

ISDS/ICS references/links

This document started October 2015 – a compilation of recent reference-links by Dr Henry Adams, Kendal. My previous compilation on ISDS/ICS is referred to in [STOP TTIP South Lakes](#) website like this:

On 16sep15 the EU Commission's Cecilia Malmstrom put forward their version of an "ISDS-lite", re-badging it **ICS - the Investment Court System**. It is similar to the EP's "ISDS-lite" voted for by MEPs including the LibDem's only MEP Catherine Bearder but not by Green MEPs. This pdf links to both it and responses by NGO's and several political Parties: <http://www.dragonfly1.plus.com/EU-Commission-proposal-for-ICS-&-responses.pdf>

In autumn 2016 I wrote a summary from key references, link to it here: www.bit.ly/ICSISDS Here is the start of it:

The strong case against separate corporate court systems (ICS/ISDS)

(with links to excellent recent reports) www.bit.ly/ICSISDS

By Henry Adams – **Autumn 2016** – especially FAO Tim Farron MP and the LibDems

We can't let big US oil and fracking firms have an ICS/ISDS in CETA to undermine climate legislation.

[update:] We were very pleased to hear Tim Farron saying that companies should use national domestic courts if they wish to legally settle any disputes with governments over trade or investment issues. We hope other LibDems come to agree with Tim when they read the evidence below. ...

Some of the best recent briefings: (other links in reverse chronological order on next pages)

CETA: Trading away democracy - HOW CETA'S INVESTOR PROTECTION RULES COULD RESULT IN A BOOM OF INVESTOR CLAIMS AGAINST CANADA AND THE EU – September 2016 – A Joint Publication, September 2016 (20 pages). Written by Pia Eberhardt et al. *Excellent report.*

<http://www.bothends.org/en/Publications/document/173/CETA-Trading-away-democracy>

- highlights the ICS-ISDS in CETA. Excellent summary page of dangers e.g. Canadian mining companies in EU e.g. Gabriel Resources – Romania case. *Quotes:*

Chevron argues that the mere existence of ISDS is important as it acts as a deterrent. - EU Commission official about a meeting with Chevron on ISDS, 29th April 2014

It's a lobbying tool in the sense that you can go in and say, 'Ok, if you do this, we will be suing you for compensation.' [...]

It does change behaviour in certain cases. - Peter Kirby, law firm Fasken Martineau, on investor-state arbitration

This doesn't change anything because the standards on the basis of which judgements are rendered remain the same. - Nigel Blackaby, arbitration lawyer with Freshfields on the EU's ICS proposal.

Published by Corporate Europe Observatory (CEO), Transnational Institute, Powershift, the Council of Canadians, Védegylet Egyesület, War on Want, Umanotera, Friends of the Earth Europe (FoEE), Quebec Network on Continental Integration (RQIC), Forum Umwelt und Entwicklung, Global Justice Now (GJN), European Federation of Public Service Unions (EPSU), Association Internationale de techniciens, Experts et Chercheurs (AITEC), Attac Austria, LobbyControl, Vienna Chamber of Labour (AK Vienna), Afrika Kontakt, Ecologistas en Acción, Instytut Globalnej Odpowiedzialności (IGO), Both Ends, Nature Friends Greece, Centre national de coopération au développement (CNCD-11.11.11) and Attac France.

ISDS – ICS: The zombie ISDS – “Rebranded as ICS, rights for corporations to sue states refuse to die” -

Corporate Europe Observatory, February 2016. Author: Pia Eberhardt

This is a thorough assessment of the ICS version of ISDS, also including a good chapter on the ISDS in general including example lawsuits:

<http://corporateeurope.org/international-trade/2016/02/zombie-isds> 17feb16

http://corporateeurope.org/sites/default/files/attachments/the_zombie_isds_0.pdf - full report

http://corporateeurope.org/sites/default/files/attachments/zombie-isds-ex-sum-en_0.pdf - summary

<http://media.waronwant.org/sites/default/files/The%20zombie%20ISDS.pdf>

Investment Court System put to the test: new EU proposal will perpetuate investors' attacks on health and environment - Friends of the Earth Europe <http://foeeurope.org/investment-court-system-put-to-test> 19apr16

ISDS & climate: Polluters Paradise is one of the best briefings on how ISDS/ICS impacts on climate policy, and how this impact is likely to increase if TTIP and CETA are implemented. I quote from it:

"Chevron argues that the mere existence of ISDS is important as it acts as a deterrent." EU Commission official about a meeting with Chevron on ISDS in TTIP, 29 April 2014

10dec15 **Polluters' paradise** - Corporate Europe Observatory

<http://corporateeurope.org/international-trade/2015/12/polluters-paradise>

7dec15 **Polluters' Paradise** - Transnational Institute <https://www.tni.org/en/publication/polluters-paradise> - summary/intro that links to a pdf report: <https://www.tni.org/files/publication-downloads/pollutersparadise.pdf>

Investment Court System (ICS): The Wolf in Sheep's Clothing – PSI – Public Services International 4jul16

<http://www.world-psi.org/en/investment-court-system-ics-wolf-sheeps-clothing>

Public sector unions lobby MEPs to reject new Investment Court System - PSI, 5july16

<http://www.world-psi.org/en/public-sector-unions-lobby-meps-reject-new-investment-court-system>

7 reasons to scrap the Investment Court System

- 1:** ICS would **empower corporations to sue governments** over measures to protect the environment, health & workers
- 2:** The ICS means **billions in taxpayer money** could be paid to compensate corporations, including for missed future profits
- 3:** ICS is a sure-fire way to bully decision-makers, potentially **curtailing desirable policymaking**
- 4:** The ICS would give powerful **rights and privileges** to foreign investors, **without any obligations**
- 5:** Since only investors can sue, there is an incentive for **ICS arbitrators to side with them** to bring more lawsuits & fees
- 6:** ICS is likely to be **incompatible with EU law**, as it sidelines European courts and is fundamentally discriminatory
- 7:** ICS risks locking us into **a legal straightjacket**, as it will be practically impossible to remove investor privileges from larger trade deals

