



Selected Statements and Actions Against Investor-State Dispute Settlement (ISDS)

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High-Level U.S. Judicial, Executive and Legislative Officials

U.S. President Joe Biden

“I don't believe that corporations should get special tribunals that are not available to other organizations. I oppose the ability of private corporations to attack labor, health, and environmental policies through the Investor-State Dispute Settlement (ISDS) process and I oppose the inclusion of such provisions in future trade agreements.”

–[President Joe Biden's Response to the United Steel Workers Questionnaire; May 17, 2020](#)

U.S. Supreme Court Chief Justice John Roberts

“It is no trifling matter for a sovereign nation to subject itself to suit by private parties; we do not presume that any country—including our own—takes that step lightly. Cf. *United States v. Bormes*, 568 U. S. ___, ___ (2012) (slip op., at 4) (Congress must “unequivocally express[]” its intent to waive the sovereign immunity of the United States (quoting *United States v. Nordic Village, Inc.*, 503 U. S. 30, 33 (1992); internal quotation marks omitted)). But even where a sovereign nation has subjected itself to suit in its own courts, it is quite another thing for it to subject itself to international arbitration. Indeed, “[g]ranted a private party the right to bring an action against a sovereign state in an international tribunal regarding an investment dispute is a revolutionary innovation” whose “uniqueness and power should not be overlooked.” Salacuse 137. **That is so because of both the procedure and substance of investor-state arbitration ... Substantively, by acquiescing to arbitration, a state permits private adjudicators to review its public policies and effectively annul the authoritative acts of its legislature, executive, and judiciary.** See Salacuse 355; G. Van Harten, *Investment Treaty Arbitration and Public Law* 65–67 (2007). ... Procedurally, paragraph (3) of Article 8 designates the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) as the default rules governing the arbitration. Those rules authorize the Secretary-General of the Permanent Court of Arbitration at The Hague to designate an “appointing authority” who—absent agreement by the parties—can select the sole arbitrator (or, in the case of a three-member tribunal, the presiding arbitrator, where the arbitrators nominated by each of the parties cannot agree on a presiding arbitrator). UNCITRAL Arbitration Rules, Arts. 6, 8–9 (rev. 2010 ed.). The arbitrators, in turn, select the site of the arbitration (again, absent an agreement by the parties) and enjoy broad discretion in conducting the proceedings. Arts. 18, 17(1) ... **a Contracting Party grants to private adjudicators not necessarily of its own choosing, who can meet literally anywhere in the world, a power it typically reserves to its own courts, if it grants it at all: the power to sit in judgment on its sovereign acts.”**

–[Chief Justice John Roberts' dissent in *BG Group PLC v. Argentina* \(No. 12-138\), March 2014](#)

U.S. Trade Representative (USTR) Robert Lighthizer

“I’m always troubled by the fact that non-elected, non-Americans can make a decision that a United States law is invalid. This, as a matter of principle, I find that offensive. That’s what can happen very often in this area ... The most troubling aspect of all this is that it attacks our sovereignty.”

–[USTR Lighthizer to Senate Finance Committee members in response to Sen. Sherrod Brown’s \(D-Ohio\) question on whether ISDS will be removed from NAFTA; June 21, 2017](#)

The USMCA (NAFTA’s Successor) Includes Significant ISDS Reforms

“The [ISDS] mechanism contained in NAFTA... will be phased out between the United States and Canada, and its coverage will be significantly trimmed for investors in Mexico. The investor-state dispute settlement provision (ISDS) of USMCA will cover investments in Mexico only in oil and gas, power generation services, telecommunication services, transportation services, and the management of ownership of infrastructure. [This] is a major win for USTR Robert Lighthizer, who views it as a means for corporations to undercut country’s sovereignty and as [political risk insurance](#) that encourages outsourcing.”

–[“From NAFTA to USMCA: What’s New and What’s Next?” William Alan Reinsch and Jack Caporal, CSIS. October 3, 2018](#)

Democratic Senators and Members of Congress Oppose ISDS

“We urge you to pursue any and all options at your disposal—including new regional frameworks like the Americans Partnership for Economic Prosperity (APEP), which your agencies are spearheading—to remove ISDS from existing U.S. trade deals.”

–[Bicameral Letter from Senator Warren \(D-Mass.\), Representative Cohen \(D-Tenn.\), and 35+ members of Congress to USTR Katherine Tai; November 2, 2023](#)

“Investor-State Dispute Settlement (ISDS) provisions found in United States-backed free trade agreements allow multinational corporations to sue governments before panels of corporate lawyers based on claims that regulatory frameworks, including those designed to protect workers and the environment, will lead to future losses, and whereas thus far Latin American and Caribbean countries have been sued a total of 346 times under ISDS provisions more than any other region of the world.”

