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Official Government Statements and Actions against Investor-State Dispute Settlement (ISDS)

European Union and Member States

France: High Level Officials and Parliament Oppose ISDS

“France did not want the ISDS to be included in the negotiation mandate. We have to preserve the right of the state to set and apply its own standards, to maintain the impartiality of the justice system and to allow the people of France, and the world, to assert their values,”

--[Matthias Fekl, France’s Secretary of State for Foreign Trade; November 17, 2014](#)

“France does not agree with the inclusion of such a mechanism. If such a mechanism should be included in the agreement, the Commission must obtain a unanimous vote.”

--[Nicole Bricq, Senator and France’s Former Minister for Foreign Trade on TTIP; March 2014](#)

“The Senate, given the preliminary report of the European Commission ... on the public consultation on the settlement of disputes between investors and states (ISDS) ... urges the Government to ensure the principle of democracy in any proposed investment protection agreement and systematically refuse to insert an investor-state dispute settlement mechanism.”

--[French Senate passes unanimous resolution against inclusion of ISDS in CETA and TTIP, February 9, 2015](#)

“The National Assembly...considering the European Parliament resolution of 8 June 2011 on trade relations between the EU and Canada, given the text of the agreement finalized at the bilateral summit of Ottawa... opposes any mechanism for arbitration of disputes between States and investors, and therefore requests the substantial revision of Chapters 10 and 33 on the protection of investments.”

--[French National Assembly passes resolution against inclusion of ISDS in CETA; November 23, 2014](#)
([Similar resolution passed by the French Senate on November 27, 2014](#))

Germany: High Level Officials Speak Out Against ISDS in TTIP

“From the perspective of the [German] federal government, the United States and Germany already have sufficient legal protection in the national courts.” The German government “has already made clear its position that specific dispute settlement provisions are not necessary in the EU-U.S. trade deal.”

--[Sigmar Gabriel, Germany’s Economic Minister; March 26, 2014](#)

“It is completely clear that we reject these investment protection agreements.”

--[Sigmar Gabriel, during a parliamentary debate on TTIP; September 25, 2014](#)

Netherlands: Parliamentary Motion Opposes ISDS in CETA and TTIP

“The House...considering that our constitutional democracy and values such as human dignity, freedom, democracy, equality and protection of environment and human rights must be guaranteed; declares that TTIP may not contain dispute resolution which prejudices our national legal system and our democratic decision-making...”

--[Motion passed by the Dutch Parliament; March 31, 2015](#)

“...whereas inclusion of a dispute settlement mechanism (ISDS) in trade agreements presents undesirable social, financial and environmental risks for the Dutch government; noting that a section on dispute settlement is included in the recently released CETA agreement ... calls on the Government to speak out against an ISDS clause in TTIP and CETA.”

--[Motion passed by the Dutch Parliament; November 19, 2014](#)

Austria: Parliamentary Motion Expresses Skepticism about ISDS in TTIP and CETA

“The usefulness of the inclusion of ISDS clauses in agreements with countries with developed legal systems (eg. B. USA and Canada) cannot be seen from today's perspective.”

--[Austrian Parliament Resolution passed by majority vote; October 1, 2014](#)

Croatia: Government Skeptical of the Validity of ISDS

“...up to day there has been no clear evidence that the number of concluded international investment agreements (IIAs) has any correlation with the growth of foreign investment. On the contrary, there is a clear growth of investor to state disputes with many evident flaws.

Even if we disregard the huge costs of arbitration for the respondent state (especially in case of frivolous claims to which some states are exposed together with lately popular third party funding claims) and reduced policy space, both of which represent a big concern for most states, we cannot disregard the fact that the system we have created is far from legal certainty and stability - what we have today is a number of contradicting awards, problems with enforcing such awards, un-transparent proceedings and insufficient appellate mechanism.”

--[Irena Alajbeg, Head, Trade and Economic Agreements Department; October 16, 2014](#)

European Commission: Skeptical of ISDS in TTIP

“[ISDS] is indeed a very toxic issue in this parliament and elsewhere...Does this mean that we will include it automatically in the TTIP? No it doesn't mean that. And I don't exclude that in the end it will be taken out.”

--[Cecilia Malmström, incoming EU Trade Commissioner; September 29, 2014](#)

“However, as Commission President, I will also be very clear that I will not sacrifice Europe's safety, health, social and data protection standards or our cultural diversity on the altar of free trade...Nor will I accept that the jurisdiction of courts in the EU Member States is limited by special regimes for investor disputes.”

