

TISA

Deregulierung des Service public
Déréglementation des services publics

Zürich, 24. Februar 2016

Blockade in der Doha-Runde

- Norden will weitere Marktöffnung für Industriegüter und Dienstleistungen
- Süden will Zugang für Agrarprodukte
- Streit um Generika-Produktion
- ... um Subventionierung von Grund-nahrungsmitteln durch Länder des Südens
- ➔ Norden schert aus WTO aus, z.B. TISA

TISA Trade in Services Agreement

- Detailhandel
- Banken
- Treuhand
- ...
 - Gesundheitswesen
 - Soziale Dienste
 - Energieversorgung
 - Öffentlicher Verkehr
 - Kultur
 - Bildung
 - Post
 - Telecom...
- Commerces
- Banques
- Fiduciaires
-
 - Santé
 - Services sociales
 - Energie
 - Transports publics
 - Culture
 - Education
 - Poste
 - Télécommunications...

TISA Trade in Services Agreement

- Verhandlungen 2012
- Schweiz beteiligt
- Für die Schweiz rel. neue Elemente in TISA
 - «Standstill»
 - «Ratchet»
- TTIP: Macht der multinationalen Konzerne?
- Négociations 2012
- Participation de la Suisse
- De nouveaux éléments guère connus jusqu'ici
 - «Standstill – clause de gel»
 - «Ratchet – clause de rochet»
- TTIP: Pouvoir des entreprises multinationales

TISA

- Negativ-Listen (Meistbegünstigung, Inländerbehandlung)
- Standstill-Klausel
- Ratchet-Klausel
- Annexes

Negativ-Listen

vergessen

von korrupter Regierung erkauft

- Jeder Staat muss auf einer Liste festhalten, welche Bereiche er ausnehmen will
- Was nicht auf der Liste steht, ist automatisch den Regeln von TISA unterstellt
- Die Liste ist definitiv, eine Rücknahme ist nicht mehr möglich

«Standstill» → Core-Text II-2

Article II-2: Scheduling of National Treatment Commitments

1. In scheduling commitments pursuant to Article I-4 (National Treatment), each Party shall accord to services and service suppliers of any other Party, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers, subject to any conditions and qualifications that the Party shall set out in its Schedule in accordance with paragraphs 2 and 4.
2. The conditions and qualifications on national treatment set out in Section B of Part I or Part II of each Party's Schedule shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.
3. If a Party amends a measure referred to in paragraph 2 in a way that reduces or eliminated the inconsistency of that measure with the treatment provided for in Article I-4 (National Treatment), as it existed immediately before the amendment, a Party may not subsequently amend that measure in a way that increases the inconsistency with the treatment provided for in Article I-4 (National Treatment).
4. Paragraphs 2 and 3 and Article I-4 (National Treatment) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in Section A or Part I of each Party's Schedule.

...beschränkt auf Massnahmen,
welche eine Partei bereits kennt im Zeitpunkt,
wo das Abkommen in Kraft tritt...

- The conditions and qualifications on national treatment set out in Section B of Part I or Part II of each Party's Schedule shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures

...limités au mesures d'une partie
qui existent au moment où
le traité entre en vigueur...

«Ratchet» «rochet»

- If a Party amends a measure referred to in paragraph 2 in a way that reduces or eliminated the inconsistency of that measure with the treatment provided for in Article I-4 (National Treatment), as it existed immediately before the amendment, a Party may not subsequently amend that measure in a way that increases the inconsistency with the treatment provided for in Article I-4 (National Treatment).



verpflichtet werden. Zudem haben sie sich auf eine Bestimmung zu einer Sperrklinkenklausel ("Ratchet") und einer Stillhalteklausele ("Standstill") geeinigt.

