TiSA

Another Secret Free Trade Agreement putting the Paris Agreement in a straight jacket

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GREENPEACE

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Another Secret Free Trade Agreement putting the Paris Agreement in a straight jacket

At the end of last year, representatives from nearly 200 countries met in Paris to negotiate and sign a landmark treaty with the express purpose of limiting global warming to no more than 1.5 degrees from pre-industrial levels.

The Paris Agreement both affirmed "the need to promote universal access to sustainable energy" and called for "making finance flows consistent with a pathway to low greenhouse gas emissions and climate-resilient development".

What does that mean in practice?

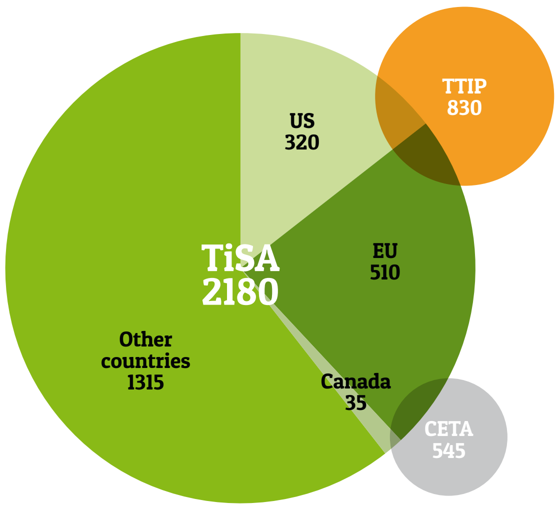
Most of the pollution that is warming our atmosphere comes from burning coal, oil and gas. The Agreement's ambitions effectively mean we need to start phasing out fossil fuels right away, and we need to have done it entirely by 2050. Swapping fossil fuels for renewables, however, represents a fundamental shift for the global economy, one which big business and some governments will resist and undermine.

The Economist writes:

"Perhaps the most significant effect of the Paris agreement in the next few years will be the signal it sends to investors: the united governments of the world say that the age of fossil fuels has started drawing to a close."

The only way to achieve this is by taking seriously the Agreement's goals and speeding up the clean energy transition.

People affected by TTIP, CETA and TiSA
(in millions of people):



But that historic Agreement is facing a fresh threat: globe-spanning trade treaties that could handicap the deployment of renewable energies, and extend the life of the very fossil fuels the world needs to phase out.

The latest of these free-trade deals that has come to the public's attention is called the Trade in Services Agreement, better known as TiSA.

Like the TPP, TTIP and CETA treaties before it, TiSA promises to drive deregulation and reduce national sovereignty to support global trade.

Even more than TTIP, TiSA is shrouded in mystery, its text a well-guarded secret – with parties unable to release details of negotiations until five years after the deal has taken effect.

Greenpeace Netherlands has obtained a trove of secret TiSA documents that detail a range measures that could undermine action on climate change and unleash an empowered fossil fuel industry.

Of course the trade pact covers a great deal more than just energy, with big business able to use key clauses to stop national government policy.

Greenpeace Netherlands has asked other NGOs to analyse different parts of the leaked documents, and will publish them at TTIP-Leaks.org in due course.

What is TiSA?

Where TTIP, CETA and TPP cover the trading of goods and services, TiSA tackles services alone.

The treaty outlines rules that govern the cross border trade of services and therefore the services industry, which makes up more than half of the global economy, though the term is vague and could arguably be applied to the trade of certain goods as well.

Among others, TiSA will cover financial services, e-commerce, information and communications technology services, international maritime transport services, computer related services, postal and courier services, government procurement of services.

It is designed to create free-trade between more than 50 major economies, including the entire Anglosphere and the EU and its member states. It could impact the lives of 1.8 billion people.

The new trade agenda

The services sector produces intangible goods, which makes the implications of the TiSA treaty far from straightforward.

Its annex on "Energy and Mining Related Services" suggests it should simply apply "to measures affecting trade in energy and mining related services".

That includes services that are "supplied to a juridical person engaged in the exploration, development, production, transmission, storage or distribution of energy or energy sources".

That may sound harmless, but one must understand that TiSA is not an isolated agreement; it arrives alongside treaties such as TTIP, CETA and TPP which set out and cement similar trade terms.

Services to the energy sector covers not only transport and storage, but also services for the exploration of fossil fuels.