Aug-Sep2016 **Buzzfeed's Chris Hamby** et al. have done an in-depth investigative study of the ISDS and its abusive use - especially against poor countries (in effect - against poor people). Here's a brief 4 minute video showing how ISDS puts company profits above people's lives - with lead poisoning as an example (have to put up with the over-large lettering): <https://www.youtube.com/watch?v=nO4k2ILXiT8> Here's a link to their articles: **Secrets of a global supercourt** – A BuzzFeed news investigation buzzfeed.com/globalsupercourt

22feb16 **Statement against Investor Protection in TTIP, CETA, and other trade deals** - Corporate Europe Observatory <http://corporateeurope.org/international-trade/2016/02/statement-against-investor-protection-ttip-ceta-and-other-trade-deals> Contains the "7 reasons to scrap... infographic and Links to this pdf:

February 2016 **Statement against Investor Protection in TTIP, CETA, and other trade deals** – signed by numerous organisations:

http://corporateeurope.org/sites/default/files/attachments/s2b_statement_isds_ics_engl.pdf
s2b_statement_isds_ics_engl.pdf

1mar16 **The seven sins of the EU investment court** Pia Eberhardt of CEO – Corporate Europe Observatory <https://euobserver.com/opinion/132504>

April 201 - LSE report commissioned by BIS:

TO THE DEPARTMENT FOR BUSINESS INNOVATION AND SKILLS: **COSTS AND BENEFITS OF AN EU-USA INVESTMENT PROTECTION TREATY**

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260380/bis-13-1284-costs-and-benefits-of-an-eu-usa-investment-protection-treaty.pdf from which I quote: "In sum, an EU-US investment chapter is likely to provide the UK with few or no benefits. On the other hand, with more than a quarter of a trillion dollars in US FDI stock, the UK exposes itself to a significant measure of costs."

Investment Court System put to the test: New EU proposal will perpetuate investors' attacks on health and environment https://www.foeeurope.org/sites/default/files/eu-us_trade_deal/2016/execsum-icstest-eng_1.pdf
- good summary

Also see my collation of CETA references – as this is will be the first and main battle for/against actual implementation of ICS/ISDS in a major latest generation FTA -
<http://www.dragonfly1.plus.com/CETAreferences.pdf>

Useful resource: <http://investmentpolicyhub.unctad.org/ISDS/FilterByCountry>

More links: *Chronological (most recent at top)*

c.22dec16, last update 29dec16 EC Trade: **Questionnaire on options for a multilateral reform of investment dispute resolution** - Trade - European Commission
http://trade.ec.europa.eu/consultations/index.cfm?consul_id=233 cd: 15mar17

8dec16 **German utilities win compensation for nuclear phaseout** - bilaterals <http://www.bilaterals.org/?german-utilities-win-compensation> This decision is by Germany's Constitutional Court. Vattenfall is also suing using ICSID.

Early day motion 642 - PARLIAMENTARY SCRUTINY OF TRADE DEALS - UK Parliament
<https://www.parliament.uk/edm/2016-17/642> Session: 2016-17 Date tabled: 02.11.2016 Primary sponsor: [Grady, Patrick](#) Sponsors: [Godsiff, Roger](#) [Edwards, Jonathan](#) [Stephens, Christopher](#) [Brock, Deidre](#) [Rimmer, Marie](#)

That this House is concerned that UK international investment policy has not kept pace with commitments on human rights, the environment and international development, most especially that the formulation of existing Bilateral Investment Treaties may prevent partner countries from implementing policies to further progress in those areas, and that the process for parliamentary scrutiny in the UK is inadequate; believes the Government should develop an approach that complements the UK's other

international commitments; recognises that governments around the world have already made significant changes to their policies; and calls on the Secretary of State for International Trade to undertake a full rethink of the UK's approach to international investment protection, including working towards the removal of Investor State Dispute Settlement mechanisms from these treaties and to ensure Parliament has the fullest opportunity to debate, vote on and amend trade and investment deals.

LibDem MPs signed up to this (3dec16) include: Tom Brake, John Pugh (Southport), Mark Williams (Ceredigion)
Via Meg Hill email

Nov16 **Selected Government Statements and Actions Against Investor-State Dispute Settlement (ISDS)**
<http://www.citizen.org/documents/isds-quote-sheet.pdf> - PublicCitizen - based in Washington DC.

28oct16 **CETA to be signed unchanged, but less likely to be ratified after Wallonian resistance - Behind the Numbers** - Scott Sinclair and Stuart Trew <http://behindthenumbers.ca/2016/10/28/ceta-signed-unchanged-less-likely-ratified-wallonian-resistance/> Includes strong analytical criticism of the ICS-ISDS in CETA **Scott Sinclair** is the director of the CCPA's [Trade and Investment Research Project](#). **Stuart Trew** is the editor of [The Monitor](#), the CCPA's national magazine. Follow Stuart on Twitter [@StuJT](#). Scott and Stuart just returned from Brussels, where they spoke about CETA in the European Parliament and discussed the deal with civil society organizations and others. Their new book, [The Trans-Pacific Partnership and Canada: A Citizen's Guide](#), is available now from Lorimer.