Nachfolgend finden Sie das Schema zum "hybriden" Verpflichtungsansatz des TISA:

	Ansatz	Ratchet/Standstill
Meistbegünstigung	negativ	nein
Marktzugang	positiv	nein
Inländerbehandlung	negativ	ja

illustrative Liste von Beispielen an Einschränkungen der Inländerbehandlung erstellt. Sie ist im Appendix 1 der 'Guidelines for the Scheduling of Specific Commitments' enthalten, welchen der Council for Trade in Services der WTO 2001 angenommen hat (S/L/92). Er wird hier nachfolgend aufgeführt:



[Beispiele von Einschränkungen der Inländerbehandlung \(englisch\)](#)

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Zur Zeit nehmen folgende Parteien an den Diskussionen teil: Australien, Chile, Costa Rica, EU, Hong Kong, Island, Israel, Japan, Kanada, Kolumbien, Korea, Liechtenstein, Mexiko, Neuseeland, Norwegen, Pakistan, Panama, Paraguay, Peru, Schweiz, Taiwan, Türkei,



4. Accord plurilatéral

in Services Agréé

A. Le processus d'

L'idée d'un accord sur
février 2012 un groupe
la conduite conjointe
Suisse participe active

L'objectif de cette initia
dont les travaux se bas
sur une approche de li
(traitement de la natio
prises de manière à la
rochet (« ratchet ») et

Veuillez trouver ci-après

Traitement de la natio

Accès aux marchés

prises de manière à la fois positive et négative. De plus, ils ont convenu d'une clause de rochet (« ratchet ») et de gel (« standstill »).

Veuillez trouver ci-après le schéma de l'approche "hybride" du TISA:

	Approche	Rochet/gel
Traitement de la nation la plus favorisée	négative	non
Accès aux marchés	positive	non
Traitement national	négative	oui

illustrative d'exemples de restrictions concernant le traitement national a été développée par l'OMC. Elle est contenue dans l'appendice 1 des «Lignes directrices pour l'établissement des listes d'engagements spécifiques» adoptées par le Conseil du commerce des services de l'OMC en 2001 (S/L/92) et est reproduite ci-après:

[Exemples de restrictions concernant le traitement national](#)

Dernière modification: 23.04.2014 | Dimension: 22 kb | Typ: PDF

Pour l'heure les parties suivantes prennent part aux discussions : Australie, Canada, Chili, Colombie, Corée, Costa Rica, Etats-Unis, Hong Kong, Islande, Israël, Japon, Liechtenstein, Maurice, Mexique, Norvège, Nouvelle-Zélande, Pakistan, Panama, Paraguay, Pérou, Suisse, Taïwan, Turquie, Uruguay et UE.

«national treatment»

XI. Propriété de biens immobiliers ou fonciers

- Les étrangers ne peuvent pas acheter directement des terres à moins de 100 km de la frontière.
- L'acquisition, l'achat et la location simple ou en crédit-bail de biens immobiliers par des personnes physiques ou morales étrangères sont soumis à l'autorisation des autorités régionales compétentes, qui examinent si des intérêts économiques, sociaux ou culturels importants sont en jeu.
- Les entités étrangères ne peuvent acquérir des biens immobiliers que dans le cadre d'une coentreprise.
- Les non-résidents n'ont pas le droit d'acheter des biens immobiliers.

