

# TiSA: Not our future!

*When everything is a service, a Trade in Services Agreement affects everyone*

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## 1. HOW TISA CAN HARM THE IUF FAMILY

Imagine that the biggest transnational corporations in the world – Dole and Cargill, Tyson and Walmart, Uber and Airbnb, Sodexo and Hilton, McDonald's and Coca-Cola, as well as Google, Facebook, Amazon, the big banks and logistics firms – get to design a set of **enforceable global rules** that let them maximise their profits and minimise their responsibilities, including their responsibilities to labour and consumers, while further enhancing their capacity to escape taxation.

Imagine that governments from over 50 countries sign a binding and enforceable treaty that adopts these rules, and promise to obey them forever, on pain of economic penalties.

Imagine, too, that this all happens in secret, screened from the scrutiny of the workers and unions, local businesses, consumers, citizens and even national lawmakers, who are affected.

That's what has been happening since negotiations on the Trade in Services Agreement (TiSA) began in 2013.

Why should the IUF family be concerned? TiSA has the potential to lock in the worst practices across the entire food industry and fuel the continued erosion of rights, including labour rights, which has characterised the neoliberal era. Further, it aims to prevent governments from addressing recognised and future problems, including global warming, obscene inequalities of wealth and income, and the unaccountability of a footloose platform economy.

Some sections of the IUF might say: 'this has nothing to do with us ... we are agricultural workers, manufacturing workers, not service workers ... that's for our tourism, hospitality and catering members, but doesn't affect us'. But the world has changed over recent decades. That old distinction between services and manufacturing no longer applies – certainly not in the world of free trade and investment agreements. The 'servicification' of the global economy, including manufacturing and agriculture, brings those activities and their workforce under a new and powerful set of 'trade in services' rules that are made in secret and enforced outside the country.

Similar rules are being proposed for other mega-free trade and investment deals like the Trans-Pacific Partnership Agreement (TPPA), reborn as the Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP),<sup>1</sup> the Regional Comprehensive Economic Partnership (RCEP)<sup>2</sup>, the Transatlantic Trade and Investment Partnership between the US and EU, the Canada EU agreement (CETA), and the EU's negotiations with Mercosur, Indonesia and the African, Caribbean and Pacific countries.

### **Box 1. What is TiSA?**

*Since 2013 the following governments have been negotiating a secretive ‘trade in services’ deal that would lock the world into the failed neoliberal model of the past four decades: Australia, Canada, Chile, Colombia, Costa Rica, European Union, Hong Kong, Iceland, Israel, Japan, Lichtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Sweden, Switzerland, Taiwan, Turkey, United States of America. They call themselves **The Really Good Friends of Services**.*

*Their agenda has been set by some of the world’s most powerful transnational corporations [TNCs] organised through the lobby group ‘**Team TiSA**’. Its six US co-chairs come from Citigroup, IBM, UPS, Walmart, MetLife and Liberty Mutual. Team TiSA wants a ‘21<sup>st</sup> century agreement’ that removes all barriers to their global expansion and profitability and puts handcuffs on national governments’ right to regulate in the public interest, including regulation to protect labour and workers’ rights. They especially want to prevent the future regulation of new services and technologies in the digital and network economy.*

*If these and other governments adopt TiSA’s rules, they will seriously limit the ability of workers to win more effective and enforceable protections in the future, and the ability of unions to organise and defend the interests of their members. That includes workers in manufacturing and agriculture, because the trade in services agreements treat them as part of the services workforce.*

*TiSA negotiations take place in secret, but we know most of what’s being proposed because there have been many leaks of the draft texts. The most recent were from the last round of negotiations in November 2016. Since then TiSA has been on ice, pending a decision by US President Trump about whether he wants to continue. The EU also needs to decide whether Big Tech’s demands to control and exploit data can be reconciled with the human right to privacy, and if so how, and whether it will continue to insist on its ability to regulate services that are not yet invented, which TiSA would seriously undermine. However, there is no room for complacency. TiSA negotiations could suddenly re-start at any time. Meanwhile, some of its most toxic elements are being mirrored in negotiations for other so-called ‘21<sup>st</sup> century’ agreements.*

*This report explains the main implications of TiSA for the IUF’s membership, and why it is vital not only to ensure that the TiSA negotiations never restart, but also that its proposals are not transplanted into any other agreements.*

## 1.1 Consolidating Corporate Power

The global concentration of corporate power across the entire food system makes agreements like TiSA especially dangerous.<sup>3</sup> Today, a handful of mega-corporations dominate agribusinesses and agri-tech, chemical and seed corporations, beverage giants, catering and hotel and fast food chains. The global strategies of giants like Nestlé, Cargill, John Deere, Sodexo, Compass, Walmart, McDonalds and Marriott are beyond the control, and often the knowledge, of most governments – let alone the businesses, workers and consumers that have become dependent on them.

Their quest for ever-greater ‘efficiencies’ inevitably means cheap labour and more precarious work, often through exploitation of migrant workers and repression of unions. Usually, it is only the large well-resourced firms that can make the investments and meet the standards and price that those global strategies demand. Local businesses that try to compete tend to do so by suppressing wages and conditions even further.

Proposed rules on foreign investments in services, cross-border supply of services, financial services, government procurement, and domestic regulation would further strengthen corporate control and concentration. There are no corresponding rules to force greater competition or restrict the leading TNC’s abuse of their dominant market power.

Corporate dominance extends beyond those that specialise in the food system. The financialisation of capitalism – another feature of neoliberalism – has put the money men in charge of the real economy. TiSA would extend and lock in forever the hands-off approach to financial services that has submerged much of the world in a series of financial and food crises over the past 30 years. That includes the free rein given to speculators who drive commodity prices, creating gluts and shortages that play havoc with livelihoods and food sovereignty.

TiSA would also protect and promote debt-financed speculators like the private equity firms that own some of the largest food industry players, and whose goal is to maximise short-term returns to investors by cutting costs and streamlining operations across firms and countries. Their high-risk culture is infecting huge and influential investment funds like Berkshire Hathaway that once had a longer-term approach to investment in the food industry.

## 1.2 What the Corporations want from TiSA

The demands of a corporate lobby that calls itself ‘Team TiSA’<sup>4</sup> have driven TiSA (and many other mega-agreements). It is organised through the Global Services Coalition, whose position paper on TiSA describes services as ‘essential components in all global supply chains and represent a growing share of value-added embodied in traded goods’. This reflects the rise of ‘knowledge-based activities’, development of the Internet, and *‘the enhanced interplay between services and the manufacturing and agricultural sectors*. Major advances in computer networks, telecommunications, express delivery, and air transportation, have driven this economic shift’.<sup>5</sup>

Their wishlist for TiSA includes unrestricted cross-border services and data flows, no requirements to hold data within the source country or to have a local presence in the country, full commercialisation of multi-purpose state-owned enterprises (SOEs), no regulation of future new services, corporate rights to comment on new or revised

regulations, coherence across countries' regulatory regimes, and restricted exceptions for privacy.

Membership of Team TiSA is dominated by the tech, finance, logistics and retail giants: one third are IT and telecom companies. But distributors like Walmart and the US Retail Industry Leaders Association are also on board, as is the international National Retail Federation whose members include chain restaurants across the US and 45 other countries,

The American Farm Bureau Federation is in Team TiSA. Its participation reflects a historic interest in farm insurance, including crop insurance and reinsurance services. More recently, the Federation has been promoting digitisation of farming, such as the use of drones in 'precision agriculture' (see section 4.4).

These corporations have a long history of pushing for trade in services rules that allow them to expand offshore, and that require governments to deregulate and prioritise commercial over social goals. In TiSA they are demanding more extensive rules and commitments that would insulate them from attempts to regulate their activities, whether the government is trying to defend jobs, health and safety, consumer standards, human rights or privacy, or to apply the country's fraud or competition laws, or to collect taxes, or to protect people, businesses and the country from cyber-attacks and commercial sabotage.

The leaked TiSA texts show they have succeeded in securing most of their wishlist; disagreements among the TiSA parties centre on how far those rules should go.

The corporations are also set to strengthen their influence over government decisions through an Annex on Transparency – which means transparency for the corporations. When a government proposes to introduce new regulations, it would have to give other parties to TiSA and 'affected persons' the opportunity to comment and be listened to. In theory, this could also apply to unions and other civil society organizations, but it looks like the government gets to define the term. In practice, it is big business that has the knowledge, resources and connections to take advantage of this access.

In some countries 'transparency' is already part of a broader regulatory assessment process that privileges a light-touch approach to regulating in the way that is 'least burdensome' for business. Additional 'regulatory disciplines' proposed for TiSA would require 'evidence-based decision making', which is a license for industry lobbies to commission and submit research that supports their arguments. An exposé in 2017 showed Monsanto had ghost-written studies that were published in the names of reputable academics.<sup>6</sup>

The commitment to 'transparency' and 'evidence-based' regulatory processes would reinforce the existing power of corporate lobbies. Corporate and industry representatives are already embedded in the policy processes of leading TiSA countries, including US advisory committees and the European Commission's business relationships. These influencers drive trade negotiations and provide inside knowledge to the corporations. The notorious revolving door between industry and government has extended to the tech sector, with Amazon and Facebook recently hiring former US trade officials, while IT and finance moguls have been influential in the Trump administration.<sup>7</sup> In 2017 Google spent more on lobbying in the US than any other corporation.<sup>8</sup> Uber retains an army of lawyers and lobbyists to develop legal strategies and operational tactics to avoid regulation.<sup>9</sup>

### **1.3 The Contest between Capital and Labour**

TiSA is fundamentally about power. The contest between labour and capital within a country or globally has always been about the power to determine the share of the value that is being created. These struggles take place under a framework of laws, policies and administrative decisions (in trade-speak 'measures') that are principally determined by national governments in sovereign states. The content of those laws, and control over the states that make them, are politically contested. For the past 30 years of neoliberalism the pendulum has swung heavily in favour of capital, especially mega-corporations.

The same political struggle takes place locally between groups of unionised workers and the bosses in individual workplaces. Most directly, it's a struggle over basic rights to unionise and bargain collectively, the daily realities of workers' wages, conditions and workplace safety standards, and the protection of local jobs and of vulnerable groups of workers, such as women and migrant workers.

As members of society, workers also demand the right to public pensions, unemployment benefits, fair immigration rules, public education and health systems. These outcomes are shaped by a battle over ideology, values and interests, seen today in the widespread recognition that the neoliberal paradigm of the past four decades is unjust and unsustainable. Those injustices and inequalities have generated renewed demands for progressive change. Secretly negotiated, binding and enforceable mega-agreements like TiSA, TPPA and RCEP can be seen as a strategy to prevent that from happening by expanding the pro-corporate rule-book, locking in the deregulation and privatisation of services, and embedding the neoliberal paradigm for the indefinite future.

These negotiations are also a site of contest. The suspension of TiSA and TTIP, the stalling of CETA's ratification, the withdrawal of the US from the TPPA and its controversial renegotiation, the slow movement of the RCEP are all because their excessive intrusions on democratic domestic policy space have provoked resistance. These wins and losses are part of an ebb and flow born of struggle for power over capital.

### **1.4 Why Focus on TiSA?**

*TiSA is the most concerted, comprehensive, broad-based assault on the right to regulate services we have seen since the General Agreement on Trade in Services (GATS) was concluded as part of the World Trade Organization (WTO) over twenty years ago. It builds on the complex web of bilateral and regional deals negotiated since then. Those deals were too fragmented, and did not go far and fast enough, for the powerful countries and companies who are pushing TiSA.*

Initially, they tried to expand the GATS in negotiations that began in 2000. Proposals in those GATS 2000 negotiations included clusters of commitments on services that make up supply chains (e.g. tourism) or that are integral to them (e.g. multimodal transportation or computer and related services), as well as new restrictions on domestic regulations, such as licensing of services (e.g. hotels or restaurants) and technical standards, (e.g. health and safety requirements). Some countries wanted to include government procurement of services, which is a crucial market for local businesses and source of local jobs.

By the late 2010s the GATS 2000 negotiations were bogged down. States calling themselves the 'Really Good Friends of Services' decided to negotiate their own Trade in Services

Agreement on the margins of the WTO. Their ultimate goal was to transfer TiSA back into the WTO, effectively renegotiating the GATS through the back door. As TiSA progressed, their focus shifted from securing foreign investors' rights to the development of rules that could guarantee the right of corporations to supply digitally-enabled services from outside the country and quarantine the digital economy from future regulation, all in the name of 'e-commerce'.