14oct16 **World Bank tribunal dismisses mining firm's \$250m claim against El Salvador** – Claire Provost & Matt Kennard Global development - The Guardian <https://www.theguardian.com/global-development/2016/oct/14/el-salvador-world-bank-tribunal-dismisses-oceanagold-mining-firm-250m-claim>
GJN tweet “Great news, but disgraceful that OceanaGold were able to bring a case like this in the first place.”
Salvador guy said: ““This is a law suit that should never have been allowed. The millions of dollars that El Salvador has spent in legal costs could have been used to strengthen badly needed social programmes in our country.” This case at ICSID took more than 7 years!! “In 2009, the Canadian mining company Pacific Rim – since acquired by the Australian-Canadian mining firm OceanaGold – [filed a case at the centre](#) claiming that El Salvador had unfairly refused to grant it a concession to start digging at its El Dorado mining project.”NB: a Canadian mining company. ... “Jen Moore, Latin America programme coordinator at [MiningWatch Canada](#), said: “This ruling is a relief, but it is not a win. This already costly suit should never have been able to take place. For seven years, it has put a chill on policymaking that could respect the decision of Salvadorans to prohibit metal mining and protect local communities and the environment.” Too many corporations, she added, have used the ISDS system to “bully governments and undermine local opposition to mining given its devastating impacts, and this must stop”.” Also gives info on impacts of chill.

13oct16 **Law in the natural resource squeeze: 'land grabbing', investment treaties and human rights** - International Institute for Environment and Development <http://www.iied.org/law-natural-resource-squeeze-land-grabbing-investment-treaties-human-rights> by [Lorenzo Cotula@LCotula](#) Also his tweet: My latest academic piece on [#landgrabbing](#) and int'l [#investment](#) law, [#ISDS](#) <http://bit.ly/2dL5k7N> [#landrights](#) [#openaccess](#) @OUPIntLaw <http://pubs.iied.org/G04091/> 'Land grabbing' and international investment law: toward a global reconfiguration of property? [Lorenzo Cotula](#) Chapter of book: Cotula, L. (2016) "'Land grabbing' and international investment law: toward a global reconfiguration of property?" in Bjorklund, A.K. (ed.) Yearbook on International Investment Law & Policy 2014-2015, Oxford University Press.

17oct16 **Legal Statement on Investment Protection in TTIP and CETA** - Stop TTIP <https://stop-ttip.org/blog/legal-statement-on-investment-protection-in-ttip-and-ceta/> - this summary links to full pdf: **Legal Statement on investment protection and investor-state dispute settlement mechanisms in TTIP and CETA - October 2016** – with list of over 100 signatories – mostly law Professors <https://stop-ttip.org/wp-content/uploads/2016/10/13.10.16-Legal-Statement-1.pdf>
Client Earth: **Law professors say ISDS is incompatible with EU law** “Over 100 EU law professors have [signed a letter saying investor provisions in trade agreements like TTIP and CETA undermine EU rule of law](#). ClientEarth lawyer Laurens Ankersmit, whose analysis shows that [Investor State Dispute Settlement \(ISDS\) is illegal under EU law](#), said: “EU law professors have now joined Civil society and judges associations across Europe to question the legality of investment arbitration in Europe. It is absolutely crucial that the European Court of Justice is asked to clarify this issue before a potentially unconstitutional deal is concluded.”...” <http://www.clientearth.org/101-law-professors-say-isds-is-incompatible-with-eu-law/>

6oct16 **Liam Fox's TTIP and CETA support shows he has no intention of 'taking back control'** – Mark Dearn of WonW <http://www.politics.co.uk/comment-analysis/2016/10/06/liam-fox-s-ttip-and-ceta-support-shows-government-has-no-int> “And CETA's ISDS 'corporate court' mechanism means more than 40,000 US corporations with offices in both Canada and the EU will gain access to these new powers.”

3oct16 **The sting in the trade deal tail: corporations push for rights to sue governments** - Corporate Europe Observatory <https://corporateeurope.org/power-lobbies-international-trade/2016/10/sting-trade-deal-tail-corporations-push-rights-sue>

23sep16 **Don't be fooled by CETA_ It's a wolf in sheep's clothing** – Emma Woodford - the founding director of the Health and Trade Network - EurActiv.com – mainly a good brief summary of CETA's ICS-ISDS: <http://www.euractiv.com/section/trade-society/opinion/dont-be-fooled-by-ceta-its-a-wolf-in-sheeps-clothing/>

Investment protection and dispute settlement in CETA - PowerShift e. V. and Canadian Centre for Policy Alternatives (CCPA) – chapter (p.13-20) in:

Making Sense of CETA - 2nd edition - An analysis of the final text of the Canada–European Union Comprehensive Economic and Trade Agreement – PowerShift (Berlin) & Canadian Centre for Policy Alternatives
https://power-shift.de/wordpress/wp-content/uploads/2016/09/Making-sense-of-CETA_22092016.pdf 82pp

CETA: Trading away democracy - HOW CETA'S INVESTOR PROTECTION RULES COULD RESULT IN A BOOM OF INVESTOR CLAIMS AGAINST CANADA AND THE EU – September 2016 – A Both Ends Joint Publication, September 2016 (20 pages). Excellent report.

<http://www.bothends.org/en/Publications/document/173/CETA-Trading-away-democracy>

- highlights the ICS-IDS in CETA. Excellent summary page of dangers e.g. Canadian mining companies in EU e.g. Gabriel Resources – Romania case.

"2. CETA would increase the risk to the EU and its member states of challenges by Canadian investors in the mining and oil and gas extraction sectors. Canadian investment stocks in the EU are significant in these sectors, and Canadian mining companies are already engaged in a number of controversial natural resource projects across the EU. Mining specialists are celebrating CETA as a "landmark" agreement, which could have "major implications for miners." Oil, mining and gas

corporations around the world are increasingly turning to investment arbitration. The claim of Canadian Gabriel Resources against the government of Romania, which decided not to allow the Roşia Montană gold mine as the project would result in environmental destruction and the displacement of villagers, gives a good impression of the type of claims EU member states can expect from Canadian companies."

Quotes:

Chevron argues that the mere existence of ISDS is important as it acts as a deterrent.

EU Commission official about a meeting with Chevron on ISDS, 29th April 20145

It's a lobbying tool in the sense that you can go in and say, 'Ok, if you do this, we will be suing you for compensation.' [...]