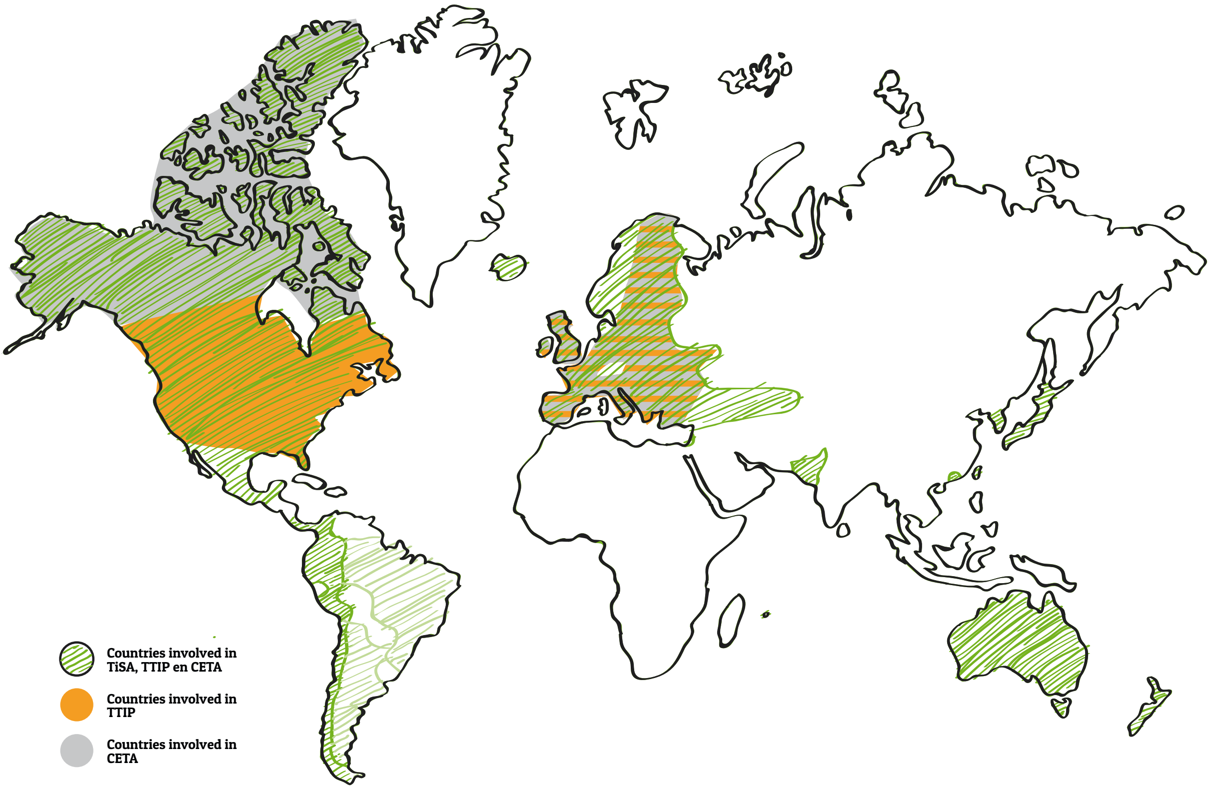
And since all of the deal's negotiating nations are members of the World Trade Organisation (WTO), the WTO agreements on both goods (GATT) and services (GATS) apply.

Liberalisation

Liberalisation is not negative per se. It means that markets are opened, that barriers to to trade between nations are removed or reduced.

The liberalisation of the renewable energy market, for example, has brought tangible benefits to the environment and has helped to accelerate the development of the sector – providing clean energy and creating thousands of jobs.

Countries involved in TiSA, TTIP en CETA:



Trade liberalisation, however, should not be a one-way street.

In the same way that governments must be allowed to liberalise markets, they must also retain the right to re-introduce regulatory measures at a later stage - if, for example, liberalisation has not had the desired effect.

TiSA threatens to undermine this basic democratic principle.

Countries that sign up to TiSA will be required to lock-in liberalisation and could be prevented from rolling back failed policies due of two key clauses – the 'standstill' and 'ratchet' clauses.

The standstill clause freezes the extent of liberalisation in certain sectors, which means the markets of TiSA state can never be less liberalised than they were at the time they signed the deal.
Meanwhile the ratchet clause - which sometimes appears in other trade agreements - stops countries from reintroducing trade barriers that had been previously and unilaterally removed.

Together these two clauses undermine the ability of governments to ever reverse the liberalisation of services, even if elected on a mandate to do it.

That means they could be stopped from testing liberalising policies, since there would be no way to reversing them if things went awry.

In order to make the objectives of the Paris Agreement a reality and in order to cut greenhouse gas emissions to the point where the worst impacts of climate change can be avoided, governments must be allowed to interfere and use all policy tools available to them.

Arbitrarily locking governments into deregulation could have hugely negative impacts on their capacity to implement the kind of climate policies we need to stay within 1.5 degrees.

