

CSOs should take action against WTO Trade Facilitation Agreement

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Despite all protests and concerns member states to the World Trade Organization (WTO) concluded a new set of agreements in December 2013 in Bali, the so-called Bali Package. One of these, the Trade Facilitation Agreement (TFA) will enter into force after ratification by two thirds of the members. It facilitates the trade for Transnational Corporations who will benefit and earn trillions, pushing away the small traders and services providers. What is at stake in the TFA for human rights?

Trade Facilitation Agreement

In November 2014 WTO members opened the way for ratifying the TFA, following a breakthrough between India and the United States. The Agreement aims at removing bottlenecks and cutting red tape for international trade. It was among the decisions taken at the WTO Ministerial in Bali in December 2013, bringing to end more than a decade of negotiations on the issue. The WTO Trade Facilitation Agreement was concluded as part of the Bali Package: <https://mc9.wto.org/draft-bali-ministerial-declaration>.

The TFA aims making customs procedures more uniform and it demands of states to develop and publish online data on import and export regulations, laws, penalty provisions, etc. and provide it to the WTO. In terms of customs procedures, it entails standardising documentation requirements and trade-related fees, streamlining existing border procedures, and regulating issues such as single window clearance or the use of customs brokers. It will cost states to streamline these operations and collect the data. UNCTAD estimates that meeting obligations under the Agreement will cost most countries US \$5 million to US \$15 million, depending on their individual situation. There is an article that states that (least) developing countries can ask technical assistance from donors and international organizations.

States can ratify all articles or notify a subset of articles of the TFA. It enters into force after ratification by two third of the 160 WTO members. To date only 12 Members have ratified the agreement: Hong Kong China, the United States, Singapore, Mauritius, Malaysia, Japan, Australia, the Republic of Korea, Botswana, Nicaragua, Trinidad and Tobago, and Niger. The EU will ratify on behalf of its member states the agreement in October 2015 after the approval of the European Parliament (EP)¹ planned for September 2015 followed by approval of the Council. This means that national parliaments in the EU and EU citizens are not involved and not informed about the Agreement and its impact.

¹ INTA, the EP trade Committee adopted the Recommendation for consent (2015/0029(NLE)) and accompanying resolution (2015/2067(INI)), without taking into account concerns of CSOs. http://www.europarl.europa.eu/meetdocs/2014_2019/documents/inta/pr/1060/1060955/1060955en.pdf

Why is it so important to take action against the TFA?

Civil society organizations worldwide have expressed their concerns about the TFA to members of parliaments and governments². TFA is considered part of current trends in WTO negotiations in which developed states are again promoting a further liberalization of trade rules over any development issue, such as ensuring food security³.

The customs procedures that are put forward by the TFA are already standards in the advanced industrial countries and most major emerging economies befitting their level of economic development. Developing countries must make important legal, political and infrastructural reforms to comply with these standards. Moreover, the new binding rules adopted deprive developing countries the means they could use to mobilize their own resources to meet these changes.

Above all, instead of simplifying customs procedures, the text introduces a new process that will allow foreign companies to have an undue influence on the customs of especially developing countries and reduce the role of internal customs operators.

'Interested Parties' as rights holders to consult

The new TFA refers to a category of 'other interested parties' as rights holders. When ratified, it results in an obligation to open the legislative process to prior consultation by traders and other interested parties located outside the territories of the state. This means that traders and 'interested parties', whoever that may be, can make comments on domestic legislation concerning the movement, release, and clearance of goods, including goods in transit. This may lead to lobbying pressures and profiteering by interest groups. These 'interested parties' could thus use lobbying and influence in a way that would inevitably tilt the balance in national regulatory and legislative processes away from the national constituencies and development priorities.

The reference to the category 'interested parties' does not appear in the GATT language on trade facilitation (i.e. Article V, VIII, and X GATT)⁴. In this sense, it could be considered an extension beyond the mandate of the trade facilitation negotiations, which was supposed to be limited to "clarifying and improving" the GATT language. This category of right holders under the TFA could encompass an undefined open-ended class of parties that do not necessarily have to be located in the territory of the Member State implementing the measure.

As for the public-private partnerships, this could be a way for expanding the market of customs-related services open for the private sector, or it could amount to a new wave of privatization of customs-related services, especially if developing countries do not carefully assess their commitments to ratify parts or the whole TFA.

² <http://ourworldisnotforsale.org/en/article/international-civil-society-opposes-binding-rules-trade-facilitation-wto>.

³ <http://www.ourworldisnotforsale.org/en/article/341-groups-100-countries-call-wto-members-abandon-liberalization-push-and-turnaround-wto-age>.

⁴ The term 'interested parties' was used in the Anti-dumping agreement. It was also used in the Agreement on Rules of Origin.

Why is it relevant for feminist and other citizens?

Feminist CSO's should engage now in WTO negotiations, in particular around the ratification of this new agreement, because of the impact of the concluding agreements on the daily lives of women. Women are still not involved in the WTO decisions structures, where the decisions are made by the rich and powerful (mostly) men. WTO negotiations remain an ongoing secretive process. The TFA needs most urgent attention and analysis now before it will enter into force, ratified by two third of the WTO members without the involvement of national parliaments and citizens in the EU and other WTO member states, secret and non-transparent.

A new negotiation to start monitoring is the Environmental Goods Agreement (EGA).

The WTO TFA is available in the 3 official languages of the WTO: English, French and Spanish. The English version: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

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