October 2013
updated version

Seattle to Brussels Network

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A transatlantic CORPORATE bill of rights

Investor privileges in EU-US trade deal threaten public interest and democracy

The EU negotiating mandate for a far-reaching free trade agreement with the US reveals the European Commission's plans to enshrine more powers for corporations in the deal. The proposal follows a persistent campaign by industry lobby groups and law firms to empower large companies to challenge regulations both at home and abroad if they affect their profits. As a result, EU member states could soon find domestic laws to protect the public interest challenged in secretive, offshore tribunals where national laws have no weight and politicians no powers to intervene.

The Commission's proposal for investor-state dispute settlement under the Transatlantic Trade and Investment Partnership (TTIP)[1] would enable US companies investing in Europe to skirt European courts and directly challenge EU governments at international tribunals, whenever they find that laws in the area of public health, environmental or social protection interfere with their profits. EU companies investing abroad would have the same privilege in the US.

Across the world, big business has already used investor-state dispute settlement provisions in trade and investment agreements to claim dizzying sums in compensation against democratically-made laws to protect the public interest (see Box 1). Sometimes the mere threat of a claim or its submission have been enough for legislation to be abandoned or watered down. In other cases tribunals – ad hoc three-member panels hired from a small club of private lawyers riddled with conflicts of interest[2] – have granted billions of Euros to companies, paid out of taxpayers' pockets.

Box 1

Some emblematic investor-state disputes

Corporations versus public health – Philip Morris v. Uruguay and Australia: Through bilateral investment treaties, US tobacco giant Philip Morris is suing Uruguay and Australia over their anti-smoking laws. The company argues that warning labels on cigarette packs and plain packaging prevent it from effectively displaying its trademark, causing a substantial loss of market share.[3]

Corporations versus environmental protection – Vattenfall v. Germany: In 2012, Swedish energy giant Vattenfall launched an investor-state lawsuit against Germany, seeking €3.7 billion in compensation for lost profits related to two of its nuclear power plants. The case followed the German government's decision to phaseout nuclear energy after the Fukushima nuclear disaster.[4]

Corporations versus government action against financial crises – challenging Argentina & Greece: When Argentina froze utility rates (energy, water, etc.) and devalued its currency in response to its 2001-2002 financial crisis, it was hit by over 40 lawsuits from companies like CMS Energy (US) and Suez and Vivendi (France). By the end of 2008, awards against the country had totalled US$1.15 billion.[5] In May 2013, Slovak and Cypriot investors sued Greece for the 2012 debt swap which Athens had to negotiate with its creditors to get bailout money from the EU and the International Monetary Fund (IMF).[6] Both, the UN and the IMF have warned that investment agreements can severely curb states' abilities to fight financial and economic crises.[7]

Corporations versus environmental protection – Lone Pine v. Canada: On the basis of the North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico, US company Lone Pine Resources Inc. is demanding US$250 million in compensation from Canada. The 'crime': The Canadian province of Quebec had put a moratorium on 'fracking', addressing concerns about the environmental risks of this new technology to extract oil and gas from rocks.[8]

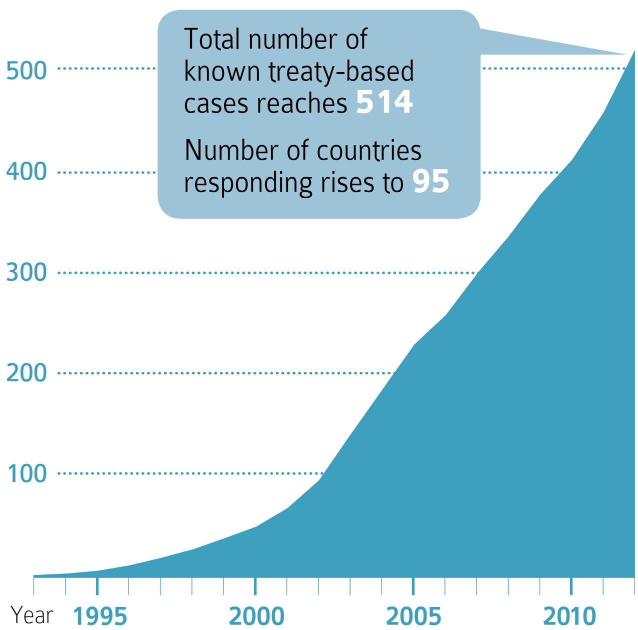
Corporations versus public health – Achmea v. the Slovak Republic: At the end of 2012, Dutch insurer Achmea (formerly Eureko) was awarded €22 million in compensation from Slovakia. In 2006, the Slovak government had reversed the health privatisation policies of the previous administration and required health insurers to operate on a not-for-profit basis.[9]