–[Rep. Nydia Velazquez’ \(D-NY\) Resolution calling for the annulment of the Monroe Doctrine; 118th Congress, 1st Session; December 21, 2023](#)

“These [ISDS] provisions tilt the playing field even further in favor of large corporations, incentivizing offshoring and undermining the sovereignty of the United States and other governments. Furthermore, ISDS is not needed to promote positive investment and in fact continues to harm human rights and hinder efforts to address climate change.”

–[Bicameral Letter from Senator Warren \(D-Mass.\), Representative Doggett \(D-Tex.\), and 31 other members of Congress to USTR Katherine Tai; May 3, 2023](#)

“The renegotiation of NAFTA must ... end the disastrous investor state dispute settlement system that undermines democracy and allows multinational corporations to put corporate profits ahead of workers, the environment, public health, and food safety.”

–[Sen. Bernie Sanders \(I-Vt.\) at a Capitol Hill press conference; Dec. 13, 2017](#)

“The Investor-State Dispute Settlement (ISDS) system and the foreign investor protections it enforces that make it easier and cheaper to outsource jobs must be eliminated. The investor outsourcing protectionism at the heart of NAFTA incentivizes companies to relocate production to low wage venues by locking in preferential treatment.”

–[Letter from Sen. Sanders \(I-Vt.\) and five other progressive senators to President Trump; Feb. 2, 2018](#)

“ISDS would allow foreign companies to challenge U.S. laws — and potentially to pick up huge payouts from taxpayers — without ever stepping foot in a U.S. court. Here’s how it would work. Imagine that the United States bans a toxic chemical that is often added to gasoline because of its health and environmental consequences. If a foreign company that makes the toxic chemical opposes the law, it would normally have to challenge it in a U.S. court. But with ISDS, the company could skip the U.S. courts and go before an international panel of arbitrators. If the company won, the ruling couldn’t be challenged in U.S. courts, and the arbitration panel could require American taxpayers to cough up millions — and even billions — of dollars in damages... This isn’t a partisan issue. Conservatives who believe in U.S. sovereignty should be outraged that ISDS would shift power from American courts, whose authority is derived from our Constitution, to unaccountable international tribunals. Libertarians should be offended that ISDS effectively would offer a free taxpayer subsidy to countries with weak legal systems. And progressives should oppose ISDS because it would allow big multinationals to weaken labor and environmental rules.”

–[Sen. Elizabeth Warren \(D-Mass.\) op-ed, “The Trans-Pacific Partnership Clause Everyone Should Oppose,” *The Washington Post*; Feb. 25, 2015](#)

“With ISDS, big companies get the right to challenge laws they don’t like, not in courts, but in front of industry-friendly arbitration panels that sit outside of any court system. Those panels can force taxpayers to write huge checks to big corporations—with no appeals. Workers, environmentalists, and human rights advocates don’t get that special right; only corporations do. Most Americans don’t think of keeping dangerous pesticides out of our food or keeping our drinking water clean as trade issues. But all over the globe, companies have used ISDS to demand compensation for laws they don’t like. Just last year, a mining company won an ISDS case when Canada denied the company permits to blast off the coast of Nova Scotia. Now,

Canadian taxpayers are on the hook for up to \$300 million – all because their government tried to protect its environment and the livelihood of its local fishermen.”

[–Sen. Warren \(D-Mass.\) speech on the Senate floor; Feb. 2, 2016](#)

“Resolved, That it is the sense of the House of Representatives that — (1) the North American Free Trade Agreement (NAFTA) should be replaced with a new trade agreement that — ... (B) should not include protections for foreign investors, including an Investor-State Dispute Settlement (ISDS) process, so to avoid exposure of the United States Government and taxpayers to financial losses, threats to United States and other parties’ laws and sovereignty, the undermining of environmental and health protections in extra-judicial tribunals, or new incentives to offshore jobs;”

[–House Resolution \(H.R. 132\) introduced by Rep. Peter DeFazio \(D-Ore.\), cosponsored by 20 representatives; Feb.16, 2017](#)

House Republicans Urge USTR Lighthizer to Remove ISDS From NAFTA

“We request that you eliminate the ISDS provisions from the North American Free Trade Agreement (NAFTA) during renegotiations of that pact and take our concerns into consideration as you review other past trade pacts and contemplate future agreements. ...ISDS subsidizes offshoring by lowering the risk premium of relocating. Instead of firms having to factor in the cost of risk insurance when making offshoring decisions, they rely on ISDS to require governments in low-wage nations either to provide them with their special offshored investor protections or compensate them. As a result, U.S. taxpayers not only lose jobs, but our policies and Treasury are exposed to reciprocal ISDS attacks by foreign firms operating here.”

