



AFTINET
Australian Fair Trade &
Investment Network Ltd

**Submission to the Peoples' Privatisation Inquiry
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Introduction

The Australian Fair Trade and Investment Network (AFTINET) is a network of 60 community organisations and many more individuals which advocates for fair trade based on human rights, labour rights and environmental sustainability.

We support the development of fair trading relationships with all countries and recognise the need for regulation of trade through the negotiation of international rules.

In general, we prefer non-discriminatory multilateral negotiations to preferential bilateral and regional negotiations that discriminate against other trading partners.

We advocate for a framework that recognises the special needs of developing countries and is founded upon respect for democracy, human rights, labour rights and environmental sustainability.

The current process in Australia is that trade negotiations are conducted in secret, and the text is not made public until after it has been agreed. The decision to sign agreements occurs at the Cabinet level and it is only after agreements have been signed that they are tabled in Parliament and examined by the Joint Standing Committee on Treaties (JSCOT). Parliament only votes on the implementing legislation, not on the whole agreement.

The Senate Inquiry into the Australian trade agreement process held in 2015 summarised the faults in this secretive and undemocratic process in its report, aptly called *Blind Agreement* (Senate Committee on Foreign Affairs Defence and Trade, 2015). AFTINET made a detailed submission to this inquiry (AFTINET 2015)

Although public and Parliamentary participation is limited, governments do have very detailed discussions with the industry groups and corporations most concerned with the commercial outcomes of the agreement. These organisations have the resources to consistently lobby governments, attend trade negotiations held both in Australia and overseas and make very detailed submissions about the content of agreements. This results in very lopsided input and under-representation of public interest issues. (Braithwaite and Drahos, 2000).

Privatisation

There has been a continuing debate in Australia about the merits of privatisation of public infrastructure and public services. The strongest pressures for privatisation come from global firms and industries which wish to invest in these sectors with the aim of profitable returns to shareholders. The promised cost savings to government and consumers through private provision have often not been delivered (Walker, 2015)

In fact, most public infrastructure and services have developed as public entities historically because they have special characteristics which mean that there can be conflicts of interest between effective and equitable service provision and profitability for shareholders. Some are natural monopolies, and others like health and education

require extensive government regulation to ensure they are affordable and accessible to all (Meagher and Goodwin, 2016).

This debate was summarised recently by Mr Rod Sims, the Chair of the Australian Competition and Consumer Commission, who claimed that privatisation of public monopolies like ports, electricity generation and transmission facilities has created “unregulated monopolies that exercise their market power to raise prices for consumers, hurt productivity and damage the economy” (Hatch, 2016).

Trade in Services Agreements and pressures for privatisation

The growing importance of commercial trade in services on a global scale was recognised when the World Trade Organisation negotiated the General Agreement on Trade in Services (GATS), which came into force in 1995. This was the first time that trade in services became subject to rules which were legally binding on governments and could be enforced through trade sanctions.

AFTINET does not oppose increased trade in commercial services. However, there are tensions between opening what many see as essential services to private investment and deregulation, and the need for continued public services and public regulation of services. This has given rise to an ongoing debate. Global services companies have lobbied for both increased privatisation and deregulation, while many community organisations and some governments have resisted these trends.

Negotiations for further liberalisation through the WTO GATS from 2002 reflected this debate. Governments from the US, the EU and other industrialised countries advocated on behalf of their often global service companies for further liberalisation. These proposals were resisted by most of the emerging former developing countries like Brazil, India China and South Africa, and by the vast majority of developing and least developed countries. These countries did not have developed services industries and wished to retain the ability of governments to regulate services in the public interest. Negotiations effectively stalled from 2010.

In 2013 a group of 23 mostly industrialised WTO member countries calling themselves “the really good friends of services” started negotiations for a separate Trade in Services Agreement (TiSA) outside of the WTO framework. The TiSA aims to deregulate services further than the GATS) and open more services to cross-border private investment. The vast majority of the 164 members of the WTO are not involved in the negotiations. Those involved are mostly OECD countries, with a few developing countries, although Uruguay and Paraguay have recently withdrawn from the negotiations. Emerging countries like Brazil, India, China and South Africa are not involved¹.