As the main users of existing international investment treaties, US and European companies have driven the investor-state litigation boom of the past two decades. By far the largest number of the 514 known disputes initiated by the end of 2012 were launched by US investors. They have filed 24% (123) of all cases. Next in line are investors from the Netherlands (50 cases), the UK (30) and Germany (27). Together, investors from EU member states have filed 40% of all known cases.[10]

EU and US companies have used these lawsuits to challenge green energy and medicine policies, anti-smoking legislation, bans on harmful chemicals, environmental restrictions on mining, health insurance policies, measures to improve the economic situation of minorities and many more. Now they are enthused about the prospect of an investment chapter in the EU-US free trade deal (TTIP), the biggest investment deal ever negotiated.

Deluge of disputes

Cumulative number of cases. Source: UNCTAD, Down to Earth



Lobbying for the corporate 'gold standard'

Investor-state dispute settlement under TTIP would empower EU and US-based corporations to engage in litigious wars of attrition to limit the power of governments on both sides of the Atlantic. The tremendous volume of transatlantic investment – both partners make up for more than half of foreign direct investment in each others' economies – hints at the sheer scale of the risk of such litigation wars. Additionally, thousands of EU and US companies have affiliates across the Atlantic; under TTIP they could make investor-state claims via these affiliates in order to compel their own governments to refrain from regulations they dislike.

Unsurprisingly, then, corporate lobby groups in both the EU and the US have pressured for the inclusion of investor-state arbitration in TTIP. The European employers' federation BusinessEurope, the US Chamber of Commerce, AmCham EU, the Transatlantic Business Council and other corporate lobby heavyweights all advocate such privileges for foreign investors. This is also part of a hope that an EU-US deal would set a global 'gold standard', a model for investment protection for other agreements around the world.[11] More and more countries are questioning and even abandoning investor-state arbitration globally precisely because of negative impacts against the public interest;[12] in response, business is demanding a "signal to the world of our willingness to commit" to their gold standard of investment protection.[13]

> The investment chapter of the TTIP should eventually serve as the 'gold standard' for other investment agreements.
>
> US Chamber of Commerce to US negotiators[14]

Ever since December 2009, when the EU got the power to negotiate investment protection issues through the Lisbon Treaty, industry associations have mobilised against any opportunity this might afford to institute a fairer balance of private and public interests.[15] This is because the Treaty opened a window of opportunity for the EU to learn from the experience of existing investment agreements, address their flaws and develop a new generation of treaties – without investor-state dispute settlement, with investor obligations and more precise and restrictive language regarding their rights. Trade unions, public interest groups and academics from across the world called for such a U-turn.

> Industry will oppose any deal in which investment protection is traded off against public policy objectives, including human and labour rights.
>
> Pascal Kerneis, European Services Forum (ESF)

In numerous letters, seminars, breakfast debates and behind-closed-doors meetings with MEPs and the European Commission, corporate lobby groups such as BusinessEurope and national industry bodies such as the German industry federation BDI lobbied against that U-turn. They made clear that industry would oppose any deal in which investment protection was "traded off against public policy objectives, including human and labour rights", as Pascal Kerneis of the European Services Forum (ESF), a lobby outlet for global service players such as Deutsche Bank, IBM and Vodafone, told Commission officials during a meeting on transatlantic investment.[16]

> While some argue that investor-state dispute settlement need not be part of the TTIP given the demonstrated US and EU commitment to the rule of law, the Chamber insists that the United States and the EU must include these provisions.
>
> US Chamber of Commerce to US negotiators[17]

Expanding investor rights

If big business has its way, TTIP's investment protection provisions will be even more slanted in favour of corporations than current EU and US practice. While the European Parliament has repeatedly stressed governments' right to regulate in order to protect the environment, public health, workers and consumers, Peter Chase – a former US government official now with the US Chamber of Commerce in Brussels – has encouraged US negotiators to explain "the dangers of the unneeded social, environmental and 'right to regulate' provisions the European Parliament seeks".[18]

US energy giant Chevron, too, is lobbying for an investment chapter which goes beyond the current US model treaty. Having been sued several times by Canadian companies under NAFTA, the US has twice revised its template for international investment treaties to better protect its policy-space. Chevron wants a revival of some of these excessive

Box 2

Risky business: how vulnerable are US and EU governments?[19]

