Norway's Energy Agenda in the Trade in Services Agreement (TISA)

POLICY BRIEF

1/ 2016

Norwegian Trade Campaign
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HANDELSKAMPANJEN

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The Norwegian Trade Campaign is a network of organisations from farmers-, unions-, environmental- and solidarityorganisations. Members are Attac, Fagforbundet, For Velferdsstaten, Handel og Kontor, Latin Amerikagruppene i Norge, Natur og Ungdom, Nei til EU, Norges Bondelag, Norges Bygdekvinnelag, Norges Bygdeungdomslag, Norsk Bonde og Småbrukarlag, Oikos- økologisk Norge, PRESS, Spire, Ungdom mot EU, Utviklingsfondet og Folkeaksjonen mot TISA.

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EXECUTIVE SUMMARY

Norway is now acting as lead advocate for an Energy Related Services Annex in the proposed Trade in Services Agreement, or TISA, a secret set of international trade talks that energy companies would like to use to expand access to the planet's remaining resources.

Despite growing populist backlash to globalization, too few policy-makers are aware of TISA's existence, and even fewer elected officials are aware of its implications for energy, environment, and economy.

This policy brief features ten boxes that breakdown each article of the proposed TISA text on Energy Related Services (ERS), explaining its essence in less than 100 words. The full draft ERS text appears as an Annex. The brief also examines TISA's implications for ecological sustainability, economic equity, and developing countries.

It's key findings are:

- ecological impacts, especially global climate change, could be exacerbated if TISA expands oil exploitation while reducing regulations that encourage low-carbon energy sources and technologies;

- economic equity could worsen if TISA encourages big oil service corporations to expand their own wealth and power while energy workers are not ensured labor rights protections;

- developing countries could be deprived of opportunities to enhance their development and workforces by disallowing policies that can ensure domestic benefits that accrue from energy exploitation;

- reducing the role of governments via TISA would seriously setback efforts to increase "energy democracy," where energy resources are governed equitably, ecologically, and democratically.

Therefore, the report recommends:

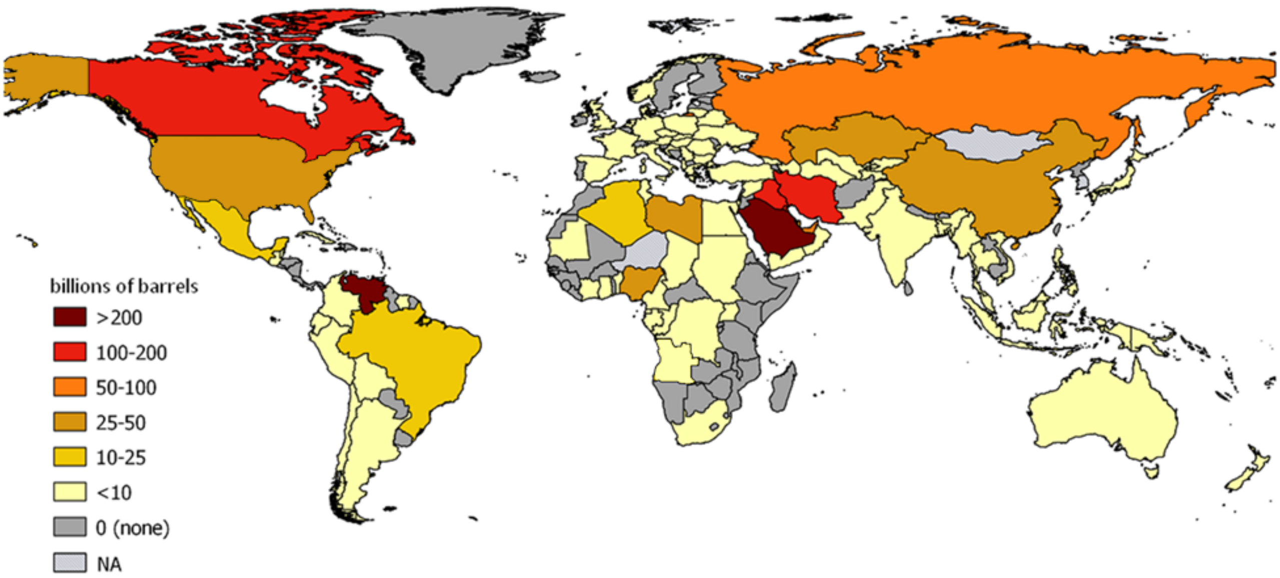
- Abandon TISA talks, and especially any Energy Annex; policymakers would be wise to wait out the clock and not rush headlong to finalize TISA;

- Urge other delegations to distance themselves from the principle of technological neutrality or clarify that it does not mean sacrificing any government authority to regulate any energy source or type of technology, either existing, emerging, or yet-to-be envisioned;

- Explore opportunities to collaborate with oil exporting countries who could benefit from better skill shares on safety and emissions reductions and renewable installations.

INTRODUCTION AND BACKGROUND

MAP 1: WORLD PROVED CRUDE OIL RESERVES IN 2014



Source: U.S Energy Information Administration 2016: Who are the major players supplying the world oil market?

The proposed Trade in Services Agreement's (TISA) Energy Related Services Annex could have enormous impacts on today's global energy system.[I] Energy Services are one of several sectors—including finance, data, transport, among others—slated for big gains if industry is able to get governments to agree to reduce its rights and responsibilities to regulate in the public interest.

