

Human rights: how will they get affected by the EU-US and EU-Canada trade and investment agreements, especially the ISDS mechanism? – a debate by email

[My response to Sarah Ludford MEP's email \(her email is below\)](#)

(I am Dr Henry Adams, Kendal)

www.bit.ly/FTAthreats - my website resource on FTAs.

www.bit.ly/FTAemailMPs – my template for helping the public email MPs to urge removal of ISDS.

From: henryadams@dragonfly1.plus.com

Sent: Tuesday, May 20, 2014 2:47 PM

To: [Sarah Ludford MEP](#)

Cc: [Chris Davies MEP](#) ; [Tim Farron MP](#) ; [Nick Clegg](#) ; info@greenlibdems.org.uk

Subject: Re: Those posters: & your promotion of the FTA model that will increase human rights abuses worldwide

Dear Sarah Ludford MEP,

Thank you for obviously taking time to write to me your position in support of the TTIP and ISDS, and to write in relation to human rights for which you are a LibDem spokeswoman.

On reading through your email and some of its references I have encountered a number of points I find hard to agree with as they don't tally at all well with what I've read over the years from sources I trust (more than politicians), nor with documents I have recently read that specifically address many of the points you raise in support of EU Commission statements. You appear to uncritically show great confidence in the EU Commission over the TTIP and ISDS. This is disappointing – as I thought the duty of MEPs is to critically assess the unelected Commission on our behalf, not to try and present a rose-tinted pro-EU picture. I fear the uncritical promotion of the EU may be an over-riding LibDem and MEP policy now in the face of such media attention to UKIP's anti-EU garbage right now. The LibDems should learn from Peter Cranie's position: we must be in the EU to change it for our benefit (not corporate benefit).

In summary: I don't trust that the EU has convincingly made safe with its "sticking plaster" reforms a Free Trade Agreement style model that was originally designed for the primary benefit of multinational corporations (e.g. the 20 year old NAFTA), and has not lost that direction of travel either. I'll pick one detail from the very flaw-riddled EC "rebuttal" reference you cite: "a majority of cases are decided in favour of the government". Do you really call 42% a majority?? Why do you quote this distortion? Is that the least-worst item to quote from that document?

I look forward to having time to write a full point-by-point response. But right now I'll give some more overall impressions. And in the meantime – I am forwarding your email to my network of contacts such as human rights academics, CEO, Trade Justice Movement, The Democracy Center, 38 Degrees, World Development Movement (Global Justice), George Monbiot, and others, and I'll await their responses to see how much they tally with my views.

Also I hope you have time to read these recent articles by **Corporate Europe Observatory (CEO)** which address a number of the points you and/or the EU Commission make:

27mar14 '[Campaigners slam Commission's mock consultation on investor rights in EU-US trade deal](#)'.

16apr14 '[Commission's weak reforms of EU-US trade deal could unleash a corporate litigation boom](#)' press release for this briefing:

16apr14 '[Still not loving ISDS: 10 reasons to oppose investors' super-rights in EU trade deals](#)'.

Note: "Second, it is a very one-sided process. Only companies can sue governments. Abusive corporations cannot be sued, for example, when they violate **human rights**." [my embolding]

Annex 1: [Reality check of the Commission's plans for 'reform' of "substantive" investor rights](#)

Annex 2: [Reality check of the Commission's plans for 'reform' of "investor-state dispute settlement"](#)

You paint a picture that EU is firm against corporate influence. However I have much to the contrary. For example in this link I show how pro-corporate influence on the TTIP negotiations have **already** contributed to truncation of important EU climate change legislation (the FQD – which Chris Davies MEP used to support): http://www.dragonfly1.plus.com/FTA_threats.html#ClimateChange This has a big knock-on consequence for continued **human rights abuses** (so might interest you?).

Via TTIP, the US trade negotiator has been pushing for Big Oil to have more say regarding EU climate legislation that might affect their profits, and official US adviser Chevron is pushing for a strong ISDS to be included. Barroso spoke in the US that he's prepared for compromise to get the trade deal in place as soon as possible before the public hear (and are swayed by) NGO criticisms. This hardly inspires my trust!