TiSA became an incubator for many of the new '21<sup>st</sup> century' rules for capital. It forms an important pillar in the broader strategy to develop new global norms that fetter governments, alongside the TPPA, TTIP, the free trade and investment agreements between the EU and Japan, EU and Mercosur, and others that are still in the making.

Ironically, now that TiSA has bogged down, there is a push to negotiate TiSA-style rules on e-commerce in the WTO, along with restrictions on domestic regulation of services and 'facilitating' foreign investment.

While this report focuses on TiSA, these broader contexts must be kept constantly in mind. If they succeed in creating a binding and enforceable new rule-book for 21<sup>st</sup> century capitalism, the prospects for workers and unions to achieve a more just society look bleak. The challenge facing IUF, along with many others, is to make sure they don't succeed.

## **1.5 The Battle for Geopolitical Control**

This multi-pronged strategy is also an attempt, in part, by a cluster of wealthy countries and their transnationals to counter China's increasingly prominent role in the global economy. China's One Belt One Road (OBOR) initiative aims to build a consumer-based economy that serves China's growing middle-class and ensures domestic food security, thereby securing the power of the one-party state.

The physical component of OBOR requires massive investments by China's state-owned companies and its powerful private TNCs in other countries' natural resources and agri-food sectors, including land. China has also become a powerhouse in the rapidly expanding digital economy as it creates a Digital Silk Road. Alibaba now provides the platform, infrastructure, data facilities and payment system for most of the e-commerce in the Asian region. In late 2017 it overtook Amazon to become the largest e-commerce platform operator in the world.<sup>10</sup> China also aims to be a leader in automation and robotics. It is seriously interested in biofuels.

China has a huge interest in the development of global rules on services that work for China. It wants to defend the state's power in areas of domestic sensitivity or weakness, while advancing its digital and investment strategies, and exporting its authoritarian, anti-union workplace culture, especially through influencing the application of domestic labour laws to its operations.

China's 21<sup>st</sup> century rulebook is therefore not the same as that proposed for TiSA. Indeed, the US insisted on excluding China from the TiSA and the TPPA so it had no voice in designing the rules. However, China is active in other negotiating arenas, such as the RCEP and backed proposals to begin negotiations on electronic commerce and investment in the WTO.<sup>11</sup> The WTO Director-General announced a joint e-commerce initiative with the World Economic Forum and the Electronic World Trade Platform (e-WTP), created by Alibaba founder Jack Ma.



Workers and citizens in all countries are treated as collateral damage as this geopolitical contest plays out.

## 2. WE ARE ALL SERVICES WORKERS NOW!

Old classifications of work no longer apply in today's capitalism. The IUF's membership spans the entire food supply chain. Food is the *physical product* that workers grow, process or serve. Those *commodities* – bananas, canned fish, hamburger patties, beer – are subject to trade rules on *agriculture*, which restrict measures like subsidies, border taxes and quarantine rules, and trade rules on *goods*, which prevent protections for local producers and restrict labelling and product requirements. Workers' activities that *create* the food on the banana plantation or fish farm, *process* it in the meat plant or brewery, *distribute* it inside countries or across border, *sell* it in the real world of bricks and mortar shops or via the Internet, then *cook* and serve it in the restaurant or *deliver* it through AmazonPrime or UberEats are considered *services*.

### 2.1 The 'Servicification' of Agriculture and Manufacturing

The process of 'servicification' explains how activities intrinsic to dairy, aquaculture or factory processing, which were previously viewed as manufacturing or agricultural work, are now classified as services work, alongside services that are inputs. The women and men who labour in tea plantations and aquaculture, the breweries, dairy and meat factories, are all now regarded as *services workers* within a large and diffuse 'supply chain' that organizes human labour.

This new world of services is constantly shifting and expanding. Activities that were once part of a unified manufacturing or agricultural operation are now splintered, contractualised, digitised and automated. Work in a vineyard, processing plant, warehouse or hotel has been divided up among different service suppliers and contractors. How they are supplied will vary from a family farm to a corporate farm to IT-based 'precision agriculture' and indoor digital farms. Some services may still be provided in-house. Sometimes work is outsourced to firms who provide the picking, cleaning and packing. Sometimes the responsibility for employment itself is outsourced, with personnel agencies providing temporary or specialist labour. Sometimes they are a combination, with contractors recruiting their workforce through personnel agencies. Services that are contracted in or outsourced may be provided from within the country by foreign or local firms, or remotely from offshore.

Traditional services work is also being constantly reorganised and redefined:

- Many catering services were once supplied internally by public or private companies. These were then outsourced to new specialised companies like Sodexo, which expanded to become a 'catering and facilities management' company, branching out into security, cleaning etc. Sodexo now calls itself a provider of 'quality of life services': '*We are the only company in the world that offers integrated Quality of Life services to its clients through On-site Services, Benefits and Rewards Services and Personal and Home Services in 80 countries around the world.*'<sup>12</sup>

- Today's hotel chains like Hilton or Intercontinental and fast food operators like Dunkin Donuts and Subway rarely run the operations themselves. They sell franchises and make their money from fees and management contracts, and are commonly located offshore. Individual franchises then contract in or out various aspects of the work, from housekeeping and cleaning to food preparation and security.
- In a decade, platform owners like Amazon, Airbnb, Expedia and Uber have come from nowhere to dominate online transactions in retail, accommodation, travel and transport. Yet they insist they are merely computer companies with no link to the business activity and have no responsibility to comply with relevant laws and obligations, including employer obligations.

Some would say these trends are not new. At a macro-level that's true – all human inputs to the food system are services provided by people. But the reorganisation of the food production supply chain and its formal redefinition as a 'service' change the way that work is perceived and regulated. Services work, outside of public services, management and the professions, is traditionally low paid and vulnerable, largely because it is highly feminised, viewed as low-skilled and often done by migrants. Sometimes the entire class of service workers has inferior protections under domestic labour laws.

'Servicification' also undermines union organising, collective bargaining and industrial action. The contractualisation of services activities under intensely competitive conditions erodes the opportunities for, and the feasibility and culture of, solidarity. Likewise, the splintering of tasks into minute roles within a single transaction that spreads across multiple countries, means there is no single employer to bargain with. Binding and enforceable rules on 'trade in services' in TiSA would empower corporations to lock in, advance and adapt these trends. In doing so, they further undermine the power of workers, unions and citizens to demand social and economic justice through new national laws and through alternative international treaties that can deliver a progressive future.

## **2.2 Why Servicification is Crucial to TiSA**

As Section 3.1 explains in more detail, all the services in the value chain for a particular service, from conception to production to end-use, appear in the services classification list that is used as the basis for deciding what is covered by TiSA.

These are just some of the separate service activities in the dairy sector that could be subject to TiSA's rules: real estate, stock agents, veterinary services, research and development (R&D), artificial insemination, milking, fertilising, irrigation, weather forecasting, soil testing, milk testing and analysis, scientific and technical consulting, data processing, satellite services, haymaking, buying, leasing and repairing farm equipment, water supply, effluent disposal, accounting, commission agents, freight transport, all the services activities include abattoirs, meat and dairy processing, wholesaling, retailing, bank lending, disaster insurance commodity markets, futures trading.

Fishing spans an equally wide range of services sub-sectors, including ship construction, leasing of vessels with or without crew, vessel repairs and maintenance, certification and inspection, recruitment of crew, insurance, R&D, satellite tracking, GPS and sonar, maritime, port and stevedore services, refrigeration and warehousing, refrigerated ground transportation, air and sea freight, canning and processing, packing, labelling, auctions, spot markets, quota leasing or trading, wholesale markets, supermarkets.

Box 3 sets out the actual classifications for ‘services incidental to agriculture’, ‘services incidental to manufacturing’, ‘services incidental to fisheries’, as well as the traditional services sectors of tourism and employment agencies. It soon becomes evident that TiSA could reach into almost every activity of every sector of IUF’s membership.

### 2.3 Digitisation of Services Work

TiSA is meant to cement in and intensify the trend to servicification. At the same time, TiSA is designed to advance a digital revolution that will have equally significant, but less predictable consequences for the IUF workforce.

Champions of the so-called 4<sup>th</sup> industrial revolution celebrate the potential for digital technologies to disrupt social and economic life and people’s livelihoods. The past decade has seen the advent of online marketplaces that match buyers and sellers of groceries, fast foods and hotel rooms; driverless tractors, and pizzas delivered by drones; surveillance devices that track a worker’s every move in the abattoir or the hypermarket; automated pickers of fruit in orchards and packages in warehouses; algorithms that decide which job applicant meets the gender, race and class profile *and* is compliant enough to get the job. Even food is produced by 3D printers and meat is grown in labs.

The digital economy is controlled by a club of relatively new mega-corporations. They are largely based in the US, but increasingly also in China. Big Tech, sometimes referred to by the shorthand term GAFA (Google, Amazon, Facebook and Apple), owns the technology and intellectual property, runs the digital platforms and payment systems, and most importantly controls the data on which the digital economy depends.

Evidence of constant disruption is everywhere:

- Amazon Prime and UberEats threaten the survival of brick and mortar supermarkets and fast food chains, whose belated attempts to compete through automation and online put even greater pressure on workers right along the food chain.
- Airbnb became the world’s largest accommodation supplier in 2015,<sup>13</sup> despite owning no property. Its largely private offerings are eroding hotel occupancy and affordable housing on the local rental market. Cleaning of Airbnb rentals is entirely unregulated, off the books, and organised through contractors, amplifying the pressure on these already precarious, largely female and predominantly migrant workers.
- Old agribusiness giants like Bayer and John Deere have responded to the intrusion of electronic firms like Panasonic and Fujitsu into food production [Box 4] by reinventing themselves as agri-tech companies that market ‘precision agriculture’ and automation that replaces human labour.

These changes have occurred incredibly fast. The digital economy is barely regulated and governments are playing catch up. Few of them understand what is happening now, let alone have anticipated the regulatory challenges of the future. Genuinely empowering options are tentatively being explored, such as ‘community data’ where the value created from data generated by communities must be returned to the community and not exploited by some corporation. Big Tech is determined to pre-empt that.

Many governments, especially in the global South, are being told they can leapfrog the old industrial era by embracing the digital economy. They are being seduced with promises of

innovation, efficiency, new jobs and access to international markets, more choice and cheaper services for consumers. Yet the barriers they face are set to intensify as TiSA strengthens the oligopoly of Big Tech over the entire digital infrastructure.

Consumer demand, especially in richer countries, has fuelled this growth, although downsides of barely regulated platform operations for consumers are becoming more widely understood.

Negative impacts for workers are obvious: the digital revolution potentially threatens the livelihoods of workers in every activity covered by the IUF, from plantations and factories to hotels, catering, and restaurants. Work is increasingly automated. Employers' decisions are made using computer algorithms. Jobs are precarious and contractualised, or described in bogus terms as 'self-employed'. The future of work in the next ten, let alone thirty years, is literally unimaginable.

Workers are under constant surveillance, even purportedly for their own welfare.<sup>14</sup> Fujitsu markets a technology called the 'Ubiquitousware' series of solutions as a means to prevent accidents through early detection. The software aggregates data from personal sensors, including the flow of workers and goods in warehouses. Every worker is fitted with a location badge, or wristband, that tracks his or her movements. The data is forwarded to a simulator and 'is used to create flow maps that can identify bottlenecks within the warehouse. This helps to minimize worker downtime and improves overall efficiency'.<sup>15</sup>

Digital technologies are changing more rapidly than regulatory regimes can. It takes time to develop new models of regulation. Most countries have no laws in place to protect workers and consumers in the digital environment. Big Tech companies like Uber have global strategies to evade what rules do exist, including by classifying themselves as computer services companies and their workers as self-employed. The combination of TiSA's rules on e-commerce, cross-border services and domestic regulation are intended to shield them from regulatory catch-up.

Unions are also operating on an obsolete model that assumes formal employees work in physical workplaces for employers who are located within the country and are governed by national labour laws. But that is not the current and certainly not the future reality for many IUF unions and their members.

### ***Box 2. Big Tech's Demands for TiSA***

Big Tech's expectation of TiSA is clear. Their operations are barely regulated now. They want TiSA to ensure that remains the case for the indefinite future, even when problems inevitably arise that can't be foreseen now. Imagine ...