TISA is its own negotiating forum although its architects clearly intend to take it to the World Trade Organization (WTO),[II] so much of the groundwork is already in place to ensure TISA's energy rules become the new global regime. Across all services sectors included in the agreement, TISA would institutionalize the prioritization of rights for corporations and investors over protections for people and the planet.

TISA talks currently include 23 WTO Member Nations, Australia, Canada, Chile, Chinese Taipei, Colombia, Costa Rica, Hong Kong China, Iceland, Israel, Japan, Korea, Liechtenstein, Mauritius, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, Switzerland, Turkey the United States, as well as the 28-Member European Union.[III] Brazil's new government might also join,[IV] a major market for Statoil.[V]

Oil Industry Imperatives

Advancing an agenda first floated fifteen years ago by the Bush-Cheney White House,[VI] Norway is now acting as top advocate for a new free trade agreement that would radically reduce the role of government in regulating energy,[VII] one of the economies' most strategic sectors, and certainly one that

significantly impacts national security and ecological sustainability.
Especially interesting to energy services companies is the vast majority of global oil reserves currently controlled by governments, valued at trillions of dollars in potential profits for commercializing carbon assets that may already be polluting the planet beyond repair. The U.S. Energy Information Agency's update from February 2016 on "the major players supplying the world oil market" notes that, "Government-owned national oil companies (NOCs) control most of the world's proved oil reserves (75% in 2014) and oil production (58% in 2014). International oil companies (IOCs), which are often stockholder-owned corporations, make up the balance of global oil reserves and production."[VIII]

Of the 25% of oil reserves that IOCs reportedly control, much of it is held by the six so-called Supermajors: Exxon, Shell, Chevron, BP, Conoco and Total.[IX] Oil services companies, such as Schlumberger and Halliburton, don't often own oil reserves outright but they are contracted by both NOCs and IOCs to provide specific services such as testing, drilling, engineering, etc. Neither IOCs nor oil services companies are able to access government-controlled oil reserves as easily as they would like. That's why TISA's energy agenda reflects today's reality of oil industry imperatives,—that is, what they must do to survive, and thrive—where few companies still have huge staffs and since they simply outsource for specific services. TISA would provide oil services companies with access, not to the ownership of energy resources, but to the oil service contracts needed for production. With TISA, such companies do not directly "own" the oil but they are able to profit from its exploitation.

Oil companies are now often only executive offices with administrative teams overseeing outsourced contractors and subcontractors of specialized services for limited periods of time, using short-term equipment rentals. TISA would deliver rules for today's "just-in-time" workplace where companies aim to exploit the most lucrative links in the global value chains of supplying energy.

Post-Paris Climate Policies Classified as Trade Violations

If concluded in December 2016, TISA would hit world markets at a crucial time when governments agreed only one year ago in Paris to enact ambitious policies to shift to low-emissions energy sources and technologies.[X]

If a TISA Party wanted specific environmental reviews or permits before entering new areas of oil exploration, or insisted on certain technologies for exploitation, TISA could be used to prohibit specific requirements or procedures as barriers to free trade in energy services. See more below.

As NOCs are primarily comprised of publicly-owned carbon assets awaiting conversion to cash, more people are asking post-Paris if converting carbon to cash via oil production can be done before regulations curbing greenhouse gas emissions come into enforceable laws.

Norway's Role in TISA's Energy Agenda

Norway, along with Iceland, are both listed in leaked TISA documents as authors of the proposal for an Energy Related Services Annex, which is strikingly similar in structure, language, and specific policy demands to proposals previously pushed in WTO by the European Union and the United States. In the past, Norway has participated in the WTO's

"Friends of Energy Services" group supporting greater free trade in this sector, but it is not clear how or why they have now become its chief advocate.

Perhaps the U.S. and E.U. are now prioritizing other service sectors, whereas Norway's top three exports are still goods based in oil and gas. Iceland's intention is to export more of its energy services in renewables, especially geothermal. Together with Norway's worldwide reputation as an arbitrator of global peace, the two nations' international images serve as useful screens to "greenwash" the oil industry's dirty energy agenda.

Nevertheless, Norway's leading role is peculiar given that TISA threatens to take away control from not only government regulators, but also those responsible for the state's 67% ownership of Statoil who effectively act as "the person holding the right" to exploit Norway's energy resources. In Norway's case, self-governance and "policy space" over energy resources is put in play by a number of TISA's core provisions, and especially by its proposed Energy Annex. The country best known for its Peace Prize appears as if its become captured by oil interests pushing a plan that protects profiteers who would pollute the planet beyond repair. TISA's thrust of advancing an aggressive expansion of fossil fuels might make observers ask if Oslo's global oil agenda is trumping its aspirations for world peace.

> Iceland's intention is to export more of its energy services in renewables, especially geothermal. Together with Norway's worldwide reputation as an arbitrator of global peace, the two nations' international images serve as useful screens to "greenwash" the oil industry's dirty energy agenda.