[–Letter from Republican Congressmen Daniel Donovan Jr \(R-NY\), David P. Joyce \(R-Ohio\), and Bryan K. Fitzpatrick \(R-Penn.\) to USTR Lighthizer; Oct. 11, 2017](#)

U.S. State and Local Government Officials and Associations

National Conference of State Legislatures

“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; March 2024](#)

National Association of Attorneys General

“WHEREAS, implementation of the standards in Chapter 11 of the North American Free Trade Agreement (NAFTA) raises serious concerns over its potential impact on the power of state or local governments to protect the welfare and environment of their citizens; and NOW, THEREFORE, BE IT RESOLVED THAT THE NATIONAL ASSOCIATION OF ATTORNEYS GENERAL: 1. Encourages Congress to ensure that in any new legislation providing for international trade agreements foreign investors shall receive no greater rights to financial compensation than those afforded to our citizens;”

[–National Association of Attorneys General, “Resolution: In Support of State Sovereignty and Regulatory Authority;” March 2002](#)

National Association of Counties

“[NACo] supports free trade activities that enhance the economic base of local governments and promote county participation in the global economy. NACo, however, opposes the adjudication of disputes arising out of trade agreements in a manner that preempts local government authority, circumvents domestic judicial processes, and grants greater rights to foreign investors than those guaranteed to U.S. citizens by federal, state, and local law.”

[–National Association of Counties’ “American County Platform and Resolutions;” July 25, 2016](#)

National League of Cities

“The U.S. must advocate for trade rules that contain legal standards consistent with the Constitution and applicable case law. International agreements, such as the North American Free Trade Agreement (NAFTA), that define “expropriation of property” to include “indirect expropriation” or “tantamount to expropriation” are ... inconsistent with U.S. Constitutional law. According to U.S. Constitutional law on takings, the term “expropriation” includes only direct expropriations.”

[–National League of Cities’ “National Municipal Policy and Resolutions;” Nov. 19, 2016](#)

45 U.S. State Attorneys General

“As the chief legal officers of our states, we are concerned about any development that could jeopardize the states’ ability to enforce their laws and regulations relating to tobacco products. Experience has shown that state and local laws and regulations may be challenged by tobacco companies that aggressively assert claims under bilateral and multilateral trade and investment agreements, either directly under investor-state provisions or indirectly by instigating and supporting actions by countries that are parties to such agreements. Such agreements can enable these tobacco companies to challenge federal, state, and local laws and regulations under standards and in forums that would not be available under United States law.”

–[National Association of Attorneys General Letter to USTR Froman; Feb. 5, 2014](#)

125 U.S. State Legislators Representing All 50 States

“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

The European Commission Proposes a Coordinated Withdrawal from the Energy Charter Treaty

“The Commission now proposes a coordinated withdrawal by the Union and its Member States, as it considers the Treaty to be no longer compatible with the EU's climate goals under the European Green Deal and the Paris Agreement, predominantly due to concerns over continued fossil fuel investments. Another concern relates to the specifics of the investor-state dispute settlement mechanism. The rulings of international arbitration tribunals are rarely in the public domain, with few opportunities for legal redress and oversight; the majority of cases have been launched against EU Member States, often by investors headquartered in the EU. The Court of Justice of the European Union (CJEU) judgment from September 2021 found it to be contrary to EU law, as it excluded the CJEU from jurisdiction over intra-EU disputes in its areas of competence.”

–[European Parliament briefing: “EU Withdrawal From the Energy Charter Treaty,” December 2023](#)

Governments Unilaterally Withdraw from the ECT

“Due to many concerns over the protection of fossil fuel investments and amid the lack of prospects for change, several countries have announced their intention to withdraw unilaterally. France, Germany and Poland are due to leave the ECT by the end of 2023 and Luxembourg by mid-2024.”

