in Services (GATS) to be included in the WTO at the time of its founding in 1995. Notwithstanding several financial and economic crises, the services negotiations in the GATS and free trade agreements (FTAs) continue in the same business as usual, with countries' negotiations mandates reflecting the interests of the services conglomerates through the USCSI and the ESF (extensively documented by Corporate Europe Observatory). Corporate pressure was equally strong during the negotiations of the WTO Financial Services Agreement (an annex to GATS), completed in 1997, after the founding of the WTO. The GATS includes a built-in agenda for further negotiations, which was incorporated as a major area of corporate interest in the launching of the Doha Round of the WTO in 2001.

Developing countries only agreed to start a new Round of negotiations in Doha because rich countries promised that the Round would be dedicated to "fixing" the anti-development and anti-public interest aspects of the existing WTO (such as the unfair rules on Agriculture). However, since then, corporate interests have steadily lobbied negotiators to oppose changes to existing rules that would make the WTO more "development-friendly," and to instead keep pushing a liberalization, deregulation and sometimes privatization agenda. Thus, the negotiations in the Doha Round, which was supposed to have been completed by 2005, are at a stalemate.

The proposed TISA is thus a cynical attempt of the major proponents of so-called "free trade" and aggressive market opening to ensure that corporate wish lists can be fulfilled, without having to make any changes to existing WTO demanded by poor countries. A TISA could also jeopardize movement towards serious transformation of the global trading system demanded by civil society, such as the global "Turnaround Agenda" of the Our World Is Not for Sale (OWINFS) network.

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STOP corporate globalization.

What types of services would be included in the proposed TISA?

"Services" cover a broad range of activities from transport, (tele-) communications, construction, retail, engineering, energy provision, water distribution, accountancy, marketing, publicity, banking, and insurance, to nature conservation, entertainment, museums, education, health, funeral services, and much more. The GATS agreement lists all of these as tradable commodities, making every aspect of human activity the subject of closed-door commercial negotiations.

However, GATS allowed countries to choose the services they wanted to liberalize, and thus commit to the deregulatory disciplines and rules of the agreement. This is called a "bottom up approach." At the same time, the negotiations procedure of making requests and offers still put pressure on countries to liberalize as much as possible. In contrast, during the TISA negotiations, the participating countries will have to liberalize services in "essentially all modes and sectors" which according to some Really Good Friends means 90% of all services.

Besides extensively listing services for liberalization, the RGF also want to adopt disciplines on how services sectors can be governed, restricting governments' and parliaments' right to regulate. The RGF have already had extensive exchanges about these disciplines, which would go far beyond the existing GATS and FTAs.

Countries have already tabled proposals for the following sectors:
- Canada on temporary immigration, also called the natural movement of persons, or Mode IV in GATS;
- Australia, Japan and Hong Kong on domestic regulation;
- EU on Government Procurement in Services;
- Australia on professional services;
- Switzerland on export subsidies;
- EU on postal services;
- Norway on maritime services;
- Japan on telecommunications.

What would be some of the Negative Impacts of the proposed ISA?

Strong regulation of and oversight over both public and private services is crucial for democracy, development, and the public interest, all of which would be seriously damaged if the proposed ISA were allowed to exist.

Democracy is eroded when decision-making about important sectors such as financial services (including banking, accounting, insurance, etc), retail, shipping, telecommunications, transportation, and tourism, is transferred from citizens, local oversight boards, and municipal/county/provincial/state jurisdiction to unaccountable "trade" negotiators to further curtail regulation and prioritize corporate profits. One need only to reflect on the recent impact that the deregulation of the financial sector had on spreading the negative impacts of the economic crises around the entire world, and the ongoing negative impacts being suffered in terms of unemployment and austerity, to realize that robust financial sector re-regulation is absolutely essential to forestalling another economic crisis, just to give one example.

Development is jeopardized when essential services such as health care, water and energy provision, postal distribution, education, public transportation, sanitation, and others are left to be taken over by foreign corporations to make profits rather than be provided at the service of the citizens of the home country. Examples abound of states having privatized what were previously public services, and bringing in foreign corporations to take over the privatized services, only to find that the private corporation soon begins to charge increased prices for decreased services, and leaves both consumers and the government worse off.

The TSA would not contain provisions that foreign investment in services sectors should only be undertaken in a way that the benefits the *public interest*, or when there is a specific public plan including regarding ensuring accountability of private corporations to the development goals of the population. The proposed TISA will be constructed instead to give "rights to profit-making" to foreign corporations. Consequently, due to increased competition, employment and labor rights could also be seriously undermined. Foreign investors would be granted protections through the TISA against what they deem to be trade-restrictive regulations (even if these regulations were designed to protect the environment, health, safety, financial stability and the public interest).

Corporations may even become able to defend these "rights" to profit by directly suing their host country, if the proposal to include the nefarious Investor-State Dispute Settlement (ISDS) mechanism (which allows foreign corporations to sue sovereign governments in an elite, secretive, three-person court, in which countries sometimes avoid losing but can never win) becomes enshrined the proposed TISA.

What would be the Basic Structure of the proposed TISA?