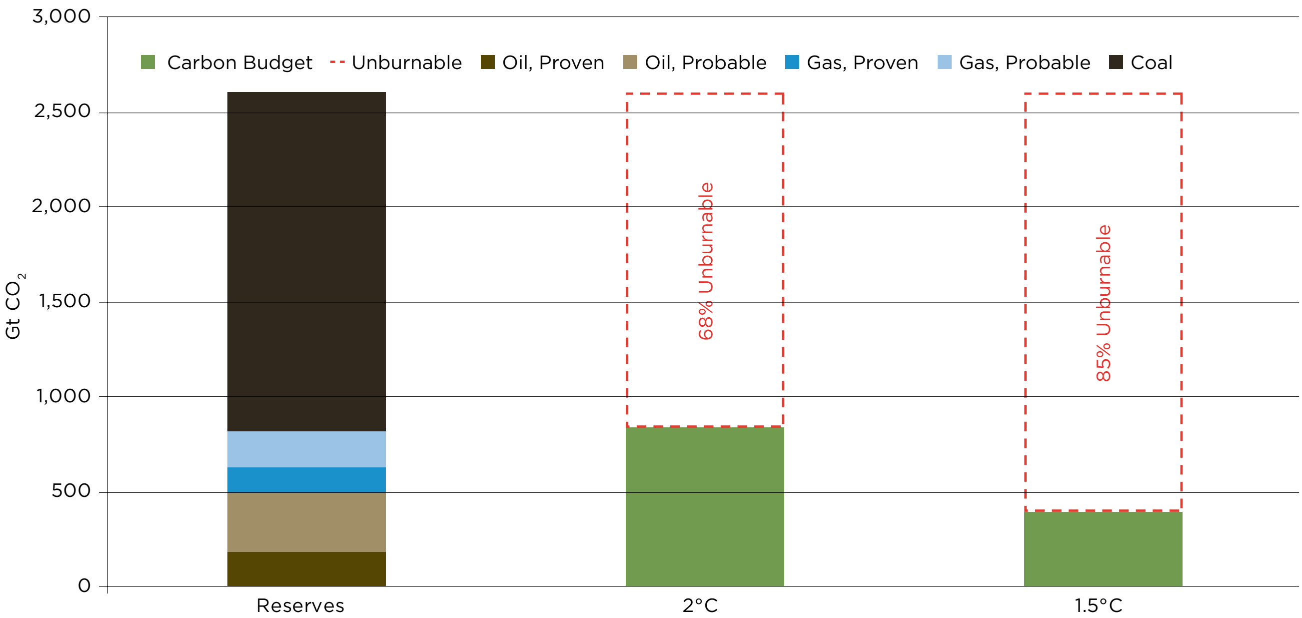
Ten Threats from TISA's Energy Text

Throughout the text of this report, readers will see ten small boxes explaining the essence of each article in the proposed Energy Related Services Annex of the TISA text. At the end of this report, the full draft ERS text is attached as an Annex.

ENVIRONMENTAL IMPLICATIONS

BOTH TISA'S OVERALL AGENDA AS WELL AS ITS SPECIFIC PROVISIONS ARE NOT GOOD NEWS FOR POLICYMAKERS TRYING TO USHER IN A JUST TRANSITION TO ECOLOGICALLY SUSTAINABLE ENERGY SUPPLIES.

CHART 1: GLOBAL FOSSIL FUEL RESERVES COMPARED TO CARBON BUDGETS FOR LIKELY CHANCE OF 2°C AND MEDIUM CHANCE OF 1.5°C



Source: OCI 2016: "The Sky's the Limit: Why the Paris Climate Goals Require a Managed Decline of Fossil Fuel Production," Oil Change International.

Is TISA's Intended Outcome Based on Sound Climate Science?

Scientists say we must keep the vast majority of the planet's fossil fuels in the ground,[XII] which appears as if it's diametrically opposed to Norway's establishing a new set of trade rules aimed at expanding oil exploitation by establishing new markets in resource-rich countries for energy services companies.

A letter from civil society's climate campaign groups to governments gathering at November 2016's UN Climate Convention's (COP 22) in Marrakech, Morocco states that:

Analysis has now shown that the carbon embedded in existing fossil fuel production, if allowed to run its course, would take us beyond the globally agreed goals of limiting warming to well below 2˚C and pursuing efforts to limit to 1.5˚C. The global carbon budgets associated with either temperature limit will be exhausted with current fossil fuel projects, and in fact some currently-operating fossil fuel projects will need to be retired early in order to have appropriately high chances of staying below even the 2˚C limit, let alone 1.5˚C.

With this new understanding, the challenge has never been clearer. To live up to the goals set forth by the Paris Agreement and to safeguard our climate for this and future generations, fossil fuel production must enter a managed decline immediately, and renewable energy must be advanced to swiftly take its place in the context of a just transition. Therefore, we, as civil society organizations representing millions around the world, call on world leaders to put an immediate halt to new fossil fuel development and pursue a just transition to renewable energy with a managed decline of the fossil fuel industry. [XIII]

It is within this context of today's epic ecological crisis of rapidly rising surface temperatures, sea levels, storm intensity, floods, drought, and desertification that the world must view Norway's proposed Energy Annex in TISA. If science is seriously taken into account, it means managed decline of existing and planned oil production immediately, not further expansion via liberalization. TISA's "standstill" and "ratchet" clauses could complicate efforts to transition energy supplies since they would make permanent deregulation and liberalization policies, requiring that they not be reversed.