–[European Parliament briefing: “EU Withdrawal From the Energy Charter Treaty,” December 2023](#)

Netherlands: Environment Minister Questions if ISDS Can be Reformed; Exits ECT

“Consequently, it is not certain whether the ISDS mechanism under the ECT can be satisfactorily reformed in the future. Additionally, dispute resolution concerning sustainability provisions deviates from recent agreements reached by the EU and lacks sufficient ambition. Due to the significant importance the cabinet attaches to achieving Dutch and European climate goals and modernizing the dispute resolution mechanism, as well as the political and societal concerns that have arisen, the cabinet concludes that it wants to pursue withdrawal from the ECT within the EU framework.”

–[R.A.A. Jetten, Dutch Minister of Climate and Energy, in an Official Government Letter; 2 November 2022](#)

The UK Exits the ECT; Shadow Climate Change Minister Slams ISDS Over Oil Lawsuits

“We are in an urgent global fight against the climate emergency. We cannot allow fossil fuel companies to stop democratically elected governments from taking strong climate action. Labour has long argued that the energy charter treaty is clearly outdated and not fit for purpose. It is good that the government has finally taken the step to leave it.”

–[UK Shadow Climate Change Minister Kerry McCarthy, “UK quits treaty that lets fossil fuel firms sue governments over climate policies,” 22 February 2024](#)

The European Parliament Adopts a Resolution Rejecting Climate ISDS Lawsuits

“The resolution stresses that an alarming number of investment claims target environmental measures, and regrets that countries are being sued in relation to 'policies on climate, the phasing out of fossil fuels, or the just transition'. Parliament also urges the Commission to exclude 'investments in fossil fuels or any other activities that pose significant harm to the environment and human rights from treaty protections, in particular investor-state arbitration mechanisms'. The resolution also points out that 'even in the absence of legal proceedings, the explicit or implicit threat of recourse to investment arbitration can enhance the position of investors in negotiations with states (the 'chilling effect')'.”

–[European Parliament: “Investor-State Protection Disputes Involving EU Member States: State of Play,” November 2022](#)

Australia: Trade Minister Rejects Inclusion of ISDS in Future Trade Deals

“Ensuring the benefits of trade flow to the Australian community also means we maintain Australia’s right to regulate key social policy areas like health, the environment and issues affecting First Nations Australians in all our trade agreements... To that end, we will not include investor-state dispute settlement in any new trade agreements. And when opportunities arise, we will actively engage in processes to reform existing ISDS mechanisms to enhance transparency, consistency and ensure adequate scope to allow the Government to regulate in the public interest.”

–[Australian Trade minister Don Farrell in a speech at the APEC Study Centre; 14 November 2022](#)

France: High-Level Official Opposes ISDS

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

–[French Senator and Former Minister for Foreign Trade Nicole Bricq on TTIP; March 2014](#)

Croatia: Government Skeptical of the Validity of ISDS

“...up to today 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; Oct. 16, 2014](#)

New Zealand: No More ISDS in Forthcoming Trade Deals

“Cabinet has today instructed trade negotiation officials to oppose ISDS in any future free trade agreements.”

–[Prime Minister Jacinda Ardern in a press conference; 31 October 2017](#)

Brazil: Model Bilateral Investment Treaty Omits ISDS

Brazil does not have any international investment agreements in force. While Brazil negotiated 14 agreements in the late 1990s, none has been implemented. Six of these were rejected by the Brazilian Congress because indirect expropriation and ISDS are considered non-compliant with the Constitution. Brazil has begun signing investment treaties again, but without the fair and equitable treatment standard and investor-state arbitration.

–[Columbia Center on Sustainable Investment, “Columbia FDI Perspectives: Perspectives on topical foreign direct investment issues,” No. 159; Oct. 26, 2015](#)

“There are many reasons why Brazil decided not to have ISDS in its agreements, some of them coincide with (the) general critique that many organizations and scholars make regarding ISDS which is the fact that it may be considered discriminatory against national investors who do not have the chance to resort to international arbitration and must tackle any issues within domestic courts. This is one of the reasons why historically, Brazil has decided not to go down this road. So, from our perspective, ISDS is intrinsically flawed. So, no reforms would be enough to redeem the system ... For us, the best solution is simply throw it out of the window and use something different. What we use, as you know, is SSDS, state-to-state dispute settlement.”