Grunderwerb durch Ausländer

Lex Koller soll zur Lex Sommaruga werden

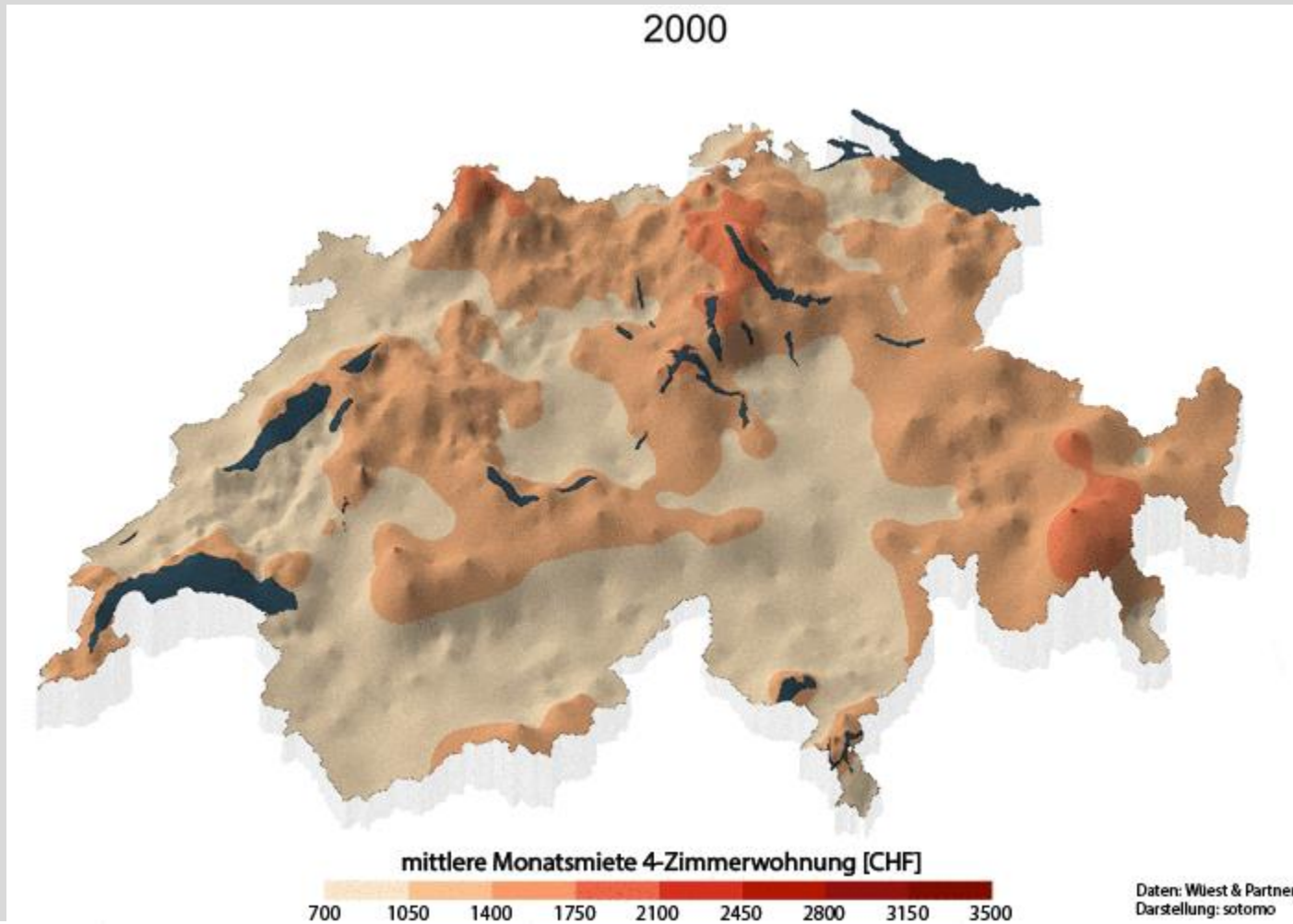
Der Schaukampf um zwei Motionen aus SP-Kreisen war bloss das Vorspiel. Jetzt muss das Bundesgesetz zum Grunderwerb durch Ausländer grundsätzlich überarbeitet werden. Von Markus Häfliger

von **Markus Häfliger** | 4.6.2014, 05:30 Uhr

Die Lex Koller ist ein unsympathisches Gesetz. Das fängt schon bei ihrem zungenbrecherischen Namen an: Dieser lautet offiziell Bundesgesetz über den Erwerb von Grundstücken durch Personen im Ausland. Vor allem aber schränkt die Lex Koller für bestimmte Käufer das Recht auf Privateigentum empfindlich ein, was jedem liberalen Geist zuwider sein muss. Hinzu kommt, dass bei der Lex Koller seit je ein Hauch von Abschottung mitschwingt.

Trotz all diesen unschönen Aspekten erfreut sich das Gesetz derzeit grosser Beliebtheit – und das mit gutem Grund. Denn der Grund und Boden ist kein

Mieten loyers



Lex Koller → Lex Sommaruga?

- Wenn TISA in Kraft tritt → «Standstill»
- Regulierungsdichte darf nicht mehr erhöht werden
- Die **Regulierungen** in der Lex Koller dürfen nur noch abgebaut, aber **nie mehr erhöht** werden
- TISA en vigueur → «gel»
- La réglementation ne pourra plus être rendue plus stricte
- La Loi Koller pourra être allégée, mais **plus jamais être aggravée**

Einwand?