--[Jean-Claude Juncker, President-elect of the European Commission; July 15, 2014](#)

“There will be no investor-to-state dispute clause in TTIP if Mr. Timmermans [EU Commission First Vice President] does not agree with it too.”

--[Jean-Claude Juncker, President-elect of the European Commission; October 22, 2014](#)

European Parliament: Socialists & Democrats (second-largest bloc) Oppose ISDS in TTIP

“We believe that this mechanism is unnecessary in an agreement between two countries that fully respect the rule of law. Accepting the ISDS would mean opening the door for big corporations to enforce their interests against EU legislation. This would deprive states of crucial policy space in important fields such as health or environment. We don't want the Commission to improve investor-state dispute settlement in the TTIP negotiations, but we request that the Commission drops ISDS within TTIP altogether.”

--[Socialists & Democrats in the European Parliament, position statement; January 21, 2014](#)

European Union: Half of Member States Absent on Letter Supporting ISDS in TTIP

Fourteen of 28 EU Member States did not sign a letter to European Commissioner for Trade Malmström asking for ISDS to be included in TTIP. Missing from the letter were many key European Union members, including Austria, Belgium, Bulgaria, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Poland, Romania, Slovakia, and Slovenia.

--[October 21, 2014](#)

United States

United States: Representatives Introduce Legislation Banning ISDS in Trade Agreements

“A bill to prohibit the President from entering into a free trade agreement or investment treaty with a foreign country or countries if the agreement or treaty includes investor-state dispute settlement provisions.”

--[Bill with 13 co-sponsors introduced to the United States House of Representatives; February 19, 2015](#)

United States: Senators Call for Exclusion of ISDS in TPP

“Giving foreign corporations special rights to challenge our laws outside of our legal system would be a bad deal. If a final [Trans-Pacific Partnership] TPP agreement includes Investor-State Dispute Settlement, the only winners will be multinational corporations.”

--[Floor speech from Senator Elizabeth Warren; February 26, 2015](#)

“We believe that the TPP should not include an investor-state dispute settlement process. Including such provisions in the TPP could expose American taxpayers to billions of dollars in losses and dissuade the government from establishing or enforcing financial rules that impact foreign banks. The consequence would be to strip our regulators of the tools they need to prevent the next crisis.”

--[Letter from U.S. Senators to United States Trade Ambassador Michael Froman; December 17, 2014](#)

United States: Congressional Leaders Oppose ISDS in TTIP

“Private foreign investors should not be empowered to circumvent U.S. courts, go before extrajudicial tribunals and demand compensation from U.S. taxpayers because they do not like U.S. domestic financial regulatory policies with which all firms operating here must comply...”

We believe there will be a great deal of resistance to any agreement that exposes U.S. financial regulations to the interpretations of international tribunals. We strongly urge that the investor-state dispute settlement provision be excluded from TTIP, or at the very minimum, that it not apply to the financial sector.”

--[Letter from U.S. Congressional Leaders of the House Financial Services Committee; December 3, 2014](#)

“Congress has repeatedly expressed concerns about the investment provisions of U.S. trade agreements. The inclusion of investor-to-state dispute settlement process (ISDS) in previous trade agreements advantages foreign investors over domestic ones and threatens US laws, regulations, and judicial decisions protecting health and public safety. These provisions provide foreign investors the right to either bypass our own courts entirely or to undermine them by challenging their results before panels of private arbitrators who are not required to protect the public interest or to utilize American legal principles and precedent...”

Excluding ISDS provisions from the TTIP is more likely to generate broad public support in both the United States and Europe.”

--[Letter from House Ways and Means Committee Democrats to President Barack Obama; December 17, 2014](#)

United States: State Legislative Bodies Oppose ISDS in U.S. Free Trade Agreements

“NCSL will not support Bilateral Investment Treaties (BITs) or Free Trade Agreements (FTAs) with investment chapters that provide greater substantive or procedural rights to foreign companies than U.S. companies enjoy under the U.S. Constitution. Specifically, NCSL will not support any BIT or FTA that provides for investor/state dispute resolution. NCSL firmly believes that when a state adopts a non-discriminatory law or regulation intended to serve a public purpose, it shall not constitute a violation of an investment agreement or treaty, even if the change in the legal environment thwarts the foreign investors’ previous expectations.”