How TISA Could Conflict with Climate Commitments under the Paris Agreement

Human history is now at a time when the vast majority of the Earth's fossil fuels must be kept buried underground in order to have a chance of keeping temperature increases and other climate impacts within manageable ranges. Given today's ecological imperatives, TISA overall objective of opening more markets to please oil interests is scientifically unsound if not downright dangerous.
Post-Paris policy actions by governments are accelerating trends to actively encourage the expansion of energy forms that do not emit dangerous greenhouse gases while also curbing emissions and reducing usage of those sources that are carbon intensive.

BOX 1- TISA TEXT CORE PROVISIONS: SHIFT POWER TO "SERVICES" COMPANIES

The Trade in Services Agreement (TISA) aims to open markets for companies providing "services" (as opposed to producing goods), a growing sector of special interest for firms from developed countries. Leaked texts reveal TISA's core provisions contain elements that would radically reduce the right to regulate companies in finance, transport, data, and energy, among other "systemic sectors" of the economy.[XI] Boundaries between goods and services are also becoming blurrier as technology evolves, for example with mobile phones, or even energy. Secretive TISA talks include Norway along with the EU's 28 member countries and 22 members nations of the WTO.

Technological Neutrality

While indeed the world is now in a moment when energy innovation is of epic importance, TISA could prevent policymakers from acting on the fact that today's climate crisis is caused by a certain class of technologies and very specific energy sources that must be thoroughly regulated as we phase down fossil fuels.

Article 1 of TISA's Energy Annex deserves close examination since it seems to be based on an idea that could have grave implications for not only the environment but also how humans govern technology, today and into the future.

"Article 1-Scope" states, "This Chapter shall apply to measures affecting trade in energy related services, irrespective of the energy source dealt with, technology used, whether the energy source is renewable or non-renewable, and whether the service is supplied onshore or offshore."

Establishing this principle as Article 1 of TISA's proposed Energy Annex implies it is an important idea that the text's advocates aim to advance. While it may sound smart, its implications are impossible to predict and far from officially accepted among WTO Member Nations.

The United States has repeatedly attempted to argue the technological neutrality principle in WTO and other trade bodies to legitimize its legal status. WTO Dispute Panels have noted that the U.S. has asserted this principle, and that the idea could be consistent with GATS,[XIV] however disagreement over the idea by other WTO Members is literally reduced to a footnote.[XV] WTO's July 1999 "Work Programme on Electronic Commerce, Progress Report to the General Council," adopted by the Council for Trade in Services, states:

"It was also the general view that the GATS is technologically neutral in the sense that it does not contain any provisions that distinguish between the different technological means through which a service may be supplied. Some delegations expressed a view that these issues were complex and needed further examination." While the idea appears to have originated in applying to electronic commerce, its advocates are trying to extend its application to other areas of the economy, such as energy services. Norwegian trade negotiators have apparently accepted this principle of neutrality as they are advancing a similar idea in their proposal as that from the Friends of Energy Services. Indeed, Norway's entire ERS proposal shares the same structure, language, and specific policy demands as proposals fifteen years ago pushed by the European Union and United States. The EU's "Collective Request in Energy Services" under the WTO's services talks tried to expand similar notions in the General Agreement on Trade in Services (GATS).

BOX 2- TISA TEXT ENERGY ANNEX- REDUCE THE ROLE OF REGULATORS

TISA's proposed Annex on Energy Related Services aims to establish new rights for energy service companies over government authorities responsible for regulating and protecting health and safety, conserving the environment, ensuring local content, or enhancing workforce development. Big Oil companies are increasingly outsourcing their activities to specialized service suppliers via contracts and subcontracts, so TISA would "get government out of the way" so that they could contract with whomever they want, whenever they want. The biggest oil reserves are controlled by governments' National Oil Companies (NOCs), which TISA does not now cover but could if introduced to WTO's multilateral membership.

A Statoil statement on technological neutrality does not instill confidence that a more prudent and climate-friendly definition is widely shared.[XVI] The company's public position on "EU energy and climate policies beyond 2020" states that "Innovation and cost-effectiveness are best guaranteed by policies that promote competition among energy sources instead of prescribing a specific energy mix. The European Commission's Energy Roadmap 2050 has demonstrated that a technology-neutral approach is the most cost- effective."

The TISA text sounds strikingly similar to the principle of "technological neutrality," which threatens energy democracy as well as the planet by potentially preventing governments from enacting measures that encourage or discourage specific energy sources or technologies.

To project what it might mean in the energy sector, municipal measures mandating solar or other renewable sources might be at risk of TISA's telling them they cannot require installation of solar since "neutrality" requires that rules are irrespective of source or technology.

It is an extremely slippery slope to go down since TISA also could remove the right to regulate future services from emerging technologies. Norwegian trade negotiators may have a different understanding of the principle but this position is not yet public let alone perfectly clear in how it would apply to all sorts of measures being implemented across the planet to protect our common future.

BOX 3- TISA TEXT
ARTICLE 1- TECHNOLOGICAL NEUTRALITY: TREAT ALL SOURCES THE SAME

Article 1 of TISA's Energy Annex appears to extend the principle of "technological neutrality" to the energy sector, which could potentially prohibit governments from enacting measures that distinguish between different types of energy sources and technologies. Ignoring inherent differences between oil, gas, coal, wind, solar, and hydro would surely worsen global climate change. Restricting policies that guide innovation would silence society from having any say over what types of technologies and energy sources we use. Norwegian trade negotiators are advancing a persuasive yet specious argument that's been persistently pushed by American diplomats although other nations disagree.