Furthermore, and I quote from my website on FTAs:

The present unelected **European Commission** ("Barroso II") has been heavily criticized for being unduly over-influenced by big business and remote from the public and groups campaigning for the public interest: for example CEO report how the Commission has been party to corporate capture in '[The record of a Captive Commission](#)' (pdf, May 2014).

Despite Barroso's desire to compromise (how?) with the US and fast-track the deal before the public are informed and swayed by NGOs [recent news I've read from his US visit; link mislaid], you try to put across that the EU "will negotiate" or "will insist" that the ISDS will be made safe regarding our concerns. I don't trust Barroso not to use such insistence as more than bargaining chips. Also, on closer inspection of your words I find them far from convincing.

Q1: Am I right in interpreting your words as meaning that a company *can* potentially successfully sue a government for profits foregone *if* there is another part of its case that refers to another relevant factor such as 'discrimination' or 'fair and equitable treatment' or 'expropriation'?

Q2: (If yes to Q1) If a company is successful in claiming its future profits foregone, are negative externalities such as carbon costs deducted from those lost-profits – calculated by a respectable carbon costing consultancy? (measure: SCC – Social Cost of Carbon)

Because if that is not the case – then a company could be successful in claiming profits foregone for being stopped from continuing a project that would be of overall net global loss (and quite possibly contributing to **human rights abuses**, directly and/or indirectly).

Although people might argue that there is no precedence or normality for such a system of internalising externalities to be put in place, surely it could be reasonably argued that the reason this is so is the over-influence of the existing excessive lobbying of corporate interests in and on the US and EU Commission and UK and other EU national governments, which in turn demonstrates how we cannot trust the unelected Commission nor UK coalition government on the TTIP, CETA and ISDS. The battle over the EU FQD – with which Chris Davies and myself are both well familiar – well demonstrates the weakness of the EU and UK to corporate influence.

Some of the ISDS jargon you use has been subject to corporate misuse:

You refer to '**expropriation**' with respect to the ISDS. I understand that this word's meaning has been expanded following corporate pressure regarding the interpretation of ISDS clauses to include 'indirect expropriation' so as to include future profits foregone as being equivalent to expropriation, and thus the word expropriation can be "weaseled" or made ambiguous.

Also the word ‘**discrimination**’ is now very suspect, having been frequently misused to defend the “free trade” of tar sands fuel products by Canada’s Harper government (Harper is a climate-denialist corporate puppet for destructive extraction industries with track records of **abuse of human rights**). And incredibly their discrimination claim has been parroted and supported by LibDem MP Norman Baker (once considered to be one of the “greenest” of LibDem MPs). He considers the avoidance of the possibility of such a terrible crime of “discrimination” [against Canada’s tar sands industry] as being much more important than the urgent need to stop the proposed 3 times expansion of the tar sands industry and its associated inherent abuse of indigenous and **human rights**, ecoside and excessive carbon emissions [details on my tar sands website]. It is hardly surprising then that Big Oil is pushing for the inclusion of the ISDS!

I am glad you mention Columbia with regards FTAs and human rights. The sad reality is that it is not just US FTAs/BITs but also EU FTAs/BITs that are bad for human rights:

[‘DOSSIER COLUMBIA’](#) pdf report by Laura Rangel (lawyer, Columbia) for Transnational Institute [TNI](#) - May 2012. "Organisations and trade unions in Colombia and in Europe, including the European Trade Union Confederation (ETUC) and the International Trade Union Federation (ITUC) have frequently argued against the **EU-Colombia Free Trade Agreement**. They state that it implies **gross violations of human rights**, and the rights of trade unionists in particular. ...". Also, an increasingly tragic example of FTA’s going badly wrong - in Colombia: [‘Colombian protests show cracks in disastrous economic model’](#) (War on Want). In association with recent FTAs with USA then EU, the Columbian government is trying to force on its peasant farmers regulations which favour huge agri-businesses such as Monsanto, which is understandably causing unrest. Note how the main push of FTAs is for **de**-regulation of laws protecting us and the environment from collateral damage by corporations (when wanting to increase profits by externalizing costs to us), but the parts of the FTAs *increasing* regulations are those parts designed to protect corporations from fairness and genuine free trade for poorer people, such as in the use of seeds, by excessive IP rights for agri-businesses.

