

Statement against Investor Protection in TTIP, CETA, and other trade deals

February 2016

The undersigned call on the US, the EU, and Canada to exclude any form of Investor-State-Dispute Settlement from the Transatlantic Trade and Investment Partnership (TTIP), from the EU-Canada Comprehensive Economic and Trade Agreement (CETA) and from all other trade and investment agreements.

This week, the US and the EU will resume negotiations on investment protection in TTIP. The European Commission – claiming to have listened to public opinion – produced its proposal for a ‘new’ Investment Court System (ICS) that would allegedly replace the ‘old’ ISDS in all on-going and future investment negotiations. However, we believe that the proposed changes are just a ‘re-branding’ of the old ISDS system. The EU has not addressed the key problems of the ISDS and ICS systems both of which undermine democratic decision-making.

Crucially, the new proposal is worse than the current practice of the member states’ stand-alone investment treaties from which it is possible to withdraw: both the EU and Member States (MS) would be locked in to the TTIP and CETA. We have identified five key serious concerns that exist in both the ISDS and ICS mechanisms:

- both ISDS and ICS give exclusive rights to foreign investors, thereby discriminating against domestic investors, citizens and communities, without any evidence of benefits to the wider society
- both ISDS and ICS can force governments to use billions in taxpayers funds to compensate corporations for public health, environmental, labour and other public interest policies, government actions and even court rulings. They do not ensure that private interests cannot undermine public policy objectives
- neither ISDS or ICS are subject to democratic principles and scrutiny. Parliaments will not be able to change the rules later on;
- both ISDS and ICS undermine the jurisdiction of European and MS courts as foreign investors can by-pass them;
- both ISDS and ICS ignore the fact that European, U.S. and Canadian legal systems are perfectly capable of handling disputes with foreign investors, based on the law that applies to everyone else in society.

The number of investor-state cases has recently sharply increased, with over 50 new claims filed annually in the last four years. The total number of known ISDS cases has now risen to 667 claims against a total of 105 countries in a diverse array of government policies, many of which are not traditional trade issues.

One example is the shocking case of Canadian pipeline developer TransCanada who is seeking to sue the US government for blocking the Keystone XL Pipeline as part of its fight against climate change. It is noteworthy that TransCanada is suing the US using four investor rights in the North American Free Trade Agreement (NAFTA) that are also included in CETA and the EU's ICS proposal.

In addition, the key changes advocated by the Commission as improvements to the system in its recent proposal are riddled with legal shortcomings in two key areas: the alleged independence of the system and the alleged protection of the right to regulate.

While the introduction of so-called 'judges' to investment tribunals appears to be a positive step, they will be paid lucrative fees on a case by case basis providing a strong incentive to rule in favour of the investors in order to ensure future cases. This investor bias would most likely remain if the EU and its trading partners eventually introduced a regular salary for the 'judges' because in legal systems where only one side can sue, claimant-friendly rulings secure a steady flow of cases, power and authority for the adjudicators.

The right to regulate in the public interest does not protect against unlimited backward looking damages including expected profits and interests. It is furthermore undermined by the need for governments to take the 'measures necessary' to achieve 'legitimate' objectives leaving the criteria to define what measures are necessary and what constitutes legitimate objectives open for interpretation, and ultimately, arbitration by for-profit adjudicators. An ISDS case may not prevent legislation, but it puts a hefty price tag on any law or regulation which could potentially cost billions in taxpayer money when a government is later sued for compensation. This has already proven to create a regulatory chill such as has been witnessed in Malaysia and New Zealand who were waiting for the outcome of the Phillip Morris ISDS case against Australia before implementing similar plain packaging legislation. The EU's claim that it has protected the 'right to regulate' gives a false impression of security; health, environmental and social legislation remain under threat in the EU, the US and Canada if ISDS/ICS is included in CETA and the TTIP.

While existing trade and investment treaties already severely limit the policy space that governments have, the inclusion of ISDS/ICS in CETA and TTIP would massively expand the investment arbitration system – and multiply liability and financial risks for governments on both sides of the Atlantic. ISDS in TTIP would newly empower more than 47,000 of the 51,495 US owned subsidiaries currently operating in the EU to launch ISDS attacks on European policies and government actions.