- The masters of the global digital economy have a legal right to operate into your country from anywhere in the world. ...
- No need to have any presence inside your country, so they can bypass hard-won labour protections, tax liability and licensing rules and standards, or make them effectively unenforceable. ...
- No requirement that they hold your data inside the country, freeing them from local privacy and consumer protection laws. ...
- No obligation to use your country's telecom or Internet infrastructure that was built with taxpayer money to support local businesses and attract investors, and now risks becoming redundant. ...
- No requirement to use content produced by local firms or employ local workers who would gain access to 'proprietary knowledge'. ...
- Absolute secrecy for their algorithms that drive the search engines, precision agriculture or smart products, which ensures a captive clientele because no-one can replicate the technology. ...
- No accountability for anticompetitive practices that promote their own brands or suppliers who pay extra. ...
- No obligation to disclose the algorithms that screen out pro-union employees, discriminate against women and perpetrate other human rights abuses.

Eleven governments have already agreed to almost all of these global rules in the 'electronic commerce' chapter in the TPPA.<sup>16</sup> They also agreed never to regulate key aspects of the services and technologies that drive the global digital economy for the indefinite future, unless they fall within narrowly prescribed and untested exceptions. The proposed e-commerce annex in TiSA follows the same template.

The EU is a critical player on this issue. Outstanding EU concerns about privacy protection is one of the reasons why TiSA negotiations have been suspended. But the EU has been actively promoting the same e-commerce agenda in FTAs and the WTO,<sup>17</sup> and it seems close to deciding a compromise on privacy that would remove that obstacle to TiSA negotiations resuming.<sup>18</sup>

### 3. FOOD AS A TRADEABLE SERVICE

Activities that are classified as services are potentially subject to the pro-corporate rules of TiSA and similar agreements. It's not surprising that the mega-corporations that dominate the global food industry and transnational supply chains want more expansive rules *and* more commitments of services to those rules. What services are subject to TiSA's rules will depend on each TiSA country's schedule of commitments, and whether its negotiators have (a) listed the service as covered for the market access rule, and (b) listed it as *not* covered for the 'non-discrimination' rules<sup>19</sup>. These rules are described in section 3.2, and in more detail with examples in Annex 1. Schedules are discussed in section 3.2.

#### 3.1 How services are classified

The way to identify whether an activity is classified as a service and if so, how it might be described, is to look at the services classification list used in the WTO (known as 'W/120'). It lists 12 main headings with over 160 sub-headings. This list is used for TiSA to ensure consistency with the GATS, even though it is almost 30 years old.

There is no agreement on whether a commitment on the *means* of supplying a service covers all services delivered that way – in other words, whether a government's commitment on computer and related services commits all digitally-enabled services to TiSA's rules! Services such as Internet Service Providers (ISPs) and cloud computing didn't exist in 1991 and it is unclear what sector they fall under, if any. The description of 'other' computer services is very vague, and it seems outrageous to make a country apply the rules to any computer service that is invented. But some TiSA countries argue that it should.

Using classifications that are clearly out of date or uncertain heightens the legal risk that a proposed regulation is said to breach a country's TiSA obligations.

The W/120 list also doesn't explicitly capture some activities that were almost exclusively public services in the early 1990s, such as water distribution. There are many sub-sectors involved in privatised water delivery. Commitments to any of those sub-sectors, which were made years ago, could now have a much broader impact when applied to water. Likewise, cleaning services that used to be provided in-house are now usually sub-contracted. The W/120 definition covers cleaning in hotels and private accommodation, but doesn't directly cover activities like contract cleaning of a meat processing plant, which was uncommon in the early 1990s. All cleaning through a sub-contract or as contracted cleaners could be a cleaning service, or come under personnel placement services, or both.

Other classifications apply directly to the 'servicification' of manufacturing and agriculture. Box 3 shows what activities fall under specific classifications for 'services incidental to' manufacturing, agriculture and fishing, as well as personnel placement services and restaurant services. These are some of the most obvious service sub-sectors that might apply to IUF's affiliates. But the potential coverage is far more extensive. As section 2.2 showed, many other sectors are involved in the delivery of a service. Inclusion of just one of these sub-sectors in a schedule potentially brings the entire supply chain under the rules. Worse, the rules apply to measures *affecting* the supply of that service.

### **Box 3. Defining agriculture, fisheries, tourism and personnel services**

A helpful way to show the potential reach of the rules in TiSA and similar agreements is to look at how the W/120 list defines services sub-sectors that specifically mention manufacturing, agriculture, fisheries and tourism, as well as personnel placement. *Note that services related to manufacturing and agriculture apply where those activities are conducted 'on a fee or contract basis', i.e. they are contracted in or outsourced as part of 'servicification'.*

#### **Services incidental to manufacture of food, beverages and tobacco, on a fee or contract basis (8841)**

This category is included in the W/120 list of services, but unlike other traditional services there is no explanation of what it covers. That makes it very hard to predict what governments can and can't do if a country's schedule has promised to apply TiSA's market access rule to 'Services incidental to manufacturing', or doesn't specifically exclude that category of services from the coverage of the 'non-discrimination' rules (in the 'negative' list part of the schedule).

The best guide to what might be covered is to refer to the long list of activities covered by 'Services incidental to manufacture of food products and beverages' in the related International Standard Industrial Classification (ISIC) system.<sup>20</sup> ISIC has separate descriptions for **production, processing and preservation of meat, fish, fruit, vegetables, oils and fats** (which all have their own entries!); **manufacture of dairy products, grain mill and prepared animal feeds, other food products, and beverages**. The description for manufacture of meat and meat products alone covers:

**Operation of slaughterhouses** killing, dressing or packing meat of cattle, hogs, sheep, goats, horses, poultry, rabbits, game or other animals including whales processed on land or on vessels specialized for this work. **Production of fresh, chilled or frozen meat or poultry. Preservation and preparation of meat** and meat products by such processes as drying, smoking, salting, immersing in brine or canning. Sausage production is included. Rendering and refining of lard and other edible animal fats. Production of flours and meals of meat or meat offal. **Slaughtering includes the production of by-products** such as raw hides and skins, pulled wool, feathers or down, teeth or bones.

#### **Services incidental to agriculture (881)<sup>21</sup>**

As with manufacturing, there is no specific explanation of what this sub-sector covers. The best guide is the long list of activities covered by 'Services incidental to agriculture' in the related ISIC classification system<sup>22</sup>:

*This class includes specialized activities, on a fee or contract basis, mostly performed on the farm. Providing agricultural machinery with drivers and crew. Activities establishing a crop, promoting its growth or protecting it from disease and insects. Harvesting and activities related to harvesting such as preparation of the crop for primary markets, by cleaning, trimming, grading, drying, decorticating, retting, cooling or bulk packaging. Cotton ginning. Transplantation of rice in rice fields. Activities of farm labor contractors. Landscape planning and design in connexion with planting, stocking, trimming,*

supervising, lawn and garden installation and maintenance and tree surgeons activities (for the care of ornamental trees and shrubs). Operation of irrigation systems for agricultural purposes. Animal boarding, care and breeding. Activities to promote propagation, growth and output of animals and to obtain animal products. Activities such as artificial insemination, herd testing, droving, agistment, poultry caponizing, coop cleaning, dung gathering, etc. Also, sheep-dipping and shearing, egg-cleaning and grading, animal skinning and related activities. Activities carried on for special farm operators such as reptile farms or frog farms but **excluding fish farms**.

[Exclusions: Provision of feed lot services is classified in group 012 (Farming of animals). Service activities to promote commercial hunting and trapping are classified in class 0150 (Hunting, trapping and game propagation including related service activities). Preparation of vegetable fibres for textile use is classified in class 1711 (Preparation and spinning of textile fibres; weaving of textiles). Marketing activities of commission merchants and co-operative associations are classified in division 51 (Wholesale trade and commission trade, except of motor vehicles and motorcycles). Activities of agronomists and agricultural economists are classified in class 7414 (Business and management consultancy activities). Landscape architecture is classified in class 7421 (Architectural and engineering activities and related technical consultancy). Veterinary activities are classified in class 8520.]

### **Services incidental to fishing (882)**

The problem of no explanation also applies to this category. Again, the ISIC list provides a long description of what a commitment to this subsector in TiSA is likely to cover.

*This class includes **fishing on a commercial basis in ocean, coastal or inland waters**. Whale catching. Taking of marine or freshwater crustaceans and molluscs. Hunting of aquatic animals such as turtles, sea-squirts and other tunicates, sea urchins or other echinoderms and other aquatic invertebrates. Gathering of marine materials such as natural pearls, sponges, coral and algae. **Processing** of fish, crustaceans and molluscs **aboard the fisherboats**. **Operation of fish hatcheries** producing oyster spat, mussel and other molluscs seeds, lobsterlings, shrimp post-larvae and other crustaceans seeds and fish fry and fingerlings. Growing of laver and other edible seaweeds. **Fish farming**, breeding, rearing, cultivation of oysters for pearls or food. Service activities related to marine and freshwater fisheries and to operators of fish hatcheries or fish farms.*

[Processing of fish, crustaceans and molluscs not connected to fishing, i.e. on vessels or in factories ashore, is classified in class 1512 (Processing and preserving of fish and fish products). Net making and net mending are classified in class 1723 (Manufacture of cordage, rope, twine and netting). Fishing boat repairing is classified in class 3511 (Building and repairing of ships). Service activities related to fishing practised for sport or recreation are classified in class 9249 (Other recreational activities). Fishing inspection, protection and patrol services are classified in class 7523 (Public order and safety activities).]

### **Hotels and restaurants, including catering (641-643)**

Hotels and restaurants appear in the W/120 list as subheadings of Tourism and Travel Related Services. Yet tourism spans a vast array of other service activities. The WTO identified more than 70 *tourism-dedicated* activities that range from real estate, hotel



construction, refuse disposal, air and ground transportation services, to entertainment venues, cruise ships, tourism degrees, food tourism and tour guides. There were another seventy *tourism-related* services.<sup>23</sup> Since then, the rise of Expedia, Airbnb, Tripadvisor has added a whole layer of digitally-enabled services.

There is a specific tourism category in the W/120 list. It has a sub-heading for hotels and restaurants, with detailed descriptions for various kinds of hotel and restaurant services. The following are the descriptions *just* for services related to serving meals. It is important to remember that additional services classifications could also apply to serving meals. For example, UberEats or Pizza Hut delivery by drone could fall under 'other' food serving service, or be a transport service, a computer-related service, something else, or all of them! That matters because a commitment on any one of these subsectors could bring that activity under TiSA's rules.

#### **64210 - Meal serving services with full restaurant service**

*Food preparation and serving services and related beverage serving services furnished by restaurants, cafes and similar eating facilities providing full service consisting of waiter service to individual customers seated at tables (including counters or booths), with or without entertainment. Included are such services **provided by restaurants, bars, nightclubs and similar facilities, operated in hotels or other lodging places or in transport facilities, e.g. in trains or aboard ships.***

*[Exclusion: Serving services of beverages without prepared food are classified in subclass 64310, if without entertainment, and in 64320, if with entertainment.]*

#### **64220 - Meal serving services in self-service facilities**

*Food preparation and serving services and related beverage serving services furnished by eating facilities that provide a range of pre-cooked foods from which the customer makes individual selections and is billed accordingly. These facilities provide seating but no individual waiter service; they are often known as cafeterias.*

#### **64230 - Caterer services, providing meals to outside**

*Food preparation and serving services provided by caterers to groups, on the premises or elsewhere. Included are related beverage serving services.*

#### **6429 - Other food serving services**

*Other food preparation and serving services and related beverage services furnished, e.g. by refreshment stands.*

### **Placement and Supply Services of Personnel (872)**

Contractualised services work usually involves a personnel recruitment or employment agency that supplies workers directly into the workplace or indirectly through the sub-contractor. The activities of personnel agencies are a sub-sector of W/120 (and the ISIC list). The relevant definitions are:

#### **87205 - Supply services of other commercial or industrial workers**

*Services consisting in **supplying on a fee or contract basis** to the clients, **whether on a temporary or long-term basis, industrial workers hired by the supplier, who pays their emoluments.** Included are supply services of construction workers, maintenance workers,*

*drivers, machinists assemblers, metalworking machine operators, labourers, movers, shippers, etc.*

#### **87209 - Supply services of other personnel**

*Supply services of other personnel not elsewhere classified. This class includes personnel search, selection referral and placement in connection with employment in any field. The **services may be supplied to the potential employer or to the prospective employee and may involve the formulation of job descriptions, the screening and testing of applicants, the investigation of references, etc.** Executive search and placement activities are included as are labour contracting activities, i.e. the supply to others, chiefly on a temporary basis, of personnel hired by, and whose emoluments are paid by, the agency.*

*Exclusions: Activities of **farm labour contractors are classified in class 0140** (Agricultural and animal husbandry service activities, except veterinary activities).*

### **3.2 How Services Become Subject to TiSA's Rules**

Classifications matter because governments promise to apply TiSA's restrictions to specific services sectors in their country-specific schedules. They can make different commitments for the same service according to its 'mode' of delivery, for example whether it is supplied from inside the country (mainly by foreign investment) or from offshore (usually by the Internet). Modes are explained further in Annex 1.