–[Representative of Brazil at UNCITRAL working group on ISDS reform, Dec. 2017](#)

South Africa: Begins Process of Withdrawal from BITs

After a commission of business, labor and government representatives serving on a multi-year commission issued a report noting ISDS had posed serious risks and expenses and had not resulted in more FDI, in 2015 South Africa the process of terminating its BITs with Belgium, Luxembourg, Spain, and the Netherlands and gave notice of termination of its other BITs. “The spike in international investment arbitrations that followed the financial crisis in 2001 laid bare that bilateral investment agreements can pose profound and serious risks to government policy... Our own experience demonstrated that that there was no clear relationship between signing BITs

and seeing increased inflows of FDI... The review identified a range of concerns associated with expansive interpretations on the provisions usually found in BITs. The review also identified difficulties with respect to international arbitration... This, in our view, opens the door for narrow commercial interests to subject matters of vital national interest to unpredictable international arbitration outcomes and is a direct challenge to constitutional and democratic policy-making..."

–[Xavier Carim, Deputy Director General of the South African Department of Trade and Industry, at the WTO Public Forum in Geneva; Sept. 25, 2012](#)

India: Begins Termination/Renegotiation of BITs

After undertaking a review of its Model BIT, India began sending termination notices to as many as 57 countries (including the UK, France, Germany, Spain and Sweden) with whom the initial duration of the treaty has either expired or will expire soon. For the remaining 25 countries (such as China, Finland, Bangladesh and Mexico) with whom the initial duration of the treaty will expire from July 2017 onward, India has requested them to sign joint interpretative statements to clarify ambiguities in treaty texts so as to avoid expansive interpretations by arbitral tribunals.

–[“Remodeling India’s Investment Treaty Regime,” *The Wire*; July 16, 2016](#)

Indonesia: Works 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.

–[Ben Bland and Shawn Donnan, “Indonesia to terminate more than 60 bilateral investment treaties,” *Financial Times*; March 26, 2016](#)

“In response to an increase in the number of arbitration cases submitted to ICSID, BKPM formed an expert team to review the current generation of BITs and formulate a new model BIT that would seek to better protect perceived national interests. The Indonesian model BIT is reportedly reflected in newly signed investment agreements.”

–[U.S. Department of State 2022 Investment Climate Statements: Indonesia](#)

Mercosur: Excludes ISDS

Mercosur — the trading bloc that includes Argentina, Brazil, Paraguay, and Uruguay — has approved a Protocol for the Cooperation and the Facilitation of Investment within the Mercosur countries that explicitly excludes investor-state arbitration.

–[Damien Charlotin and Luke Eric Peterson, “Analysis: In New Mercosur Investment Protocol, Brazil, Uruguay, Paraguay and Argentina Radically Pare Back Protections, and Exclude Investor-State Arbitration,” *IReporter*; May 4, 2017](#)

Ecuador: Rejects ISDS, Exits BITs, Denounces ICSID

In 2023, Ecuador's constitutional court declared that the investor-state dispute clauses of the Ecuador-Costa Rica FTA were unconstitutional.

–[Investment Arbitration Reporter article by Erik Brouwer, August 4, 2023](#)

Ecuador began terminating ISDS-enforced treaties in 2008 and withdrew from the ICSID convention in 2009. After creating a “Citizen’s Audit Commission,” which evaluated and reviewed all its international investment pacts to determine if they were in the country's national interest, Ecuador followed the audit’s recommendations and terminated its 16 remaining investment treaties in 2017, including its treaty with the United States.

–[“Ecuador Denounces Its Remaining 16 BITs and Publishes CAITISA Audit Report,” Investment Treaty News; June 12, 2017](#)

“On July 6, 2009, the World Bank received a written notice of denunciation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) from the Republic of Ecuador.”

–[World Bank: “Denunciation of the ICSID Convention by Ecuador,” July 9, 2009](#)

Bolivia: Withdrew from ICSID and Mentions ISDS in New Constitution

“Every foreign enterprise that carries out activities in the chain of production of hydrocarbons in name and representation of the State shall submit to the sovereignty of the State, and to the laws and authority of the State. No foreign court case or foreign jurisdiction shall be recognized, and they may not invoke any exceptional situation for international arbitration, nor appeal to diplomatic claims.”

–[Article 366 of the Constitution of the Plurinational State of Bolivia \(2009\)](#)

“On May 2, 2007, the World Bank received a written notice of denunciation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) from the Republic of Bolivia.”

–[World Bank: “Denunciation of ICSID Convention,” May 16, 2007](#)

Venezuela: Withdrew From ICSID; Refuses to Recognize Rulings

“On January 24, 2012, the World Bank received a written notice of denunciation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) from the República Bolivariana de Venezuela.”