- Globally, **514** investor-state disputes were known by the end of 2012.
- **58** claims were launched in 2012 alone, the highest number of known disputes filed in one year.
- US and EU investors have initiated at least **329 (64%)** of all known disputes.
- The US has faced over **20** investment claims under NAFTA's investment chapter.
- **15** EU member states are known to have faced one or more investor-state challenges.[20]
- The Czech Republic is the **fifth** most sued country in the world.
- **More than half** of foreign direct investment in the EU comes from the US; likewise over half the foreign direct investment in the US comes from the EU.
- Only **8** EU member states, all Eastern European, already have a bilateral investment treaty with the US[21]; TTIP would contain one of the **first** EU-wide investment protection chapters.
- Around **42%** of the known concluded investor-state cases were decided in favour of the state, **31%** in favour of the investor and **27%** of the cases were settled (many of the latter likely to involve payments or other concessions for the investor).
- The highest damages to date, **US$1.77 billion**, were awarded to US oil company Occidental Petroleum against Ecuador.
- Legal costs in investor-state disputes average over **US$8 million**, exceeding **US$30 million** in some cases; they are not always awarded to the winning party.

investor rights such as the 'umbrella clause' in TTIP, which would considerably expand a state's obligations (see annex for more details). Chevron has also proposed that investments protected under TTIP should include "both existing and future investments".[22] When an investor-state dispute mechanism is combined with such open-ended clauses, risks for costly legal proceedings grow considerably.

> The US-side should clearly explain the dangers of the unneeded social, environmental, and 'right to regulate' provisions the European Parliaments seeks.
>
> Peter Chase, US Chamber of Commerce

Paving the way for dirty gas

Chevron is currently engaged in a controversial legal battle with Ecuador. The company initiated arbitration to avoid paying US$18 billion to clean up oil-drilling-related contamination in the Amazonian rainforest, as ordered by Ecuadorian courts. The case has been lambasted as "egregious misuse" of investment arbitration to evade justice.[23] No wonder Chevron dedicated its complete contribution to the US government's TTIP consultation to investment protection, "one of our most important issues globally" as they put it.[24]

> Chevron views investment protection as one of our most important issues globally.
>
> Chevron to US trade negotiators

In Europe, Chevron wants the "the strongest possible protection" from government measures to "mitigate the risks associated with large-scale, capital intensive, and long term projects [...] such as developing shale gas". Because of its health and environmental impacts, several EU governments have decided to put a break on shale gas development ('fracking'). TTIP's proposed investment protection chapter would empower energy companies like Chevron to challenge such precautionary measures because it would oblige governments "to refrain from undermining legitimate investment-backed expectations", as Chevron demands (see Box 1 for a legal precedent under NAFTA). The mere threat of a million-Euro investor-state lawsuit could be enough to scare governments into submission and weaken or prevent fracking bans and strict regulation. In Chevron's words: "Access to arbitration [...] increases the likelihood that investors and host states are able to resolve disagreements and negotiations in a successful and equitable manner."[25]

I've seen the letters from the New York and DC law firms coming up to the Canadian government on virtually every new environmental regulation [...]. Virtually all of the initiatives were targeted and most of them never saw the day of light.

Former Canadian government official, 5 years after NAFTA's investor-state provisions came into force[26]

Law firms lobbying for vested interests

Whenever policy-makers in the EU and the US have set out to change international investment treaties in recent years, law firms and investment arbitrators together with industry associations have mounted fierce lobbying campaigns to counter reforms to better balance public and private interests.[27] This is not surprising – investment arbitration is big business for them. The tabs racked up by elite law firms can be US$1,000 per hour, per lawyer in investment treaty cases, with whole teams handling them. The private lawyers who decide these disputes, the arbitrators, also line their pockets, earning daily fees of US$3,000 and more.[28] The more investment treaties and trade agreements with investor-state dispute settlement provisions exist, the more business for these lawyers.