- «Die Schweiz nimmt auch die Wirkung von Standstill und Ratchet aus»
- «Die Schweiz hat in der Offerte überall und generell die Wirkung von Standstill und Ratchet ausgenommen»

«Standstill» «gel» → Core-Text II-2

Article II-2: Scheduling of National Treatment Commitments

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2. The conditions and qualifications on national treatment set out in Section B of Part I or Part II of each Party's Schedule shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.
3. If a Party amends a measure referred to in paragraph 2 in a way that reduces or eliminated the inconsistency of that measure with the treatment provided for in Article I-4 (National Treatment), as it existed immediately before the amendment, a Party may not subsequently amend that measure in a way that increases the inconsistency with the treatment provided for in Article I-4 (National Treatment).
4. Paragraphs 2 and 3 and Article I-4 (National Treatment) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities as set out in Section A or Part I of each Party's Schedule.

Alles ausnehmen? Tout est excepté?

- Druck: Standstill und Ratchet mussten in TISA
- Ist es realistisch, dass die Schweiz als Einzige bis am Schluss ALLES ausnehmen kann?
- Pression: il faut absolument que standstill et ratchet figurent dans TISA
- Est-ce réaliste que seule la Suisse pourra faire exception de tout?

Süden: Land-Grabbing

- Wenn TISA in Kraft:
- gesetzliche Einschränkung des Land-Grabblings
= Verletzung von Standstill
- Land-Grabbing lässt sich nicht mehr bekämpfen

Späterer Anschluss von Ländern des Südens

- Voraussetzung: Einstimmigkeit der bisherigen TISA-Staaten
- Jeder TISA-Staat kann Bedingungen stellen, sonst Veto-Möglichkeit jedes TISA-Staates
- Z.B. «keine Einschränkung für Landerwerb»

Annexes

*Without prejudice
Limited distribution – for TiSA participants only
Limited*

[Article [...]: Annexes

This Annexes to this Agreement are an integral part of this Agreement.]

*Might need to be reviewed depending on outcome of discussion on new and enhanced disciplines
and to ensure Schedules and other relevant attachments are integral part of the Agreement.*

- Gemäss seco wird über folgende Anhänge verhandelt:

- Finanzdienstleistungen
- Telekommunikationsdienstleistungen
- Elektronischer Handel
- Grenzüberschreitung natürlicher Personen
- innerstaatliche Regelungen
- Transparenz
- unterschiedliche Arten des Transports
- Logistikdienstleistungen
- Postdienstleistungen (delivery services)
- Energiedienstleistungen
- Öffentliches Beschaffungswesen
- professional services
- Exportsubventionen
- Staatliche Firmen

Anhänge wirken
direkt auf jedes Land.

Anhänge wirken auch dann,
wenn der Sektor vom Hauptteil
des Abkommens ausgenommen ist.

Die gemachte Ausnahmen betref-
fend Standstill & Ratchet sind
wirkungslos

Standstill & Ratchet kommen zur
Anwendung, auch für CH

Annex on professional services

Part I – Commitments on Professional Services

Scope [and Definition]

- (a) This Annex applies to measures by parties affecting trade in professional services. For the purposes of this Annex, “professional services” means the following services [AU propose: as defined] in each Party’s Schedule:
- (i) [~~MX oppose: legal~~ services][AU/JP propose:, including for [CH oppose: domestic law (host country law),] foreign law and international law][CPC861];
 - (ii) accounting, auditing and bookkeeping services [CPC 862];
 - (iii) taxation services [CPC 863];
 - (iv) architectural services [CPC8671];
 - (v) engineering services [CPC8672];
 - (vi) integrated engineering services [CPC8673];
 - (vii) urban planning and landscape architecture services [CPC8674];
 - (viii) [CH/CO/NO propose: engineering related scientific and consulting services [CPC 8675];
 - (ix) technical testing and analysis services [CPC 8676];]
 - (x) [AU/CO/NO propose; US/MX/JP oppose: veterinary services [CPC932]]; and
 - (xi) [AU/CO/NZ/NO propose; KR/MX/TW/CH/JP oppose: private education services [CPC 921-4**, CPC 929**]]
 - (xii) [CH propose/EU oppose: construction related engineering services [CPC 51**]]

Annex on telecommunication services

Article 3: [CO/EU: Telecommunication Regulatory Body] [AU/CA/CL/NZ/US propose: Independent Regulators] [CO/CH propose: Regulatory] [JP/PE propose: Independent Regulatory Body] [CO propose: and Enforcement] [CO/CH propose: Authorities]

1. [CH propose alt: 1. Parties should ensure that relevant regulatory authorities are legally distinct and functionally independent from any telecommunications service suppliers, and have sufficient legal authority and adequate resources to perform their functions effectively.]

