

# TISA and state-owned enterprises

*Lessons from Uruguay's withdrawal for other countries in the South*

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PHOTOGRAPH: PIT-CNT

**Mobilization of the PIT-CNT trade union federation** – *The opposition of the workers' movement was a fundamental factor considered by the Uruguayan government before its decision to withdraw from the TISA negotiations.*

## ¿What is TISA?

The Trade in Services Agreement (TiSA) is designed to be an international trade liberalization treaty targeted exclusively at services. Should it enter into force, TISA will consolidate the process started in 1995 with the

launch of the General Agreement on Trade in Services (GATS) under the auspices of the World Trade Organization (WTO), by widening and deepening the commercialization of services that are crucial to society, such as healthcare, education, transport, and energy and water supplies.

A total of 50 governments are currently sitting at the negotiation table: Australia, Canada, Chile, Colombia, Costa Rica, Hong Kong, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Taiwan, Turkey, the United States, and the European Union (representing its 28 member countries). The United States and the European Union are taking the lead, after Australia played a key role at the start of the negotiations.

Even though it encompasses such obviously asymmetric economies, the agreement being negotiated makes no provision for special or differential treatment based on the relative size of the economies or their level of productive and technological development.

By the end of 2016, 21 rounds of negotiations had taken place since the launch of the negotiations in March 2013. The talks focus on a core text that contains cross-cutting obligations and institutional clauses that apply to all services. There are also three proposed annexes of so-called 'horizontal disciplines' that place limits on governmental authority, covering 'domestic regulation', 'transparency', and 'localization' requirements for companies. Finally, 15 sectoral annexes are being negotiated. These seek to establish specific conditions for different types of services and modes of supply. This latter group includes an annex on state-owned enterprises.

TiSA could become the international treaty that most faithfully reflects the current dynamics of wealth accumulation in the capitalist system. The organization of production based on global value chains and the increasing financialization of the economy are the two processes that structurally underpin the system today. The transnationalization of production is the result of the boundaries of exploitation being constantly pushed back in the search for ever cheaper options for accessing the commons and imposing increasingly insecure conditions on the working class.

In this context, the reduction of state intervention in social and economic life to the bare minimum is seen as the condition that defines what market analysts call 'a good business climate'. This is why there is such strong pressure to deregulate and privatize activities associated with the provision of public services.

This process is also linked to strategies to outsource various productive activities, making it easier to relocate investment in places with greater installed

capacity and/or lower labour costs due to depressed wages.

Deregulation of the financial system is another fundamental concern for transnational corporations interested in promoting their business on a global scale. The pressure to deregulate is explained, first, by the workings of the international chains of capital accumulation, both to allow corporate mechanisms to function at the global level and to improve the conditions for making a profit by means of the arbitrary location of capital for tax evasion purposes. Second, the financial market is an increasingly profitable line of business for the transnational corporations themselves. Despite the heavy and lasting impact of the financial crisis that erupted in 2008, the debate on financial system regulation is being strongly obstructed by corporate interests.

In this context, the weight of services in the economy is growing. The globally configured processes for the physical production of goods increasingly contain complex networks of services incorporated within them.

### **TiSA and transnational corporations**

Large transnational corporations are both protagonists and beneficiaries of the new dynamics of capital accumulation. The main obstacles preventing them from fully implementing their business model are the various national laws that seek to establish sovereign measures to protect or regulate the life of society in a way that benefits the great majority of people. The TiSA proposal is above all a way to place limits on the sovereign authority of states.

Analysis of the statements made by the Global Services Coalition (the international business association that brings together the main transnational service providers in several of the countries that are negotiating TiSA, under the leadership of US corporations such as Google, Microsoft, AIG, Citigroup, Walmart, 21st Century Fox, Intel and UPS) shows the direct influence of corporate power on the design and structure of the negotiations. The conversations about TiSA take place under a high degree of secrecy, but this is selective: while civil society organizations depend on leaks of unofficial information in order to access (some of) the content of the negotiations, the transnational corporations have been very closely involved in the ins and outs of the talks. The corporate coalition has publicly expressed its appreciation of "the opportunities provided by TiSA participating governments for consultation with services industries worldwide" ([www.servicescoalition.org](http://www.servicescoalition.org)).