EU and US lawyers dominate the field, seeking out every opportunity to sue countries. Nineteen of the top-20 law firms representing claimants and/or defendants in such disputes are headquartered in Europe or the US, the large majority of them (14) US firms. Out of the 15 arbitrators who have decided 55% of the total investor-state disputes known today, ten are from the EU or the US.[29]

Since the entry into force of the Lisbon Treaty in Europe in 2009, law firms like Hogan Lovells and Herbert Smith Freehills have been keen to influence the debate, inviting the European Commission, member state officials and MEPs to "informal but informed" roundtable discussions and webinars with their clients – including several who have sued countries under existing investment treaties such as Deutsche Bank, Shell and energy giant GDF Suez. Their message: there was a need for high standards of investor protection and in particular investor-state arbitration; and investment protection should not be linked to labour or environmental standards.[30]

One of the main concerns put forward by lawyers was the politicisation of investment policy as a result of the Lisbon Treaty. The involvement of the European Parliament was a particular thorn in their side. At a conference in December 2009, Daniel Price, an ex-US trade negotiator and former co-chair of the Transatlantic Economic Council[31] who now mainly works as lobbyist, investment lawyer and arbitrator, warned of the potential "steady deterioration" of investment treaties which he had witnessed in the US. The involvement of Congress had led to controversy and later to a review of the US investment policy which Price considered "unhelpful". This review tried to better balance investor and state rights through more precise legal language. In January 2010, shortly after Price had walked through the revolving door from the Bush administration, he wrote to the Commission official responsible for the investment files and offered "to assist you in thinking through these issues." He added: "As you know, my group has advised both outbound investors and governments on investment policy issues".[32]

A pure power grab

Some of Price's arbitrator colleagues have already come out defending TTIP investor-state dispute settlement provisions against more cautious voices warning of litigation risks and questioning the need for extra-judicial enforcement in two sophisticated legal systems such as the US and the EU. Simon Lester, for example, policy analyst of the libertarian Cato Institute and usually a proponent of investor-state arbitration, has warned of the unprecedented litigation risks that such a dispute settlement system would create in the context of the enormous transatlantic investment flows.[33]

With the amount of investment that would be covered in a US-EU agreement, US and EU leaders might have to start contemplating the impact of investor-state losses.

Simon Lester, Trade Policy Analyst, Cato Institute[34]

One of the usual arguments for investor-state arbitration – the need to grant legal security to attract foreign investors to countries with weak court systems – turns to dust in the context of TTIP. If US and EU investors already make up for more than half of foreign direct investment in each others' economies, then it is clear that investors seem to be happy enough with the rule of law on both sides of the Atlantic. This is confirmed by an internal European Commission report from 2011 stating that "it is arguable that an investment protection agreement with the US would be needed with regard to the rule of law."[35]

> What possibly could be the explanation for why you would need extra-judicial enforcement and additional property rights with respect to an agreement with the European Union? Is it the US position that Europe's courts are crappy and that their property laws are scandalous? They are not. Investor-state in TTIP is a pure power grab from corporations.

Lori Wallach, Director Global Trade Watch at Public Citizen[36]

Growing public outcry

Citizens and organised civil society, on the other hand, oppose investor-state dispute settlement. According to a statement by the Transatlantic Consumer Dialogue, supported by consumer groups from the EU and the US, TTIP "should not include investor-state dispute resolution. Investors should not be empowered to sue governments to enforce the agreement in secretive private tribunals, and to skirt the well-functioning domestic court systems and robust property rights protections in the United States and European Union."[37] The federation of US trade unions, AFL-CIO, similarly argues that "given the advanced judicial systems of both the US and EU", investor-state dispute settlement "is an unwarranted risk to domestic policy-making at the local, state and federal levels."[38] Digital rights activists, environmentalists and health groups have also come out against the threat of a corporate assault on democracy.

The US National Conference of State Legislators, which represents all 50 US state parliamentary bodies, has also announced that it "will not support any [trade agreement] that provides for investor-state dispute resolution" because it interferes with their "capacity and responsibility as state legislators to enact and enforce fair, nondiscriminatory rules that protect the public health, safety and welfare, assure worker health and safety, and protect the environment."[39] MEPs from the Greens, Socialists and the Left Group in the European Parliament seem equally concerned.

> It doesn't make any sense to apply this system in relations between the EU and the United States. Any claim should go through ordinary judicial system.

MEP David Martin, Socialists & Democrats[40]

When US-Congressman Alan Grayson alerted the public that TTIP would include an investor-state system allowing consumer protection, environmental safeguards and labour laws to be "struck down by international tribunals", this generated nearly 10,000 angry comments from citizens in little more than 24 hours.[41]

> Why are our representatives thinking about handing over our sovereign rights to huge corporations who care nothing about us?

One of many concerned citizens in her contribution to public TTIP consultation in US[42]

Beware of the EU agenda

Some EU member states also seem to question the need for investment protection clauses between two legal systems which are as sophisticated as in the EU and the US. Some fear a flood of claims from the US with its more aggressive legal culture. There are concerns that the US financial sector could attack policies to tackle Europe's economic crisis such as bail-outs and debt restructuring. On the other hand, member states such as Germany and the Netherlands, which support far-reaching investor rights, rather want to avoid pro-public interest legal language which is more common in the US and which, in their view, would 'dilute' investment protections.