Your approach (and LibDem approach) appears to be confident in its attempts to try and patch up the inherently pro-corporate FTA/BIT model, instead of ditching it and supporting the pro-people Alternative Trade Mandate model. I do not share your confidence, not just due to the evidence, but because of the powerful pro-corporate driving force behind and within the EU Commission and both political and corporate aims for Europe to extract all it can out of countries of “the global South”, for minimum cost, at least to Europe.

I’ve ended up writing much more than I intended, but couldn’t resist it. I must resist further temptation now to address every remaining point in your email but I’ve run out of time right now.

Yours sincerely,

Henry Adams, Kendal

www.bit.ly/FTAthreats - my website resource on FTAs.

www.bit.ly/FTAemailMPs – my template email to MPs to urge removal of ISDS.

From: [Sarah Ludford MEP](#)

Sent: Monday, May 19, 2014 1:15 PM

To: henryadams@dragonfly1.plus.com

Cc: [Chris Davies MEP](#) ; [Tim Farron MP](#)

Subject: RE: Those posters: & your promotion of the FTA model that will increase human rights abuses worldwide

Dear Mr Adams,

Thank you for contacting me about EU trade policy – specifically the proposed Transatlantic Trade and Investment Partnership (TTIP) - and human rights.

EU trade relations with third countries are already conditional on a number of criteria, including the respect and promotion of human rights; the principle of human rights protection in EU trade policy is enshrined in EU

treaties. Since 1995, a standard clause on respect of human rights has been included in all trade agreements with third countries and is coupled with a suspension clause in cases where human rights are abused. Liberal Democrats strongly support this.

The Transatlantic Trade and Investment Partnership (TTIP) is a proposed free trade agreement currently being negotiated between the European Union and the United States. It aims at removing trade barriers in a wide range of economic sectors to make it easier to buy and sell goods and services between the EU and the US.

As MEP for London and vice-chair of the European Parliament's delegation to the United States of America, I [support](#) the TTIP because it will bring great benefits to London, Europe and beyond. This has been confirmed by an independent research study conducted by Centre for Economic Policy Research and carried out on behalf of the European Commission of which a summary can be found [here](#).

Claims made by [George Monbiot](#) and others that TTIP would enable 'big businesses to sue governments which try to defend their citizens' are untrue. The European Commission has [rebutted](#) misconceptions about investor-state dispute settlement (ISDS) provisions, which already exist under many trade agreements. These protect companies if a country fails to implement non-discrimination rules on investment they signed up to or expropriates foreign investors without compensation. UN statistics in fact show that a majority of investor-state dispute settlement cases are decided in favour of the government concerned.

The case of Phillip Morris challenging Australia's plain packaging regime for cigarettes has been cited. But in fact Australia's legislation is also being challenged by the World Trade Organisation (WTO), quite separate from any investor-state dispute settlement case.

The fact that a government changes a law which increases costs for a given company is not sufficient to bring a case in the investor-state dispute settlement system. The EU will negotiate TTIP in such a way so as to ensure that legislation reflecting legitimate public choices, e.g. on the environment, cannot be undermined through investor-state dispute settlement. To prevent abuse, it will insist that the costs must always be borne by the losing party which would act as a deterrent for investors to bringing tactical claims and will seek to include provisions allowing for the prompt dismissal of unsubstantiated claims in order to avoid unnecessary litigation. Lib Dem MEPs have argued that the legal framework for ISDS should be very clear, and the definitions of fair and equitable treatment should be clearly indicated rather than left to general customary international law in order to prevent abuse and frivolous claims.

Negotiations for the TTIP also do not take place in secret like some campaigners have claimed - summaries of the meetings and statements on the outcome and progress of negotiations are published on the Commission [website](#).

While the Commission, led by Trade Commissioner Karel De Gucht, takes the lead in trade talks, it consults the UK and other EU governments during the negotiations through the Trade Policy Committee, made up of senior officials from each Member State and through the Foreign Affairs Council. The Commission is also conducting multiple public discussions with industry and civil society representatives about the trade agreement. It has now also launched a public consultation on the ISDS, details of which can be found online [here](#) and any concerned individual or organisation will be able to submit comments.