--[National Conference of State Legislatures’ Policy Directive; August 22, 2014](#)

United States: State Legislators Oppose ISDS in TPP

“The ISDS has proven to be extremely problematic, undermining legislative, administrative, and judicial decisions, and threatening the system of federalism established in the U.S. Constitution. It interferes with our capacity and responsibility as state legislators to enact and enforce fair, nondiscriminatory rules that protect the public health, safety and welfare, assure worker health and safety, and protect the environment. It should have no place in the Trans-Pacific Partnership.”

--[Open Letter from State Legislators representing all 50 States; July 5, 2012](#)

Other Governments

Australia: Opposed Inclusion of ISDS in Free Trade Agreements

Australia opposed inclusion of ISDS in its Free Trade Agreement with the United States, which was implemented in 2005. In the Trans-Pacific Partnership (TPP) talks, Australia has maintained a position of not having ISDS apply to Australia in the context of that pact, as was evidenced in a [leaked copy of the investment chapter](#) in June 2012.

“Arbitral tribunals set up under ISDS provisions are not courts. Nor are they required to act like courts. Yet their decisions may include awards which significantly impact on national economies and on regulatory systems within nation states. Questions have been raised about the consistency, openness and impartiality of decisions made in ISDS arbitrations.”

--[Paper authored by the Australian High Court Chief Justice; July 9, 2014](#)

Bolivia & Venezuela: Withdrawal from the ICSID Convention

In 2007 and 2012 respectively, Bolivia and Venezuela officially submitted their withdrawal from the ICSID convention. In 2008, Venezuela also terminated its Bilateral Investment Treaty (BIT) with the Netherlands.

Brazil: Congress Rejects Investment Agreements as “Non-Compliant” with the Constitution

Brazil does not have any international investment agreements in force. While Brazil negotiated 14 agreements in the late 1990s, none have been implemented. Six of these were rejected by the Brazilian Congress because indirect expropriation and Investor-State Dispute Settlement is considered non-compliant with the Constitution.

Ecuador: Withdraws from ICSID, Terminates 10 BITs and Auditing Remaining BITs

Since 2008, Ecuador has terminated ten BITs, and has created a “Citizen’s Audit Commission” which seeks to evaluate and review BITs and other international arbitration instruments to determine if they are in the country’s national interest. Ecuador withdrew from the ICSID convention in 2009.

India: Government Ministries Call for Review and/or Termination of BITs

India's Ministry of Commerce and Industry has recommended the termination of all of India's 83 Bilateral Investment Promotion and Protection Agreements, while the Department of Economic Affairs has called for the pacts to be reviewed and renegotiated.

Indonesia: Plans to Terminate 60 BITs

In early 2014, Indonesia announced plans to terminate 60 of its BITs. Indonesia has informed the Netherlands of its intention to terminate their BIT in July of 2015.

Namibia: Doubts Correlation between FDI and Investment Treaties

"A number of recent economic studies regarding the potential benefits and costs of investment protection provided in treaties, including ISDS have shown there is no correlation between investment flows and the prevalence of BITs, and therefore questioning the rationale for States to commit to them. It is a known fact that there is a significant risk inherent to ISDS for host countries, particularly developing host countries, while statistics show that claimants are predominantly investors from industrialized countries. More worrying of course, is that legal and arbitration costs are significant and are especially posing challenges to developing states. The resulting awards and the high cost of ISDS proceedings, including important legal counsel and arbitrator fees, can pose a significant budgetary threat for many developing countries. Typical provisions within BITs such as national treatment and pre-establishment rights impose contractual obligations on Governments that limit their right to regulate and for developing countries hampers their ability to act in their own interest. While the entire process of arbitration and dispute resolution remains less than transparent, the future continuation of investment treaties and arbitration as tools to protect and promote foreign investment is questionable."

--[Malan Lindeque, Permanent Secretary, Namibian Ministry of Trade and Industry; October 16, 2014](#)

South Africa: Begins Process of Withdrawal from Bilateral Investment Treaties (BITs)

South Africa has begun the process of terminating its Bilateral Investment Treaties (BITs) with Belgium, Luxembourg, Spain, and the Netherlands, and indicates its intention to begin to withdraw from other BITs with EU Member States. South Africa's Department of Trade and Industry wrote: "Existing international investment agreements are based on a 50-year-old model that remains focused on the interests of investors from developed countries. Major issues of concern for developing countries are not being addressed in the BIT negotiating processes."