**ANTEL's Telecommunications Tower** – *The state-owned company ANTEL has positioned Uruguay as one of the world's leading countries in telecommunication services and universal access to high-speed broadband Internet.*

## TiSA, public services and the state

The voraciousness of the terms under negotiation in TiSA with regard to public services and the role of the state in trade or industry reflects a view of the economy and society that is rooted in the neoliberal mindset. TiSA is designed as a means to guarantee transnational services corporations a larger share of the market, and policies to regulate or provide public services are therefore an obstacle to be removed. Hidden behind ambiguous language, which supposedly safeguards the sovereign power of states to perform their roles, the obligations contained in the agreement reflect a strong commitment to privatization.

This vision of the minimalist state is reflected in the definition of public services. According to Article I-1:3 of the TiSA core text, “a service supplied in the exercise of governmental authority” means any service which is supplied neither on a commercial basis, nor in competition with one or more service suppliers’.

In practice, this definition implies that the only activities the state will still be responsible for are defence and the justice system. Rights to healthcare, education, energy, water, leisure, communication and culture are ignored, and states are obliged to give up on the effective protection of fundamental human rights.

The agreement's drive to privatize is also evident in the inclusion of the so-called ‘ratchet’ and ‘standstill’ clauses in the core text. The ratchet clause means that states are obliged to ensure that any measure to deregulate or open up the market to allow private companies to provide a service remains in place indefinitely.

There are numerous examples all over the world of failed concessions for the private sector to supply basic services, particularly water and electricity. If TiSA enters into force, any deregulation experiment governments might try out would automatically become permanent. The aim of the standstill clause is to ensure that the existing level of regulation when the agreement is signed

will be set as the ceiling, and any subsequent changes can only go in the direction of further deregulation.

### **Towards the minimalist state and weak state-owned enterprises**

In the 14th round of negotiations held in October 2015, the United States introduced a chapter on state-owned enterprises. The proposed text replicated the basic content of the draft Trans-Pacific Partnership Agreement (TPP), signed in February 2016 and currently torpedoed after the new US government announced that it was withdrawing from it.

The agreement's obligations would apply to 'juridical persons' (companies) in which the state owns a majority of the share capital or exercises majority control in the management body, and that are 'principally' engaged in commercial activities aimed at supplying a service or producing a good that is made available to consumers in the market.

Although non-profit-making entities are not affected, the definition of profit is so restrictive that in reality it leaves little room for any enterprises providing basic services to be exempted, even though their sole purpose is to ensure that services are accessible and affordable.

State-owned enterprises are to be obliged to abide by commercial considerations with regard to price-setting, quality standards, distribution, marketing and other aspects of the supply of services. Enterprises that operate under a government mandate to provide a public service are exempt from this obligation. The exemption is deceptive, however, because there is still the obligation not to discriminate between local and foreign suppliers or providers, and this reduces the ability to operate in accordance with anything other than market considerations.

TiSA seeks to limit the role of state-owned enterprises as potential agents of productive and technological development, by expressly prohibiting the possibility of discriminating in favour of national suppliers. The exemption of public procurement from the obligations of this chapter is also fallacious, because it only applies to the procurement of services purchased for governmental purposes. Under the terms of the agreement, the provision of basic services would not be eligible for the exemption.

The refusal to recognise the special status and role of state-owned enterprises is also reflected in the obligation imposed on states to introduce regulatory frameworks and bodies that guarantee the 'impartial' and equivalent treatment of public and private enterprises.

TiSA works like a complex piece of machinery, as the conditions specifically negotiated for a certain sector are reinforced by the stipulations made in the chapters that introduce general conditions. The obligations regarding domestic regulation are a case in point. Because of the very nature of services, the removal of obstacles to the operation of service-provider companies introduced by domestic regulation in any of its forms (laws, decrees, regulations) is of key importance in the agreement's rationale. The annex on domestic regulation establishes the requirements of objectivity, reasonableness, impartiality, transparency and need as conditions that states must meet when they introduce any regulations. This means that any regulations regarding the operation and control of state-owned enterprises may be challenged if corporations see them as discriminatory or restricting their profit-making potential.

TiSA also places strong constraints on states that are supposedly justified by the objectives of transparency. These constraints are set out in both the horizontally-applicable annex on transparency and in the annex on state-owned enterprises. The latter establishes the obligation for each party to keep the other parties informed about all its state-owned enterprises. States are also obliged to disclose sensitive information about their enterprises, including the composition of share capital, annual revenue, the nature of the organizational structure, financial reports and audit reports, every time another state asks for such information. For another state to request this information, they only have to argue that the activities of the state-owned enterprise are affecting the trade in services between the parties.