MEPs are also being kept informed, and the European Parliament as well as the Council must agree the outcome before any agreement is approved. My Dutch colleague Marietje Schaake follows the negotiations on behalf of our group, the Alliance of Liberals and Democrats in Europe (ALDE), and [publishes](#) regular updates.

I disagree that TTIP or other free trade agreements currently under negotiation by the EU will undermine human rights standards; on the contrary. Prior to the launch of any free trade agreement (FTA), the Commission must not only carry out an obligatory impact assessment to ensure that the proposed FTA will not negatively impact human rights, but issues such as the role of civil society, development assistance and human rights are all part of

the political dialogue which takes place between the EU and third country. In relation to Colombia, there is a continuing human rights dialogue between the EU and Colombia, and LibDems are determined to ensure that the human rights provisions are fully implemented in the FTA. In March the European Parliament sent a [delegation of MEPs from the Parliament's International Trade committee](#) to meet with members of civil society to discuss labour, environment and sustainability issues.

Liberal Democrat MEPs will continue to work in the European Parliament to ensure that a comprehensive deal on TTIP is reached which includes high environmental, social and economic protections.

Thank you again for contacting me in relation to this issue.

Yours sincerely,
Sarah Ludford

Baroness Sarah Ludford MEP

Liberal Democrat MEP for London

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Whilst Baroness Sarah Ludford MEP will treat as confidential any information which you pass on, she will allow authorised staff and volunteers to see the information if this is needed to help and advise you. She will also pass on some or all of your information to agencies such as the European Commission, the European Parliament, government departments or a local Council if this is necessary to help with your case. If you would like to know more about my work, sign up for my email bulletin [here](#)'.

From: henryadams@dragonfly1.plus.com [mailto:henryadams@dragonfly1.plus.com]

Sent: 23 April 2014 19:22

To: Sarah Ludford MEP; Sarah Ludford MEP

Cc: Chris Davies MEP; Tim Farron MP

Subject: Fw: Those posters: & your promotion of the FTA model that will increase human rights abuses worldwide

Dear Sarah Ludford MEP,

LibDems are promoting the FTA model that will increase human rights abuses worldwide

In my email to Tim Farron cc'd to GreenLibDems and others I have criticized your promotion of the TTIP which is based on the FTA model notorious for promoting human rights abuses such as in Columbia and elsewhere. The adoption by the EU of the TTIP – based on the FTA model (instead of the much better Alternative Trade Mandate model) will help increase human rights abuses worldwide and indigenous rights in the US. Also the adoption by the EU of the CETA – the EU-Canada equivalent – will increase human rights abuses and indigenous rights abuses in the Alberta tar sands area, especially if the dangerous ISDS clause is not removed.

The LibDems are not just turning a blind eye, but actively promoting a system that puts profits of multinational corporations before human rights.

Yet about a year ago Nick Clegg wrote an article saying that human rights must be put above profits, but I've yet to see that put into action rather than just words, and we are now seeing the LibDems do just the opposite of Nick Clegg's promise. (I must write to him to remind him of his promise. Will the response be "I'm sorry but..."?)

Thus I was disappointed to hear you promoting the TTIP on #bbcsp – especially as I thought human rights was your topic – or do you confine that topic to cases within the EU member states? And does Nick Clegg have unstated limits-of-applicability to his human rights promise?

Are the LibDems deliberately hiding the truth about the TTIP - or just incredibly ignorant of what they are promoting?

I hope the latter, as that would be more easily corrected.

Do look at my briefing resource on FTAs: www.bit.ly/FTAthreats.

Within this resource is the recently started section on human rights and indigenous rights is here:

http://www.dragonfly1.plus.com/FTA_threats.html#indigenous

Yours sincerely,

Henry Adams

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Hidden dangers for us all in FTA's:

http://www.dragonfly1.plus.com/FTA_threats.html

From: henryadams@dragonfly1.plus.com

Sent: Wednesday, April 23, 2014 6:27 PM

To: info@greenlibdems.org.uk

Cc: [Tim Farron MP](#)

Subject: Fw: Those posters:

FYI: in response to email to me by Tim Farron and team re **the lying posters of UKIP**.