Other Elements of ERS with Ecological Implications

TISA contains other elements' with important ecological implications that cumulatively reduce policy space. Key articles in the ERS include reinforcing TISA's restrictions on Domestic Regulations (TISA's Chapter X). Georgetown University Professor of Law, Robert Stumberg, has written widely on the dangers of trade in services talks infringing on the Right to Regulate. Stumberg's study of the legal terms used in services trade talks raises cautionary flags for regulators and elected officials responsible for protecting the public interest. Public Services International summarizes Stumberg's explanation of the legal complexities as follows:[XVII]

"TiSA's proposed text for limiting domestic regulations uses several terms (See Stumberg Box below), such as "transparent," "objective," "relevant," and "appropriate", that may sound noble, but in fact, are loaded with legal implications that could result in corporations rolling back almost any measure to protect the public good. One way governments regulate services is by requiring permits or licenses for services providers before they are allowed to operate. Too often, such permits are seen by service providers as unjustified barriers to the "free trade" in services."

"-'Pre-established' is a rule against change: it could negate any regulation that is adopted after a company is created, after property is purchased, or after a company establishes market share.

"- 'Objective' has five definitions in WTO documents including "not subjective" (which undermines balancing tests for determining the public interest) and "least-trade restrictive'.

"- 'Relevant' in the GATS context is linked with relevance to the supply of a service, which could be used to challenge measures that protect external impacts of energy services on the environment, aesthetic or cultural resources, or other sectors of a local economy."

For further examples of how the TiSA annex might clash with US utility regulation, see Stumberg's 2005 report, GATS and Electricity.

As an example consider U.S. President Obama's established a "climate test" to apply to proposed energy infrastructure in determining whether government agencies will grant permits for construction. The controversial Keystone XL pipeline's permit was rejected because it was determined that it would significantly increase carbon emissions. TISA's restrictions on procedures for granting government permits for energy services could potentially be used to stop such measures if they are deemed not "pre-established," "objective" or "relevant" to the energy service of "construction and related engineering services."

Greenpeace recently released a report arguing that two key clauses (1) restricting the right to regulate; and (2) requiring policy "standstill and ratchet" keeps governments locked-in to liberalized trade regardless of the consequences. "Together these two clauses undermine the ability of governments to ever reverse the liberalisation of services, even if elected on a mandate to do it." reads their report on TISA.[XVIII]

TISA's ERS also contains languages requiring national energy companies to dismantle public sector services and enforce participation by private players. If private sector companies are as superior in their "productivity" that they claim to be when compared to public sector then their participation could easily stimulate additional resource exploitation at a time when the world should be managing an organized decline in oil exploration.

BOX 4- TISA TEXT ARTICLE II- DEFINING SERVICES: PRIVATIZE ACTIVITIES OF PUBLIC COMPANIES

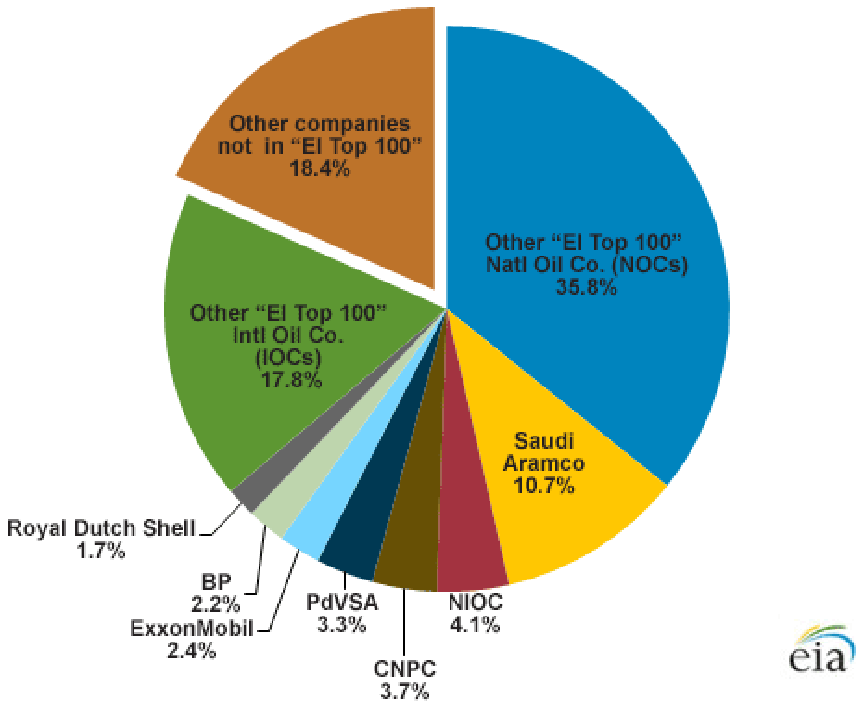
Article II defines the services covered by TISA's Energy Annex as activities "incidental to exploration, exploitation, development, production or distribution of energy or energy resources to the extent such services are supplied to energy companies." "Energy companies" are defined as the "persons holding the right" to energy resources, regardless of their ownership by public or private entities. Together, TISA apparently puts the activities of its signatories' public energy companies under market rules. Worse, TISA rules are made secretly by the suppliers of such services, often without the input or awareness of public officials let alone the general public.

