

A blueprint for global privatisation

Why we need to stop the Trade in Services Agreement

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Like a number of other 'trade deals' currently being planned, the Trade in Services Agreement (TISA) is designed to sound inoffensive. It is anything but.

Like the better-known TTIP trade deal between the EU and US, TISA threatens to lock in the privatisation of public services, hobble regulation and grant multinationals legal rights far in excess of those available to most people. But while TTIP is about the EU and US, the ambitions of TISA are global. The 50 countries involved in TISA account for 70% of the world economy and the ultimate aim is to impose the deal on the rest of the world through the World Trade Organisation. For this reason, TISA is the trade deal that most threatens poorer countries of the global south. It must be stopped.



Photo: Annette Dubois

Five reasons to oppose TISA

- **It could lock in privatisation of public services.** TISA contains mechanisms, such as 'ratchet' and 'standstill' clauses, that make it much harder to reverse privatisations and will allow greater market access for foreign companies.
- **It will be terrible for the climate.** TISA entrenches the idea of technological neutrality on energy policy. This could stop countries favouring renewables over coal, oil and gas.
- **It will mean more casino capitalism.** TISA will undermine efforts to regulate the financial sector and avoid another crisis.
- **It threatens online privacy.** TISA promises to hand much more power to the likes of Google and Microsoft to move personal data across borders to countries with lax data protection laws.
- **It will be especially damaging to countries in the global south.** TISA includes countries like Pakistan that could be hindered in developing public services. It also poses a threat to countries outside TISA, because, once approved, rich countries will seek to impose TISA-style measures globally through the WTO.

What is TISA?

TISA is not just a trade deal. Traditional trade deals are mostly about reducing tariffs and quotas (taxes or limits on goods that countries import and export). TISA differs from most trade deals in that it is only about services, not goods. Also, it is not so much about trade but about allowing multinationals to provide services across borders. TISA considers all regulations to be trade barriers. This means that it has serious consequences for things that have little to do with trade, affecting areas like labour rights, banking regulation and whether public services like electricity and water are run for the benefit of the people or by profit-making multinational companies.

TISA's full name is the Trade in Services Agreement. Trade in services is different than trade in goods. After all, unlike goods, services are not tangible, physical things. You cannot really transport a hairdressing appointment across the Atlantic Ocean though you can transport a hairdresser (which is one of the ways TISA deals with trade in services). Much of the danger in TISA lies in the fact that it turns many public services into commodities to be run for the benefit of business, rather than in the interest of people who need services like electricity, healthcare and transport. TISA signatories will have to treat foreign multinationals from TISA countries with at least as much favour as local companies, even if local firms are much smaller.

The idea of having an international treaty to regulate (or to be more accurate, deregulate) trade in services is not new. Back in 1995, the General Agreement on Trade in Services (GATS) entered into force. While this was roundly criticised by social justice campaigners at the time for opening the door to the privatisation of public services, it didn't go far enough for some in the business community. GATS was negotiated through the World Trade Organisation (WTO) which meant that it needed to be approved by every country in the world. The WTO system, while severely unfair, did at least allow poorer countries to argue their corner. This was not liked by the rich countries and their powerful services lobbies, and meant that the Doha Round of talks on extending the measures in GATS descended into deadlock.

Not content with this, a group of big businesses including Walmart, Google and Rupert Murdoch's 21st Century Fox got together under the banner of the Global Services Coalition to push for a new deal that would avoid going through the WTO.

TISA is the result of these lobbying efforts. The countries that followed this agenda called themselves the 'Really Good Friends of Services'!

Negotiations started in 2013 and are scheduled to finish by the end of 2016. The talks have been conducted in high levels of secrecy, with even less transparency than those on TTIP. The countries negotiating are mostly rich countries like EU member states, the USA and Japan but poorer economies like Pakistan, Panama and Colombia are also involved. The BRICS countries of Brazil, Russia, India, China and South Africa are not part of the negotiations though the new government of Brazil has said it is interested in joining the agreement. While the TISA deal currently involves just 50 of the 195 countries in the world, the idea is that it will end up becoming binding on the whole world through the WTO or at least serve as a model for future trade agreements.