Many aspects of the proposed TISA are yet to be determined. However, negotiators have already agreed on several core aspects, and there are strong indications about several others. These include:

- Participants will have to liberalize services in "essentially all modes and sectors," and countries will be pressured to exclude only a very few services from their commitments – greatly expanding the coverage from the current GATS.
- All foreign services providers and their products will receive "National Treatment" except for those services specified in an exemption list (a serious deviation from the GATS structure).
- The proposed agreement is intended to become "multilateralized" after its intended completion, meaning that other countries will be pressured to join after the framework is set by the most extreme liberalizers.
- The United States seems to have "enforceability" as a major demand for the ISA, which most likely points to their desire to include the "Investor to State Dispute Settlement" mechanism.
- New, far-reaching disciplines on regulations would likely include a "standstill" clause that would mean that no new so-called trade-restrictive regulation in a services sector could be introduced. In addition, a "ratchet" provision would mean that any that future autonomous elimination of regulatory measure that could be considered discriminatory, would be automatically become part of the ISA agreement.

How Would the Proposed Services FTA Impact Non-Participating Countries?

- Countries like the EU and lately the United States have made clear that their intention is to "multilateralize" the negotiations. That means that the worst neo-liberalizers set a hyper-deregulation-and-privatization agenda as the global "norm," and then pressure other countries to join afterwards.
- With regards to the WTO, participants would notify the WTO through Article V of GATS, meaning that the under the TISA, countries should liberalise around 90% of their services. Thus it should be considered a very radical Services FTA. Participating countries have agreed on this mechanism in order to prevent non-participating developing countries from having the chance to block it within the WTO.
- Because it is being negotiated outside of the WTO, non-participants (as well as civil society) will have less access to negotiating documents, texts, or meetings.
- Members of the TISA will attempt to pressure negotiating partners in FTAs and Regional Trade Agreements (FTAs), as well as so-called Economic Partnership Agreements (EPAs) to "harmonize" with the TISA, which would put additional pressure on non-participating countries.
- Even if the TISA were to be technically "outside" the WTO, poor countries that are in the process of joining the WTO would likely be highly pressured to join the ISA against their interests.
- The proposed TISA weakens the negotiating position of the developing countries in the WTO.
- In the WTO negotiators have been seeking to strike a balance between commitments in the negotiations on Agriculture and Non-Agricultural Market Access (NAMA, principally manufactured goods and natural resources) before moving on with Services and other issues. But if a new agreement on Services is agreed to outside the WTO, then the developing countries will have less leverage in their efforts to get an agreement to change global agricultural rules, and other key aspects of their agenda, including changes that need to be made to accommodate the needs of the Least Developed Countries (LDCs).

Once the TISA is concluded the countries signing up to it may also act as a block in the services (GATS) negotiations within the Doha Round pushing countries to join TISA in stead of continuing negotiations based on the guidelines that were agreed by consensus of the WTO members; and making them accept stricter disciplines and an ambitious liberalization benchmark. (Note that WTO members rejected such a target, set at 80% liberalization, at the Hong-Kong Ministerial in 2005.)

How Can We STOP the Proposed Services FTA from Ever Existing?

Some governments have to receive a mandate from their legislative bodies to engage in negotiations, but most can do so without prior parliamentary consent. Still it is worth encouraging members of parliament to question the participation of their country in the TISA negotiations. Governments may also still be required to consult local authorities or sub-federal governments before joining negotiations or making specific commitments.

NO SECRET, UNTRANSPARENT AND UNACCOUNTABLE NEGOTIATIONS!

Negotiations should not be carried out behind the backs of the majority of the (developing country) members of the WTO. They should also not be carried out in secret, in which the citizens, parliamentarians, trade unions, regulating agencies, services users and other interested parties have limited to no access to setting negotiating mandates and no access to direct negotiations or negotiating documents, while corporations set the agenda.

NO MORE DEREGULATION AND SURRENDERING SERVICES TO CORPORATE INTERESTS!

The world is still recovering from the greatest global economic downturn in history, facilitated by the extreme deregulation of the financial services industry. Services sectors that are predominantly run by private interests, such as banking, accounting, shipping, insurance, retail, tourism, telecommunications, and many others, still need strong public oversight to ensure that they operate in a transparent and accountable legal framework for the public good. Other services, such as water and electricity provision, education, health care, local transport, sanitation, and others, ought to either be operated by the public, or strictly regulated to ensure that the public interest is served as a priority over private profit.

1. **If your country is listed as a participant in the TISA negotiations**, immediately contact your government and demand that they (a) renounce their participation; (b) offer full transparency; (c) open up the discussions to include regulatory agencies, public service providers and users, parliamentarians, and other civil society organizations focused on ensuring high-quality and accessible services for the public; and (d) exclude as many key sectors as possible such as financial, energy, health care, education, water, sanitation, and others as possible from the agreement.

2. **If your country is NOT listed as a participant in the TISA talks,** contact your government to ask that they issue a clear and public statement that they oppose the TISA negotiations, and will not now or in the future join the agreement (and that they disapprove of the current RGF process).

3. **Whether or not your government is part of the negotiations**, spread the word about the dangers of the proposed TISA among parliamentarians, other elected officials, regulatory agencies, public services providers and users, trade unions, and other public interest and civil society organizations, so that they can also become aware of the dangers, and advocate on the issue.

If enough TISA participants find their negotiating mandates severely constricted, or have to renounce their participation, and enough non-participants publicly affirm their opposition and lack of interest, the corporate interests pushing for the proposed TISA will lose in their efforts to gain further control over services that must be maintained for the benefit of public interest and not corporate profit.

For more information and to get involved, please contact the Our World Is Not for Sale (OWINFS) network at djames@cepr.net.