¹ The current TiSA negotiating countries are Australia, Canada, Chile, Colombia, Costa Rica, European Union, (comprising 28 countries) Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Korea, Switzerland, Taiwan, Turkey, United States

The negotiations are taking place in secret, without access to draft proposals, offers or negotiating texts. This is less transparent than the WTO, where proposals, offers and draft texts on trade in services have been published since 2003.

Since 2013, There have been 18 rounds of negotiations, but only one set of public briefings provided each year by the Department of Foreign Affairs and Trade. Without access to the proposals or draft text they lack detail and make meaningful input difficult. The only detail has been provided by leaked documents (Wikileaks, 2106). There is now pressure to include the negotiations by the end of 2016.

Services under negotiation range from water, health and education to financial and environmental services, all of which need regulation to ensure equitable access. Governments also need the flexibility to respond to changes like the global financial crisis or climate change. AFTINET believes national policies on the regulation and provision of essential services should be decided through transparent democratic parliamentary processes, not through trade negotiations conducted in secret.

The WTO GATS is a positive list agreement, which means that each government can choose whether to include particular services in the agreement. The TiSA applies a negative list to national treatment of services, which means that all services, including new services which might develop in the future, are covered by its rules, unless specifically exempted. Market access is based on a positive list, which makes the agreement very complex.

Public services are claimed not to be included in so far as they are “services supplied in the exercise of governmental authority and not on a commercial basis, nor in competition with other providers.” But this is an ambiguous definition which can include many public services.

There is a chapter on state-owned enterprises like water or postal services which says they must operate on the same basis as commercial companies which compete with them. Community service obligations must be separately funded by government. This can place pressure on quality service provision and prepare enterprises for privatisation by removing the justification for public ownership.

The structure of the agreement treats government regulation as if it were a tariff, to be reduced and minimised over time in all service sectors, including new services, through “standstill” and “ratchet” provisions. This means that regulation is effectively frozen at current levels, cannot be increased unless specifically exempted, and must be reduced over time. These provisions reduce the flexibility to increase regulation if circumstances change, or to introduce new regulation for new services which might develop in the future.

TiSA could also restrict the ability of governments to respond to failures in services privatisation. For example, the recent attempt to create a private market for vocational education services resulted in fraudulent advertising, failure to provide courses to students and misuse of government funds (Branley, 2016) The system is now being reviewed, with the aim of regulation to prevent such abuses (Knott, 2016). In these circumstances, there must be sufficient flexibility for governments to re-regulate and if necessary resume public service provision in the event of market failure.

There are also TiSA proposals to limit regulation in areas like licensing, qualifications and standards, to ensure they are not ‘more burdensome than necessary’. These proposals could restrict the ability to ensure safe and equitable access to essential services like water, to establish quality standards in areas like childcare and aged care, and for environmental standards.

TiSA is not the only trade agreement dealing with trade in services. Over the last two decades, most bilateral and regional trade agreements have had trade in services chapters which were initially modelled on the WTO GATS Agreement. However, TiSA is now becoming the template for trade in services chapters in regional and bilateral agreements like the Trans-Pacific Partnership between the US, Australia and Pacific Rim countries and the Australia-Indonesia Cooperative Economic Partnership Agreement.

Conclusion

AFTINET is concerned that the secrecy of trade in services negotiations and the prominent role played by global service companies with an agenda of privatisation and deregulation could result in reduced ability of future governments to regulate and provide essential services in the public interest.

The promotion of increased trade in services by private companies for commercial purposes should not prevent governments from retaining their full capacity to regulate and provide essential services in the public interest.

Policies and laws relating to essential service provision should be decided through transparent democratic parliamentary processes, not through secret trade negotiations which bind governments into rigid rules which could prevent them from responding to future changes like market failure, financial crises and climate change.

For these reasons, exposure of the process and content of trade in services agreements to critical public debate is an essential part of the wider privatisation debate.

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