It does change behaviour in certain cases.

Peter Kirby, law firm Fasken Martineau, on investor-state arbitration6

This doesn't change anything because the standards on the basis of which judgements are rendered remain the same.

Nigel Blackaby, arbitration lawyer with Freshfields on the EU's ICS proposal4

5sep16 **Legal briefing EP Legal Service Opinion on ICS in CETA**, 5 September 2016 – Client Earth

<http://www.documents.clientearth.org/wp-content/uploads/library/2016-09-05-legal-briefing-ep-legal-service-opinion-on-ics-in-ceta-ce-en.pdf>

<https://www.theguardian.com/global-development/2016/jul/28/who-really-won-legal-battle-philip-morris-uruguay-cigarette-adverts>

4jul16 **Do Revised Investment Protection Rules in the EU-Canada Trade Deal Make Any Difference?** – EPHA

<http://epha.org/do-revised-investment-protection-rules-in-the-eu-canada-trade-deal-make-any-difference/> E.g.

"nothing has changed significantly as the regulatory chill effect – which is a central objection to TTIP – will still remain exactly the same" links to a full analysis and annex. EPHA = European Public Health Alliance.

<http://epha.org/wp-content/uploads/2016/07/Joint-Analysis-CETA-ICS-1.pdf>

<http://epha.org/wp-content/uploads/2016/08/Annex-1-2.pdf> - legal analysis

25jun16 **TransCanada Files NAFTA Suit Demanding More Than \$15 Billion for Keystone XL Rejection** – Michael Brune <http://ecowatch.com/2016/06/25/transcanada-nafta-keystone-xl-tpp/>

13jun16 **Unmasked: Corporate rights in the renewed Mexico-EU FTA** - Transnational Institute (TNI)

<https://www.tni.org/en/publication/unmasked-corporate-rights-in-the-renewed-mexico-eu-fta> "Oil and gas companies have initiated 57 known investment disputes, 80% of which were launched in the last 10 years." "European companies have a track record of human rights and environmental violations in Mexico with virtually total impunity. The proposed investment chapter developed by the European Union does nothing to address this situation. On the contrary, it will deepen the imbalance between binding rights for corporations and voluntary guidelines when it comes to respect of human right."

3jun16 **#ExxonKnew About Climate Change and ExxonKnows How to Use Trade Deals to Get Its Way** – Llana Solomon, Sierra Club http://www.huffingtonpost.com/ilana-solomon/exxonknew-about-climate-c_b_10281690.html

13jun16 **Corporate Sovereignty [ISDS] Finally Enters The Political Mainstream** – Glyn Moody in Techdirt
<https://www.techdirt.com/articles/20160610/04091534671/corporate-sovereignty-finally-enters-political-mainstream.shtml> re-states Corbyn's position, and shows ISDS ratchet clauses re Australia's FTA's/BIT's.

19may16 **Leak reveals five EU governments propose new intra-EU ISDS mechanism** - #TTIP – The Greens / EFA
<http://ttip2016.eu/blog/-208.html> "Germany, France, Austria amongst nations pushing for increased investor privileges"
Business Europe's leaked letter: <https://www.scribd.com/doc/313055735/EU-Business-Lobby-Letter-Demanding-New-EU-Wide-Investment-Protection-Instrument>

15may16 **Slovenia rejects Investment Court System provision in CETA** - The Council of Canadians
<http://canadians.org/blog/slovenia-rejects-investment-court-system-provision-ceta>

TTIP investment court 'incompatible with human rights' – Cecile Barbieri in EurActiv 20apr16
<http://www.euractiv.com/section/trade-society/news/ttip-investment-court-incompatible-with-human-rights/>

Gabriel Siles-Brügge @GabrielSilesB Apr 26 How #TTIP's proposed #ICS differs little from #ISDS (w/ potential consequences for public health): documents.manchester.ac.uk/display.aspx?DocID=28671 #TTIP4Health
POLICY BRIEFING The EU Investment Court Proposal in TTIP: ISDS 2.0 Nicolette Butler (University of Manchester) <http://documents.manchester.ac.uk/display.aspx?DocID=28671>

"**Conclusions:** The ICS proposal put forward by the EU Commission in its draft text on investment does not represent a fundamental departure from the 'traditional' system of ISDS as contained in the US model BIT 2012, despite the assertions of the EU Commission otherwise. The criticisms of the ISDS system are not adequately addressed in the ICS proposal. Indeed, the proposal is probably best described as 'ISDS 2.0', representing relatively minor tweaks to the traditional ISDS system, and adding new problems to the mix. Civil society groups should therefore be weary of the ICS and not be swayed by the EU Commission's PR campaign for its proposal. ..."

LSE report commissioned by BIS:

COSTS AND BENEFITS OF AN EU-USA INVESTMENT PROTECTION TREATY

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/260380/bis-13-1284-costs-and-benefits-of-an-eu-usa-investment-protection-treaty.pdf

25apr16 **FOIA reveals government's assessment of TTIP's corporate courts** – "lots of risks and no benefit" - Global Justice Now

<http://www.globaljustice.org.uk/news/2016/apr/25/foia-reveals-governments-assessment-ttips-corporate-courts-%E2%80%93-lots-risks-and-no>

25apr16 **TTIP: UK Government found secret courts in trade deal have 'lots of risk and no benefit' in its only assessment** – Hazel Shepherd, Business News, The Independent

<http://www.independent.co.uk/news/business/news/ttip-uk-government-only-did-one-assessment-of-trade-deal-and-found-it-had-lots-of-risks-and-no-a6999646.html>

38 Degrees: **TTIP facts from the Government's own business report**

<https://speakout.38degrees.org.uk/campaigns/851>

*** 19apr16 **ICS: Investment Court System put to the test** - Transnational Institute

CONCLUSION: "New EU proposal will perpetuate investors' attacks on health and environment"

<https://www.tni.org/en/publication/investment-court-system-put-to-the-test>

*** 19apr16 **EU investment proposal won't prevent corporate attacks on health and environment** - Corporate Europe Observatory <http://corporateeurope.org/international-trade/2016/04/eu-investment-proposal-won-t-prevent-corporate-attacks-health-and> The "Investment Court System is put to the test" and found neither to protect the right to regulate nor to prevent attacks on environment/health regulation. "Report by Friends of the Earth Europe - Transnational Institute - Corporate Europe Observatory - Forum Umwelt und Entwicklung – Canadian Center for Policy Alternatives"

fighting-ttip-ceta-isds-lessons-from-canada-maude-barlow.pdf

<http://www.globaljustice.org.uk/sites/default/files/files/resources/fighting-ttip-ceta-isds-lessons-from-canada-maude-barlow.pdf> - I have downloaded this into my CETA and ISDS folders.

