Public Services International brief on the Trade in Services Agreement (TISA) July 2013

What is the proposed TISA?

At the beginning of 2012, about 20 WTO members (the EU counted as one) 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 all foreign providers access to domestic markets at "no less favorable" conditions as domestic suppliers and would restrict governments' ability to regulate, purchase and provide 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.

Negotiations have started, 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 of 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 the idea come from?

The TISA negotiations largely follow the corporate agenda of using "trade" agreements to bind countries to an agenda of extreme liberalization and deregulation in order to ensure greater corporate profits at the expense of workers, farmers, consumers and the environment. The proposed agreement is the direct result of systematic advocacy 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).

Notwithstanding several financial, economic, social and environmental crises, the services rules proposed for the TISA replicate and greatly expand upon the same rules that 'discipline" government measures and limit policy space for regulation, enshrined in the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO) and free trade agreements (FTAs), which contributed to those crises.

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. With the Doha round at a stalemate, the proposed TISA is an attempt of the major proponents of aggressive market opening to progress corporate interests.

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. 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. These discussions already go far beyond the existing GATS and FTAs.

What is the effect of the proposed TISA?

The proposed TISA is an assault on the public interest and public services as it fails to ensure that foreign investments in service sectors actually promote public goals and sustainable economies. We are particularly wary of further undermining of essential services such as health care and insurance, water and energy provision, postal distribution, education, public transportation, sanitation, and others if they are handed over to private and foreign corporations motivated only by profits and available only to those who can pay market rates.

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 TISA potentially affects government procurement by restricting the ways in which governments can purchase and provide services. The application of principles of competitive neutrality can limit public policy space to achieve other social, economic and developmental goals. The definition of public services will be particularly important.

The deregulation of the financial sector and capital movement which was encouraged in part through 1990s'era rules of GATS and FTAs led to the recent global financial crisis and the ensuing worldwide wave of recessions. The continued suffering by millions from unemployment and austerity measures reminds us that financial sector re-regulation is essential to rebuild stability and forestall future financial and economic crises.

The TISA would not contain provisions that foreign investment in services sectors should only be undertaken in a way that benefits the *public interest*, or when there is a specific public plan including ensuring accountability of private corporations to the development and social goals of the population.

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 Investor-State Dispute Settlement (ISDS) mechanisms proposed in other agreements (which allows foreign corporations to sue sovereign governments in opaque courts outside the jurisdiction of the sovereign government) find their way into the proposed ISA.

What would be the basic structure of the proposed TISA?

Many aspects of the proposed ISA 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 “multilateralised” 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 TISA, 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 TISA agreement.

How transparent are the negotiations?

The TISA talks are not public. Citizens, parliamentarians, trade unions, regulating agencies, services users and other interested parties have limited or no access to those who are setting negotiating mandates or to negotiations or negotiating documents. However corporations set the agenda and have easy access to the negotiation documents. It is unacceptable that negotiating texts will not be published, and input from regulatory agencies, public service providers and users, parliamentarians, state and local officials, and civil society organizations is not invited. Parliaments and legislatures must set binding terms for such negotiations, which must not go into effect without a full vote of elected officials.

Are migrant workers affected?

The proposed TISA promotes the liberalization of so-called temporary movement of natural persons, who are actually migrant workers, without guaranteeing legal protections for their human and labour rights. PSI believes the movement of workers is outside the competence of trade agreements and must be dealt with as part of the normative tripartite framework of the International Labour Organization (ILO).

Could the TISA affect non-participating countries?

The proposed TISA also poses a threat to countries that are not participating. The European Union and the United States have made clear that their intention is to “multilateralise” the negotiations. It is possible that once a TISA is concluded, signatory countries would try to act as a bloc in services (GATS) negotiations within the WTO, pushing other countries to meet the TISA level of liberalization and deregulation, thus contradicting the services negotiating guidelines that WTO members agreed upon by consensus.

Next Steps

PSI is currently undertaking further research on the effects of the TISA on our sectors. We hope to have this completed in the second half of 2013. PSI will be working with civil society and other allies to oppose the harmful effects of the TISA. If you are concerned about the proposed TISA please:

1. Forward the name and contact details of the person responsible for trade issues in your union to PSI at Pauline.Chase@world-psi.org
2. Endorse the attached letter produced by PSI in conjunction with our allies at the Our World Is Not for Sale (OWINFS) network. Please send organizational endorsement, with country, to manicandan@gmail.com with a copy to Pauline.Chase@world-psi.org
3. Contact your local civil society campaign (or ask PSI to put you in touch with them) to fight the TISA in your country.
4. Keep PSI informed of your efforts on this front by communicating regularly with PSI Senior Policy and Advocacy Officer Daniel.Bertossa@world-psi.org.