BOX 5- TISA TEXT ARTICLE III- CROSS-BORDER TRADE: ALLOW SUPPLIES "WITHOUT LIMITATIONS"

Article III commits signatory countries to open markets for energy services "without limitations to permit cross-border supply" in eight essential areas of energy production, such as drilling services. It also opens markets in other energy services categories—such as mining, testing, and environmental services—that can be "subject to any terms, limitations, conditions, and qualifications set out" in a Schedule submitted by a Party. However, assurance of adequate "policy space" for regulators is limited, since TISA's core text establishes the principles of "standstill" (stopping any stronger regulations) and "ratchet" (prohibiting any reversal of liberalization).

ECONOMIC IMPLICATIONS

CHART 2: SHARE OF WORLD OIL PRODUCTION BY TYPE OF COMPANY, 2014



Source: U.S Energy Information Administration 2016: Who are the major players supplying the world oil market?

America's oil boom made OPEC increase exports in mid-2014, depressing prices and reducing jobs. With Norwegian oil workers out of jobs due to low oil prices lasting longer than projected, the national government in Oslo obviously wants to stimulate employment in the oil services sector.
As a nation endowed with ample oil supplies, Norway has an inherent interest in maximizing its own energy resource exploitation as well as participating in other nations' attempt to do the same.
However, there are serious problems with its TISA proposal to expand exports of Norwegian workers to other countries to exploit more oil. For example, Statoil is reportedly banking on Brazil[XIX] but workers and trade negotiators there are sometimes skeptical of trade liberalization. Further, exploiting Norway's existing domestic oil and gas reserves may not be physically realistic based on the most recent scientific scenarios of what must stay in the ground to keep average global temperatures at or below 1.5C, or even 2C. Norway is not ranked in the world's top twenty nations with the most oil

reserves. Having the world's largest sovereign wealth fund[XX] may also make Norway better positioned than most to weather the anticipated impacts on global climate change.

Internal Economic Interests

The internal economic interests of Norway's energy actors, such as Statoil, oil service companies, energy workers, and government reliant on oil revenues, bear much more scrutiny than this policy brief can begin to provide. Many of the most lucrative markets for oil service providers are, of course, in oil rich nations of the Middle East that have wisely kept out of energy services talks in WTO/GATS, and are staying away from TISA. TISA provides a possible future pathway for them to provide more services to the companies holding the rights to energy resources, if not directly access the resources themselves.

Statoil obviously wants to expand exploration in other areas of offshore Norway, since it sees that domestic discovery rates are decreasing and supplies overall are rapidly depleting. Seeking new revenue, Statoil is seeking new opportunities in other countries by exploiting those territories' oil resources. Sometimes taking out concession on their own and on other occasions partnering with national oil companies, more often than not their access to resources is restricted.

The government of Norway wants to expand export of tens of thousands of jobless energy service workers. Trade talks refer to this type of services delivery as Mode 4, or the movement of natural person to provide services in another Party's territory. Norwegian petroleum workers' unions could have significant concerns about expanding services trade via Mode 4 liberalization, reflecting workers worldwide who want rights protected wherever they might work. It could easily be so that control of working conditions of energy workers, in Norway and worldwide, would deteriorate even more.

Just Transition Strategies and S olutions

Norway should work with others to manage decline of production, not more expansion. Its energy expertise could be deployed to increase efficiency while power down existing operations. Another possible pathway forward is mobilizing Norway's energy expertise to export knowledge and share skills and experience, especially in Africa, with greater efficiency in existing oil sector operations and the emerging sectors in renewable energy, especially micro-hydro power.

BOX 6- TISA TEXT ARTICLE IV- COMMERCIAL PRESENCE: NEW RIGHTS FOR FOREIGN INVESTORS

Article IV commits signatory countries to open markets in energy services "without limitations to permit supply through commercial presence," which means allowing foreign investors a physical presence in one's own national territory. Many oil-rich countries have historically chosen to keep foreign investors from establishing any physical presence in their territories, or have been very selective in how they allow it. While WTO's rules on services (GATS) already include the "right to establishment," they do not apply specifically to the energy sector, whereas TISA's explicit extension of such rights to the energy services sector could sacrifice sovereign control over energy resources.

> Norway should work with others to manage decline of production, not more expansion.

BOX 7- TISA TEXT
ARTICLE V- ENERGY RESOURCE SOVERIEGNTY: YOUR RESOURCE, MY MARKET

Article V recognizes states' sovereignty over energy resources yet reaffirms "that such rights must be exercised in accordance with, and subject to, the rules of international law." While this may sound safe, recall that international trade law, as enforced by WTO, has as its overall objective the free flow of trade in goods and services. Further, TISA's Energy Annex would reinforce, as Article V states in its following phrase, "the objective of promoting trade in energy related services." TISA's Articles cumulatively compel countries to make energy production activities once preserved for public entities into private markets for service suppliers.

BOX 8- TISA TEXT
ARTICLE VI- RIGHT TO REGULATE

Article VI appears to safeguard domestic decisions that regulate the energy industry, however its result may be to "regulate the regulators." WTO dispute resolution panels may discount all but exclusively commercial considerations in deciding whether regulatory criteria are "objective" or "transparent," key terms for trade lawyers. TISA's Energy Annex could put at risk licensing requirements and permits for all sorts of activities, from building pipelines and other essential infrastructure to drilling, storage, and transmission that require prior environmental assessment, mitigation measures, as well as public input, safety procedures, and policies already in place in order to ensure public benefits.