[alt 2. CA/CL/TW/CO/CR/EU/HK/IS/IL/JP/KR/LI/NZ/NO/PA/PE/TR propose; AU/US considering: [CO/CR oppose: With a view to ensuring the independence and impartiality of telecommunications regulatory bodies,] each Party shall ensure that its telecommunications regulatory body is separate from, and not accountable to, any supplier of [CA/CL/EU/JP/NO oppose: public] telecommunications services. [CR considering: To this end, each Party shall ensure that its telecommunications regulatory body does not hold a financial interest² [KR propose: equity] or maintain an operating or management role in any such supplier].]

2. [CA/CO/NO propose: Each Party shall ensure that its telecommunications regulatory body does not accord] [AU/CL/TW/EU/IS/IL/KR/LI/NZ/PE/US propose; PA considering: No Party may accord] more favourable treatment to a supplier of [telecommunications services in its territory than that accorded to a like service supplier of another Party [EU/KR propose; CA/PA/PE/US oppose: *inter alia*] on the basis that the supplier receiving more favourable treatment is owned by the [AU/CL/EU/JP/KR/LI/NO/PE/TR oppose: national] government of the Party.]

Annex on telecommunication services

- each Party shall ensure that its telecommunications **regulatory body is separate** from, and not accountable to, **any supplier of public telecommunications services**. To this end, each Party shall ensure that its telecommunications regulatory body **does not hold a financial interest** or maintain an operating or management role in any such supplier

Schweiz — Suisse

- Regulatory body
- ComCom
Eidgenössische Kommunikationskommission
commission fédérale de la communication
- Bund = Mehrheitsaktionär
Confédération = actionnaire majoritaire
- Swisscom

with one or more service suppliers. Competitive delivery services do not include (i) air transport services, (ii) services supplied in the exercise of governmental authority, or (iii) maritime transport services.

[Express delivery services means the supply of a competitive delivery service on an expedited basis while tracking and maintaining control of the items throughout the supply of the service.]

[Postal monopoly means the exclusive supply of [specified collection, [TR: sorting,] transport, and delivery services] [EU: specified delivery services] within a Party's territory pursuant to a measure by the Party.

Regulatory Transparency and Independence

2. Each Party that maintains a postal monopoly [EU:, as identified in its schedule of specific commitments] shall define the scope of the monopoly [TR: with regard to items of correspondence] on the basis of objective criteria, including quantitative criteria such as price and/or weight thresholds.

3. Each Party shall ensure that any authority responsible for regulating [competitive delivery services] [EU: delivery services] is separate from, and not accountable to, any supplier of competitive delivery services [EU: or the postal monopoly], [and that the] [EU: the] decisions and procedures that these authorities adopt [are] [EU: shall be] impartial, non-discriminatory, and transparent with respect to all [competitive] delivery service suppliers in its territory.

[Abuse of Monopoly]

4. Each Party shall ensure that any supplier of services covered under a postal monopoly does not use its monopoly position to engage, either directly or indirectly, including through its dealings with its parent, subsidiaries, or other enterprises the Party or the service supplier owns, in anticompetitive practices in a non-monopolized market in its territory that adversely

Grundversorgung?

Service universel?

Core-Text Domestic Regulation

AU/CA/CL/CO/CR/EU/HK/JP/MX/NO/PA/US oppose:

- Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service.

Annex on Domestic regulations

- US oppose:

General Provisions

4. Parties recognize the right to regulate, and to introduce new regulations, on the supply of services within their territories in order to meet public policy objectives.

[TR propose: Nothing in these disciplines prevents Members from exercising the right to introduce or maintain regulations in order to ensure provision of universal service.]

Schweiz – Suisse?

Streitbeilegung?