Restricting the right to regulate

Although the right to regulate is mentioned in TiSA, various obstacles are included that restrict the ability of national governments to do just that.

When one member of the treaty attempts to introduce a law or regulation, other members can file a challenge – taking a dispute to a TiSA panel to judge whether the proposed action is in fact necessary.

The mechanism, called the 'necessity test,' says that the party trying to introduce the disputed policy must prove that it is not a "disguised restriction on trade in services".

It is an approach already employed by the World Trade Organisation, but it almost always delivers verdicts against additional regulation.

In 44 WTO cases in which the right to regulate was challenged, the disputed regulation was judged to be necessary only once.

You would expect that trend to continue in TiSA, where partners are compelled to "alleviate market distortions and barriers to competition in the supply of energy related services."

And so the deregulation measures detailed in TiSA could serve to stop the introduction of new rules, first by watering down national governments' right to regulate and then by setting up a system by that will likely lead to the veto of many new laws.

Trade deals to supremacy over Paris Agreement

Where the Paris Agreement does not have a means for enforcement, TiSA does.

If a national government is trying to introduce a new law or regulation on a liberalised market, a fellow TiSA member can submit a challenge and force the proposed action to survive the 'necessity test' applied by a dispute panel.

This means that where the Paris Agreement relies on the good will of parties, TiSA has legally binding and enforceable mechanisms that give it much more teeth than the Paris Agreement.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The case of Eneco

To understand the real-life ramifications of TiSA's one-way liberalisation policy, take the example of Netherlands energy firm Eneco.

In 2013, the integrated energy company – which is owned by a group of local governments – came under pressure from liberalising laws from the Dutch parliament, was forced to split its production and distribution businesses.

This led to Eneco cutting their renewables investment by 400 million euros, and cancelling the construction of new offshore wind farms.

You would need to be able to rethink liberalization in such cases.

Energy efficiency

The EU has proposed to also include energy efficiency services to TiSA coverage, though Australia, Iceland and Norway are still considering it.

The proposed definition appears weak in comparison to existing EU policies such as the 2012 Energy Efficiency Directive, referring only to "restraining the growth in energy consumption".

Secrecy

TiSA is even more secretive than fellow trade deals CETA and TTIP, themselves renown for their extreme confidentiality.

The TiSA negotiations are happening completely outside the view of the public, with negotiators meeting regularly in embassies scattered across Geneva.

Although some details about the negotiations has been made available by some parties, this depends entirely on the willingness of countries to disclose information and does by no means provide the public with a comprehensive overview.

The environment

And then there's how these treaties address the environment.

Though the latest draft of the TTIP text includes a proposed chapter specifically on sustainable development - one which refers to the Paris Agreement, no less - it is distinct from its chapter on energy and raw materials, which appears designed to increase the trade of fossil fuels between parties.

CETA doesn't have a special energy chapter, and its text does cloud countries and business' right to distinguish between types of fuel, presumably to protect the especially dirty tar sands oil which Canada produces.

Although CETA includes a chapter on trade and the environment, it comes with one key caveat: it is excluded from the state-to-state dispute settlement mechanism, arguably CETA's strongest enforcement mechanism.

While the trade-related parts of CETA have access to this powerful mechanism, designed to ensure compliance, the chapter on the environment does not.

The leaked TiSA documents make no reference to either a sustainable development chapter or the Paris Agreement.

Essentially these trade deals echo one another: climate and clean energy is an afterthought, if not an out-and-out obstacle.

Conclusion

TiSA is the latest in a string of global trade deals designed to drive liberalisation and reduce national sovereignty in support of global trade.

Its energy annex is not especially clear, with the term ‘services related to’ vague enough to cover any number of actions and phrases like ‘market distortion’ likely to kick-off a range of interpretations.

What is clear, however, beyond any specifics to do with ratchet and standstill clauses or necessity tests, is that there is a risk that TiSA could be used to take and support actions that go against the global climate agreement signed in Paris.

To achieve the ambition of limiting global warming to just 1.5 degrees, governments around the world must be able to take all necessary actions and need regulatory flexibility rather than irreversible liberalisation.

Countries should be favouring and supporting renewable energy in order to quickly phase out fossil fuels, even if that isn’t in line with free market deals.

Control over energy and climate policy should stay in the hands of elected officials, should stay in the hands of the electorate themselves.

Rules and regulation should be allowed to be both introduced and removed by governments elected by the public.

We need a new trade agenda that puts the environment and the climate at its heart.

Greenpeace demands a stop to TiSA negotiations.

It wants the 1.5 degrees target agreed in Paris to be included in any future version of TiSA and all other trade agreements which are currently under negotiations or approval.

Future trade negotiations have to be open to the public. They should be as open as the open market itself.


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