NB: p.9 gives “Canada’s experience with ISDS under NAFTA” – “As a result of NAFTA’s ISDS challenges, Canada is now the most sued developed country in the world.” & “But they are probably just the tip of the iceberg because many new laws or changes to laws never come to light because of the “chill effect” of prior restraint. The Canadian government adopted a new policy soon after NAFTA was adopted whereby all new laws and any changes to existing laws have to be vetted by trade experts to ensure they are not challengeable under ISDS rules.”

Apr16 **Investor-State dispute settlement undermines rule of law and democracy, UN expert tells Council of Europe** – Office of the High Commissioner, UN Human Rights

<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19839&LangID=E>

- via glyn Moody tweet 19apr16

29feb16 **Dangerous CETA deal must be rejected** - Friends of the Earth Europe

<http://www.foeeurope.org/dangerous-CETA-deal-must-be-rejected-290216>

29feb16 **New system of corporate courts in Canada-EU trade deal condemned as ‘putting lipstick on a pig’** -

Global Justice Now <http://www.globaljustice.org.uk/news/2016/feb/29/new-system-corporate-courts-canada-eu-trade-deal-condemned-putting-lipstick-pig>

<http://trade.ec.europa.eu/doclib/press/index.cfm?id=1468>

17feb16 **Investment court system, ISDS in disguise: 10 reasons why the EU's proposal doesn't fix a flawed system** - Friends of the Earth Europe <http://www.foeeurope.org/investment-court-system-ISDS-disguise-170216>

Links to pdf: - an awkward format for reading on screen. Probably designed to be printed as a 4 page leaflet but wasteful for ink as it includes white lettering on dark background!

<http://www.foeeurope.org/sites/default/files/eu-us-trade-deal/2016/investment-court-system-isds-in-disguise-10-reasons-why-the-eus-proposal-doesnt-fix-a-flawed-system-english-version-0.pdf>

GJN ttip_briefing_update_feb_16_2016.pdf – has a section on ICS

http://www.globaljustice.org.uk/sites/default/files/files/resources/ttp_briefing_update_feb_16_2016.pdf

“...But we shouldn’t be deceived. The Investment Court System is still very dangerous. It would still be a parallel court system that can only be used by corporations to sue countries for pursuing legitimate public policy goals. A bit of extra transparency won’t change the fundamental fact that democratic decisions will be subject to challenge by multinationals. Once set, up this court would be largely above democratic intervention. The implications of ordinary court verdicts, even those of the UK Supreme Court, can usually be reversed if

Parliament changes the law. This Investment Court System is likely to be above UK or even EU law by its very nature. For some universal principles, such as human rights, this may be acceptable, as human rights are arguably more important than the sovereignty of national parliaments or EU institutions. But by setting up this new international investment court, we are effectively saying that the rights of corporations should be above ordinary law and the ...”

Nick Dearden @nickdearden75 EU commission says: 'don't worry about TTIP corporate court, it'll hardly be needed'. So why have it? euobserver.com/economic/132295 #nottip

EU defends TTIP investor court after German backlash <https://euobserver.com/economic/132295>

How TTIP threatens UK’s ability to enforce fair taxes on corporations - Global Justice Now 15feb16

<http://www.globaljustice.org.uk/news/2016/feb/15/how-ttip-threatens-uks-ability-enforce-fair-taxes-corporations> Links to new 12pp GJN report by Claire Provost (pdf):

<http://www.globaljustice.org.uk/sites/default/files/files/resources/taxes-on-trial-how-trade-deals-threaten-tax-justice-global-justice-now.pdf>

Quaker view: QCEA: by George Thurley <http://www.qcea.org/wp-content/uploads/2016/02/Around-Europe-365-OctDec2015-colour-for-email.pdf> 19feb16

*** 11feb16 **Greenpeace** position: Brussels, 11 February 2016 **FROM ISDS TO ICS: A LEOPARD CAN'T CHANGE ITS SPOTS - POSITION PAPER ON THE COMMISSION PROPOSAL FOR AN INVESTMENT COURT SYSTEM IN TTIP**
http://www.greenpeace.org/eu-unit/Global/eu-unit/reports-briefings/2016/2016_02_11_Greenpeace%20Position%20Paper%20ICS_Final.pdf

EU faces tough sell on TTIP compromise – POLITICO.html 7feb16

<http://www.politico.eu/article/eu-faces-tough-sell-on-ttip-compromise-malmstroem-froman/>

"Washington, business are lukewarm toward Brussels' dispute resolution alternative."

NB: Top German Judges Tear To Shreds EU's Proposed TAFTA-TTIP Investment Court System – Glyn Moody in Techdirt, 9feb16 <https://www.techdirt.com/articles/20160204/09411333520/top-german-judges-tear-to-shreds-eus-proposed-tafta-ttip-investment-court-system.shtml>

On ICS-ISDS: 3feb16 **If you're worried about our sovereignty, read the German judges' damning indictment of TTIP** – Nick Dearden, Global Justice Now <http://www.globaljustice.org.uk/blog/2016/feb/3/if-youre-worried-about-our-sovereignty-read-german-judges-damning-indictment-ttip> "They've issued a damning indictment on the proposal for an 'international investment court'" ... "Their statement [Germany's biggest association of judges] 'rejects the proposal of the European Commission to establish an investment court' saying 'neither is there a legal basis nor the necessity' for such a court."