Sri Lanka: Considering "Moving Away" from Bilateral Investment Treaties (BITs)

"...due to reasons such as a) tenuous relationship between BITs and increased inward investment, b) bitter lessons learned from international arbitrations and c) the tendency for BITs to constrain domestic policy space, Sri Lanka considered to "move away from BITs" to "establish appropriate domestic legislation to protect inward FDI."

--[Champika Malagoda, Director of Research & Policy Advocacy Department, Board of Investment of Sri Lanka; October 16, 2014](#)

Civil Society, Experts, & Press Express Opposition to ISDS

Large Array of Civil Society Organizations on Both Sides of the Atlantic Opposes ISDS in TTIP

“For the following reasons, we strongly urge you to exclude ISDS from TTIP: ISDS forces governments to use taxpayer funds to compensate corporations for public health, environmental, labor and other public interest policies and government actions: ISDS has been used to attack clean energy, mining, land use, health, labor, and other public interest policies... ISDS undermines democratic decision-making: ISDS grants foreign corporations the right to directly challenge government policies and actions in private tribunals, bypassing domestic courts and creating a new legal system that is exclusively available to foreign investors and multinational corporations... European and U.S. legal systems are capable of handling investment disputes: The United States and the EU have very strong domestic court systems and property rights protections. Inclusion of ISDS in TTIP would only provide corporations a new means to attack domestic policies deemed permissible by domestic courts.”

--[178 U.S. and EU labor, environmental, health, privacy, Internet freedom, financial, development, family farmer, faith and consumer groups; December 16, 2013](#)

Legal Scholars Oppose ISDS in TPP and TTIP

“ISDS weakens the rule of law by removing the procedural protections of the legal system and using a system of adjudication with limited accountability and review. It is antithetical to the fair, public, and effective legal system that all Americans expect and deserve.

Proponents of ISDS have failed to explain why our legal system is inadequate to the task... we urge you to uphold the best ideals of our legal system and ensure ISDS is excluded from upcoming trade agreements.”

--[Letter from prominent U.S. legal scholars; April 30, 2015](#)

“ISDS threatens domestic sovereignty by empowering foreign corporations to bypass domestic court systems and privately enforce terms of a trade agreement. It weakens the rule of law by removing the procedural protections of the justice system and using an unaccountable, unreviewable system of adjudication.

For the above reasons, we urge you to ensure ISDS is not included in the TPP and the TTIP”

--[More than 100 legal scholars from the United States; March 13, 2015](#)

“[W]hy consider including investor-state arbitration in the TTIP at all?...Investor-state arbitration delivers undue structural advantages to foreign investors and risks distorting the marketplace at the expense of domestically-owned companies. The benefits to foreign investors include their exclusive right of access to a special adjudicative forum, their ability to present facts and arguments in the absence of other parties whose rights and interests are affected, their exceptional role in determining the make-up of tribunals, their ability to enforce awards against states as sovereigns, the role of appointing bodies accountable directly to investors or major capital-exporting states, the absence of institutional safeguards of judicial independence that otherwise insulate adjudicators in asymmetrical adjudication from financial dependence on prospective claimants, and the bargaining advantages that can follow from these other benefits in foreign investors’ relations with legislatures, governments, and courts. At root, the system involves a shift in sovereign priorities toward the interests of foreign owners of major assets and away from those of other actors whose direct representation and participation is limited to democratic processes and judicial institutions.”

--[120 legal scholars from the United States, EU member states and other countries; July 2014](#)

EU & U.S. Consumer, Health, Environmental, and Labor Groups Oppose ISDS in TTIP in Letter on Chemicals

“Moreover, the proposed inclusion of investor-state dispute settlement (ISDS) terms in TTIP would undermine stronger chemical regulations by empowering corporations to circumvent domestic courts and directly challenge such protections before extrajudicial tribunals.”

--[111 U.S. & EU Organizations; July 10, 2014](#)

U.S. Organizations across the Political Spectrum (Business, Labor, Libertarian) Oppose ISDS in TTIP

“ISDS is a significant reason why trade agreements engender so much antipathy. Yet, ISDS is not even essential to the task of freeing trade. So why burden the effort by carrying needless baggage? Purging both the TPP and the TTIP of ISDS makes sense economically and politically, would assuage legitimate concerns about those negotiations, splinter the opposition to liberalization, and pave the way for freer trade.”