Alphabet soup: Trade acronyms explained

TTIP The Transatlantic Trade and Investment Partnership is the trade deal currently being negotiated between the US and EU. It is the trade deal that has attracted most public attention in the UK. Like TISA, it threatens to lock in the privatisation of public services.

TPP The Trans-Pacific Partnership is a deal very much like TTIP but between the US and 11 other countries around the Pacific Ocean, including Australia, Japan, Peru and Malaysia.

CETA The Comprehensive Economic and Trade Agreement is another similar deal between the EU and Canada. Unlike TTIP the text of CETA has been released because negotiations have officially ended. However, due to serious misgivings around ISDS corporate courts, the ratification of CETA is likely to be delayed.

BITs Bilateral Investment Treaties are trade deals between two countries or economic blocs. There are hundreds of these deals in force around the world. Though much smaller in scale, BITs contain many of the same clauses that are being considered for TTIP, TISA and CETA so they show us what the effects of these deals may be.

The ratchet clause – the privatiser's best friend

TISA threatens public services. From postal services to the NHS, TISA could lock in privatisation and ensure that big multinationals increasingly call the shots on areas like health, education and basic utilities.

The main mechanism for this in the deal is what is called a 'ratchet clause'. Once a country has unilaterally liberalised a services sector by giving foreign companies the same or better treatment than national ones, it cannot reverse that measure for companies from TISA member states. This means that while no country will be forced to privatise a public service, once foreign companies are allowed in to provide a service, it becomes much more difficult to reverse.

There is also another clause called the 'standstill clause'. This complements the ratchet clause and means that no new regulation can be passed that gives foreign companies worse treatment than at the time TISA is implemented.

Taken together, the standstill and ratchet clauses could make it much harder for a future government to renationalise the railways, a move backed by a majority of the British public. Similarly, it could mean that the creeping privatisation of the NHS becomes more and more irreversible with greater involvement of companies from countries like the USA. And forget taking control of the electricity system back from the big six energy firms.

TISA holds out the dangerous prospect of making it much more difficult to pass progressive legislation without challenge. General elections will become increasingly pointless. Whether you vote Conservative, Labour, SNP, UKIP or Communist, the government's hands will be tied because TISA is an international agreement which has precedence over national and EU law.

Thankfully, the ISDS corporate courts system that could be part of other deals like TTIP and CETA is unlikely to be included in TISA. These have been used by multinational companies to sue countries for billions of pounds if they pursue any regulation or policy that could limit the profits a company is expecting to make. It could, for example, be used to lock in NHS privatisation forever. However, states still will be able to sue each other, probably without appeal, and could be very much encouraged to do so by large companies.

But, while unlikely, some have warned that if a Most Favoured Nation clause is included in TISA, it could be invoked to 'import' ISDS into TISA from another trade deal.¹ Most Favoured Nation basically means that you promise not to treat the country you've signed a deal with worse than any other country. So if another country has a 'better' deal (e.g. a deal that includes ISDS), a Most Favoured Nation clause *might* be used to justify allowing the use of ISDS even where it isn't explicitly in the trade deal being invoked.²



Photo: Matt Buck

At least two thirds of the British public support renationalisation of the railways, something that would be much more difficult to implement if trade deals like TISA went ahead.

Welcome to the regulatory Wild West

Some of the loudest advocates for TISA are financial services firms. TheCityUK, an organisation that lobbies on behalf of big City of London financial services companies like Barclays and Morgan Stanley, is a key part of the Global Services Coalition that spawned TISA.

This is for a good reason. TISA will lock-in pre-crisis levels of ill-considered liberalisation or deregulation. While measures taken in the aftermath of the 2008 financial crisis were nowhere near sufficient to mend the broken financial system, the finance industry is already champing at the bit to get back to business as usual. For the City, any sensible prudential regulation that might stop them causing the next financial crisis is 'red tape' and a 'barrier to trade'.

