

Climate Deception: Non-binding “Targets” for Climate, but Binding Rules on Trade in Services

December 3, 2015, by Deborah James, Our World Is Not for Sale (OWINFS) network, djames@cepr.net

The whole world is watching as world leaders from nearly every country across the globe meet in Paris this week to set carbon emission reductions targets to address global climate change.

Unfortunately representatives of 50 of the same governments are also meeting this week in Geneva to negotiate binding rules that will seriously constrain countries’ ability to meet those targets.

The 15th round of talks to create a “Trade in Services Agreement,” or TISA, are occurring once again in Geneva. Members of the TISA currently include Australia, Canada, Chile, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Taiwan, Turkey, the U.S., and the 28 member states of the European Union. How come everyone knows about the Paris talks, but not those in Geneva? Because the Geneva talks are convened in secret – precisely because the negotiators don’t want the public to know what they’re up to.

The TISA is modeled on the General Agreement on Trade in Services (GATS) of the WTO, which Naomi Klein has documented in her book, *This Changes Everything*, has been used extensively against environmental policies. Yet the point of the TISA is to go further than the GATS because corporations see the existing rules as not “ambitious enough.” The financial services, logistics and technological corporations, largely in the United States and also the EU, are attempting to expand the WTO’s GATS to develop a set of deregulation and privatization rules that constrain public oversight of how services operate domestically and globally, setting aside environmental, labor, and development issues in favor of transnational corporate rights to operate and profit.

Fortunately, Wikileaks has [come again to the rescue](#). Today they are publishing analysis and secret, leaked proposals that would create far-reaching rules that give corporations rights to access markets and limit public oversight of environmental and energy services and road transportation in TISA member countries.

The [analysis](#) of a proposal for an “Energy Related Services (ERS)” annex of the TISA would give “rights” to foreign energy corporations in domestic markets. Far from mandating reductions in carbon emissions or promoting access for poor countries to clean technologies, the proposed TISA annex would actually limit the ability of governments (on national, regional, or local levels) to set policies that differentiate between polluting and carbon-based energy sources, such as oil and coal, from clean and renewable energy sources such as wind and solar. This is according to the “principle of technological neutrality,” revealed in the analysis of the proposed chapter by Victor Menotti published by the [Public Services International](#) (PSI) global union federation today.

Since reducing the dependence on fossil fuels is the basis of much of today’s climate policy, it is hard to imagine how governments could achieve the reductions in fossil fuel usage required by the targets if they are not able to differentiate among energy sources.

[Developing countries](#) have demanded that principles of common but differentiated responsibility become enshrined in any new climate deal; the TISA would instead sidesteps developing country concerns raised at the WTO, and fails to include the (weak) flexibilities for developing countries included in the WTO’s GATS.

In fact, a main point of the TISA seems to be to “shift political power over energy and climate policies from people using their governments for shaping fair and sustainable economies to global corporations using TISA for restricting governments from regulating energy markets, companies, and industry infrastructure,” according to Menotti. This includes ensuring domestic economic benefits from natural resource extraction, a key strategy for poverty reduction in many developing countries.

But it’s not just energy policy that is at stake. In his [analysis on the proposed chapter on environmental services](#), Bill Waren of Friends of the Earth US, notes that the “scope of environmental regulations covered and put at risk by TISA appears to be wide.” The annex indicates that it would apply to important services often run on a public basis, such as sewage treatment, refuse disposal and sanitation, but also to undefined “other environmental protection services.” “National Treatment” rules in the TISA also mandate that governments would have to provide “conditions of competition” for foreign corporations at least as favorable as domestic companies. Amazingly, this would also apply to environmental services that have yet to be invented!

In his analysis, Waren also details how the “exception to protect governments’ right to regulate the supply of environmental services is largely toothless.”

Further, the “market access” rules of the TISA limit public regulation of the number of services suppliers; the total value of the services supplied; the legal form of the services corporation; and other regulatory aspects, and would affect not only the energy and environmental services covered by the specific annexes but approximately 160 services sectors, many of which greatly impact the environment, including: real estate; retail; construction, air, road, and maritime passenger and freight transport; electricity, gas, and water distribution; services for agriculture, hunting, forestry, fishing, mining, utilities; and others.

The draft [annex on road transport](#) reveals similar problems to the annexes on [maritime](#) and [air transport](#) previously released. While citizens and elected officials have public environmental and job creation goals around the construction of infrastructure including bridges and roads, and environmentalists and labor activists have a huge stake in taxing and regulating maritime and air transport in order to fund climate adaptation and mitigation and reduce carbon emissions from the transport industries, the TISA proposes to impose a corporate model that would favor the transnational corporations’ “rights” to operate, and limit regulation. In its [analysis of the draft chapter](#), the International Transport Workers Federation (ITF) notes that the “combined impact of the leaked TISA documents’ provisions would constitute serious barriers for any state wanting to invest in, manage and operate its national infrastructure, to plan development or to defend social and safety standards across the transport industry itself.”

These newly-released proposed chapters would also interlink with other TISA chapters such as on domestic regulation; transparency; government procurement; and other cross-cutting issues. The similarities to the proposed TransPacific Partnership (TPP) and its negative potential impacts, as described in detail in an analysis published December 2 by the Sierra Club, [A Dirty Deal: How the Trans-Pacific Partnership Threatens our Climate](#) [PDF] are glaring.

Both would empower fossil fuel companies to attack environmental policies, in the proposed TISA based on more than 20 grounds provided in the chapter on [Domestic Regulation](#). This chapter restrains government regulation of technical standards, professional qualifications, and licensing standards and procedures, in order to proscribe policies including domestic energy and environmental legislation to policies which are not, among other requirements, “more burdensome than necessary,” “objective,” and “reasonable.” But what do these words mean?