These schedules are complicated and technical, and there is a serious risk of error. Highly neoliberal governments also use them to bind future governments to maintain their pro-corporate model.

Some agreements, such as the GATS, list the sub-sectors that are covered by the main rules in each of the four modes for supplying the service (known as a 'positive' list). Others, such as US Free Trade Agreements (FTAs) and the TPPA, apply those rules to all services and measures *except* those which the government has listed in one of two annexes:

- the first annex applies a standstill to existing measures, which prevents the government from introducing new measures that would breach the rules;
- the second annex preserves the space to maintain existing inconsistent measures and introduce new ones.

This approach is known as a 'negative list'. Any measure, service or activity that is not listed is subject to the rules, even if the activity or service doesn't exist yet.

A negative list is almost always much more restrictive than a positive list because it covers everything not mentioned. Governments effectively give away the right to regulate new services and technologies that were never conceived of when they drafted their original lists (think of 3D printed food and pizza delivery by drones).

TiSA uses a hybrid of these two approaches. A TiSA country's schedule has:

- (i) a **positive list** to identify which of its services will be subject to the **market access** rule. Where a country has made a commitment on a service sector for the core **market access** rule, it can't cap the *total* foreign investment in a business in a firm or in that sector, and it can't require that a foreign investment is made through a joint

venture. It also can't restrict the size or expansion of the activities of a private firm from a TiSA country or a public monopoly.

- (ii) a **negative list** for the so-called '**non-discrimination**' rules. Under the *national treatment* rule the government can't limit an *individual* foreign investor's ownership of a services firm or give preferences to local businesses, unless it has explicitly preserved the right to do so. *Local presence* says a government can't require an offshore service supplier to have a presence in its country. The proposed rule on *performance requirements* says foreign firms can't be required to use local content or transfer technology 'in connection with supply of services', disadvantaging local businesses even further. Other rules apply to requirements to employ local management and appoint local directors. Every service sector or relevant measure that is not mentioned is subject to those rules – including new services that didn't exist when the TiSA country's schedule was finalised.

These rules are explained further, with examples, in Annex 1.

This novel combination of positive and negative list commitments is complicated for negotiators to draft, and even for experts to compare with that country's existing schedules in the GATS and other FTAs. The format makes it exceptionally difficult for national policy makers and legislators to know whether a new law or directive might breach the TiSA, especially as most of them know little if anything about trade law.

Governments can't just protect whatever they want in these schedules. TiSA schedules are negotiated between the participating countries through a series of 'requests' and 'offers'. When the negotiations were suspended in November 2016, each participating country had made two revised offers. Because the negotiations are secret, it has been impossible to see what most governments are promising or to challenge their failure to protect important activities and sectors. Only the EU, Norway and Switzerland have published their proposed schedules. Given that level of secrecy, people are justified in fearing the worst.

#### **4. CONTROLLING THE GLOBAL FOOD REGIME**

For decades, workers have been exploited and small producers have become marginalised as corporations like Dole, Nestlé, Unilever, Tesco and Carrefour strengthened their power over the global food industry.<sup>24</sup> By organising through vertically integrated supply chains, the agri-food industry can dictate how much of what products they buy from which producers in which country. They set the quality and standards, the price and the delivery timelines. Their relentless quest to cut costs and increase profits has squeezed those with least power in the production process – ultimately the workforce.

Other corporations dominate segments of the supply chain. Recent mergers of major players have consolidated their control, accompanied by massive job losses. The two largest US chemical makers, Dow Chemical and DuPont, completed a \$130 billion merger in 2017; the world's largest meat packer, Brazil's JBS, bought Cargill's pork assets in 2015 for \$1.45 billion, alongside Pilgrim's Pride and Swift Food to secure a 22% US market share in beef, 18% in chicken, and 11% in pork by 2017.<sup>25</sup> Bayer has been trying to buy Monsanto, including its agri-tech subsidiary, for a debt-financed \$66 billion.

#### 4.1 Securing Corporate Dominance through TiSA

If TiSA's more extensive schedules of commitments are applied to established and new trade in services rules it would become impossible to break the transnationals' stranglehold of the food system.

A genuine 'free trade' agreement would prevent anti-competitive practices and create conditions where small traders have a level playing field with TNCs. But there are no global competition rules and no level playing fields in TiSA. If the agreement did address competition, it would still favour big enterprises. For example, the TPPA has a chapter entitled 'Competitiveness and Business Facilitation', which aims to facilitate global supply chains that are dominated by the major players. Its only effective rules to promote competition are targeted at public telecom monopolies and other state-owned companies; those texts are largely mirrored in leaked annexes from TiSA.<sup>26</sup>

The threat from such rules extends beyond TiSA. China's overseas investment in agriculture has also grown rapidly.<sup>27</sup> Many investments are small-scale. Some are huge. WH Group (formerly known as Shuanghui) is a privately-owned company that listed in Hong Kong in 2014, after it brought US pork company Smithfield for \$4.7 billion. State-owned ChemChina bought Syngenta for \$43 billion in 2017, having bought Italy's Pirelli tire company and Germany's Krauss-Maffei machinery manufacturer two years earlier. China is not part of TiSA, but its rules would apply to China if the plan to ultimately insert TiSA into the WTO succeeds. Meanwhile, the leaked investment chapter of the 16-country RCEP negotiations shows that China is taking an aggressive approach to protecting its overseas investments, especially in natural resources, and demanding non-discrimination in establishing enterprises in other countries.<sup>28</sup>

#### 4.2 The Rise of Big Tech

While workers, unions, local businesses and even governments struggle to deal with these existing challenges, the old mode of transnational capitalism is being displaced by a new industrial revolution that is driven by digital technology. As Box 2 shows, TiSA is seen as both the midwife and protector of this revolution, ensuring the Big Tech remains unregulated and unaccountable. The risk that these corporations could control the global food system is very real:

- Giants like Google and Alibaba control the platforms, search engines, data and payment systems of the digital economy. Their algorithms decide whose products and services are viewed online, with what priority, according to the viewers' class, gender, nationality and search history. TiSA would prevent any requirement to disclose those source codes, while the data can be held anywhere in the world, and subject to that country's laws.
- Amazon runs its own transnational logistics operations in parallel with the transport, warehousing and delivery services provided by traditional operators like DHL and Fedex. Amazon's just-in-time approach means it constantly shifts what it buys, for how much, from whom and in which country. With minimal sunk investment in infrastructure, Amazon can adapt its operations and move locations more easily than its traditional competitors, including to frustrate industrial action. Many proposed annexes in TiSA seek to guarantee seamless multi-modal transportation, which would apply TiSA's rules across the entire supply chain. 'Logistics' covers the distribution networks from inside

the factory to the warehouse and delivery to customers, and every service along the way.<sup>29</sup>

- Alibaba took over from Amazon as the world's largest retailer in 2016.<sup>30</sup> With support from the Chinese government, Alibaba is developing digital free trade zones in partnership with other governments that act as regional hubs for vertically integrated supply chains. That creates an alternative form of dependency.<sup>31</sup> But China is still in technology catch-up mode. That's why it is ambivalent about TiSA: the rules that guarantee access to other countries and non-discrimination work for China, but those that prevent technology transfer, protect source codes or are designed to break down state-owned enterprises don't.

### 4.3 Data: the New Oil

Data is the new oil that drives the global economy in which Internet users are not the consumers, they are the product. Data from every search, purchase, posting or log is hugely valuable for a range of commercial, financial, economic, social, cultural and political purposes. As noted previously, the two most important outcomes for Big Tech from TiSA are:

- (i) *the unfettered right to move and store data anywhere in the world*, which allows them to minimise investment, take advantage of weak privacy and consumer protection laws, and minimise their tax liability. For example, it would be impossible to guarantee compliance with the core data privacy principles for agri-data developed by the American Farm Bureau Federation, and adopted by Agriculture Technology Providers, supposedly to ensure control over their data.<sup>32</sup>
- (ii) *protection from having to disclose the source codes* that run their systems, even to governments.

Team Tisa, which is dominated by the tech industry, also wants governments to commit never to regulate 'new services', including those that develop new technologies or uses for data. Because these services don't currently exist they are unlikely to be protected in the negative list part of a country's schedule. The EU's insistence on the right to regulate new services was a factor behind the suspension of the TiSA negotiations in November 2016.<sup>33</sup>

Under the 'transparency' annex, Big Tech would have to be consulted on proposed new regulations, so it can lobby against them.

Agreeing to these rules would have massive consequences for the food sector. The power of data has already unleashed new asymmetries in food production. Traditional knowledge of what and when to plant and harvest, weather patterns and soil nutrition is devalued. Digital analysis supplied by tech companies is treated as superior and even required. Farmers are offered free or cheap apps to help them choose crops, monitor rainfall, test soil quality, identify pests and the best eradication strategies, decide optimal stock holdings and when to sell.

'Bi-directional data flow' means farmers send information through the app and receive instant advice in return. Over time, they become dependent on a single platform and its proprietary apps that require costly technology and updates, often funded by the company or loans. Supply contracts will increasingly mandate the use of 'precision farming' and 'best

agricultural practice' that is tied to particular inputs, including seeds and pesticides, compliance with standards and testing, and use of expensive automated equipment.

All the time, farmers are being farmed for their data. The basic information services are described as 'free'; advanced services may be subscribed for.<sup>34</sup> The data they produce is

- collected by the agri-tech and data processing companies;
- processed using data analytics and fed back to the individual source (the farmer) as advice;
- stored in 'the cloud', mainly in servers in the US that are subject to minimal protections;
- used to build a profile of the farmer for targeted advertising;
- sold to third parties for targeted promotion of their products, such as genetically manipulated plants to maximise yield and climate readiness, and to addict farmers to the seeds and associated pesticides, herbicides and other inputs without which they can't function; and
- aggregated into big data that informs product development and corporate strategies.

All these activities are all classified as 'services', but it's not always clear what the service is. Most qualify as 'computer and related services', but there is overlap with advertising, R&D, engineering services, as well as the substantive services, such as technical testing or wholesale distribution. Again, the classification matters: a full commitment in a country's schedule would allow a significant part of its food production to be controlled from outside the country and beyond its laws.

#### **4.4 How TiSA Enables Digital Farming**

Food production will become one of the flashpoints of the 4<sup>th</sup> industrial revolution. Digitisation enables what is termed 'precision agriculture'. TiSA's e-commerce rules would facilitate its development and expansion, allowing transnationals to use their monopoly over digital technologies and intellectual property to consolidate corporate power over agriculture.

Poor countries and farmers are encouraged to embrace digital technologies. Rural communities are told they will be empowered, because digital marketplaces enable them to sell their products online. Instant analysis and advice on inputs or farm management will improve their efficiency and productivity. Sensors, robotics, crop imaging and climatic data can inform their decisions on irrigation, fertiliser, crop choice and soil monitoring. Automation will relieve small farmers of the burden of hard manual labour. Drones can spray pesticides, while self-driving tractors are guided by global positioning system (GPS), allowing farmers to watch from the fenceline.

**Reality check 1:** Precision agriculture will enhance the market power of agribusinesses and a small number of large-scale farmers in wealthy countries, and strengthen the power and reach of the global commodity processors and traders.

**Reality check 2:** Digital technologies require Internet connectivity, affordable devices and a reliable electricity supply. Connectivity across Africa in 2017 averaged 31%.<sup>35</sup> In India, where

low cost smart phones are touted as a cheap option, only 17% of the entire population has a mobile phone, with many fewer in the rural areas.

Labour is supposed to benefit too. **Reality check 3:** the new technologies are designed to sharply reduce demand for labour and discipline the workforce. New work opportunities will supposedly replace old manual labour, but these jobs will be fewer, higher tech and often unsuited to the existing workforce. Even where upskilling of workers occurs, it won't happen overnight, so employers are more likely to bring in people who are already trained. New software systems are touted as helping to ensure that employers comply with labour standards, for example as the dairy industry moves from family farms to an agribusiness scale.<sup>36</sup> But the same technology facilitates the surveillance of the workforce, while automation and larger scale production reduce the number of jobs.