For example, TISA could make it problematic for countries to regulate banks to stop them becoming 'too big to fail'. The text proposes a ban on "limitations on the total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test".³ Introducing limits on the size of banks, hedge funds or other investment funds may also be in contravention of TISA. Even in times of heightened speculation, TISA would make

it more difficult to manage capital flows. Had it been in force already, TISA could also have made it much harder to force banks to separate retail banking from investment banking, something that is thankfully scheduled to occur in the UK before TISA is likely to come into force.

There is also a danger that TISA will undermine efforts to regulate risky financial products. Switzerland has argued for wording saying that foreign financial services firms must be permitted to "offer...any new financial service".⁴ While more moderate wording may be adopted in the end, the direction of travel on financial services is highly concerning considering the fact that the 2008 financial crisis was sparked largely by the under-regulated use of new financial products like the infamous Credit Default Swap. The danger is that TISA will deter governments from limiting the use of such 'innovative' financial products and leave us powerless to stop the next financial crisis.

As part of the provisions on 'transparency', TISA also requires governments to inform big financial firms well in advance if they plan to introduce new regulations. This will make it easier for these firms to lobby against them, or even plan legal action to stop new rules from being approved.



Paris, December 2015: Climate activists protest outside the offices of MEDEF (Movement of the Enterprises of France), a prominent member of BusinessEurope, the main European lobby group for multinationals pushing for free trade deals.

Good for coal, oil and gas. Bad for the climate and the right to regulate

TISA could also lead to many important rules and regulations being abandoned in areas like energy, public procurement, transport, freight, health service provision and data protection. This is because TISA may subject all new regulation to the 'necessity test'. This means no new rules unless they are proven to be 'no more burdensome than necessary'.⁵ Proving a new rule meets this vague test is very difficult, leaving countries open to legal challenge for introducing any measure designed to protect the public. The EU Commission has said that it will not accept measures that impede its right to regulate,⁶ but a leaked version of the text appears to suggest that (unlike the US and Canada) the EU has not opposed the inclusion of the necessity test in the TISA annex relating to domestic regulation.⁷

In any case, TISA will be a serious block to new regulation. For example, Iceland and Norway, backed by the US, are pushing hard for the agreement bind signatories to commit to technological neutrality on energy-related service exports.⁸ This means that countries will find it much harder to regulate in favour of renewables over fossil fuels. 'Overly burdensome' regulation of dirty energy extraction techniques like fracking may also be challenged if they impact on trade-in-services.

Threatening privacy

Data protection regulation is also a controversial area. Big business wants more control of the internet and flows of data. Specifically, many US firms want to be able to move data across borders at will. This would allow companies like Google and Facebook to move personal information to the USA where data protection laws are far more lax than in the EU. A number of countries, including the US, support text that says "no Party may prevent a service supplier of another Party from transferring, (accessing, processing or storing) information, including personal information, within or outside the Party's territory, where such activity is carried out in connection with the conduct of the service supplier's business".⁹ Although TISA stipulates that privacy laws have to be applied in the receiving country, it is not clear how this will be guaranteed, respected and enforced.

If text like this is included in the final version of TISA, the fear is that personal data will become more accessible to third parties and compromise the privacy of users.

Labour rights? What labour rights?

TISA's approach to labour rights for migrants is a throwback to another era. No chapter on social rights will be included in the deal. Under proposals being considered for TISA, some categories of migrant worker may end up being categorised as "independent service suppliers" and will consequently not enjoy the right to things like the minimum wage or be allowed to join a trade union.¹⁰ If you enter a country under this "mode 4" visa, your presence in your new country may also be tied to your employer, so if you lose your job you would immediately have to leave the country.¹¹ This sort of system of modern indentured labour is wide open to abuse by unscrupulous employers who may get away with illegal practices safe in the knowledge that they can threaten any employee with deportation if they complain. This sort of system is used in countries like Saudi Arabia, the UAE and Qatar and has resulted in working conditions that have been described as being close to slavery.