German judges slap TTIP down - Germany - DW.COM - 04.02.2016

<http://www.dw.com/en/german-judges-slap-ttip-down/a-19027665>

On ICS/ISDS for TTIP: [Cecile Toubeau @Cecile_Toubeau Feb 3](#) of Transport and Environment tweets: "**German judges conclude that special courts are wrong & not independent**" [#NOISDS](#) [@MalmstromEU](#) [@EU TTIP team](#)
<http://www.drb.de/cms/index.php?>

Opinion on the establishment of an investment Tribunal TTIP - the proposal from the European Commission on 09.16.2015 and 11.12.2015 No. 04/16 February 2016 by the German Association of Judges Association (DRB) <http://www.drb.de/cms/index.php?id=952>

[a software translation from German:] The German Association of Judges rejects proposed by the EU Commission imposing a capital court in making the Transatlantic Trade and Investment Partnership (TTIP). The DRB sees neither a legal basis nor a need for such a court. Understanding obviously connected with the proposal for an international investment court, the courts of the EU Member States could grant foreign investors no effective legal protection, lacks factual findings. If here weaknesses have been recognized by the negotiating

parties on a TTIP in individual EU Member States, it would be against the national legislature disclosed and clearly defined. It would then be up to the legislator and the person responsible for the judiciary to remedy the proven system of national and European law. Only in this way can the right grant claim, the holder is entitled litigants in Germany and the European Union can be ensured. The creation of special courts for individual groups of litigants is the wrong way.

4feb16 **TTIP investor court illegal, say German judges** <https://euobserver.com/economic/132142>

On ISDS in CETA: **Analysis finds EU-Canada trade deal would unleash wave of investor lawsuits** - Transport & Environment 18nov14 <http://www.transportenvironment.org/publications/analysis-finds-eu-canada-trade-deal-would-unleash-wave-investor-lawsuits>

CETA Changes Make Investor-State Provisions Worse - **Maude Barlow** – chair, Council of Canadians, in HuffPost: http://www.huffingtonpost.ca/maude-barlow/ceta-changes_b_9130538.html

Includes quotes from EU Green MEPs: "French MEP Yannick Jadot declared, "European citizens do not just want a change at the margin of the arbitration, but removal of the provision." German MEP Ska Keller stated, "The proposal changes nothing about the fact that investors get an extra-judicial system that will deal only with their rights, not their obligations."" ... "Even to call the new arbitrators 'judges' is a misnomer, as these tribunals will not be taking into account environmental protection, human rights or other non-corporate considerations that a regular judge usually has to balance. What's more, the arbitrators of this new court system can moonlight as lawyers with the very same corporations that are launching these cases. This is a lucrative business that could cloud an arbitrator's judgment. There is no proposal to set limits on how much a company can sue for, resulting in a continuation of the multi-million and billion lawsuits already on the table around the world."

& refers to: <http://www.theglobeandmail.com/opinion/editorials/a-better-deal-for-canada-the-us-and-europe/article28352319/>

<http://www.lowimpact.org/us-bans-pipeline-transcanada-sues-us-taxpayers-for-15-billion-ttip-will-transfer-wealth-from-taxpayers-to-corporations/> - Dave Derby, lowimpact, jan16.

19jan16 Nick Dearden on Gus Van Harten study: **‘Corporate courts’ have taken from the poor and handed to the rich – TTIP will turbo-charge this redistribution** - Global Justice Now

<http://www.globaljustice.org.uk/blog/2016/jan/19/corporate-courts-have-taken-poor-and-handed-rich-%E2%80%93-ttip-will-turbo-charge>

Who Has Benefited Financially from Investment Treaty Arbitration? An Evaluation of the Size and Wealth of Claimants by Gus Van Harten, Pavel Malysheuski, 11jan16

http://papers.ssrn.com/sol3/Papers.cfm?abstract_id=2713876

The billions made by lawyers when multinationals put countries in the dock - The Bureau of Investigative Journalism January 11, 2016 by Nick Mathiason and Claire Provost, Published in: All Stories, Corporate Watch
<https://www.thebureauinvestigates.com/2016/01/11/the-billions-made-by-lawyers-when-multinationals-put-countries-in-the-dock/>

ISDS carve-out - Gus van Harten - YouTube.html – TNI Transnational Institute

<https://www.youtube.com/watch?v=V3S5blws5tY>

Key Flaws in the European Commission’s Proposals for Foreign Investor Protection in TTIP

by Gus Van Harten _ SSRN.html http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2692122

“Abstract: In November 2015, the European Commission released a proposed text on foreign investor protection in the EU-US Transatlantic Trade and Investment Partnership (TTIP). In this paper, I outline key flaws in this proposal, including language buried in the text that seriously undermines the EC's proposed provisions on the "investment court system" (ICS) and on the right to regulate.”

“The flaws cast doubt on the EC’s claims, in particular, that it has reformed investor-state dispute settlement (ISDS) and that it has safeguarded the right to regulate.”

“1. ISDS is alive in the EC’s proposals” ... “after a study of the text it became clear that ICS is mainly a re-branding exercise for ISDS.”

“2. The case still has not been made for foreign investor protection in the TTIP” ... “In short, ISDS skews decision-making and the marketplace in favour of bigger foreign players at the expense of smaller and domestic ones.”