**Reality check 4:** Claims of environmental benefits are corporate spin. The 'Life Sciences' nexus of seed-chemical-fertilizer and other inputs is now going digital. Monsanto says it promotes 'sustainable agriculture' through practices like no-plough farming, but the figures it cites for reduced pesticide application are fake.<sup>37</sup> The real environmental impacts include the decline of biodiversity, soil erosion and contamination, groundwater depletion and pollution, and pesticide-resistant varieties of super-weeds requiring more and more lethal chemicals.

**Reality check 5:** 'Climate smart agriculture' promotes business-friendly innovations, rather than tackling the industrial agriculture practices that contribute to climate change. These innovations are largely geared to mono-production for export – precisely the kinds of production that are helping to drive global warming.

The Agrifood Atlas sums up the impacts of precision agriculture for farm workers: *While a boom in the sector will generate employment in equipment production, servicing and software, it will reduce the number of jobs in animal production and in labour-intensive aspects of crop farming. The developers aim to reduce labour costs and drudgery, and enable farmers to become independent of working hours. ... Manufacturers promise that unlike human workers, their machines can work day and night without errors.*<sup>38</sup>

#### **Box 4. Automated farms**

*Extract from:*

*“These robots are milking cows without any humans involved, and the cows seem into it”  
Business Insider Australia, 4 June 2017<sup>39</sup>*

Stensland Family Farms, which sits in the northwest corner of Iowa, has 170 dairy cows, but nobody milks them. Robots do. Aided by sensors, lasers, and data collection, automated technology is cropping up on dairy farms around the world. The shift offers benefits for farmers who struggle to find workers willing to do the manual labour, and, after the cows adjust, they seem to like the robots better. ...

Stensland Farms is one of about 50 farms in Iowa that have made the switch to robots. In the US, there are 2,000 robotic milking machines installed, according to estimates from Lely, the Dutch ag-tech company that makes the system Stensland uses. ...

*“It’s really started to accelerate in the last two or three years, and the big reason behind that is labour — the availability of labour, the quality of labour to milk cows, and the cost of labour.”*

Dairy farmers struggle to fill these jobs, since younger generations are increasingly uninterested in taking up the manual labour of the family business, and it’s hard to find locals willing to do the gruelling work. Many farmers rely on immigrant workers, a business model that comes with its own risks, especially given President Trump’s vows to restrict immigration over the US’s southern border. The robots, however, can milk up to 60 cows per day. ...

*“Once we got these robots in, we were able to lighten the load on the family, plus actually we were able to eliminate a couple jobs [sic]”. ...*

According to the US National Milk Producers Federation, dairy farms employ 150,000 full-time workers. Although those people don’t all milk cows, Lely’s estimates suggest a significant number of them could be out of a job a decade from now. That may not be great for the humans who do that work, but Stensland says there’s reason to believe the shift will be better for the bovine animals at the heart of this whole process.

#### **4.5 ‘Smart’ Fishing**

Similar issues arise with ‘smart fishing’. Factory ships are standalone automated vessels that process and freeze the catch. Sonar is now supplemented by digital algorithms to process satellite data and marine information sources, minimising search time and fleet operating costs. Their size and ability to operate in remote waters for long periods effectively put their labour, fisheries and environmental practices beyond the reach of regulators.

The world’s largest factory fishing vessel Damanzaihao is owned by Bermuda-registered China Fishery Group. It has variously been flagged as Russian, Mongolian, New Zealand and Peruvian.<sup>40</sup> The Singapore-listed Pacific Andes Resources Development Ltd took a majority stake in the group in 2004 and it was floated in 2006. In 2010 China Fishery expanded through acquisitions in Peru and into the South Pacific’s fisheries. US-based global private equity investor the Carlyle Group then took a stake ‘to secure further access to underutilized ocean resources and enhance its sustainable fishing practice’.<sup>41</sup> In 2015 the Damanzaihao was formally listed by the South Pacific Regional Fisheries Management Organisation as an illegal, unreported and unregulated vessel.<sup>42</sup> It also faced accusations of child labour exploitation. The company filed for bankruptcy under laws that protect it from



creditors. Its Chinese crew were not paid for over a year and were stranded in Peru for over two years, as the owners held their passports and Seaman's Books, until the Chinese government intervened to get them home in March 2017.<sup>43</sup>

These practices push artisanal fishers to the brink and increase the pressures on smaller fishing fleets to exploit their crew. They also deplete the ocean's resources.

Neither China nor Singapore is participating in TiSA, but Peru and the US are.<sup>44</sup> TiSA commitments on services related to fisheries, or other related services, would pose numerous obstacles to those, or other governments', ability to regulate factory fishing. For example: the foreign factory fishers couldn't be required to have a local presence, making it very hard to subject them to domestic law, monitor compliance and require disclosure of information; licensing requirements and technical standards for 'legitimate' public policy purposes would still have to be the least burdensome to achieve 'quality' of the service; general regulations would have to be administered in a 'reasonable, objective and impartial' way, including not favouring workers. In addition, a draft TiSA annex aims to facilitate big maritime transport operators; the TiSA parties rejected a proposal from Turkey to protect workers in the situation of Damanzaihao.<sup>45</sup>

#### **4.6 The New Digital Agri-masters**

Digital technologies that are promoted and protected through TiSA are transforming the traditional corporate landscape. As agribusiness and tech companies continue to buy up innovators and competitors, or shut them down through anti-competitive practices, traditional agri-food corporations are becoming agri-tech companies or being taken over by them.

- In 2013, Monsanto bought Climate Corporation, which underwrites weather insurance for farmers (a financial service under TiSA). Two years later, Climate Corporation launched the Climate FieldView digital platform, which was developed by its R&D arm as a one-stop shop for field data management.<sup>46</sup> US company John Deere, which dominates the equipment market, has access to Climate Corporation's big data.
- Bayer's proposed \$66 billion takeover of Monsanto is promoted as a marriage of firms that focus on controlling plant pests and improving yields, respectively. Bayer plans to use connected sensors, software and precision machines to offer farmers a combination of seeds and pesticides. European Commission regulators have not been convinced by Bayer's pledge that the future software platform won't exclude rivals' seeds and crop protection products. Analysts predict that Bayer will 'lure farmers with a type of money-back guarantee if a digital farming package, complete with predefined seeds and chemicals, does not yield certain harvest levels.'<sup>47</sup>
- The American Farm Bureau Federation, Lockheed Martin, PepsiCo and GeoSilos co-sponsored a study in 2015 promoting the benefits of 'Drone as a Service' in 'precision agriculture'.<sup>48</sup> The service provider, Measure, describes itself as the leading 'Drone as a Service' company in the US, spanning the telecom, construction, media, energy as well as agriculture sectors.<sup>49</sup> A follow-up report in 2017 announced a web-based app so farmers could calculate the value of drones in increasing yield and saving money.<sup>50</sup>
- Electronics giants Fujitsu and Panasonic have set up digital indoor farms to grow food that bypasses both traditional farms and producers in exporting countries. In October

2015 Fujitsu announced the establishment in Vietnam of a Food and Vegetable Factory to promote the 'Fujitsu Intelligent Society Solution "Akisai" Food and Agriculture Cloud'.<sup>51</sup> The project combines greenhouse cultivation that is controlled through a series of sensors, and vegetable factor cultivation in a 'completely closed plant factory' whose environment is totally controllable. The publicity says 'Fujitsu provides this service in Japan and other countries to help farmers raise crop quality and productivity, and at the same time cut costs'.

Panasonic has been licensed by Singapore's Agri-Food and Veterinary Authority to run a high-tech indoor vegetable farm, which supplies major supermarkets and hospitality outlets. The 'vertical farming' technique produces 40 crop varieties with no pesticides. Seeding and potting are fully automated, as is irrigation.<sup>52</sup> Similar practices are used in Belgium, where wholly automated factories are built as a climate chamber with only a robot having access to the crates in which small seedlings are raised to fully grown crops. The 'factory' has multiple cultivation layers, dispensing with the cost of land.<sup>53</sup>

#### **4.7 Food Delivery Platforms**

Similar disruptions have occurred at the other end of the supply chain, with tech firms challenging the dominance of the old transnationals:

- Amazon and Alibaba run digital marketplaces that act as clearing houses for food products. They choose which sellers and products have access to the site at what cost and which of those have prominence in a search. Amazon's strategic purchase of niche food distribution and retail chain Whole Foods Market gives it access to data on the buying habits and preferences of affluent clientele, as well as a quality branded product it can uniquely market.<sup>54</sup>
- Amazon PrimeFresh can take online grocery orders and deliver to the door of premium customers in as little as 15 minutes after the order is placed.<sup>55</sup> Online food delivery is cost-intensive, because it relies on logistics and customer retention, but it avoids the sunk costs of bricks and mortar retail and uses contractualised or automated labour. Established giants like Walmart and Tesco are losing their market dominance. They cite these competitive pressures to justify driving down pay, conditions and employment protections for workers in the food supply chain, ignoring other contributors such as internal competition from 'own label' production and the push to maximise investors' returns. As brick and mortar outlets decline, so do jobs. Attempts to catch-up by introducing digital services, such as 'flexible last-mile delivery', 'click and collect' and order-drive-through-pickup delivery options, further shift the balance of their workforce towards insecure contract work and bogus self-employment.
- China's major food delivery platform is Ele.me, valued at around \$6 billion. The biggest Chinese digital companies Alibaba and Tencent are both investors. In 2017 China's main search engine Baidu sold its food delivery business to Ele.me in a deal valued at about \$800 million.<sup>56</sup> Ele.me has plans to expand to Hong Kong, Taiwan and Singapore;<sup>57</sup> the first two are TISA parties.
- Food corporations like Unilever and Mars are adopting a 'decentralised grocery shopping ecosystem' that bypasses wholesalers and supermarkets and sells their brands direct to consumers through digital platforms.<sup>58</sup> In theory, any manufacturer could list and sell products on the 'decentralised ecosystem' platform and run their own loyalty

schemes. But the mega-players have advantages of incumbency, brand recognition, loyalty, and a massive customer data base – and they control the algorithms. Proposed rules in TiSA on logistics and multi-modal transportation would further facilitate their expansion.<sup>59</sup>

- Data matching platforms like Uber connect suppliers and users through faceless algorithms to deliver services. They rely on ‘self-employed’ contractors whose terms of employment they control and can terminate effectively at will. The algorithm monitors workers’ performance and sets payment terms. But as contractors, there is no minimum wage. Uber provides no health or workers’ compensation insurance. Uber’s virtual presence allows it to use the same employment model on a global scale. Legal battles to secure compliance with local laws must be fought in individual jurisdictions. Uber has lost a number of them.<sup>60</sup> Yet these are rear-guard actions by local and central governments playing catchup with the behemoth.

UberEats was launched as a standalone app in early 2016, charging a significant delivery fee from the restaurants and using surge pricing at times and places of high demand. Restaurants seek to recoup their costs by squeezing their workers; those workers who don’t face job losses still face cost pressures on wages and hours, and the loss of tips. The business operates through apps on Apple iTunes (in 36 languages), Google and Facebook. Uber’s attempt to classify its ‘meal deliverers’ as freelancers rather than employees has been challenged in US courts, following from similar litigation over its taxi service.<sup>61</sup> The way in which Uber and UberEats are classified becomes crucial to determining what restraints TiSA would place on governments who seek to rein them in.

- McDonalds is using Uber Technologies to develop its McDelivery programme.<sup>62</sup> Fast food chains like McDonalds and Wendy’s are moving to digital ordering kiosks to replace cashiers (alongside automated kitchen equipment).<sup>63</sup> Restaurant eaters can use Amazon accounts to pay the bill.<sup>64</sup> Alibaba has gone one step further with a ‘smile to pay’ system that uses facial recognition software to pay for fast foods at KFC in China.<sup>65</sup> ‘Sentiment trackers’ monitor positive and negative comments about services and workers, as well as customer behaviour.<sup>66</sup> It’s not hard to see how these services could be defined in TiSA by reference to the computer technology, rather than what consumers actually buy, and stymie attempts to regulate them.