LibDems need to present the full truth about the EU – such as re the TTIP - the EU-US FTA

Henry Adams, Kendal, - trying with limited success to improve the LibDems.

From: henryadams@dragonfly1.plus.com

Sent: Wednesday, April 23, 2014 5:47 PM

To: [Tim Farron MP](#)

Subject: Those posters:

Hi Tim and team,

We **do** need to fight UKIP – but I am not happy with the way the LibDems are doing it.

We need to fight the UKIP lies with the **full truth** about the EU and why we need to stay in it, and in the process not to turn a blind eye to the not-so-good aspects of the EU that we need to change.

We need to remain in the EU so that we can more easily change EU and thus Europe, the UK (and the world!) for the better.

As the reality is of course – that EU policy is the result of a battle between good and bad forces, not quite the rosy simplistic impression that the LibDems would like us to believe.

A good example in the EU is the ATM model (good) versus the FTA model (bad) for trade and investment with the US and elsewhere:

But:

The LibDems are still whitewashing the EU-US FTA-based TTIP proposals as being of big net benefit to the UK, based on speculative £££ benefits (omitting that shareholders and other beneficiaries of big multinational corporations will be the main beneficiaries, not all of us as the propaganda tries to imply), and also dubious jobs benefits (to where-ever multinats can find the cheapest labour). The LibDems are at the same time still turning a blind eye to the mass of evidence from existing FTAs of the big negative impacts of the FTA model (www.bit.ly/FTAthreats), of which the ISDS (www.bit.ly/ISDSthreats) is the worst but not the only example. And I am not being negative about trade per se, as the LibDems could be supporting the **Alternative Trade Mandate** – which is for the benefit of all of us, unlike the FTA model – which is for the benefit primarily of multinational corporations (and their \$\$\$£££beneficiaries) who helped design the FTA model in the first place.

So the LibDems are fighting UKIP on the EU by not revealing the full truth about the EU: and truth about the TTIP EU-US FTA is becoming a sacrifice of truth by the LibDems in their battle against UKIP.

A week or so ago I heard **Sarah Ludford MEP** – LibDem MEP spokesperson **for human rights** – speaking up *for* the TTIP on #BBCSP – in seeming total ignorance of the fact that the FTA model on which TTIP is based has a huge well-known track record of **promoting the abuse of human rights!** Columbia provides just one example of many. Again, refs in my www.bit.ly/FTAythreats
So why isn't she supporting the ATM instead?

I try my best to advise and brief the LibDems via yourself and the GreenLibDems with evidence and truth, in the forlorn hope that the LibDems will improve by adopting evidence-based policy, instead of bending to wherever the flow of money and power comes.

But it seems that the LibDems are finding sticking up for the full truth too uncomfortable, even when trying to fight the lies of UKIP.

Is the gap between evidence-based reality and the excuse of sticking to “political-reality”, just too big a chasm for the stride of LibDem leadership potential to bridge?

Henry Adams

PS: I'll never forget the vigorous clapping Ed Davey got at the LibDemConf when he spoke up for nuclear power saying he will ensure it won't be subsidized, at the same time he was ensuring it would be heavily subsidized. Were they clapping him for his skills at disingenuousness, or his weaseling on the word “subsidy”?
LibDems who spoke up with good evidence-based arguments received fewer claps.

Dr Henry Adams (Ecological Consultant)

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Hidden dangers for us all in FTA's:

http://www.dragonfly1.plus.com/FTA_threats.html

Henry,

Did you see UKIP's poisonous poster campaign over the weekend? We can't let them get away with this. Their campaign is based on lies, its only aim is to spread fear and resentment.

We need to fight back quickly against UKIP. Will you add your name to our campaign today?



UKIP have spent over £1m on these posters so we need to fight back quickly. We need to deliver more leaflets, post more letters and make more phone calls. **We've only got four weeks until polling day - this can't wait.**

Will you back our campaign today and help us fight back against UKIP?

I'm proud that we're prepared to speak up for Britain's place in Europe, but pride isn't enough. We need to get our message out and fight back against UKIP. We can only do that with your help.

Thank you,

Tim Farron MP

PS. **We need to fight back quickly. Please back our campaign now.**

Stronger Economy
Fairer Society



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