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## **Reporters Memo:** **First House Hearing Today on the Trans-Atlantic Free Trade Agreement**

### ***Flood of 10,000 Critical Public Comments to USTR Docket Against Inclusion of Investor-State Corporate Tribunals Spotlights Major U.S.-EU Deal Controversy***

May 16, 2013

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**WHAT:** House Ways and Means Trade Subcommittee Hearing on the Trans-Atlantic Free Trade Agreement

**WHEN:** 2 p.m. Thursday, May 16

**WHERE:** 1100 Longworth HOB

Submission of more than 10,000 public comments on the Trans-Atlantic Free Trade Agreement (TAFTA) to the U.S. Trade Representative's (USTR) docket last week punctured the notion that the pact will avoid the controversies that have dogged past trade deals. The cause of controversy is that negotiations will focus primarily on "[behind-the-border](#)" policies and "[regulatory and other non-tariff barriers.](#)" given that tariffs between the United States and EU are already quite low.

Critical comments were submitted by panoply of consumer, farmer, labor, environmental, health and tech groups concerned about the negotiations being used to roll back critical public interest safeguards. In addition, nearly 10,000 comments were generated in 32 hours after an email sent by U.S. Rep. Alan Grayson (D-Fla.) alerted the public that the deal is slated to include the controversial "[investor-state](#)" provisions. [The investor-state proposal would empower foreign corporations](#) to skirt U.S. legal systems and directly challenge domestic health, environmental and other public interest policies before extrajudicial foreign tribunals authorized to order taxpayer compensation. The investor-state system has generated controversy across the political spectrum. Conservatives have objected to the notion that the United States would be subjected to the jurisdiction of United Nations and World Bank tribunals. Progressive have viewed the system as a means to attack domestic health and safety policies.

To date, most agreements including investor-state enforcement have been between a developed and developing countries. TAFTA would break that mold, providing corporations a new means to attack U.S. and EU policies in extrajudicial tribunals despite U.S. and EU court systems being recognized as among the world's best. The result: Foreign firms operating in the United States would be provided greater rights than domestic firms. Moreover, because many European firms are established here, U.S. taxpayers would face unprecedented liability from investor-state suits, in contrast to past U.S. pacts with developing countries in which few firms have investments in the United States.

In contrast to the bulk of public comments, all four witnesses presenting to the House Ways and Means Trade Subcommittee holding Congress' first hearing on proposed TAFTA negotiations represent business interests. This includes two witnesses representing the transatlantic coalition of large corporations that has pushed for TAFTA negotiations for years. The business interests view TAFTA negotiations as a

means to eliminate an array of consumer, environmental and other public interest safeguards that they have identified as “trade irritants.” The corporate agenda is closely mirrored by the official framework for talks announced in February in a report of a high-level U.S.-EU government commission advised by many of the corporate interests.

Despite growing public scrutiny of the TAFTA proposal, President Barack Obama is wrapping up a week of meetings with EU officials, including British Prime Minister David Cameron, to discuss how to rush the completion of this sweeping “trade” agreement by the end of next year. This week, Obama and Cameron [announced plans to launch formal talks](#) during the G8 Summit in Northern Ireland next month.

### **What Generated 10,000 Comments in 32 Hours: Proposed Inclusion of the “Investor-State” System That Would Empower Foreign Corporations to Challenge the U.S. Government in Extrajudicial Tribunals, Undermine Domestic Public Interest Policies and Cost U.S. Taxpayers Millions**

U.S. and EU officials have confirmed that they plan to include in TAFTA a mechanism included in prior U.S. “free trade” agreements (FTAs) called “investor-state dispute resolution. This mechanism, which is facing [growing controversy](#) in many countries, elevates foreign corporations to the level of sovereign governments, empowering them to privately enforce the terms of a public treaty. This is done with trade pact terms that by authorize individual foreign firms and investors to skirt domestic laws and courts, and directly challenge signatory countries’ public interest policies before foreign tribunals to demand taxpayer compensation for policies claimed to undermine investors’ expectations. The cases are decided by panels comprised of three private sector attorneys, unaccountable to any electorate, who rotate between serving as “judges” and bringing cases against governments for corporations.

Foreign investors have used the broad “rights” granted by this system, which are superior to those afforded to domestic firms, to demand taxpayer compensation for environmental, energy, land-use, toxics, water, mining, labor and other non-trade domestic policies that they allege undermine their “expected future profits.” A recent Bloomberg exposé, “[Coup d’Etat to Trade Seen in Billionaire Toxic Lead Fight,](#)” details one such case under the U.S.-Peru FTA. When an investor-state tribunal rules in favor of the foreign investor, the government must hand the corporation an amount of taxpayer money decided by the tribunal. There is no appeal mechanism. Even when governments win, they often must pay for the tribunal’s costs and legal fees which average \$5 million per case, wasting scarce resources to defend public interest policies against corporate challenges.