Even if TTIP did not include the far-reaching investor rights, four out of five US firms operating in the EU – that is a total of 41,811 – could already become eligible for an ISDS case against the EU and its members using the CETA agreement if investments are structured accordingly. The danger of being sued under TTIP and CETA is even more real given that US, European and Canadian companies are already the most frequent users of investment arbitration. They are responsible for launching over 80 per cent of all known investor-state disputes globally. Indeed, UNCTAD's recently updated online data shows that foreign investors launched more ISDS cases in 2015 than in any prior year – twice the number launched just five years earlier. 52% of concluded ISDS cases have ended in an outright loss for the government or a settlement with the foreign investor.

Not only would the inclusion of ISDS/ICS in CETA and TTIP most likely lead to a massive explosion of investment arbitration cases against legitimate policies; their inclusion is a massive blow to democracy, human rights and the rule of law in any trade and investment agreement.

In a time when all attention should be focused on averting a global climate catastrophe and on tackling the economic and social crises in many parts of the world, there is no space for agreements that would place giant obstacles in the way of the solutions. Governments must have the flexibility to put in place measures to protect their people and the planet without fear of expensive trade litigation being launched by corporations. If there is concern about weaknesses in domestic legal systems, we should be focusing on improving them in order to combine equal access to the law with a full capacity for the democratic scrutiny of the development of law.

We therefore cannot support the foreign investor protection proposed for TTIP and CETA, and call, again, for the exclusion of any form of Investor-State-Dispute Settlement from all current and future trade and investment agreements.

European/International Organisations

Compassion in World Farming, Europe
Friends of the Earth Europe, Europe
SOLIDAR, Europe
Health and Trade Network, Europe
Alcohol Policy Youth Network, Europe
Bizolutioners - evolutionary solutions for human rights problems created by business, Europe
ClientEarth, Europe
WECEF, Europe
WeMove.EU, Europe
European Digital Rights (EDRi), Europe
European Work Hazards Network, Europe
LobbyControl, Europe
SumOfUs, International
FIAN International, International

National Organisations in Europe

Alternative und Grüne GewerkschafterInnen (AUGE/UG), Austria
Attac Austria, Austria
Attac Flachgau, Austria
DIE LINKE, Austria
eku-konstruktiv, Austria
Erklärung von Salzburg für solidarische Entwicklung EVS, Austria
Evangelical Association for World Mission EAWM, Austria
Gewerkschaft Öffentlicher Dienst/ Universität Salzburg, Austria
Initiativplattform TTIP stoppen Oberoesterreich, Austria
Kath. Betriebsseelsorge Salzburg, Austria
Katholische ArbeitnehmerInnen Bewegung Erzdiözese Wien, Austria
Network Social Responsibility - Netzwerk Soziale Verantwortung (NeSoVe), Austria
SOL - Menschen für Solidarität, Ökologie und Lebensstil, Austria
Talente-Tauschkreis Salzburg, Austria
Collectif Alpha asbl, Belgium
MIG, Belgium
Réseau wallon de lutte contre la pauvreté, Belgium
11.11.11, Belgium
ATTAC Belgique, Belgium
ATTAC-Charleroi, Belgium
CGSP wallonne, Belgium
Change Partnership, Belgium
Cie D'ici P., Belgium
Collectif Roosevelt .BE, Belgium
Corporate Europe Observatory, Belgium
Équipes Populaires, Belgium
FIAN Belgium, Belgium
FIDA - Fédération Internationale de la Diaspora Afar, Belgium
Greenpeace, Belgium
groupe CNCD local, Belgium
ISVI, Belgium
Jeunes Organises et Combatifs Bruxelles, Belgium
Left Ecological Forum, Belgium
MOC Bruxelles, Belgium
Mouvement ouvrier chrétien, Belgium
MPEVH, Belgium
Quinoa asbl, Belgium
Social Platform, Belgium
Vie Féminine, Belgium
Confederation of Labour Podkrepa, Bulgaria