But the US government and the European Commission seem to be determined to use TTIP to empower foreign investors to bypass local courts and sue states directly at international tribunals when democratic decisions impede their expected profits. In its negotiation mandate, the Commission made detailed suggestions for a "state-of-the-art investor-to-state dispute settlement mechanism" and investor rights which mirror the proposals from business lobby groups.[43] The proposal will put many policies at risk and most likely create a chilling effect on governments looking to pass new rules to protect the environment and society (see annex).

It is high time that governments and parliaments on both sides of the Atlantic grasp the political and financial risks of investor-state dispute settlement and axe the plans for this looming transatlantic corporate bill of rights. The European Parliament in particular should put a leash on the Commission which is obviously disregarding MEPs' call for "major changes"[44] in the international investment regime (see annex).

Why on earth should legislators grant business such a powerful tool to rein in democracy and curb sound policies made in the interest of the public?

Annex:

The devil is in the (TTIP) detail

Trade speak: what the EU wants to negotiate[45]	Translation: what it means in practice[46]
The investment protection chapter "should cover a broad range of investors and their investments [...] whether the investment is made before or after the entry into force of the Agreement".	Definitions of "investor" and "investments" are key because they determine who/what is covered by the chapter. A broad definition not only covers actual enterprises in the host state, but a vast universe ranging from holiday homes to sovereign debt instruments, exposing states to unpredictable legal risk. Broad definitions also open the door to mailbox companies abusing the treaty via "treaty shopping", allowing, for example, a US firm to sue the US via a Dutch mailbox company.
Intellectual property rights (IPR) should be included in the definition of 'investments' to be protected by TTIP.	The investor-state disputes of tobacco company Philip Morris against Uruguay and Australia show the risks of this proposal (Box 1). In another IPR-based claim, US drug giant Eli Lilly is attacking patent laws in Canada whereby a medicine's patentability must be demonstrated when filing a patent[47]. Public health lawyers have lambasted TTIP-like deals a "booby trap for access to medicines".[48]
Investors should be treated in a "fair and equitable" (FET) way, "including a prohibition of unreasonable, arbitrary or discriminatory measures".	A catch-all provision most relied on by investors when suing states. In 74% of the cases where US investors won, tribunals found an FET violation. In Tecmed v. Mexico, for example, the tribunal found that Mexico had not acted "free from ambiguity and totally transparently". Due to environmental concerns, a local government had not relicensed an operating waste treatment plant.[49] The EU is likely to propose a broad version of the clause, even protecting what investors consider their 'legitimate' expectations from 'unpredictable' policy change. A ban on a chemical found to be harmful to public health could be considered a violation of this provision. Investors will also be enabled to challenge scientific justifications of a policy and 'arbitrary' or 'unreasonable' relationships between a policy and its objective.
Investors should be protected "against direct and indirect expropriation", including the right to compensation.	From a certain, investor-friendly view, almost any law or regulatory measure can be considered an 'indirect expropriation' when it has the effect of lowering future expected profits. Several tribunals have interpreted legitimate environmental and other public policies in such a way.
The agreement should also include an "umbrella clause".	This would bring all obligations a state assumed with regards to an investment under the TTIP 'umbrella' (like a contract with one investor), multiplying the risk of costly lawsuits.
The agreement should guarantee the "free transfer of funds of capital and payments by investors".	This provision would allow the investor to always withdraw all investment-related monies, reducing the ability of countries to deal with sudden and massive out- and inflows of capital, balance of payment and other macroeconomic crises.
Investment protection "should be without prejudice to the right of the EU and the Member States to adopt and enforce [...] measures necessary to pursue legitimate public policy objectives such as social, environmental, security, stability of the financial system, public health and safety in a non-discriminatory manner".	This paragraph provides false comfort. It links public policy to a necessity test, placing a big burden of proof on governments to justify their actions. Is Australia's plain packaging law for cigarette packs necessary to protect public health? Was Germany's exit from nuclear energy necessary? Might there not have been other, more effective measures? It would be up to an offshore tribunal of private lawyers with lack of accountability to decide.