The investor-state system was initially established to provide for a venue to obtain compensation when a government expropriated a foreign investment in a country that did not have well-functioning domestic court system. In the past, it was included in pacts between a developed and developing country with the developed country firms suing developing country governments.

[More than \\$380 million in taxpayer compensation has already been paid out to foreign corporations](#) in a series of investor-state cases brought under the North American Free Trade Agreement (NAFTA) and related U.S. FTAs. Of the more than \$14 billion in the 18 pending claims under NAFTA-style deals, all relate to environmental, energy, land use, public health and transportation policies – not traditional trade issues. [In November 2012, U.S. pharmaceutical corporation Eli Lilly used the investor-state provisions of NAFTA to attack Canada’s entire legal basis for granting patents, demanding \\$100 million in compensation. The United States was not exposed to significant liability under this regime in the past because the only agreement with a major capital exporting country including investor-state was NAFTA. All investor-state challenges against the United States have come from Canadian firms under NAFTA. Inclusion of this regime in TAFTA would expose U.S. taxpayers to enormous new liabilities.](#)

The global World Trade Organization rules do not include private enforcement. Thus, EU corporations currently do not enjoy greater legal privileges than U.S. firms and cannot directly challenge the U.S. government in foreign tribunals over U.S. domestic policies. If TAFTA is enacted with investor-state provisions, EU corporations would be newly empowered to demand U.S. taxpayer compensation for being required to comply with the same policies enacted by Congress and state legislatures that apply to domestic firms. U.S. corporations would gain the same privileges in EU countries.

### **Growing Public Outcry over TAFTA**

When Grayson alerted citizens of TAFTA's proposed inclusion of the investor-state regime, nearly 10,000 individuals submitted comments within 32 hours to denounce the extreme provision as an affront to democracy and the public interest. In addition, more than 370 organizations and individuals filed concerns and remarks on the deal in response to USTR's invitation for public input. Below are links to comments submitted by the diverse array of organizations concerned about TAFTA's threats to food safety, climate change policy, family farmers, Internet freedom, workers' rights, access to medicines, financial regulation and other critical public interest objectives.

**Public Citizen:** <http://www.citizen.org/documents/TAFTA-comments.pdf>

**Rep. Alan Grayson (D-Fla.):** <http://graysonforcongress.com/news/grayson-army-opposes-corporatocracy-nearly-10000-submit-comments-against-trade-deal-sell-outs>

**Sierra Club:**

[http://action.sierraclub.org/site/DocServer/TTIP\\_Federal\\_Register\\_May\\_10.pdf?docID=13041](http://action.sierraclub.org/site/DocServer/TTIP_Federal_Register_May_10.pdf?docID=13041)

**AFL-CIO:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812db32c&disposition=attachment&contentType=pdf>

**National Farmers Union:**

<http://nfu.org/images/stories/policy/05%2010%2013%20Transatlantic%20Trade%20-%20USTR.PDF>

**Electronic Frontier Foundation:** <https://www.eff.org/deeplinks/2013/05/dear-us-trade-rep-dont-shut-the-public-out-from-us-eu-trade-negotiations>

**Coalition for Sensible Safeguards:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812da20b&disposition=attachment&contentType=pdf>

**Consumer Federation of America:** <http://www.consumerfed.org/pdfs/TTIP-Comments-Consumer-Federation-of-America.pdf>

**Library Copyright Alliance:** <http://www.librarycopyrightalliance.org/bm~doc/lca-ttip-comments-final-10may13.pdf>

**U.S. Public Interest Research Group:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812dac68&disposition=attachment&contentType=pdf>

**Food and Water Watch:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812da8d4&disposition=attachment&contentType=pdf>

**International Association of Machinists and Aerospace Workers:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812bff6b&disposition=attachment&contentType=pdf>

**Citizens Trade Campaign:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812d898d&disposition=attachment&contentType=msw8>

**United Steelworkers:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812d8ce7&disposition=attachment&contentType=pdf>

**Center for Food Safety:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812da7a4&disposition=attachment&contentType=pdf>

**Public Knowledge:** <http://publicknowledge.org/files/PK%20TTIP%20comments.pdf>

**Communications Workers of America:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812d7715&disposition=attachment&contentType=pdf>

**Center for Democracy and Technology:** <https://www.cdt.org/files/pdfs/CDT-TTIP-Comments-5-10-13.pdf>

**Digital Democracy:**

<http://www.centerfordigitaldemocracy.org/sites/default/files/CDDUSTRMay102013.pdf>

**Maine Citizen Trade Policy Commission:**

<http://www.regulations.gov/contentStreamer?objectId=09000064812dc78a&disposition=attachment&contentType=pdf>

**Knowledge Ecology International:**

[http://keionline.org/sites/default/files/KEIcomments\\_TTIP\\_9May2013.pdf](http://keionline.org/sites/default/files/KEIcomments_TTIP_9May2013.pdf)

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