DEVELOPMENT IMPLICATIONS

Seventy-five percent of the planet's oil reserves and almost sixty percent of production is currently controlled by governments who must make sure trade creates economic benefits nationally. TISA aims to enter service markets that are limited to foreign service suppliers such as Halliburton, Schlumberger, and even Statoil. Oil exporting nations often employ policies to ensure that local benefits accrues from foreign companies' presence in the oil sector. Nigeria, Venezuela, Brazil, South Africa, Angola, Malaysia, and Trinidad and Tobago all apply various mixes of measures to require local content.

TISA contains "Localization" provisions that are anti-development by their outright prohibiting countries from using crucial policy tools that developed countries often used to develop their own industries, skilled workers, and base of technology. TISA not only continues colonialist extractive economies, but reinforces it by legally denying development policies such as:[XXI]

- ban on boards of directors with nationals
- ban on physical presence in the host country
- ban on requiring local content of goods and services
- ban on transferring technology
- ban on hiring local labor and managers

A World Bank report on National Oil Companies notes how Norway used such policies, although it now apparently aims to deny other developing countries from doing the same:

"Norway is known for its approach to the development of strong local service and construction sectors related to oil exploration and development. Local participation ranged from favoring the NOC, Statoil, in licensing rounds—on the premises that this would increase the chances of developing local suppliers—to encouraging the use of locally produced goods and services and leveraging the country's expertise in shipbuilding and marine services. In 1972 local content polices were formalized in legislation, and the Goods and Services Office was established to: (i) support the local supply industry through joint ventures and encourage research and development and transfer of technology; (ii) review tendering procedures to ensure that local companies are given a fair chance to participate; and (iii) establish minimum local content requirements and monitor their implementation. In 2006 Statoil merged with Norsk Hydro, a private-public company in which the Norwegian government had held a 44 percent share since 1999.1 Even before the merger, Statoil's responsibilities had gradually changed over the previous 30 years, and its role as an instrument for local content development gradually disappeared. Statoil has expanded internationally both "pstream and downstream, and it is now operating in 25 countries (Olsen 2002). However, the petroleum Act (Sections 8, 23, and 54) lays down requirements regarding oil companies' purchasing policy: (i) competitive Norwegian suppliers shall be given genuine opportunities to secure orders; (ii) operating companies are required to inform the Norwegian supply and contractor industry in advance of the bidding process; and (iii) the operators have a duty to perform in Norway at least 50 percent of all research and development required by field development."[XXII]

Norway has wisely allowed selective participation by foreign companies to acquire expertise and develop its own internal capabilities, so other countries should not be denied this same option.

BOX 9- TISA TEXT ARTICLE VII- MONOPOLIES MANDATE

Article VII requires each Party to "work to alleviate market distortions and barriers to competition in the supply of energy related services, including the distortions originating from the dominant position of [national] energy companies." The presence of "[national]" in brackets—which indicates unresolved text— is strikingly similar to Halliburton's WTO agenda fifteen years ago driven by the still-persistent desire to penetrate the ninety percent of the planet's fossil fuel reserves that remain under state control. Here one sees how global oil services companies might use TISA to break up OPEC countries' state-owned companies, as well as non- OPEC nations.

BOX 10- TISA TEXT ARTICLE VIII- PUBLIC PROCUREMENT

Article VIII currently contains no text and its title is in brackets, but it could reinforce TISA's core text on Procurement drawn from GATS. Specifically, it excludes procurement (purchases by the government) for government consumption but covers procurement for services that are resold to the public—e.g., energy services. The vast market power of government purchasing is frequently used at federal, state, and local levels to achieve environmental goals and stimulate local employment, among other objectives. Such policies are important in countries with colonial histories expropriating resources and their current neocolonial legacy as reinforced by foreign companies.

RECOMMENDATIONS

Given the implications of TISA's radical agenda for Energy Services explained above, this report recommends the following:

- Abandon TISA talks, and especially any Energy Annex; policymakers would be wise to wait out the clock and not rush headlong to finalize TISA.

- Urge other delegations to distance themselves from the principle of technological neutrality or clarify that it does not mean to sacrifice any authority to regulate any energy source or type of technology, either existing, emerging, or envisioned.

- Explore opportunities to collaborate with oil exporting countries who could benefit from better skill shares on safety and emissions reductions and renewable installations. Norway should work with others to manage decline of production, not more expansion. Its energy expertise could be deployed to increase efficiency while power down existing operations. Another possible pathway forward is mobilizing Norway's energy expertise to export knowledge and share skills and experience, especially in Africa, with greater efficiency in existing oil sector operations and the emerging sectors in renewable energy, especially micro-hydro power.

ANNEX:
IS/NO ENERGY RELATED TEXT PROPOSAL 310114 REV 141114 / LIMITED DISTRIBUTION – FOR TISA PARTICIPANTS ONLY

IS/NO
ENERGY RELATED TEXT PROPOSAL
310114
rev 141114

TISA – Energy Related Services

Proposal by Iceland and Norway

Article I – Scope

This Chapter shall apply to measures affecting trade in energy related services, irrespective of the energy source dealt with, technology used, whether the energy source is renewable or non-renewable, and whether the service is supplied onshore or offshore.