TiSA would intensify the scope and scale of this disruption, while governments have less capacity to restrain them. Countries are being asked to commit to the unrestricted supply of those services, whether across the border or by a foreign investor. If firms can hold and process the data anywhere in the world, and are protected from requirements to have a local presence or disclose their source codes, they can avoid regulation and maximise the benefits of scale.

## **5. FINANCIALISATION OF THE FOOD SYSTEM**

The US sub-prime crisis in 2007, followed by the European debt crisis, showed how financialised capitalism and financial speculators could devastate the global economy and people’s lives. These were the latest in a series of crises from which no lessons seem to have been learned. Far from reining in such practices, TiSA (and the TPPA and other mega-agreements) seek to expand the reach and profits of the finance industry and big players

and protect them from re-regulation, including of yet-to-be-invented financial services and products.<sup>67</sup>

Financialisation has systemic impacts on the food system and shapes the ownership and management strategies of the dominant corporations<sup>68</sup>:

- Speculative commodity markets play havoc with the price of food to producers and consumers. Futures markets and commodity index funds bundle different products together and set prices based on factors that are unrelated to the production costs or intrinsic value of specific commodities.
- Debt-laden private equity and hedge funds treat the agri-food industry as a cash cow to maximise short term returns for investors and minimise costs, especially of labour [see Box 5].
- Commodity trading firms have their own investment arms, such as Koch Equity Development, a subsidiary of Koch Industries, which ‘spans food, shelter, clothing, transportation’.<sup>69</sup>
- Other funds, such as Farmland Australia<sup>70</sup> and Braemar UK Agricultural Land fund,<sup>71</sup> specialise in agricultural land investment to take advantage of soaring prices for farmland and tax benefits often associated with agricultural land.

The short-term goal of these investors is to maximise investor and shareholder returns. That translates to instability and uncertainty for producers, consumers and the food sector workforce.

The impacts of financialisation are compounded for developing countries by decades of pressure on their governments from the international lending institutions, the WTO’s Agreement on Agriculture and the corporate agri-food industry to shut down or privatise many important agricultural services. Those services are potentially subject to TiSA’s rules that prevent local preferences and restrictions on foreign ownership, and require a light-handed approach to regulation. Remaining state enterprises would be required to operate on a private sector basis under TiSA’s proposed annex on SOEs, aside from some limited public services obligations.

TiSA could therefore lock poorer countries into a privatised and deregulated system of food production, making it impossible to restore public services that ensure the right to food and the livelihoods of food producers. The so-called exception for public services in TiSA only applies to services that have no private competitor and are non-commercial.

TiSA would also prevent any signatories from the global South from shaping their private investment strategy to minimise the risks and maximise the benefits to their nations. The United Nations Food and Agriculture Organisation (FAO) has pointed to a severe shortage of investment capital, intensified by the 2007 financial crisis, and the aggressive approach of agriculture investment funds seeking to diversify their asset classes.<sup>72</sup> It recommends the establishment of well-structured public-private partnerships. But TiSA’s market access rule would prevent governments from requiring investment through joint-ventures in service sectors they have committed.

The FAO also recognises that investments in agriculture require more in-depth market knowledge, and hence closer physical proximity of the fund manager, than other investment targets or sectors.<sup>73</sup> Again, TiSA would not allow governments to require a local presence of

foreign investors, or their employment of nationals in executive positions, in the sub-sectors they have committed. Lock-in periods for investment capital would contravene requirements of unfettered inflow and outflow of capital, except for limited balance of payments reasons.

### **Box 5. Financialisation of corporate control**

*Brazilian private equity firm 3G Capital is a typical example of debt-financed funds that specialise in mergers and takeovers, with little interest in the actual product or commitment to its workforce. 3G's initial big venture saw its beer company Brahma take over another Brazilian brewer Antarctica to create Ambev, the largest brewer in Latin America and fifth largest in the world. Subsequent takeovers of Dutch and American brewers made AB Inbev the largest beer company in the world, controlling over a quarter of global beer sales and almost half the sector's global profit. In 2017 it announced plans to expand in China, especially through online beer sales.*

*3G branched out beyond beer. In 2010 it paid \$3.2 billion for Burger King, which was incorporated in Delaware to minimise corporate compliance costs. The chain had been floated in 2006 by another private equity investor, who had retained 1/3 ownership. 3G delisted the company and franchised virtually all the remaining outlets. Burger King now makes most of its money from franchise fees, intellectual property and real estate.*

*With support from Berkshire Hathaway (the world's largest financial services and holding company owned by Warren Buffett), 3G also bought the Tim Hortons coffee chain. The parent company Restaurant Brands is the third largest fast food chain internationally; for example, in New Zealand it operates the outlets of KFC, Pizza Hut, Carl's Jnr and Starbucks Coffee. Headquartered in Canada, Restaurant Brands International is 51% owned by 3-G. In January 2018 Canadian workers took nation-wide strike action to protest moves by franchisees and the parent to claw back their benefits, tips and other entitlements following a raise in the minimum wage.<sup>74</sup>*

*In 2013 3G bought the world's fifth largest food and beverage company Kraft Foods Group, again with Berkshire Hathaway. The \$6.6 billion purchase was heavily debt financed, relying on Kraft's strong credit rating. The resulting 'efficiencies' produced increased profits, widespread plant closures and massive job losses. Kraft and Heinz merged in 2015, cutting 16,000 jobs.<sup>75</sup> In 2017, 3G and Berkshire Hathaway failed in a hostile \$143 billion takeover bid for Unilever, after the latter's management rejected the aggressive corporate culture of 3G. Subsequently, Unilever has promised to increase returns to shareholders by cutting costs and reducing capex. The entire packaged consumer goods industry is now under pressure to conform to the practices set by 3G.*

## 6. HOW TISA TREATS WORKERS

Exploitation of what the ITUC calls the ‘hidden workforce’ is already endemic across the food supply chain, with its fluid layers of sub-contractors, ghost employers and fake self-employment. Insecure work is disguised as flexibility. The real employers are shielded from responsibility for sub-contractors’ non-compliance with labour laws on hours, minimum wage, pensions and job security, or health and safety. The burdens of insecurity, injury and sickness fall on the workers.

Transnational corporations are past masters at playing countries off against each other to secure the least-burdensome regulations and taxes. Within countries, they fuel a race to the bottom among layers of contractors, contract workers and the nominally self-employed. New technologies enable the cross-border supply of services that were once territorially bound and intensify the outsourcing and offshoring of jobs. Existing and new jobs are more precarious because the work can easily be moved elsewhere or displaced by new technologies. Substitute forms of labour, such as temporary offshore contract workers, are pitted against the existing workforce.

The systemic effects of TiSA (and related agreements) will feed these pressures in ways that erode hard-won protections, pose new barriers to the organisation of labour, and undermine the bargaining position of those who are unionised.

### 6.1 Temporary Posted Workers

TiSA will have specific impacts for temporary migrant or ‘posted’ workers who are sent to deliver a service in another country. Their terms of employment usually exploit the worker, while exacerbating ‘social dumping’ by driving down pay and conditions of competing workers in the host country and undermining unions and collective bargaining.

The temporary presence of people to deliver a service in another country is one of the four modes of trading in services, specifically mode 4. When countries commit to allow this form of ‘trade’ in their schedules, they usually limit the categories to executives, highly skilled workers and professionals. For example, the TPPA chapter is entitled ‘Temporary Entry for Business Persons’, which each country defines for itself. However, CETA includes a category of ‘contractual service suppliers’,<sup>76</sup> which is also in the draft TiSA Annex on Movement of Natural Persons. TiSA doesn’t define the categories, so the following explanation of the TiSA annex uses the following CETA definition:

natural persons employed by an enterprise of one Party that have no establishment in the territory of the other Party and that have concluded a *bona fide* contract (other than through an [employment] agency ...) to supply a service to a consumer of the other Party that requires the presence on a temporary basis of its employees in the territory of the other Party in order to fulfil the contract to supply a service;<sup>77</sup>

Under the TiSA annex, a firm in one TiSA country that has a contract to supply services in another TiSA country could employ workers from its own or a third (even non-TiSA) country to deliver the service, where the contract ‘requires’ the temporary presence of those workers. TiSA governments should ‘endeavour’ to provide entry for the contract workers for a total of 90 days over a 12-month period. The contractor could not be required to have any presence inside the TiSA country where its workers are fulfilling the contract, and there are

no rules about the nationality of the employees of the contractor supplying the service. Only the EU argued for a labour market test to ensure that no locals are available for the work. The pay and conditions of the foreign workers would be governed by their employment contract with the foreign supplier of the service. The actual services contract might include labour-related requirements, but that would be a private transaction that the receiving government could not enforce.

Each party to TiSA is expected to make commitments on the ‘temporary movement of natural persons’, either across the board or for individual services sectors. If they did so for contractual service suppliers, they would be guaranteeing entry for cheap foreign labour to displace local workers in those sectors. It looks like the standard TiSA approach to scheduling would apply. A market access commitment would mean no economic needs tests could be used to restrict the entry of contractual service suppliers to supply that service, unless there was a limitation on that commitment written in the schedule. Under the ‘negative list’, the government would guarantee that various forms of ‘non-discrimination’ apply to foreign contract workers, unless it had listed the right to exclude or restrict them across some or all sectors.

Other parts of TiSA would mean the firm that holds the contract can’t be required to have a local presence in the country. That makes it almost impossible to hold them accountable even if they are notionally required to comply with local labour laws or collective agreements, or for any violations of criminal, employment or other civil law. Even if they are present, the government can’t require them to adopt the legal form that would make it easier to hold them liable, such as an incorporated company rather than an agency. Nor could they be required to appoint nationals of the country as senior managers or as a majority on the board of directors, which again makes the effective enforcement of local legislation (or even a contract) much more difficult.

## 6.2 Migrant Workers

It is common for employers to take advantage of deteriorating employment protections to seek out docile and non-unionised workers whom they hope are prepared to endure exploitive, sometimes slave-like conditions. Sometimes those workers prove less than docile, with the support of unions.<sup>78</sup> But often they remain isolated and vulnerable. If migrant workers can fill the gap there is no incentive on employers, and those further up the supply chain, to clean up their business or the industry. In the US about half of meat processing workers are immigrants; it is similar for crop production workers, and in dairy even more.<sup>79</sup>

The standard excuse for dependence on migrant labour is that local workers won’t do the job. New Zealand’s former Prime Minister said exactly that to justify the country’s heavy reliance on migrant workers on the farms and orchards:<sup>80</sup> *“A lot of the Kiwis that are meant to be available [for farm work] are pretty damned hopeless. They won’t show up. You can’t rely on them ... [There’s] a cohort of Kiwis who now can’t get a license because they can’t read and write properly and don’t look to be employable, you know, basically young males. ... and that is one of the reasons why immigration’s a bit permissive, to fill that gap.”*<sup>81</sup> The blame game deflected attention from sub-minimum wages through exploitive piece rates, poor health and safety records on farms, and the poverty and education gaps, especially for indigenous Maori in rural areas, that affect peoples’ work readiness. At the same time, New

Zealand's equal rights commissioner was pointing to the exploitation of migrant workers in the hospitality, horticulture, viticulture and dairy industries.<sup>82</sup>

A subsequent suggestion from the New Zealand government that it might reduce the number of migrant workers drew an outcry from the horticulture industry and farmers, claiming there were no locals prepared to do the work. The unions' responded that local workers would respond if offered improved wages and conditions.<sup>83</sup> The alternative source of migrant labour is a more regulated, but de-unionised and equally exploited seasonal workers programme from the Pacific Islands (see Box 6).

Such abuses are systemic in the food industry. There have been moves to address such abuses using domestic law. In 2015 the United Kingdom introduced a Modern Slavery Act in response to the United Nations Guiding Principles on Business and Human Rights, and Australia established a commission to inquire into such an Act. The United Kingdom law imposes obligations and penalties for domestic workplaces, but they don't apply to their offshore supply chains. Large firms must instead make an annual disclosure of what steps, if any, they have taken to ensure that abuses are not taking place in their business.

There is a promise to eliminate forced labour in the labour chapter of the TPPA (see section 6.3), but that refers to the old-fashioned form of compulsion, not modern-day slavery of domestic and foreign workers. TiSA does not even try to do that. Its goal is clear: to facilitate the expansion and profitability of capital, including through the enhanced mobility of managerial and professional labour. The cross-border movement of low-skilled workers, aside from the new category of contractual services suppliers, remains outside the scope of TiSA and is treated as an immigration issue. Moreover, the new category of 'contract workers' in TiSA (and CETA before it) does not confer any rights on the workers. They are dependent on the employer who has the service contract and who will inevitably offer terms and conditions that are inferior to those it would have had to meet if it hired workers from within the country.