3. The EC’s proposals are fundamentally imbalanced

4. The EC’s proposals put poison pills into the “right to regulate” [These are listed:] (i) to (iv)

5. The EC’s proposal remains disrespectful of domestic institutions, including domestic and European courts

6. If the EC is serious about an international investment court, why is it proposing to expand ISDS in the TTIP?

Conclusion

For six reasons, the EC’s proposal for foreign investor protection in TTIP are flawed:

1. ISDS lives on in the details of the EC’s proposal.
2. There is still no evidence-based justification for including extraordinary protections for foreign investors in the TTIP and similar agreements.
3. The proposal does not include any responsibilities for foreign investors that can be enforced in the same process as foreign investors’ elaborate rights and protections.
4. The EC has buried poison pills inside the details of the “right to regulate”.
5. The proposal remains disrespectful of domestic institutions, including domestic and European courts.
6. The EC’s proposal for an international investment court lack credibility because the EC has proceeded first with a proposal for ISDS in the TTIP.

10dec15 **Polluters' paradise** - Corporate Europe Observatory

<http://corporateeurope.org/international-trade/2015/12/polluters-paradise>

7dec15 TNI: **Polluters’ Paradise** - Transnational Institute <https://www.tni.org/en/publication/polluters-paradise>

- summary/intro that links to a pdf report: <https://www.tni.org/files/publication-downloads/pollutersparadise.pdf>

“Chevron argues that the mere existence of ISDS is important as it acts as a deterrent.” EU Commission official about a meeting with Chevron on ISDS in TTIP, 29 April 2014

10dec15 **European Commission asks Canada to renegotiate key provision of CETA** - The Council of Canadians <http://canadians.org/blog/european-commission-asks-canada-renegotiate-key-provision-ceta>

“The Council of Canadians has rejected this because ICS and ISDS are not substantially different. Council of Canadians chairperson Maude Barlow says, “The proposed investment court system still gives a special status to foreign corporations by allowing them to challenge the laws that apply to everyone else through a special system outside established court systems.””

“Meanwhile, the European commissioner for trade Cecilia Malmström has tried to downplay the issue by asserting it could be settled without reopening CETA. According to her [media release](#), “[Malmström] stressed that the CETA provisions on investment were already state of the art and that the EU was aiming for some fine tuning to make it equivalent to the new EU approach as laid out in the Investment Court System proposal.”” <<< so Malmstrom admits that only some “fine-tuning” separates ISDS from ICS !!! They are both of course types of ISDS, with the extra problem that the ICS would allow the cancer to crop up again!! Plasters on it aren’t good enough.

Further reading

[Council of Canadians rejects both ISDS and ICS in CETA](#) (Nov. 20, 2015)

[US rejects Malmstrom's proposals to amend ISDS in TTIP](#) (May 11, 2015)

[What's going on with CETA 14 months after negotiations on it were completed?](#) (Nov. 28, 2015)

1dec15 [How EU nations are being sued for billions by foreign companies in secret tribunals](#) – Glyn Moody in Ars Technica UK <http://arstechnica.co.uk/tech-policy/2015/12/how-eu-nations-are-being-sued-for-billions-by-foreign-companies-in-secret-tribunals/>

“The ISDS cannot be reformed. It must be abolished. A peaceful, just, stable and sustainable international order cannot be ensured by the private sector, whose driving force is short-term profit,” says UN independent expert Zayas. <http://www.theguardian.com/commentisfree/2015/nov/16/philip-morris-uruguay-tobacco-isds-human-rights>

European Commission - PRESS RELEASES - Press release - Why the new EU proposal for an Investment Court System in TTIP is beneficial to both States and investors

http://europa.eu/rapid/press-release_MEMO-15-6060_en.htm

12nov15 **EU Investment Court: new system, same corporate privileges** - Friends of the Earth Europe <https://www.foeeurope.org/EU-investment-court-new-system-same-corporate-privileges>



Exit ICSID @no2iaa · Nov 11

#ISDS Chilleffect 2.0

Under #TPP parliaments must consider if new laws could have been expected by foreign investors

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations,³⁶ and

³⁶ For greater certainty, whether an investor's investment-backed expectations are reasonable depends, to the extent relevant, on factors such as whether the government provided the investor with binding written assurances and the nature and extent of governmental regulation or the potential for government regulation in the relevant sector.



Exit ICSID @no2iaa · Nov 11

Be warned

#ISDS chapter in #TPP would require compensation if government actions undermines investors "expectations"

(a) The determination of whether an action or series of actions by a Party, in a specific fact situation, constitutes an indirect expropriation, requires a case-by-case, fact-based inquiry that considers, among other factors:

(ii) the extent to which the government action interferes with distinct, reasonable investment-backed expectations,³⁶ and

***** [Same old, same old for 'new' Investment Court System to rule on EU-US trade deal](http://www.transportenvironment.org/press/same-old-same-old-%E2%80%98new%E2%80%99-investment-court-system-rule-eu-us-trade-deal) - Transport & Environment <http://www.transportenvironment.org/press/same-old-same-old-%E2%80%98new%E2%80%99-investment-court-system-rule-eu-us-trade-deal> – an excellent brief briefing assessment of the ICS re-branded ISDS. Great for its brevity and thus useful to show to Tim Farron. First and other paragraphs: “The European Commission’s [proposed](#) Investment Court System for the EU-US trade deal is a largely cosmetic rebranding, civil society groups have said, giving special privileges to foreign investors and undermining national and EU legal systems. The ‘new’ proposal keeps these major flaws of Investor-State Dispute Settlement (ISDS) intact – while the court’s establishment and running would be paid for by European taxpayers, according to sustainable transport group Transport & Environment (T&E) and environmental law organisation ClientEarth.” ... “Cécile Toubeau, manager better trade and regulation at T&E, which sits on the Commission’s TTIP advisory group, said: “*This Commission is supposedly committed to doing less regulation while upholding the rule of law, yet it keeps pushing for a new institution that creates corporate welfare for foreign investors and undermines Europe’s national courts. Citizens should not have to unfairly shoulder private risks taken by foreign investors who get to bypass domestic courts.*” EU citizens will have to pay for half of the €3 million start-up costs via the EU budget, while the cost of the court’s future proceedings and settlements will be paid by both European and American taxpayers. [1] The Commission is refusing to check with the European Court of Justice (ECJ) whether the new court institution, which will be able to interpret and assess EU law, is legal under EU law.”