List it or lose it

Some parts of TISA (the parts that relate to treating foreign companies at least as well as domestic firms) operate on what is called the 'negative list' system. This means that if the UK does not explicitly list areas it wants excluded from the deal, they are assumed to be included. This means that if any new products or services are invented, these will be automatically included in the relevant parts of TISA. So if we had signed up to such an agreement in 1970, before modern computers were widespread, all services trade involving computers and the internet would be automatically included, even though those things barely existed at that time.

The EU claims that it has asked for public services to be excluded from TISA's national treatment commitments, thereby providing some protection against NHS privatisation. But in practice, it is unclear how effective this will be and the UK itself has opted not to list many exclusions on health.

While such exclusions would be better than nothing, a lot depends on how they are worded. Similar deals in the past (e.g. GATS) have defined public services narrowly as "any service that is supplied neither on a commercial basis nor in competition with one or more service suppliers".¹² Wording like that would make the exclusion almost meaningless as almost all public services are run in competition with private competitors. It is possible that the

only service that would qualify would be the fire brigade, because (as of yet) few private firefighting companies exist in the EU (though they are more significant in the US).

The good news is that the latest leaked texts suggests stronger wording on public health services specifically with regards to national treatment parts of TISA, which are defined as “all health services that receive public funding or State support in any form”. However, negotiations are still ongoing and it is unclear whether other public services will be as well protected even if health retains protection.

Any loopholes in the exclusion would be brutally exploited, as happened in Canada when the province of New Brunswick decided to introduce a public car insurance scheme.¹³ This was a popular move as it meant cheaper insurance for everyone. But the plan had to be abandoned after the private insurance companies threatened Canada with legal action.¹⁴ This is because under the GATS market access rule, Canada had agreed to end monopolies. Despite this, the New Brunswick government initially thought it was safe because Canada had negotiated a clause specifically

excluding Canadian public auto-insurance monopolies from the deal.¹⁵ But the companies argued that the clause only applied to schemes that already existed in other Canadian states. The New Brunswick government ended up backing down and the private companies got their way.

Taking over the world

Unlike other similar agreements being negotiated like the US-EU TTIP trade deal and the EU-Canada CETA trade deal, TISA includes global south countries like Turkey, Pakistan, Costa Rica, Colombia, Peru and Panama (also a popular tax haven). Uruguay and Paraguay have already left the negotiations, believing that the deal would be too big a threat to their sovereignty and ability to regulate.

TISA could be even more dangerous to these countries than it is to us in Europe. While rich countries already have relatively good public services in place, poorer countries tend not to. Because trade deals like TISA do not force countries to privatise public services, this means that countries like the UK can maintain existing public provision of, for

The different types or ‘modes’ of trade in services

Trade in services is divided into four ‘modes’ which describe different kinds of service trades. There is also a mode 5, which is less widely recognised.

Mode 1: Cross border trade.

This is a service that is performed in one country for the benefit of someone in another country. An example of this would be buying an airline ticket from Paris to Rome from a French travel agent while you are still at your flat in Liverpool.

Mode 2: Consumption abroad.

This is when you go abroad yourself to get the service you need. Most tourist services fall into this category. So if you go on holiday to France and eat out at a restaurant there, you are engaging in a mode 2 trade in services.

Mode 3: Commercial presence abroad, i.e. foreign investment. This is where a company from one country sets up shop in another to provide services. The staff might all be recruited locally, as might everything else the business

needs. So if a UK-based burger chain starts opening shops in France, that is mode 3.

Mode 4: Presence of natural persons abroad.

This is where you transport people across borders to provide a service. A lot of international consultancy works this way. So bringing in a UK engineer to work on a building in the USA would be a mode 4 trade in service.

Mode 5: Services embedded in goods.

Increasingly, value of a good is more than the sum of its parts. To create many goods, you need services like design, artwork, engineering or software development. These services that are priced into the value of a good are ‘mode 5’ services. But they are controversial because they blur the lines between what is a good and a service. It is generally thought that including provisions on mode 5 services will benefit richer countries that specialise in high-value services more than poorer ones that export more simple services.