#### ***Box 6. Modern-day blackbirding in the South Pacific***

Many developing countries actively promote temporary migrant work, because they depend on remittance income to supplement local incomes, soak up unemployment and earn foreign exchange.

When negotiating free trade agreements, they seek temporary access for migrant workers as a trade-off for concessions on goods, services and foreign investment, even though these trade-offs vastly benefit the richer countries and their firms, and deepen their own countries' systemic economic problems. They only ever succeed on the margins, because entry of lower-skilled migrant workers in sectors like agriculture, hospitality, construction or domestic service is a sensitive immigration issue in receiving countries and sending countries have relatively little bargaining power.

A rare example where a temporary migrant workers' scheme has been adopted as a result of trade negotiations is the Pacific Agreement on Closer Economic Relations (PACER Plus) between Australia, New Zealand and fourteen Pacific Island countries. It was concluded in 2017, although the two largest island nations (Fiji and Papua New Guinea) have not signed it. The standard trade provisions on goods, services and investment hugely favour the two neo-colonial powers.



Alongside the formal trade and investment treaty there is a separate Agreement on Labour Mobility that builds on an existing seasonal workers' scheme. This side agreement does not impose any obligations on the receiving countries and confers no concrete rights on sending countries, let alone on their migrant workers. It is not only unenforceable – it is explicitly without prejudice to the right of each participant to 'impartially' and 'fairly' establish, administer and enforce its immigration, workplace and employment policies and laws, including eligibility criteria.<sup>84</sup> There must be an annual report to the parties' trade ministers, but that report must be adopted by consensus, allowing Australia and/or New Zealand to veto any criticisms and recommendations to increase the quotas or address ongoing labour violations.

The Pacific Islands governments fought desperately hard to secure that side agreement, despite the officially documented record of exploitation under the existing scheme. The "approved seasonal employer" scheme bonds workers to a single employer, who subcontracts them as cheap labour, for up to nine months in a nominated industry. The scheme is notorious for exploitation, with deductions for accommodation, flights, visas, bedding food and equipment deducted from minimal wages leaving them nothing to live on, unable to pay for health care, let alone remit home. With their visas tied to the employer, few are willing to complain. Those who do achieve outcomes they couldn't at home are prepared to put up with slave-like conditions. Victims draw analogies with 19<sup>th</sup> century 'blackbirding', where over 60,000 people were transported from Vanuatu and several other islands between 1863 and 1904 to work as sugar slaves on Queensland's plantations. After the practice was outlawed, the slaves were summarily deported.<sup>85</sup>

In 2017 the Australian Federal Court fined the contractor and his firm and ordered him to pay back wages to 22 Ni-Vanuatu men he sponsored to Australia and had underpaid and exploited. The contractor received payments for the labour from their sites and from the Australian government, which claims employers undergo stringent vetting and workers have effective protections.

The Australian Fair Work Ombudsman has a long-running inquiry into abuse, known as The Harvest Trail Inquiry, which was due to report in 2017 but hasn't. An Australian parliamentary inquiry into a Modern Slavery Act heard evidence of abuse. The workers have virtually no chance of ever recovering the money.

A similar scheme exists in New Zealand. The workers can be unionised, and that is implicitly encouraged by those overseeing the scheme. But it is very difficult, and a new Union Network of Migrants to unionise and protect migrant workers does yet not extend to the seasonal workers' programme.

Despite the documented record of abuse, 12 of an original 14 Pacific Islands Countries signed major concessions on goods, services and investment to Australia and New Zealand in the Pacific Agreement on Closer Economic Relations 2017 (PACER-plus), which will jeopardise local businesses, intensify foreign corporate control and deepen dependence on remittances. In return, they received non-binding side-letters to provide a quota of access into Australia and New Zealand per year.<sup>86</sup> This institutionalises the exploitative labour schemes with no guarantee that the workers will receive any better protection than they do now.

### 6.3 Labour Rights

There is no labour rights annex proposed for TiSA, nor any specific protections for labour in individual services sectors.<sup>87</sup> That is, in part, because the game plan is to transpose TiSA back into the WTO, where any kind of labour and environment provisions have been repeatedly rejected as outside the organization's mandate.

But even where agreements do have a labour chapter, it never addresses the systemic impacts on workers of the rest of the rules. The TPPA has the strongest language on labour to date, requiring governments to adopt and maintain certain core labour rights in their legislation and practices. However, this applies to 'rights as stated in the ILO Declaration on Fundamental Principles and Rights at Work', not the actual International Labour Organization's (ILO) conventions that embody those rights. That obligation is only breached if the failure to adopt the law has *demonstrably affected trade or investment between the TPPA parties*. It is not concerned to protect workers' rights *per se*.

TPPA parties must also effectively enforce their domestic labour laws, again defined in terms of the ILO Declaration, and ensure that people with a recognised interest in a labour matter have access to independent courts that follow due process. Other provisions 'recognise' the goal of eliminating forced or compulsory labour, and each country commits to 'endeavour to encourage enterprises to voluntarily adopt corporate social responsibility initiatives on labour laws' that it has endorsed.

The TPPA labour chapter is enforceable (which is not usually the case), if a dispute under the chapter cannot be resolved by confidential consultations. But the dispute has to be initiated by a government, not a union or the affected workers. The meaning of the ILO Declaration would then be interpreted by a panel of trade experts!

It is possible for unions to make submissions to a contact point in the other country on matters that are directly related to the labour chapter, but the union may also be required to explain how the matter affects *trade or investment between the relevant countries*. Again, it is not concerned to protect workers' rights *per se*. The country receiving the complaint is only obliged to make a timely response and make that public 'as appropriate'.

Ultimately, even if TiSA had a labour chapter that provided genuine protection for workers' rights, it would still not address the impacts of TiSA's pro-corporate rules that ensure that capital is always in the driving seat. By making those rules binding and enforceable on governments for the foreseeable future, TiSA would close the space for organised labour and progressive governments to shift the balance of power in favour of social and economic justice.

The point here is not that TiSA should guarantee entry for migrant workers or have a labour chapter. It is that the way 'trade' and 'labour' are dealt with under TiSA reflects class interests. Labour cannot win a struggle with capital that is fought on the terms of trade and investment agreements whose *raison d'être* is to serve capital.

## 7. THE FIGHT BACK AGAINST TiSA

Under the seemingly innocuous guise of ‘trade in services’, TiSA and similar new generation agreements pose a dramatic and far-reaching threat to workers and trade unions across the food chain, from agriculture to the manufacture of food and beverages, workers in restaurants and catering, as well as the hospitality and tourism sectors. The threat has to be understood in order to be effectively combated.

The term ‘trade in services’ is deliberately misleading. Services are not ‘traded’ across borders. Foreign corporations are empowered to operate on a multinational basis from wherever they can maximise their reach and profits and minimise their labour costs, taxes and regulatory responsibilities. E-commerce rules in TiSA are not about online shopping. They are about the control of the data flows which are essential to the digitalization of everything, including work. Rules about bytes are rules about power.

Today, everything has become a service and all workers are deemed to be services workers. Under TiSA, every task performed by workers in agriculture and food and beverage manufacture – and tasks yet to come – can be treated as a discrete, stand-alone service to be outsourced, casualised and contracted to a transnational ‘service provider’ who is liberated and protected by TiSA’s rules.

TiSA will deepen the concentration of corporate power over all the IUF sectors, and the fragmentation and precariousness of work in each of those sectors, eroding the ability of workers to organise and their power to bargain on a workplace, national and international scale. By accelerating the destruction of the direct employment relationship on which collective bargaining is based, TiSA will further reduce bargaining power for workers in all countries and across all sectors.

Financialised capitalism has severed the relationship between wages and productivity, leading to an explosion of inequality, and diverted investment from the real economy, socially useful employment and investment in public services. TiSA’s rules on financial services will insulate these speculative and destabilising excesses from regulation.

As a midwife and guardian of the 4<sup>th</sup> industrial revolution, TiSA enables the constant and destabilising disruption of digital trading platforms, secret algorithms, and artificial intelligence. ‘Disruptive technologies’ don’t only disrupt business as usual; they encourage the degradation of work and reduce workers’ ability to gain control over their working conditions by organising and fighting back. Workers and unions are left to battle a faceless, footloose, employer somewhere in the world, while national governments are stripped of the legal and practical ability to regulate them.

Agreements like TiSA do not in themselves create the conditions for these transformations of work, and thus of relations between workers and employers. They build on and amplify trends that are already well underway. But they have their own potency. As a binding and enforceable international treaty, TiSA seeks to put out of reach, now and in the future, the right of national governments to regulate these changes, as required of a functioning democracy, and the capacity of unions to negotiate their onset and consequences. In doing so, TiSA effectively insulates the most powerful corporations in the world from local regulation, accountability and legal liability, including all forms of regulation that impact on

workers, and enable their continued tax avoidance, depriving states of the revenue needed to provide public services.

Labour's struggle for power is not confined to the collective bargaining process. Power at the bargaining table requires power in society, and is conditioned by the wider environment. By enhancing corporate power, including corporate control of the food chain by agri-food and Big Tech, while reducing the capacity of governments to regulate in the public interest, TiSA and the other mega-deals that are rewriting the rulebook for global capitalism will intensify the attack on rights that is at the core of the neoliberal project.

Understanding TiSA as a potent instrument of transnational capital is an essential part of defending workers' rights. Unions don't surrender. They learn, think, strategise and fight back. This report provides the foundations for education and analysis of the potentially devastating impact of TiSA on all the IUF sectors. It aims to empower the IUF, its affiliates and their members to act at multiple levels to:

1. Stop the resumption of the TiSA negotiations;
2. Stop the negotiation and adoption of similar content in other agreements; and
3. Strategise to address the challenge that the servicification, digitisation and automation of the food sector and work poses to IUF, affiliates and workers.

The battle to stop TiSA is a battle over who makes the rules for capitalism in the 21<sup>st</sup> century. Stopping TiSA it is both necessary and possible. Wide-scale mobilisations, with important union involvement, have a long history of success in making such deals too politically toxic to conclude, from the Free Trade Area of the Americas and the Multilateral Agreement on Investment to TTIP between the US and EU. CETA's full application is stalled as a consequence of popular opposition. The tortured history of TPPA was the direct result of collective campaigns within and across the 12 countries, forcing all US presidential candidates to condemn the deal.

TiSA has its own long history of successful resistance. In 2015, mass pressure in Uruguay forced the country out of the TISA negotiations by highlighting the threat to democracy, worker rights and the country's international human rights commitments.<sup>88</sup> Pressure inside Europe from trade unions, national mobilisations, and progressives in the European Parliament, forced the EU to reject key US demands in TiSA to surrender the right to regulate new services and the right to privacy to Big Tech's control over data. Compromises to bypass those blockages remain hard fought.

TiSA negotiations were suspended in November 2016 because political pressure made it impossible for them to conclude. That short term success must be turned into a permanent victory, not just for TiSA, but for all attempts to make it live on through other corporate-driven 'trade in services' agreements.

At the same time, TiSA must be seen as a symptom of a broader threat to unions and workers. The current mode of capitalism is undergoing transformation. With or without TiSA, unions need to rethink the traditional models of organisation, solidarity and resistance if they are to survive the assault from automation and digital technologies, and remain a potent force in the struggle for economic, social and climate justice.

## ABBREVIATIONS

CETA	Canada EU agreement
CPTPP	Comprehensive and Progressive Agreement on Trans-Pacific Partnership
FAO	Food and Agriculture Organization
FTAs	Free Trade Agreements
GAFA	Google, Amazon, Facebook and Apple
GATS	General Agreement on Trade in Services
GPS	global positioning system
ILO	International Labour Organization
ISIC	International Standard Industrial Classification
OBOR	One Belt One Road
RCEP	Regional Comprehensive Economic Partnership
SOEs	State-owned enterprises
TiSA	Trade in Services Agreement
TTIP	Transatlantic Trade and Investment Partnership
TNC	transnational corporation
TPPA	Trans-Pacific Partnership Agreement
W/120	WTO services classification list
WTO	World Trade Organization

## Annex 1: TISA in a Nutshell

Trade in services agreements impose restrictions on governments that adopt them after completing their relevant constitutional processes. These restrictions apply to any **measures** a government adopts that **affect trade in services**. ‘Measures’ is very broad, ranging from laws and regulations to administrative and even judicial decisions. The rules apply to actions at central, regional or local government level<sup>89</sup> and by bodies that exercise a delegated authority, such as a private industry body that audits health and safety compliance. Moreover, the measures don’t need to directly target the service; they only need to ‘affect’ the supply of a particular service to fall within the rules, which could include new labour laws that negatively affect the supply of a service which a government has committed to TISA’s rules.