The objective of transparency is in fact a pretext to restrict the scope of government policies and expose states to the interests of transnational corporations. The obligation to make public sensitive information about state-owned enterprises leaves them vulnerable to the possibility that their strategic commercial interests will be negatively affected when they have to operate in the deregulated market and compete with major corporations.

### **Uruguay's example and its significance for other countries**

The Uruguayan government asked to join the TiSA negotiations in February 2013. It formally entered the talks two years later, in the 11th round of negotiations in February 2015.

Public debate about the implications of Uruguay's participation in TiSA began prior to its formal entry in the negotiations, but the social movements then stepped up their campaign and worked to make public opinion aware of their concerns about the agreement.

Uruguay has a robust democratic tradition rooted in strong state institutions that take part in the social, economic and political life of the country. This has enabled the country to survive the golden age of neoliberalism in Latin America without suffering too harshly from the aggressive privatization of public assets and their handover to foreign capital, as happened in neighbouring countries. What took place in Uruguay was a very interesting campaign to defend state-owned enterprises by using the tools of participatory democracy, accompanied by intense grassroots mobilization.

Furthermore, the policies taken forward for the last 11 years by the Frente Amplio governments (a coalition of left-wing parties) place state-owned enterprises at the heart of the national development project. The ultimate nature of this project is a subject of constant debate and dispute among the political parties and social movement organizations. Nevertheless, there is widespread consensus about the need to transform the structure of the economy by moving it away from the

primary sector and extractive industries and promote the development of productive sectors with a larger industrial processing and technology component. The leading role played by state-owned enterprises in this regard is unquestioned and likewise the subject of widespread consensus. In recent years, these enterprises have played a key role in modernizing sectors that are strategic for productive development, such as energy and telecommunications.

The debate was already going on in Uruguay before the TiSA annex on state-owned enterprises was published by Wikileaks in October 2015. Analysis of the core text and the annexes on domestic regulation, government procurement, telecommunications and financial services was enough to sound the alarm regarding the threat that TiSA's entry into force would pose to state-owned enterprises and government involvement in areas that are key to social welfare: the provision of health and education services, the coverage of social protection programmes and the regulation of employment relations, as some of the most important.



PHOTOGRAPH: FRENTE AMPLIO

**President Tabaré Vázquez addressing his followers during the last electoral campaign** – In September of 2015 Vázquez announced the retirement of the Uruguayan government from the negotiations of the TiSA, facing strong pressures from civil society and his political force, the leftist coalition Frente Amplio (Broad Front).

Moreover, state-owned enterprises in Uruguay currently or potentially play a clear and very important role in society. As an example of the roles they currently play, universal broadband coverage has been expanded to enable every person in the country to access the internet. This is thanks to the existence of the national telecommunications company (ANTEL), which has positioned Uruguay as a world leader in the extension of the fibre-optic network. As an example of their potential roles, a lively debate is taking place in the trade union movement and parts of the political left about introducing a system of public procurement that includes all the state-owned enterprises and helps to promote micro, small and medium-sized enterprises, cooperatives and the social and solidarity economy everywhere in the country.

Between the time when the Uruguayan government asked to join the TiSA negotiations and its acceptance by the countries already involved (particularly the United States), it became evident that the government was being put under pressure to alter its telecommunications policy. Government spokespeople at the time testified that representatives of the US government were lobbying on behalf of the large transnational corporations who were interested in consolidating or expanding their presence in the country, and today are competing with the state-owned enterprise.

Government ministers responsible for industry, health, livestock farming and labour likewise expressed their reservations about the country remaining at the negotiating table. The prestigious Universidad de la República expressed similar concerns. A public statement signed by well-known political, academic and cultural figures was launched in May 2015. In it, they warned of the dangers of the agreement for the country's ability to determine its own development. In particular, they mentioned the impact TiSA would have by 'rolling back the state's role as the driver of development, to the detriment of state-owned enterprises'.

