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## **Obama-Merkel Summit Presents Perfect Opportunity to Drop Controversial Foreign ‘Investor-State’ Rights in U.S.-EU Trade Pact**

WASHINGTON, D.C. – When President Barack Obama and Chancellor Angela Merkel discuss the Transatlantic Free Trade Agreement (TAFTA), also referred to as the Transatlantic Trade and Investment Partnership (TTIP), during their summit in Washington this week, dropping the controversial “investor-state dispute settlement” (ISDS) mechanism from the U.S.-EU talks should be high on their agenda, Public Citizen said today.

“President Obama would be well-served to take a cue from his German counterpart in rethinking the U.S. government’s insistence in including extreme foreign investor rights and their private enforcement outside domestic court systems in a U.S.-EU pact,” said Lori Wallach, director of Public Citizen’s Global Trade Watch.

In mid-March, the German government, previously one of the staunchest supporters of the controversial mechanism, [announced its opposition](#) to include ISDS in TAFTA. In a statement, the German economy ministry said that the special investment protection rules are not necessary in an agreement between the European Union and the United States because both partners have adequate legal protection for foreign investors in their courts.

The controversial ISDS mechanism elevates foreign corporations to the level of sovereign governments, uniquely empowering them to skirt domestic courts and directly “sue” the government for health, environmental, financial and other domestic safeguards. The tribunals deciding these cases are composed of three private sector attorneys, unaccountable to any electorate. Some of them rotate between serving as “judges” and bringing cases for corporations against governments. If a tribunal rules against a challenged policy, there is no limit to the amount of money the tribunal can order the government to pay the foreign corporation, which is often based on the firm’s “expected future profits.” The cases cannot be appealed on the merits.

Claiming broad “rights” that surpass those afforded to domestic firms, foreign corporations have used ISDS to attack an increasingly wide array of environmental, energy, consumer health, toxics, water, mining and other non-trade domestic policies. Germany has faced billions of dollars in ISDS claims from the Swedish company [Vattenfall](#), in two separate disputes attacking its environmental laws governing coal-fired power plants and its decision to phase out nuclear power in the wake of the Japan’s Fukushima disaster.

TAFTA would vastly expand the investor-state threat, given the thousands of corporations doing business in both the United States and the EU that would be newly empowered to attack public interest policies. More than 3,300 EU parent corporations own more than 24,200 subsidiaries in the United States, any one of which could provide the basis for an investor-state claim. This exposure to investor-state attacks far exceeds that associated with all other U.S. “free trade” agreement partners. Similarly, the EU would be exposed to a potential wave of investor-state cases from any of the more than 14,400 U.S.-based corporations that own more than 50,800 subsidiaries in the EU.

Germany’s about-face with respect to ISDS reflects growing opposition in Europe – including [France’s trade minister](#) and parliamentarians at the European Parliament and member state level. Given the widespread pushback within Europe, the European Commission launched in April 2014 a period of formal public consultation on the controversial ISDS terms proposed for TAFTA.

In 2008, then-presidential candidate Obama called for reform of the existing ISDS system. A growing number of groups from the left and the right – from [Public Citizen](#) and the [AFL-CIO](#) to the [CATO Institute](#) to [U.S. state-level officials](#) – have called for a rejection of ISDS in U.S. trade agreements.

“President Obama should take heed of Germany’s lead in pushing to dump this toxic asset from TAFTA talks, instead of vastly expanding its reach and newly empowering nearly 25,000 foreign firms to attack U.S. local, state, and federal public interest safeguards,” said Wallach.

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