Governments can control which services are covered by some (not all) of the rules when they adopt TISA, but the scope to limit a country’s exposure to these rules is much less in TISA than in the GATS and it would be almost impossible to add more restrictions later. A country makes commitments through a country-specific schedule. For the purpose of scheduling a country’s commitments all services are identified by sectors, which are divided into subsectors, usually using the services classification list known as W/120 (see section 3.1).

A service would be ‘**traded**’ under TISA when it is supplied by a firm or individual from one TISA country to a consumer from another TISA country in one of four ways (**modes of supplying a service**). Using examples of ‘trade’ in hotel services between Japan and Costa Rica, the 4 modes are:

\* mode 1) **across the border**, e.g. someone in Japan makes a room booking online with a hotel in Costa Rica;

\* mode 2) **the service is consumed in another country**, e.g. the Japanese tourist stays in the hotel in Costa Rica;

\* mode 3) **by a foreign firm that has established a commercial presence inside the consumer’s country**, eg. the hotel in Costa Rica that provides the service is a franchise of JAL; or

\* mode 4) **personnel enter the country temporarily to deliver the service**. eg. the JAL hotel in Costa Rica employs a hotel manager or chef from Japan for a fixed term.

When countries make commitments so they can do in any or all of those four modes.

The leaked draft texts from TISA reveal three layers of rules that would bind the governments of countries that sign up to TISA for the indefinite future:

### 1) the core text sets the basic rules that **apply to services committed in a country’s schedule**<sup>90</sup>

- The **market access** rule stops governments from restricting the size or growth of a particular services market by using monopolies (e.g. government-controlled distribution of poultry products), numerical restrictions (e.g. only 2 hotels over a certain size are permitted in a region), economic needs or labour market tests that show there are no local workers available, requiring foreign firms to adopt a particular legal form (e.g. a personnel agency must establish a local company rather just an agency). The government can’t require investment through a joint venture (e.g. an aquaculture operation must have a local partner). The rule also prohibits a cap on *total* foreign ownership in a service firm in that sector or across the subsector (e.g. foreign owners cannot hold majority control of a dairy factory or of total dairy processing in the country).
- The **national treatment** rule prevents better treatment of local firms (e.g. subsidies to indigenous forestry producers or local operators of digital platforms for trading food products). It also prohibits measures that only apply to foreign firms, such as caps on how much of a certain

business or asset an *individual* foreigner can own (e.g. no foreigner can own more than five restaurants or more than 20% of fishing quotas).

- A new '*localisation*' rule would mean ***offshore providers of a service could not be required to have a local presence*** in the country. That would pose major obstacles to: holding them legally liable for breaches of criminal or civil law, including labour law; vetting the qualifications of people supplying the service; assessing compliance with technical and professional standards or with consumer protections; the government's ability to levy and collect tax; as well as monitoring the labour standards of workers who are delivering the service.
- Another 'non-discrimination' rule prevents governments from setting certain ***performance requirements*** as a condition for allowing foreign investors to supply a service, e.g. that they must use a certain amount of locally produced services or goods, or must transfer technology or proprietary knowledge to local businesses. That ban includes requirements to employ or train workers who would gain access to such knowledge, meaning locals could be limited to providing cheap low-skilled labour while the more skilled jobs are kept for foreigners. The WTO already prohibits similar requirements on foreign investors in *goods*; TiSA would extend them to the broad realm of services.
- Governments cannot require foreign-owned firms to employ local ***senior managers*** or appoint a majority of ***local directors***.

**2) TiSA has about 20 proposed annexes** that would impose restrictions on the regulation of areas of policy (e.g. labour mobility, domestic regulation, transparency (for corporations)), or of specific service sectors (e.g. finance, air or maritime transport, energy, telecommunications). In most cases, these rules would only apply where the relevant service has been committed in a country's schedule. Some of these annexes don't have much support. The most important annexes for IUF, and which do have broad support, are:

- ***Labour mobility***: In the guise of 'trade', a firm from one TiSA country that has a contract to deliver services into another TiSA country could employ ***foreign workers*** to deliver the contract and those workers could be guaranteed a right of entry for periods of up to 3 months. There are no protections for those workers, or requirements for the contractor to try to recruit local workers first<sup>91</sup> (see section 6.1).
- ***e-commerce***: TiSA's e-commerce annex would allow Big Tech (Amazon, Airbnb, Google) to entrench their dominance over the global digital economy from government regulation. The proposed rules would prohibit requirements that businesses, or their data companies, hold or process locally sourced data inside the country; that means data could be held on servers anywhere in the world, subject to that country's laws and (lack of) protections for use. Digital firms could also keep the source codes and algorithms that run their apps a secret; without compulsory disclosure, it would be nearly impossible to prove racist or gender discrimination or consumer frauds (as with VW's emissions systems), unless whistle-blowers come forward (see Box 2).
- ***Domestic regulation***: The market access and national treatment rules in the core text limit to particular kinds of government regulation. TiSA governments and Team TiSA want additional restrictions on three further ways of regulating services: qualification requirements and procedures, licensing requirements and procedures, and the technical standards that apply to a service. They have proposed a multi-layered test that would require governments to take the most light-handed approach reasonably available to achieve the 'legitimate objective' of the policy or regulation. Decoded, that means hands-off, market-based approaches, such as voluntary codes and guidelines, self-regulation, and education, rather than concrete obligations that are enforceable. Business interests are given priority over social, labour, health and safety, cultural, environmental or other discretionary considerations when a country decides the

preferred way to regulate a service. Licensing requirements that impose health and safety obligations, insurance protection, payment of minimum wages, data protection, could all be attacked as unnecessarily burdensome. So could technical standards that specify work and rest hours, safety standards and the level of exposure to toxic substances. In addition, the administration of regulations must be 'reasonable' (some employers consider almost every labour regulation to be unreasonable), 'objective' (not using subjective tests, like 'effective' protections for workers) and 'impartial' (not favouring one interest, such as employees).

- **Financial services:** Team TiSA wants unrestricted rights to supply banking, insurance, investment, and other financial services across the borders, including to support e-commerce, and to ensure regulations don't make it more difficult or less profitable to do business. Cross-border finance includes the trading of futures in food commodities, managing pension funds, and the activities of investment funds, such as private equity funds buying and selling businesses to return a quick profit to investors. Governments are asked to lock in and go beyond their current levels of financial deregulation and liberalisation. They are required never to regulate 'new' financial services or products that are permitted (i.e. not yet prohibited) in another TiSA country – such as the securitised sub-prime mortgages that imploded in 2007, triggering a global financial crisis. Under TiSA, the finance industry would become even more high-risk, high-profit, globally mobile and unstable.
- **Transparency:** TiSA governments **and their corporations** would have the right to be informed of proposed new regulations *in advance* so they can lobby to protect their interests. There is no equivalent guarantee for workers, unions or for other voices, such as indigenous peoples, consumer representatives or environmental NGOs.

**3) country-specific schedules** set out what services sectors each country is committing to the core rules and to most of the annexes, including the annexes identified above. As explained in section 3.2, schedules are negotiated – a government cannot decide unilaterally what it wants to commit or protect.

There are several techniques to maximise the sectors a country bring under TiSA's rules. First, every TiSA country is expected, at a minimum, to give all the other TiSA countries what they have already promised in any bilateral or regional FTA, even when that promise was made in return for specific trade-offs. However, if a country commits less in TiSA than in an agreement with another TiSA party the initial agreement applies. Second, every TiSA country is required to use a 'negative list' approach to the 'non-discrimination' rules, which commits a service or measure to the rule unless it has been explicitly excluded (see section 3.2).

### **Dispute settlement**

TiSA is modelled on the GATS within the WTO, where enforcement is by states against states. But because it is a plurilateral agreement that sits outside the WTO it does not have access to its' dispute settlement mechanism. The panel of arbitrators hearing a dispute would be trade experts, not proper judges. Unlike the WTO, the current proposal does not provide any appeal from a panel's decision. If a party was found in breach of the TiSA rules, it would have to abandon or adjust the non-compliant measure, or face the risk of sanctions – not only against its services, but also against other parts of its export economy, such as agriculture or manufacturing.

Even though investments in services are covered by TiSA's rules there is no distinct investment chapter with investor rights of the kind found in bilateral investment treaties or investment chapters of comprehensive FTAs.

*The overall effect of TiSA is to restrict a government's autonomy to regulate in the interests of its people and require it to pursue a pro-corporate, extreme neoliberal agenda for the indefinite future.*



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- <sup>1</sup> Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Singapore, Peru, Viet Nam; the US withdrew in January 2017. The remaining eleven countries have concluded the CPTPP, which suspends some provisions of the original TPPA and changes its requirements for entry into force. It is expected to be signed on 8 March 2018.
- <sup>2</sup> The ten ASEAN countries (Brunei Darussalam, Cambodia, Indonesia, Myanmar (Burma), Lao PDR, Malaysia, Philippines Singapore, Thailand, Viet Nam), Australia, China, India, Japan, New Zealand and South Korea. Negotiations began in 2013 and are ongoing.
- <sup>3</sup> 'Corporate Concentration within the Agri-food Sector', IPES Food, 2017 <http://www.ipes-food.org/images/Reports/TR3---Concentration-Brief-Oct-2016.pdf>
- <sup>4</sup> The Team TiSA website ceased functioning in 2017. For details about the membership see Jane Kelsey, *TiSA: Foul Play*, UNIGlobal Union, 2017, p.20
- <sup>5</sup> Global Services Coalition Position Paper on the Trade in Services Agreement (TiSA), September 2014, [https://www.businessnz.org.nz/\\_\\_data/assets/pdf\\_file/0009/88713/140924-GSC-Statement-on-TiSA-Sept-2014.pdf](https://www.businessnz.org.nz/__data/assets/pdf_file/0009/88713/140924-GSC-Statement-on-TiSA-Sept-2014.pdf)
- <sup>6</sup> Christine Chemnitz et al (eds) *Agrifood Atlas. Facts and figures about the corporations that control what we eat*, Heinrich Boll Foundation, Rosa Luxemburg Foundation, Friends of the Earth Europe, 2017, p.45
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- <sup>11</sup> WTO, 'Communication from China: Work Programme on Electronic-Commerce', 10 November 2017, JOB/GC/150, at the 11<sup>th</sup> Ministerial Conference of the WTO in Buenos Aires in December 2017 <http://www.sodexo.com/home/services.html>
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- <sup>14</sup> 'IoT Prevents Accidents through Early Detection while Boosting Traffic Efficiency! The Advent of New UBIQUITOUSWARE Products', *Fujitsu Journal*, 21 January 2016, <http://journal.jp.fujitsu.com/en/2016/01/22/01/>
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- <sup>16</sup> For example, the free trade agreements between the EU and Mercosur and the EU and Japan.
- <sup>17</sup> [www.consilium.europa.eu/en/meetings/tte/2017/12/04-05/](http://www.consilium.europa.eu/en/meetings/tte/2017/12/04-05/)
- <sup>18</sup> National treatment, local presence, performance requirements, senior management and boards of directors.
- <sup>19</sup> <https://unstats.un.org/unsd/cr/registry/regcs.asp?Cl=2&Lg=1&Co=15>
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<sup>32</sup> American Farm Bureau Federation, 'Privacy and Security Principles for Farm Data',  
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<sup>42</sup> 'Giant Pacific Andes Processor, Damanzaihou has no special destination', *FIS*, 16 June 2016,  
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- <sup>88</sup> ‘Mass pressure takes Uruguay out of TiSA Negotiations’, IUF, 13 September 2015, <http://www.iuf.org/w/?q=node/4452>
- <sup>89</sup> Governments have a positive obligation to take all reasonable steps available to ensure those lower levels of government comply.
- <sup>90</sup> Not all of TiSA’s core rules are discussed here, eg. the most-favoured-nation rule that requires all parties to the agreement to receive the best treatment given to any one of them.
- <sup>91</sup> The EU is the only country suggesting a labour market test. Annex on Movement of Natural Persons, 8 November 2016, Article X, Specific Commitments, 2(c), p.7