Finally, a major national campaign was launched by the trade union movement in partnership with other social movement organizations, particularly REDES-Amigos de la Tierra. They carried out awareness-raising and advocacy work with politicians, disseminated information to public opinion and organized major popular protests, in which thousands of workers took to the streets to demand the withdrawal of the country from the TiSA negotiations. In September 2015, following a statement issued by the Frente Amplio leadership in favour of withdrawing, Presidente Tabaré Vázquez announced that the

Uruguayan government would no longer be participating in the negotiations.

Uruguay's withdrawal demonstrates that it is possible to break free from the TiSA process. There were no reprisals or negative impacts. On the contrary, the country has gained the sovereignty it needs to continue trying to build an autonomous national development model without betraying its values and political history.

Following the Uruguayan example, various social and trade union movements in other countries have been organizing protests and days of reflection in the attempt to get their governments to take the same path. One of the countries that could be worst affected by TiSA is Costa Rica, bearing in mind the social and economic importance of its state-owned enterprises. In three of the areas covered by TiSA – water, electricity and telecommunications services – Costa Rica has state-owned enterprises that are recognised worldwide as models of good public management. The existence of strong and efficient state-owned enterprises has enabled the country to achieve levels of social development very much higher than the other Central American nations.

In particular, the Costa Rican Electricity Institute (*Instituto Costarricense de Electricidad – ICE*), working together with other public institutions, cooperatives and municipal enterprises, has managed to achieve a level electricity coverage that is practically universal and based almost entirely on renewable energies. Furthermore, the ICE continues to be the leading provider of telecommunications services, despite having to compete – similarly to ANTEL in Uruguay – with two large transnational corporations: Spain's Telefónica and Mexico's Grupo Carso. All these achievements would be under threat if Costa Rica joins a trade liberalization agreement that offers no benefits to the most dynamic sectors of the country's economy.

The academic community, the trade union movement and various local business organizations have called on the government of Costa Rica to withdraw from the TiSA negotiations.

An opinion piece published on 30 August 2016 in Costa Rica's leading newspaper (*Prensa Libre*) stated that TiSA's impact on Costa Rica would be 'devastating for a country that has a significant and wide-ranging network of public services which, despite the battering quite a few of them have taken, are still designed to achieve social inclusion'. The same article argued that 'in Costa Rica's case, the breadth of the TiSA agreement will decapitate every type of service in the country, whether public or not, due to the unlimited opening up of service provision under the neoliberal ideology of free trade. As we are already seeing, it is designed to allow transnational

corporations to end up controlling the country's entire economy and financial system.'

The growing opposition to TiSA is not only being felt in Latin America. In Mauritius, the first and so far only African country to join the negotiations, various social movement organizations have expressed the concern that signing up to this agreement is part of a broader process of privatizing public services such as education, health and transport. The trade union movement has also criticized the government for conducting the negotiations in secret.

In November 2016, in response to multiple criticisms and demands for greater transparency, the Minister of Foreign Affairs, Vishnu Lutchmeenaraidoo, stated that 'the government of Mauritius also has its doubts about the content and objectives of TiSA', that it was aware that 'the capitalist block has always pursued decisions that benefit rich countries', and that it was necessary for 'the countries of the South, whether in the ACP or

the G77, to realise that the Western powers are taking the lead in the decision-making process'. He concluded that 'there needs to be a consultation phase' and 'until we get a response to all our doubts and concerns, we won't be signing anything'.

As happened in Uruguay before the government decided to withdraw from the negotiations, in Mauritius and Costa Rica doubts and concerns are increasing about TiSA's advance, as well as the continuing secrecy and the leading role played by corporate power in the negotiations.

In the words of Radhakrishna Sadien, coordinator of the cross-sectoral campaign to defend the sovereignty of Mauritius, *Pou Sovegard Nou Souverennte*: 'We need transparency. We cannot allow the discussions to take place in secret when we know there will be a challenge to our sovereignty, and the multinationals will be taking control of that sovereignty. That is the reason why other countries [should] never sign the final TiSA agreement.



PHOTOGRAPH: ICE

**ICE's geothermal plant** – *The solidarity-based model of public management promoted by state-owned enterprises in Costa Rica, a country with a long and rich history of state-driven social and economic development, could be threatened by TiSA.*

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*Transnational Institute (TNI) and REDES Amigos de la Tierra - Uruguay are partners in an international research and advocacy network that seeks to raise awareness of the impacts of free trade and investment agreements. To find out more about our work, visit our websites::*



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