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## **As Growing European Government Opposition to Investor-State Regime Shadows This Week's U.S.-EU Talks, New Report Takes on Obama Administration Defense of Parallel Legal System for Foreign Corporations**

### ***Analysis of Investment Data Reveals That Inclusion of ISDS Regime in Transatlantic Pact Would Empower Attacks Against U.S., EU Policies by 70,000 Additional Firms***

WASHINGTON, D.C. – The Obama administration's precarious justifications for the investor-state dispute settlement (ISDS) regime may determine the fate of the transatlantic free trade agreement, said Public Citizen as it released a [new report \(PFD\)](#) examining those defenses and revealing data on the U.S. and European Union (EU) firms that would be newly empowered to attack domestic policies in extrajudicial tribunals if the pact includes ISDS. Recently, the incoming European Commission president, several large voting blocs in the European Parliament and the German government have voiced opposition to ISDS.

“The ugly political spectacle of the Obama administration insisting on special privileges and a parallel legal system for foreign corporations over European officials' growing objections is only made worse by the utter lack of policy justifications for ISDS,” said Lori Wallach, director of Public Citizen's Global Trade Watch. “As a slew of domestic laws are being attacked in these corporate tribunals, European officials are rethinking past support for ISDS while the Obama administration just doubles down.”

The Obama administration has also become increasingly isolated at home in pushing for ISDS, as [libertarian](#) and [tea party groups](#) have expressed ISDS opposition alongside the [labor, environmental, consumer, health and other organizations](#) that represent the president's base. The ISDS system, included in some past U.S. and EU trade or investment pacts, empowers foreign corporations to bypass domestic courts, and challenge domestic policies and government actions before extrajudicial tribunals authorized to order taxpayer compensation for claimed violations of investor rights and privileges included in the pacts.

Trying to quell the mounting controversy, the administration has issued a series of ISDS defenses that Public Citizen refutes in its new report, “[Myths and Omissions: Unpacking Obama Administration Defenses of Investor-State Corporate Privileges.](#)” The report documents the increasingly audacious use of ISDS cases to attack policies ranging from Germany's phase-out

of nuclear power after the Fukushima disaster to Australia's landmark plain packaging cigarette law to a Canadian province's moratorium on fracking and that country's national medicine patent policy. In recent months, South Africa and Indonesia have joined the list of countries announcing the termination of ISDS-enforced agreements.

Using official data on cross-border investments, the report reveals that, were the U.S.-EU pact to include ISDS, it would newly empower corporate claims against domestic policies on behalf of more than 70,000 foreign firms – an unprecedented increase in investor-state liability for both the United States and the EU.

“Given the vast threats that these corporate privileges pose to our health, our environment, our democracy and our tax dollars, it's little surprise that European officials have joined the broad chorus concerned about this extreme system,” said Wallach. “Now all eyes are on the Obama administration: Will it continue peddling baseless defenses of these corporate protections even if that means the demise of its priority U.S.-EU pact?”

The Public Citizen report details instances in which governments have rolled back or chilled health and environmental protections in response to ISDS cases and threats under existing pacts. It describes how ISDS cases have undermined the rule of law by empowering extrajudicial panels of private-sector attorneys to contradict domestic court rulings in decisions not subject to any substantive appeal. And contrary to the administration's claims, the report explains precisely how ISDS grants foreign corporations greater procedural and substantive rights than domestic firms, including a right to demand compensation for nondiscriminatory public interest policies that frustrate the corporations' expectations.

“Rather than try to silence critical voices with far-fetched reassurances, the Obama administration should heed widespread warnings of the threats posed by this parallel legal system for corporations and scrap its stubborn fealty to ISDS,” said Ben Beachy, research director of Public Citizen's Global Trade Watch. “As the world rejects this extraordinary regime, we cannot afford to further embrace it.”

Additional reasons for the current ISDS controversy described in the [report \(PDF\)](#), which goes point-by-point through the administration's claims, include:

- ISDS cases are surging. While treaties with ISDS provisions have existed since the 1960s, just 50 known ISDS cases were launched in the regime's first three decades combined (through 2000). In contrast, corporations have launched more than 50 ISDS claims in each of the past three years.
- Under U.S. free trade agreements (FTA) alone, foreign firms already have pocketed more than \$430 million in taxpayer money via investor-state cases. Tribunals have ordered more than \$3.6 billion in compensation to investors under all U.S. bilateral investment treaties and FTAs. More than \$38 billion remains in pending ISDS claims under these pacts.

- Numerous studies have failed to find that ISDS-enforced pacts cause an increase in foreign direct investment – the ostensible reason for governments to subscribe to the pacts’ extraordinary terms. As promised benefits of ISDS have proven illusory while tangible costs to taxpayers and safeguards have grown, an increasing number of governments have begun to reject the investor-state regime. But as they have moved to terminate ISDS-enforced pacts, foreign investment has grown.
- The structure of the ISDS regime has created a biased incentive system in which tribunalists can boost their caseload by using broad interpretations of foreign investors’ rights to rule in favor of corporations and against governments, and boost their earnings by dragging cases out for years.
- Purported safeguards and explanatory annexes added to agreements in recent years have failed to prevent ISDS tribunals from exercising enormous discretion to impose on governments’ obligations that they never undertook when signing agreements.
- Transparency rules and amicus briefs are insufficient to hold accountable tribunals that remain unrestrained by precedent, countries’ opinions or substantive appeals.
- State and local governments have no standing to defend the state and local policies that often are challenged in ISDS cases.
- The Obama administration has repeatedly ignored ISDS opposition from Congress, the bipartisan National Conference of State Legislatures, diverse public interest groups and legal scholars.

[Read the report \(PDF\).](#)

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