Canada

- Bergbauprojekt des US-Konzerns BILCON
- Umweltverträglichkeits-prüfung kanad. Recht
- Keine Bewilligung
- 17. März 2015: ICSID verurteilt Kanada
- Zahlung von 300'000'000 \$
- Projet d'exploitation minière de l'entreprise BILCON
- Examen d'écocomptabilité selon droit canadien
- Interdiction du projet
- 17 mars 2015: jugement ICSID contre le Canada
- Pénalité de 300'000'000 \$

PART IV – INSTITUTIONAL PROVISIONS

Section 1: Resolution of disputes

[...] ?

Section 2: Future participation to this Agreement

Welche Rolle und Möglichkeiten haben private Konzerne? [...]

Section 3: Multilateralization

Quel rôle et quels moyens pour les entreprises multinationales? [...]

Section 4: Institutional provisions

[including: review/modification of schedules...]

Annex on transparency

Article I-[]: Transparency

1. Each Party shall ensure that its laws, regulations, procedures and administrative rulings of general application respecting any matter covered by this Agreement are promptly published or otherwise made available in such a manner as to enable interested persons and Parties to become acquainted with them.
[CH: propose: Each Party shall publish promptly and, except in emergency situations, at the latest by the time of their entry into force, all relevant measures of general application which pertain to or affect the operation of this Agreement. International agreements pertaining to or affecting trade in services to which a Party is a signatory shall also be published.]
2. [US/AU/CA/CL/CO/TW/JP/KR/NO/CR/MX/PE/NZ propose, CH/HK/IL/TR oppose, Suisse, Hongkong, Israël, Turquie To the extent possible [AU/MX propose: and in a manner consistent with its domestic law and legal system] each Party shall], [CH/EU/HK/IL/TR/PA/IS propose: Each Party may]:
 - a. publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
 - b. [TR oppose: provide [NZ propose:, where appropriate,] interested persons and other Parties a reasonable opportunity to comment on such proposed measure.]

FOOTNOTE [NZ propose: A Party may, consistent with its domestic legal system, comply with its obligations relating to proposed regulations in this Article by publishing a policy proposal,

Bund – Confédération
Kantone – cantons
Gemeinden – Communes

muss
est obligé

- To the extent possible each Party shall
 - a. publish in advance any measure referred to in paragraph 1 that it proposes to adopt; and
 - b. provide interested persons and other Parties a reasonable opportunity to comment on such proposed measure

Microsoft, Facebook, Apple
Veolia, Suez
Connex, Arriva, First
Achmea

Achmea?

- 2007: Slowakei verbietet Gewinnausschüttung aus Krankenversicherung
- Klage von Achmea gegen Slowakei
- Achmea = niederländischer Versicherungskonzern
- 2007: la Slovaquie interdit versement des profits de l'assurance maladie
- Achmea attaque la Slovaquie
- Achmea = compagnie d'assurances néerlandaise

TISA 1973

- 1973 Putsch in Chile: Salvador Allende mit Hilfe der USA gestürzt und durch Pinochet ersetzt
- Wenn TISA damals geschlossen worden wäre: Welche Leistungen hätte Pinochet den USA geschenkt?

ACS en 1973

- 1973 Coup d'Etat au Chili: Salvador Allende remplacé par Pinochet, avec le soutien des Etats Unis
- Si l'ACS avait été signé à ce moment-là, qu'est-ce qui aurait été vendu par la junte chilienne?

TISA 2016

- Putsch
- Diktat der Trojka: Griechenland, Spanien
- Korruption
- Land-Grabbing
- Konzessionen können auch von anderer Regierung nie mehr zurückgenommen werden

TISA en 2016

- Coup d'Etat
- Diktat de la Troïka: Grèce, Espagne
- Corruption
- Land-Grabbing
- Une fois la dérégulation effectuée, même un gouvernement ultérieur ne pourra plus faire marche arrière

TISA

- Negativ-Listen ermöglichen Länder mit korrupten Regierungen irreversibel aufzubrechen
- Land-Grabbing verewigt
- Druckmöglichkeit des Nordens bei Erweiterung von TISA
- → neuer Kolonialismus

NON!
NEIN! SA
NO!

Latest news 07.09.2015

- Uruguay abandons TISA negotiations!