--[Daniel Ikenson, CATO Institute; March 4, 2014](#)

“ISDS provides foreign investors the right to bypass domestic courts (including constitutionally-created Article III courts) and challenge the U.S. government directly before an international arbitration tribunal, a right home-grown investors do not share. The ISDS panels are neither democratically selected nor accountable to any public—nor are they required to consider basic principles of U.S. law...”

--[U.S. labor, environmental, health, consumer, business, family farm, faith-based and other interest groups \(e.g. U.S. Business and Industry Council, AFL-CIO, Consumers Union, National Farmers Union, Natural Resources Defense Council, Presbyterian Church USA\); February 28, 2014](#)

American Financial Regulatory Groups Oppose ISDS in TTIP and TPP

“**Reject investor-state dispute settlement.** In the TPP and TTIP, U.S. negotiators have favored ‘investor-state’ dispute resolution procedures that would give foreign banks the power to skirt domestic courts, drag the U.S. government before extrajudicial tribunals, and directly challenge domestic financial safeguards as violations of TPP or TTIP-created commitments. These tribunals, typically comprised of three private attorneys, would be authorized to order unlimited taxpayer compensation for financial regulations seen as threatening banks’ ‘expected future profits.’ Such extreme ‘investor-state’ rules have already been included in a series of U.S. ‘free trade’ agreements, leading to billions of dollars in corporate claims around the globe. We urge Congress to ensure that the numerous cross-registered financial institutions from TPP and TTIP countries will not have the ability to bypass U.S. courts to argue that U.S. taxpayers should compensate them for complying with U.S. financial regulations.”

--[Letter from Americans for Financial Reform coalition of 250 groups; December 19, 2013](#)

AARP, AFL-CIO, and Largest U.S. Labor, Consumer, and Health Organizations Express Concern about the inclusion of ISDS in TTIP and TPP

“...we have deep concerns about ISDS because it would allow global pharmaceutical firms to challenge mechanisms that state legislatures, the Congress and public agencies use to manage pharmaceutical costs in public programs...It would be irresponsible to risk the health security of millions of Americans by subjecting health programs to ISDS challenges.”

--[14 Major U.S. Organizations and Labor Unions; September 4, 2014](#)

Joseph Stiglitz, Nobel laureate Economist, Criticizes ISDS

“South Africa has decided to stop the automatic renewal of investment agreements that it signed in the early post-apartheid period, and has announced that some will be terminated. Ecuador and Venezuela have already terminated theirs. India says that it will sign an investment agreement with the US only if the dispute-resolution mechanism is changed. For its part, Brazil has never had one at all.

There is good reason for the resistance. Even in the US, labor unions and environmental, health, development, and other nongovernmental organizations have objected to the agreements that the US is proposing.

The agreements would significantly inhibit the ability of developing countries’ governments to protect their environment from mining and other companies; their citizens from the tobacco companies that knowingly purvey a product that causes death and disease; and their economies from the ruinous financial products that played such a large role in the 2008 global financial crisis. They restrict governments even from placing temporary controls on the kind of destabilizing short-term capital flows that have so often wrought havoc in financial markets and fueled crises in developing countries. Indeed, the agreements have been used to challenge government actions ranging from debt restructuring to affirmative action.”

--[Joseph E. Stiglitz in *Project Syndicate*; November 5, 2013](#)

The Economist on ISDS

“IF YOU wanted to convince the public that international trade agreements are a way to let multinational companies get rich at the expense of ordinary people, this is what you would do: give foreign firms a special right to apply to a secretive tribunal of highly paid corporate lawyers for compensation whenever a government passes a law to, say, discourage smoking, protect the environment or prevent a nuclear catastrophe. Yet that is precisely what thousands of trade and investment treaties over the past half century have done, through a process known as “investor-state dispute settlement”, or ISDS.”

--[“The Arbitration Game,” *The Economist*; October 11, 2014](#)

Financial Times on ISDS

“... a growing number of critics point to a surge in cases over the past decade arguing the system has morphed from a legitimate way for foreign investors to challenge extreme injustices such as expropriations, into a way for them to threaten, or influence, government regulations and even policy ... There is also a legitimate question over just how much investment treaties – and investor protection clauses – do to lure foreign investors. Neither Brazil nor China have many treaties in place, yet both have attracted enormous amounts of foreign direct investment.”

--[“Trade deals: Toxic Talks,” *Financial Times*; October 6, 2014](#)