The arbitrators who decide investor-state claims should be independent.	This responds to widespread concerns about conflicts of interest among the 3-lawyer panels which ultimately decide investor-state disputes. Unlike judges, they have no flat salary but earn more the more claims they rule on. Existing codes of conduct have not prevented a small club of arbitrators from deciding on the majority of investor-state disputes, paving the way for more business in the future with expansive, investor-friendly interpretations of the law. Whether the EU will tackle the conflicts of interest of these 'entrepreneurial arbitrators' remains to be seen. Just claiming that they are independent clearly won't be enough.
There should be a "possibility of binding interpretation of the Agreement by the Parties".	This should allow governments to monitor and control how the law that they created is interpreted. Following a wave of investor claims under NAFTA, the US, Canada and Mexico have issued such joint clarifications of vaguely formulated investor rights. In practice, arbitrators have proven that they are willing to ignore these 'binding' interpretations.[50]
Investors should be able to use "as wide a range of arbitration fora as is currently available under the Member States' bilateral investment agreements".	The institution that administers an investor-state dispute matters: for example, when it appoints arbitrators or resolves conflict of interest claims against them. A "wide range" of fora could include purely business-orientated organisations such as the Paris-based International Chamber of Commerce (ICC), one of the world's most influential corporate lobby groups. Can such a business site really be considered an independent forum for an investor-state dispute?
"The investor-to-state dispute settlement mechanism should contain safeguards against manifestly unjustified or frivolous claims".	Another paragraph providing false comfort. None of the controversial attacks on sound public policies mentioned in Box 1 would be dismissed under such a mechanism – because they are based on allegations of real violations of investment treaties as these tend to be so broad. Claims are only considered frivolous when there is a complete lack of legal merit. Under existing rules, states can already ask arbitrators to swiftly dispose of frivolous claims, but not a single such case is known.[51]
"Consideration should be given to the possibility of creating an appellate mechanism applicable to investor-to-state dispute settlement under the Agreement".	Unlike in proper court systems, decisions by investor-state arbitration panels are non-reviewable (except for annulment proceedings that address a narrow range of procedural errors and are not heard by judges but by another arbitration tribunal). An appeal mechanism could contribute to more coherent decisions, but as things currently stand, this is a long way from becoming a reality.

Endnotes

1 The leaked EU negotiation mandate, dated 17 June 2013, can be found on the website of the S2B network, http://www.s2bnetwork.org/fileadmin/dateien/downloads/EU-TTIP-Mandate-from-bfmtv-June17-2013.pdf [18-09-2013].

2 For the conflicts of interest, see chapter 4 of Corporate Europe Observatory/ Transnational Institute (2012) Profiting from Injustice, http://corporateeurope.org/publications/profiting-from-injustice/who-guards-guardians [15-05-2013].

3 Porterfield, Matthew C. and Byrnes, Christopher R. (2011) Philip Morris v. Uruguay. Will investor-State arbitration send restrictions on tobacco marketing up in smoke? Investment Treaty News, http://www.iisd.org/itn/2011/07/12/philip-morris-v-uruguay-will-investor-state-arbitration-send-restrictions-on-tobacco-marketing-up-in-smoke/ [15-05-2013].

4 Bernasconi-Osterwalder, Nathalie/ Hoffmann, Rhea Tamara (2012) The German Nuclear Phase-Out Put to Test in International Investment Arbitration? Background to the new dispute Vattenfall v. Germany (II), http://www.iisd.org/publications/pub.aspx?id=1613 [23-05-2013].

5 Phillips, Tony (2008) Argentina Versus the World Bank: Fair Play or Fixed Fight?, Center for International Policy (CIP), http://www.cipamericas.org/archives/1434 [15-05-2012]. Peterson, Luke Erik (2008) Round-Up: Where things stand with Argentina and its many investment treaty arbitrations, Investment Arbitration Reporter, 17 December.

6 Perry, Sebastian (2013) Bondholders pursue Greece over debt haircut, Global Arbitration Review, 7 May.

7 UNCTAD (2011) Sovereign Debt Restructuring and International Investment Agreements, Issues Note No 2, July, unctad.org/en/Docs/webdiaepcb2011d3_en.pdf [15-05-2013]; International Monetary Fund (2012) The Liberalization and Management of Capital Flows: An Institutional View, www.imf.org/external/np/pp/eng/2012/111412.pdf [15-05-2013].

8 Corporate Europe Observatory/ Council of Canadians/ Transnational Institute (2013) The right to say no. EU-Canada trade agreement threatens fracking bans, http://corporateeurope.org/publications/right-say-no-eu-canada-trade-agreement-threatens-fracking-bans [15-05-2013].