Is the requirement for an environmental assessment before the license for an oil pipeline can be granted, “more burdensome than necessary”? Is the requirement for a specified percentage of electricity to be derived from renewable sources “objective”? Would a local law mandating improved technical standards to reduce pollution by power plants that are proximate to the residential neighborhoods of low-income communities of color, as demanded by [environmental justice activists](#), “reasonable?”

The question is, why would our governments give foreign corporations the right to decide these issues, when they are clearly in the realm of local communities and citizens, elected officials, regulators, consumers, workers, and the public at large?

These attacks on domestic environmental and energy policy could actually occur even during the deliberation phases, through the proposed TISA chapter on “[Transparency](#)” which would mandate that governments provide foreign corporations a mechanism by which *and a right to* provide inputs to proposed domestic measures including laws, regulations, procedures, and administrative rulings, in advance of a final decision. It may also mandate a governmental obligation to respond to foreign corporations that had provided input, in case they disagree with the final decision. Negotiators are also contemplating a right of independent appeal if the foreign corporation disagrees with the final sovereign decision – we must ask, independent of whom?

Both the TPP and the proposed TISA would restrict governments’ ability to use public procurement to promote “green purchasing,” through the chapter disciplining [government procurement](#), which in the TISA is cross-referenced to environmental and energy services chapters. According to the analysis by the [Third World Network](#), government purchasing “provides a major source of demand for domestic service suppliers and reserving that for domestic companies (or otherwise preferring them) can facilitate social and economic development, provide employment and business opportunities for marginalized or disadvantaged individuals and communities and act as a ‘wealth redistribution’ tool.” The leaked chapter on government procurement in the TISA would open up government purchases that are subject to public tender, by all government agencies, in any amount.

Thus like the TPP, the TISA constrains the ability of governments to set policies that favor environmental job creation policies advocated for by [Trade Unions for Energy Democracy](#) and the call for a [Just Transition](#) developed by the International Trade Union Confederation (ITUC) and endorsed by We Mean Business, The B Team and seven major civil society networks including CIDSE (the international alliance of Catholic development agencies), Friends of the Earth International, ActionAid International, Greenpeace International, Christian Aid, WWF and Oxfam International.

Beyond the specific provisions of the agreements there is the problem of the general model of corporate globalization that is made international law in agreements like the proposed TISA. Klein’s book highlights how little has been written about “how market fundamentalism has, from the very first moments, systematically sabotaged our collective response to climate change.” In an [excerpt published by the Guardian](#) from her book, she notes that:

“The core problem was that the stranglehold that market logic secured over public life in this period made the most direct and obvious climate responses seem politically heretical. How, for instance, could societies invest massively in zero-carbon public services and infrastructure at a time when the public sphere was being systematically dismantled and auctioned off? How could governments heavily regulate, tax, and penalise fossil fuel companies when all such measures were being dismissed as relics of “command and control” communism? And how could the renewable energy sector receive the supports and protections it needed to replace fossil fuels when “protectionism” had been made a dirty word?”

The scaling-up of investments in zero-carbon public services and infrastructure demanded by the Sustainable Development Goals recently agreed to by governments at the United Nations will be hampered by the deregulation and privatization of services, including environmental services, embodied by the TISA model.

They are also unlikely to be helped by the so-called Environmental Goods Agreement (EGA) being negotiated under the auspices of the WTO, which the WTO’s Director General, Roberto Azevêdo, [alleged](#) will contribute to climate solutions, but still include a raft of products that have no environmental basis, according to the NGO [Transport & Environment](#). The proposed EGA would not only increase trade in those products but also reduce to zero the taxes paid by corporations for the privilege of profiting from that trade. After members agree on the list of products to include in the EGA, which they intend to finalize in time for the upcoming Ministerial meeting of the WTO in Nairobi, Kenya, December 15-18, 2015, they also will discuss adding in environmental services to the deal.

The protections and supports for renewable energy that are being called for by countries across the globe are nowhere to be found in the leaked chapters of the proposed TISA. Thus far, the restrictions on subsidies for renewable energy, such as India’s supports for solar power that have been [successfully challenged](#) by the United States in the WTO, remain in place, along with a lack of disciplines on similar subsidies that are forked over by publics coffers to the fossil fuel (oil, coal, and gas) industries in the [hundreds of billions](#) [PDF], according to Oil Change International.

The TISA also shares similarities with another agreement being negotiated in contrast to environmental goals, according to [environmental analysis](#): the Transatlantic Trade and Investment Partnership (TTIP). The new rights for investors and corporations proposed in the TISA and the TTIP, like the TPP, would become legally binding and enforceable, while any “environmental” provisions would not. This situation is reflected in the Paris talks for a new United Nations Framework Convention on Climate Change (UNFCCC) agreement, where the U.S. has led the call for environmental targets to be only voluntary and has refused any provisions that would be binding under international law.

A United Nations Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, recently published a major [report to the UN](#) addressing the adverse human rights impacts of international investment and trade agreements on the international order, and calling for human rights, health and environmental impact assessments of these agreements. Isn’t it time we stopped corporations from pushing our governments to expand agreements that harm the environment, while constraining governments from implementing the solutions necessary to combat climate change and save life on the planet as we know it? In order to implement climate solutions, let us stop the TISA, along with the TPP, and the TTIP.

The global Our World Is Not for Sale (OWINFS) network works with PSI against the proposed TISA. For more information: <http://ourworldisnotforsale.org/en/themes/3085>.