EXIT ICSID @no2iaa follows me <https://twitter.com/no2iaa> - after scanning their T's/RT's I came across:

UN UNCTAD **Recent Trends in IIAs and ISDS** pdf mentions “umbrella clause” ??? In relation to inclusion or not of sustainable development goals within IIAs IIA – International Investment Agreements

http://unctad.org/en/PublicationsLibrary/webdiaepcb2015d1_en.pdf

&:

“The Eurotunnel case is one of **only two known instances in which the UK government has faced a claim under the controversial [investor-state dispute settlement \(ISDS\)](http://www.waronwant.org/media/uk-and-france-paid-24m-euros-calais-migrants-isds-case) mechanism**, which allows companies to sue governments before private arbitration tribunals for loss of profits.” My bolding

<http://www.waronwant.org/media/uk-and-france-paid-24m-euros-calais-migrants-isds-case>

The other case the FCO decided to keep secret: <https://www.iisd.org/itn/2009/01/22/the-united-kingdom-tight-lipped-over-dispute-with-an-indian-investor/>

- (1) *There is little reason to think that an EU-US investment chapter will provide the UK with significant economic benefits.* No two countries in the world exchange more investment than the UK and the US, and there is no evidence that US or UK investors view either country as suffering from the kinds of political risks against which investment treaties are supposed to protect. Moreover, existing evidence suggests that the presence of an EU-US investment chapter is highly unlikely to encourage investment above and beyond what would otherwise take place. US investors have generally not taken much notice of investment treaties in the past when deciding where, and how much, to invest abroad – even when dealing with far more questionable jurisdictions than the UK.
- (2) *There is little reason to think that an EU-US investment chapter will provide the UK with significant political benefits.* The political relationship between Washington and Whitehall is exceptionally strong, and we are aware of no evidence that it is vulnerable to a meaningful risk of investor-state disputes that would become undesirably “politicized” in the absence of an investment treaty. Secondly, we find it unlikely that an EU-US agreement would make significant negotiating partners – like India and China – more or less willing to agree to an investment treaty with the EU. Finally, it is unclear whether the US is particularly keen on an investment protection chapter with the EU, which means the Commission may not be able to use such a chapter as an effective ‘bargaining chip’ in other trade and/or investment negotiations with Washington. However, these are all issues that BIS might wish to explore in further detail.



Samuel Lowe @SamuelMarcLowe · Nov 5

.@UKTradeMinister In case you've not seen the LSE study
@GabrielSilesB mentioned. (Vince hadn't until I showed him.)



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2



TPP's ISDS:

TPP's clauses that let Australia be sued are weapons of legal destruction, says lawyer Jess Hill

<http://www.theguardian.com/business/2015/nov/10/tpps-clauses-that-let-australia-be-sued-are-weapons-of-legal-destruction-says-lawyer>

Mostly but not all re ISDS “George Kahale III is not one of the usual suspects. As chairman of the world’s leading legal arbitration firm – Curtis, Mallet-Prevost, Colt & Mosle LLP – his core business is to defend governments being sued by foreign investors under ISDS. Some of his clients are included in the TPP, and he says the trade minister’s critics are right: “There are significant improvements in this treaty, but they do not immunise Australia from any of these claims. If the trade minister is saying, ‘We’re not at risk for regulating environmental matters’, then the trade minister is wrong.”” “Including an MFN clause [Most Favoured Nation clause – allows investor to choose the ISDS from other FTA/BITs] in the TPP was a “major mistake”, Kahale argues, and another reason Australia is still wide open to being sued for legislating to protect the environment. ” “Kahale believes the ISDS system is so badly flawed it should be abolished, and started again from scratch.”.

Re human rights: UN human rights expert de Zayas strongly criticizes ISDS in trade treaties:

<http://www.commondreams.org/views/2015/10/29/current-trade-treaties-revolution-against-law>

UN Special Rapporteur calls for ISDS to be abolished - TTIP. – TTIP – Beware what lies beneath. Greens-EFA:

<http://ttip2015.eu/blog-detail/blog/UN%20ISDS%20abolish%20TTIP%20SDGs.html>

16oct15 via BAB: Transatlantic trade and investment negotiations_ Reaching a consensus on investor-state dispute settlement _ Brookings Institution

<http://www.brookings.edu/research/papers/2015/10/transatlantic-trade-investment-negotiations-sapiro#.ViFi6FP4jHs.twitter> by [Miriam Sapiro](#)

Nonresident Senior Fellow, [Global Economy and Development](#)

[@miriamsapiro](#)



BAB Policy @BABPolicy · Oct 26

Insightful piece from [@miriamsapiro](#) on [#ISDS](#) [brook.gs/1hJo8Ub](#)

[#TTIP](#)



Transatlantic trade and investment negotiations: Reaching a consen...

Miriam Sapiro explores the rationale behind the development of investor-state dispute settlement (ISDS), which enables a foreign investor to invo...

[brookings.edu](#)

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For previous ref-links see doc linked to at top of this doc.

5jun15 **Distorted facts, blatant lies: business group's big push to get ISDS through - #TTIP**

<http://ttp2016.eu/blog/BUSINESSEUROPE%20ISDS.html>

“Emails by lobby firm BUSINESSEUROPE to MEPs sowing disinformation ahead of crucial TTIP vote

SIMON MCKEAGNEY, EDITOR

Green MEPs Bart Staes and Molly Scott Cato today openly denounced the lobbying tactics of Mr Beyrer, Director-General of leading business advocate group BUSINESSEUROPE, over the contentious Investor-state Dispute System (ISDS) in TTIP.”