9 Hall, David (2010) Challenges to Slovakia and Poland health policy decisions: use of investment treaties to claim compensation for reversal of privation/liberalisation policies, January, http://www.psiru.org/reports/2010-02-H-tradelaw.doc [23-05-2013]; Peterson, Luke Eric (2012) Investor Announces Victory in Intra-EU BIT Arbitration with Slovakia Arising out of Health Insurance Policy Changes, Investment Arbitration Reporter, 10 December.

10 UNCTAD (2013) Recent Developments in Investor-State Dispute Settlement (ISDS), No 1, Revised, May, p. 4, http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf [15-05-2013], with additional research in the UNCTAD database of investor-state disputes, http://unctad.org/en/pages/DIAE/International%20Investment%20Agreements%20%28IIA%29/IIA-Tools.aspx [26-05-2013].

11 See, for example, the joint letter of AmChamEU, BusinessEurope, the Transatlantic Business Dialogue, the U.S. Chamber of Commerce and others on the EU-US Investment Dialogue, dated 16 November 2011, http://www.amchameu.eu/Portals/0/2011/Documents/JointAssnTECCo-chairsInvestmentLetter20111115.pdf [15-05-2013]. In their contributions to the 2012 and 2013 consultations on TTIP in the EU and the US, all these lobby groups have advocated investor-state dispute settlement.

12 In spring 2011, the Australian government announced that it would no longer include investor-state dispute settlement provisions in its trade agreements. Bolivia, Ecuador and Venezuela have terminated several bilateral investment treaties and have withdrawn from the World Bank facility for settling such disputes, the International Centre for Settlement of Investment Disputes (ICSID). South Africa and India are reviewing their treaties.

13 Statement of the U.S. Chamber of Commerce on the Transatlantic Trade & Investment Partnership to the Office of the U.S. Trade Representative, May 10, 2013, http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0241 [23-05-2013].

14 Ibid.

15 See, for example, Corporate Europe Observatory (2011) Investment rights stifle democracy, http://corporateeurope.org/publications/investment-rights-stifle-democracy [23-05-2012].

16 Internal European Commission report of a meeting on EU investment policy and the EU-US investment dialogue, organised by AmCham EU on 8 July 2011. Obtained through access to documents requested under the information disclosure regulation. On file with CEO.

17 Statement of the U.S. Chamber of Commerce on the Transatlantic Trade & Investment Partnership to the Office of the U.S. Trade Representative, see endnote 13.

18 Chase, Peter H. (2011) The United States, European Union and International Investment, GMF policy brief, July, p.8, http://www.gmfus.org/archives/the-united-states-european-union-and-international-investment/ [15-05-2013].

19 UNCTAD (2013), see endnote 10; Akhtar, Shayerah Ilias/ Weiss, Martin A. (2013) U.S. International Investment Agreements. Issues for Congress. Congressional Research Service, April 29, www.fas.org/sgp/crs/row/R43052.pdf [23-05-2-13].

20 Czech Republic (20 claims), Poland (14), Slovak Republic (11), Hungary (10), Romania (9), Lithuania (5), Estonia, Germany, Latvia (all 3 claims), Slovenia and Spain (2 claims), Belgium, France, Italy and Portugal (all one claim).

21 Bulgaria, Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania and Slovakia.

22 Chevron Corporation: Comments on Proposed Transatlantic Trade and Investment Partnership, May 7, 2013, http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0054 [23-05-2013].

23 See the website http://chevrontoxico.com/. For Chevron's version of the story, see http://www.theamazonpost.com/.

24 Chevron Corporation, see endnote 22.

25 Ibid.

26 Greider, William (2001) The Right and US Trade Law. Invalidating the 20th Century, The Nation, http://www.thenation.com/article/right-and-us-trade-law-invalidating-20th-century# [15-05-2013].

27 See: Corporate Europe Observatory (2011), see endnote 15; Corporate Europe Observatory/ Transnational Institute (2012) Profiting from Injustice, chapters 3 and 4, http://corporateeurope.org/publications/profiting-from-injustice [15-05-2013].

28 OECD (2012) Investor-State Dispute Settlement. Public Consultation: 16 May – 23 July 2012, p. 20. International Center for Settlement of Investment Disputes (2008) Schedule of Fees (Effective January 1, 2012), p.1.