Foundation for Environment and Agriculture (FEA), Bulgaria
Solidarna Bulgaria, Bulgaria
The Bulgarian Left, Bulgaria
Za Zemiata, FoE Bulgaria, Bulgaria
Zelena Partiya Bulgaria, Bulgaria
Luridicum Remedium, Czech Republic
May Day, Denmark
The Ecological Council, Denmark
350 Finland, Finland
Animalia, Finland
Attac Finland, Finland
CRASH - Coalition for Research and Action for Social Justice and Human Dignity, Finland
Emmaus Aurinkotehdas ry, Finland
Friends of the Earth Finland, Finland
Friends of the Landless Finland, Finland
Hyvinvointivalion vaalijat ry, Finland
Maailmankauppojen liitto ry, Finnish Association of Worldshops, Finland
Parecon Finland, Finland
Physicians for Social Responsibility, Finland, Finland
Pro Ethical Trade Finland, Finland
Swallows in Northern Finland, Finland
Technology for Life NGO, Finland
TTIP Network Finland, Finland
Uusi Tuuli ry, Finland
AITEC, France
ATTAC France, France
Attac Marseille, France
BCA PACA FRANCE, France
Collectif Causse Méjean - Gaz de Schiste NON !, France
Collectif citoyen IDF Non aux pétroles et gaz de schiste et de couche !, France
Collectifs Isérois "STOP GHRM 38", France
Confédération paysanne, France
COPRA, France
CPC!, France
Ecolectif Contre Gaz de Schiste Gignac et Environs 34, France
foodwatch France, France
Jeunes Ecologistes, France
Les Amis de la Terre, France
rdm.esindignées fr, France
STOP TAFTA CETA Nord Isère, France
TOX POPULI, France
Arbeitsgemeinschaft bäuerliche Landwirtschaft e.V., Germany
Arbeitskreis Fracking Braunschweiger Land, Germany
Attac Deutschland, Germany
Attac Trägerverein e.V. Regionalgruppe Kleve, Germany
Berliner Wassertisch, Germany
BI Gemeinsam gegen Gas- und Probebohrungen am Niederrhein, Germany
BI lebenswertes Korbach e.V., Germany
BLUE 21, Germany
Buergerinitiative kein-frack-in-wf, Germany
BUND – Bund für Umwelt und Naturschutz Deutschland; Friends of the Earth Germany, Germany
BUND Naturschutz in Bayern e.V., Germany
BUND-Erfurt, Germany
Bürgerinitiative Fracking freies Hessen n.e.V., Germany
Bürgerinitiative Fracking Freies Hamburg, Germany
Campact, Germany
Deutscher Naturschutzring (DNR), Germany
Digitalcourage e.V., Germany
FDCL Berlin, Germany
Foodwatch Germany, Germany
Forum Umwelt und Entwicklung, Germany
German-African Centre (DAZ), Germany
IBD Initiative Bürger für Demokratie, Germany

Interessengemeinschaft Schönes Lünne, Germany
ISSA – information centre on southern africa, Germany
Joshua Satelitte, Germany
KMU gegen TTIP (DE), Germany
Mehr Demokratie, Germany
Occupy Erfurt, Germany
PEGAH Wuppertal e.V., Germany
PowerShift e.V., Germany
SEEDS ACTION NETWORK (SAN Germany), Germany
TTIPunfairHandelbar, Germany
Vereinigung Demokratischer Juristinnen und Juristen e.V., Germany
WEED – World Economy, Ecology & Develoment, Germany
Fair Trade Hellas, Greece
GREENS-SOLIDARITY, Greece
Naturefriends Greece, Greece
ATTAC Hungary, Hungary
Védegylet, Hungary
Attac Ireland, Ireland
Fís Nua, Ireland
Keep Ireland Fracking Free, Ireland
Fairwatch, Italy
Locale-Globale, Italy
Žali.It, Lithuania
Fundacja Strefa Zieleni, Poland
Institute of Global Responsibility, Poland
The Civil Affairs Institute, Poland
Oikos Cooperação e Desenvolvimento, Portugal
Plataforma Não ao Tratado TransAtlântico, Portugal
Alburnus Maior (Save Rosia Montana campaign), Romania
Asociația România Vie / Romania Alive Society, Romania
EcoV, Romania
Mining Watch Romania, Romania
Terra Mileniul III Foundation, Romania
Scottish Hazards, Scotland
Center for Sustainable Rural Development Kranj, Slovenia
Društvo Bober, Slovenia
Društvo Duh časa, Slovenia
DRUŠTVO MLADI IN TOBAK, Slovenia
Društvo za podporo radiu Marš, socialno podjetje, Slovenia
F.B SKUPINA, Slovenia
Focus, association for sustainable development, Slovenia
Institute for Sustainable Development, Slovenia, Slovenia
Konfederacija sindikatov 90 Slovenije, Slovenia
Legal-oreganisational centre for NGOs, Slovenia
Mitja Krapša s.p., Slovenia
No Excuse Slovenia, Slovenia
Party for Ekosocialisem and Sustainable Development of Slovenia - TRS, Slovenia
Pirate Party Slovenia, Slovenia
Political party Solidarnost, za pravično družbo, Slovenia
PROTESTIVAL, Slovenia
Puntarji, movement for active citizenship, Slovenia
Slovenian Coalition for Public Health, Environment and Tobacco Control, Slovenia
Society Movement for Sustainable Development of Slovenia - TRS, Slovenia
Solidarnost (political party), Slovenia
Umanotera, Slovenia
Zavod Svibna, Slovenia
a) UTD Slovenija, Slovenia
Obalna sindikalna organizacija Koper, Slovenia
CCOO Euskadi, Spanish State
Amigos de la Tierra, Spanish State
Andalucía No TTIP, Spanish State
Asamblea de Andalucía, Spanish State
Asamblea de Andalucía Sevilla, Spanish State