Article II – Definitions

a. For the purpose of this Chapter: «energy related services» means services incidental to exploration, exploitation, development, production or distribution of energy or energy resources to the extent such services are supplied to energy companies, directly or indirectly through their contractors or subcontractors;

b. “energy companies” means persons holding the right to undertake exploration, exploitation, development, production or distribution of energy or energy resources.

Article III – Cross-border Trade

1. Each Party shall undertake commitments without limitations to permit cross-border supply asdescribed in Article I-1, 2 (a) and (b) of energy related services to the extent they belong under the following CPC categories:

- architectural services [CPC 8671],
- engineering services [CPC 8672],
- integrated engineering services [CPC 8673],
- management consulting services [CPC 865],
- services related to management consulting services [CPC 866],
- site formation and clearance services [CPC 5113] (including geothermal drilling services),
- maintenance and repair of equipment [CPC 633 + 8861 – 8866] and
- construction and related engineering services [CPC 51].

2. Subject to any terms, limitations, conditions, and qualifications set out in its Schedule, each Party shall permit cross-border supply of energy related services to the extent they belong under the following CPC categories:

- rental/leasing services without operator related to ships [CPC 83103],
- rental/leasing services without operator related to other transport equipment [CPC
- 83101+83102],
- rental/leasing services without operator related to other machinery and equipment [CPC
- 83106+83109],
- technical testing and analysis services [CPC 8676],
- services incidental to mining [CPC 883, 5115],
- related scientific and technical consulting services [CPC 8675],
- environmental services [CPC 94],
- other lodging services n.e.c. [CPC 64199] (lodging offshore),
- maritime domestic transport services [CPC 7212],
- maritime towing and pushing services [CPC 7214] and
- bulk storage services of liquids or gases [CPC 7422].

Article IV –Commercial presence

1. Each Party shall undertake commitments without limitations to permit supply through commercial presence of energy related services to the extent they belong under the following CPC categories:

- architectural services [CPC 8671],
- engineering services [CPC 8672],
- integrated engineering services [CPC 8673],
- management consulting services [CPC 865],
- services related to management consulting services [CPC 866],
- technical testing and analysis services [CPC 8676],
- services incidental to mining [CPC 883, 5115],
- related scientific and technical consulting services [CPC 8675],
- site formation and clearance services [CPC 5113] (including geothermal drilling services),
- maintenance and repair of equipment [CPC 633 + 8861 – 8866]
- construction and related engineering services [CPC 51],
- environmental services [CPC 94],
- other lodging services n.e.c. [CPC 64199] (lodging offshore) and
- bulk storage services of liquids or gases [CPC 7422].

2. Subject to any terms, limitations, conditions and qualifications set out in its Schedule, each Party shall permit supply through commercial presence of energy related services to the extent they belong under the following CPC categories:

- rental/leasing services without operator related to ships [CPC 83103],
- rental/leasing services without operator related to other transport equipment [CPC 83101+83102],
- rental/leasing services without operator related to other machinery and equipment [CPC 83106+83109],
- maritime domestic transport services [CPC 7212] and
- maritime towing and pushing services [CPC 7214].

Article V – Sovereignty over Energy Resources

1. The Parties recognise state sovereignty and sovereign rights over energy resources. They reaffirm that such rights must be exercised in accordance with, and subject to, the rules of international law.

2. Without affecting the objective of promoting trade in energy related services, the Agreement shall in no way prejudice the rules in the respective Parties governing the system of property ownership of energy resources.

3. Each Party continues to hold, in particular, the rights to decide the geographical areas to be made available for exploration, development and exploitation of its energy resources, the optimisation of their recovery and the rate at which they may be depleted or otherwise exploited, to specify and enjoy any taxes, royalties or other financial payments payable by virtue of such exploration and exploitation, and to regulate the environmental and safety aspects of such exploration, development and exploitation, and to participate in such exploration and exploitation, inter alia, through direct participation by the government or through state enterprises.

Article VI – Right to Regulate

1. Consistent with the provisions of this Agreement, each Party retains the right to regulate and to introduce or maintain measures affecting trade in energy related services in order to meet legitimate national policy objectives. All such measures shall be clearly defined, transparent and objective.

2. Measures by Parties relating to licensing requirements and procedures, qualification requirements and procedures, and technical standards affecting trade in energy related services shall be pre-established and published, based on objective and transparent criteria and relevant to the supply of the services to which they apply.

3. Parties shall work to ensure maximum transparency of relevant processes relating to the development and application of domestic and international standards by non-governmental bodies.

4. Where technical standards are required and relevant international standards exist or their completion is imminent, each Party shall take them or the relevant parts of them into account in formulating their technical standards, except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of national policy objectives.

Article VII – Competition

1. Each Party shall work to alleviate market distortions and barriers to competition in the supply of energy related services, including the distortions originating from the dominant position of [national] energy companies.

2. Each Party shall ensure that it has and enforces such laws and regulations as are necessary and appropriate to address anti-competitive conduct in the energy related services markets.

3. Each Party shall ensure that their respective competition law and policy are enforced in atransparent, timely, objective and non-discriminatory manner.

[Article VIII – Procurement of energy related services]

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