29 Corporate Europe Observatory/ Transnational Institute (2012) Profiting from Injustice, see endnote 27.

30 Background material for the foreign investment roundtable organised by Hogan Lovells in Frankfurt on 7 June 2010 and the internal Commission report on the EU foreign direct investment roundtable organised by Hogan Lovells in Brussels on 7 December 2010, dated 21 December 2010, TRADE F.2 CB/MAL/ba. Obtained through access to documents requested under the information disclosure regulation. On file with CEO.

31 The Transatlantic Economic Council (TEC) brings together European Commission and US government officials. It was set up by Commission President Barroso, German Chancellor Merkel and US President Bush in 2007 to advance the transatlantic economic integration.

32 European Commission (2009): Mission Report. 50 years of Bilateral Investment Treaties Conference – Frankfurt 1-3 December 2009; email from Daniel Price to Jean-François Brakeland, head of the services and investment unit in the Commission's trade department, dated 5 January 2010. Both obtained through access to documents requested under the information disclosure regulation. On file with CEO.

33 See the blog exchange between Simon Lester, trade policy analyst at the Cato Institute, and arbitrator Mark Kantor, http://worldtradelaw.typepad.com/ielpblog/2013/02/trans-atlantic-trade-and-investor-state.html [15-05-2013].

34 Ibid.

35 Internal European Commission report of a meeting on EU investment policy and the EU-US investment dialogue, organised by AmCham EU on 8 July 2011with the European Services Forum, 13 December 2011, dated 17 December 2011. Obtained through access to documents requested under the information disclosure regulation. On file with CEO.

36 Interview with Lori Wallach, Director Global Trade Watch at Public Citizen, 6 May 2013.

37 Transatlantic Consumer Dialogue (2013) EU and US consumer groups' initial reaction to the announcement of a Transatlantic Trade and Investment Partnership, 5 March, http://www.tacd.org/index2.php?option=com_docman&task=doc_view&gid=354&Itemid=40 [15-05-2013].

38 AFL-CIO (2013) U.S.-EU Free Trade Agreement, http://www.aflcio.org/Issues/Trade/U.S.-EU-Free-Trade-Agreement [15-04-2013].

39 An Open Letter From U.S. State Legislators to Negotiators of the Trans-Pacific Partnerhsip Urging the Rejection of Investor-State Dispute Settlement, July 2012.

40 S&Ds raise concerns about investor-state arbitration mechanism, 23 May 2012, http://www.socialistsanddemocrats.eu/gpes/public/detail.htm?id=138256&section=NER&category=NEWS&startpos=&topicid=&request_locale=EN [26-05-2013].

41 http://alangraysonemails.tumblr.com/post/50533132368/trade-sell-out-out-of-the-mouths-of-citizens [24-05-2013].

42 http://www.regulations.gov/#!documentDetail;D=USTR-2013-0019-0256 [24-05-2013].

43 See endnote 1.

44 European Parliament resolution of 6 April 2011 on the future European international investment policy (2010/2203(INI), 6 April 2011.

45 See endnote 1.

46 UNCTAD's World Investment Report 2012 gives a good overview of the risks of certain investment protection provisions and how they could be addressed.

47 Council of Canadians (2013) Eli Lilly's NAFTA lawsuit should prompt rethink of investor "rights" deals, http://canadians.org/blog/eli-lilly%E2%80%99s-nafta-lawsuit-should-prompt-rethink-investor-rights-deals [18.09.2013].

48 Baker, Book K. (2013) Corporate Power Unbound. Investor-State Arbitration of IP Monopolies on Medicines – Eli Lilly and the TPP, PIJIP Research Paper Series, Paper 36, http://digitalcommons.wcl.american.edu/research/36 [26-05-2013].

49 Public Citizen (2012) Memorandum. "Fair and Equitable Treatment" and Investors' Reasonable Expectations: Rulings in U.S. FTAs & BITs Demonstrate FET Definition Must be Narrowed, www.citizen.org/documents/MST-Memo.pdf [26-05-2013].

50 Porterfield, Matthew C. (2013) A Distinction Without a Difference? The Interpretation of Fair and Equitable Treatment Under Customary International Law by Investment Tribunals, Investment Treaty News, 22 March, http://www.iisd.org/itn/2013/03/22/a-distinction-without-a-difference-the-interpretation-of-fair-and-equitable-treatment-under-customary-international-law-by-investment-tribunals/ [26-05-2013].

51 Inside US Trade (2013) Revised EU Mandate Seeks To Prevent 'Frivolous' Investor-State Claims, 23 May.

Brussels/Amsterdam, October 2013

Published by The Seattle to Brussels Network (S2B), Corporate Europe Observatory and the Transnational Institute

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