Asamblea de Cooperación por la Paz, Spanish State
Asociación Andaluza por la Solidaridad y la Paz (ASPA), Spanish State
Association Africanist Manuel Iradier, Spanish State
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ATTAC Spain, Spanish State
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CCOO, Spanish State
CEDSALA, Spanish State
CGT-Spain, Spanish State
Círculo Podemos Mar Cangas, Spanish State
Coordinadora de Organizaciones de Agricultores y Ganaderos (COAG), Spanish State
Colectivo para la Paz, Spanish State
Colla Ecologista d'Almassora, Spanish State
ECOAR, Spanish State
Ecologistas en Acción/Ekologistak Martxan, Spanish State
Ehntípez, Spanish State
ENTREPUEBLOS/ENTREPOBLES/ENTREPOBOS/HERRIARTE, Spanish State
EQUO, Spanish State
Errenteria IrabaziZ, Spanish State
Extrem Berries, Spanish State
FACUA-Consumidores en Acción, Spanish State
Front Civic, Spanish State
Fundacion Munubat, Spanish State
Ganemos Palencia, Spanish State
Gañemos Vilanova, Spanish State
ICV -Iniciativa per Catalunya Verds, Spanish State
Ingeniería Sin Fronteras País Vasco, Spanish State
Iniciativa Cambio Personal Justicia Global, Spanish State
Intersindical Alternativa de Catalunya - IAC, Spanish State
Intersindical Valenciana, Spanish State
Izquierda Unida Castilla y León, Spanish State
IZQUIERDA UNIDA EN VALLADOLID, Spanish State
Komite Internazionalistak, Spanish State
kostalde, Spanish State
Lambda, collectiu de lesbianes, gais, transsexuals i bisexuals, Spanish State
Leganes contra el TTIP, Spanish State
Mugarik Gabe, Spanish State
Observatori del Deute en la Globalització - ODG, Spanish State
ONG Elan-Euskadi, Spanish State
ONGd, Spanish State
PACD Sevilla, Spanish State
Partido X, Spanish State
Paz con Dignidad, Spanish State
PCA Sevilla ciudad, Spanish State
Plataforma de afectados por la hipoteca de Palencia, PAH, Spanish State
Plataforma en defensa de lo público, Spanish State
Plataforma no al TTIP de Palencia, Spanish State
Plataforma no al TTIP en Sevilla, Spanish State
Plataforma por lo Público y Contra los Recortes, Spanish State
Podemos Andalucía, Spanish State
Podemos Sanitat Catalunya, Spanish State
Podemos Sevilla, Spanish State
Podemos Vera, Spanish State
Podemos Vilanova de Arousa, Spanish State
Procés Constituent, Spanish State
REAS Euskadi, Spanish State
SETEM Hego Haizea, Spanish State
Solidaridad Internacional Andalucía, Spanish State
Sondicalista, Spanish State
Terra SOSTenible, Spanish State
Unidad Popular, Spanish State

Union Sindical Obrera (USO), Spanish State
Vabus, Spanish State
València en Comú, Spanish State
VSF Justicia Alimentaria Global, Spanish State
Xnet, Spanish State
Friends of the Earth Sweden / Jordens Vänner, Sweden
Both ENDS, The Netherlands
Stichting SchalieGASvrij Haaren, The Netherlands
Centre for Research on Multinational Corporations (SOMO), The Netherlands
Foodwatch Netherlands, The Netherlands
Transnational Institute (TNI), The Netherlands
Vrijschrift, The Netherlands
Women's International League for Peace and Freedom Netherlands, The Netherlands
Greater Manchester Hazards Centre Ltd., United Kingdom
Artists Against TTIP, United Kingdom
Families Against Corporate Killers, United Kingdom
Global Justice Now, United Kingdom
Jubilee Debt Campaign, United Kingdom
Not For Shale, United Kingdom
StopTTIP uk, United Kingdom
The Gaia Foundation, United Kingdom
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