Demonstration against TISA, Geneva, July 2015

example, healthcare. But for countries that do not already have their own versions of the NHS in place, it can mean locking in a situation in which private companies run public services for profit.

In other words, these countries are starting from a lower base. The same thing happened when the WTO was set up. Rich countries were allowed to keep their subsidies at quite high levels while poor countries that could not afford these subsidies when the WTO was set up are now barred from doing the same. This led to a situation in which the EU subsidises rich landowners to the tune of billions of pounds every year while poor countries face severe sanctions if they dare to do the same.

TISA may not yet be a global deal in the same way that the WTO treaties are but the ambition is to expand TISA well beyond the initial 50 countries to encompass the whole of the world and replace GATS. At the very least, TISA will serve as a model for future trade in services deals. Indeed, although the WTO has rejected the incorporation of TISA, the proponents of the deal are already planning for it to be embedded in the WTO structure – making

the deal far more powerful and meaning that many countries will be bound by rules that they will have had no part at all in making. This would be a disaster for people living in the global south, as they would have to accept a fait accompli.

We need to stop TISA

Activists across Europe have already mobilised to stop TTIP, the EU-US trade deal that contains many of the same threats that TISA does. Over 3 million people across the continent, and over 500,000 in the UK alone, signed a petition rejecting TTIP.

There has not yet been as much public anger over TISA. It is vital for elected representatives, campaigners and ordinary citizens to unite against this threat. Trade unions like the UK's GMB union and the International Transport Workers' Federation and Public Services International (PSI) have already started raising the alarm on TISA, as have many groups in the global south. More of us must join them. Defeating TTIP may amount to a pyrrhic victory if we allow TISA to pass without challenge.

References

- 1 <https://www.etuc.org/documents/emergency-motion-tisa#.Vz7zXYQrKmw>
- 2 A UK company has tried to do something like this before in a bilateral deal between the UK and Turkmenistan that didn't include the right to sue through the ICSID tribunal (though it did allow for ISDS through the alternative UNCITRAL system). In that case, the arbitration panel decided that it couldn't be done, but one dissenting arbitrator argued the opposite. This shows that the issue of importing ISDS could be open to interpretation, depending on how TISA is drafted. In another case between an Argentine company and Spain, bits of an ISDS clause that were deemed more favourable were successfully imported from a deal between Chile and Spain. It is unclear however, whether it would be possible to do this if (as is likely to be the case with TISA) there is no provision for ISDS at all.
- 3 <https://wikileaks.org/tisa/core/TiSA-Core-Text.pdf> Article 1-3 (2) b
- 4 <https://wikileaks.org/tisa/financial/02-2015/TiSA%20Financial%20Services%20Negotiating%20Text.pdf>
- 5 The necessity test is included in the reference to subparagraphs 4. a, b and c in GATS Article VI <https://www.wikileaks.org/tisa/domestic/04-2015/TiSA-Annex-on-Domestic-Regulation.pdf>
- 6 <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2015-012905&language=EN>
- 7 <https://www.wikileaks.org/tisa/domestic/04-2015/TiSA-Annex-on-Domestic-Regulation.pdf>
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- 12 As for example in the draft TPP agreement: <https://www.readthetpp.com/ch10.html>
- 13 https://www.citizen.org/documents/newbrunswick_auto.pdf
- 14 http://www.s2bnetwork.org/wp-content/uploads/2015/09/en_tisaresearchpaper_final_web1.pdf p14
- 15 Ibid



Take action

Attac and Global Justice Now are part of an international movement against free trade deals. Visit our websites to find out more.



Attac Norway is a solidarity organisation which connects social struggles taking place at home with those around the world. As part of the international Attac network we fight against inequality and for democratic control over financial markets, demanding the abolition of tax havens and a financial transactions tax. We also work for world trade that puts the environment, human rights and social rights before profit.

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Global Justice Now campaigns for a world where resources are controlled by the many, not the few. With thousands of members around the UK, we work in solidarity with global social movements to fight inequality and injustice.

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