–[World Bank: “Venezuela Submits a Notice under Article 71 of the ICSID Convention” January 26, 2012](#)

“I will say it once. We will not recognize any decisions of the ICSID. We will not recognize them.” According to the article, he continued by “arguing [ICSID] gives transnational companies a gateway to violate national sovereignty”

–[President Hugo Chavez via CNN: “Chavez Says he Won’t Respect World Bank Panel’s Decision,” January 9, 2012](#)

Honduras: Withdrew from ICSID

“On February 24, 2024, the World Bank received a written notice of denunciation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) from the Republic of Honduras.”

–[World Bank, “Honduras Denounces the ICSID Convention,” February 29, 2024](#)

South African Development Community (SADC) Amends Treaty to Remove ISDS

In August 2016, the 15 member states of the SADC agreed to remove the investor-state dispute settlement mechanism from its Finance and Investment Protocol.

–[Luke Eric Peterson, “In Aftermath of Investor Arbitration Against Lesotho, SADC Member-States Amend Investment Treaty to Remove ISDS, Limit Protections, *IAReporter*; Feb. 20, 2017](#)

Namibia: Doubts Correlation between FDI and Investment Treaties

“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... impose contractual obligations on Governments that limit their right to regulate and for developing countries hampers their ability to act in their own interest.”

–[Malan Lindeque, Permanent Secretary, Namibian Ministry of Trade; Oct. 16, 2014](#)

Sri Lanka: Considering “Moving Away” from 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; Oct. 16, 2014](#)

Pakistan: Denouncing Agreements With ISDS

“Pakistan, a country that inaugurated the ISDS system, having entered into the first investment agreement ever, with Germany in 1959, recently announced that it would denounce 23 of its agreements with ISDS, not ratify 16 that have already been concluded, and, like India, seek to mitigate the effects of those agreements in which the initial term has not yet expired.”

–[Colombia University White Paper: “Turning the Tide: How to Harness the Americas Partnership for Economic Prosperity to Deliver an ISDS-Free Americas”](#); October 2023

International Organizations

United Nations Special Rapporteur on Human Rights and the Environment Outlines How ISDS Negatively Impacts Environmental Policy

“As ISDS arbitration tribunals routinely prioritise foreign investment and corporate interests above environmental and human rights considerations, ISDS claims have devastating consequences for a wide range of human rights, exacerbating the disproportionate harms suffered by vulnerable and marginalised populations.”

–[Mr. David R. Boyd, *Investor-State Dispute Settlements Have Catastrophic Consequences for the Environment and Human Rights: UN Expert*; October 20, 2023](#)

United Nations Commission on International Trade Law (UNCITRAL) Working Group on ISDS Reform Discusses Substantive and Political Problems With ISDS

“Australia saw the UNCITRAL process as an opening for ensuring ‘social license’ for a process that many ordinary Australians looked at disdainfully due to the protracted and expensive arbitration launched against that country by the Philip Morris company. Similarly, Mauritius noted that investor-state arbitration was meant to depoliticize disputes, but that it has come under attack so much in the mainstream media that it has itself become a ‘highly politicized’ mechanism that may be no longer suited to achieve its legal and developmental goals due to its crippled legitimacy.”

–[IAReporter analysis of UNCITRAL Vienna session audio recordings, Jan. 2018](#)

United Nations Conference on Trade and Development (UNCTAD): No Clear Evidence That BITs, Many of Which Contain ISDS Provisions, Boost FDI

“The current state of the research is unable to fully explain the determinants of FDI, and, in particular, the effects of BITs on FDI. Thus developing-country policymakers should not assume that signing up to BITs will boost FDI. Indeed, they should remain cautious about any kind of recommendation to actively pursue BITs.”

–[UNCTAD, “Trade and Development Report, 2014;” Aug. 2014](#)

Intergovernmental Panel on Climate Change (IPCC) Report Warns of Regulatory Chill

“While international investment agreements hold potential to increase low-carbon investment in host countries (PAGE 2018), these agreements have tended to protect investor rights, constraining the latitude of host countries in adopting environmental policies (Miles 2019). Moreover, international investment agreements may lead to ‘regulatory chill’, which may lead to countries refraining from or delaying the adoption of mitigation policies, such as phasing out fossil fuels (Tienhaara 2018).”

–[IPCC Working Group 3: Climate Change 2022 Mitigation of Climate Change Report; p. 1499](#)

UNCTAD: Broadly Shared View That Current Dispute Settlement System Needs Reform

“In recent years, many countries (developing and increasingly developed countries alike) have experienced first-hand that IIAs [international investment agreements] are not ‘harmless’ political declarations, but do ‘bite’. Broad and vague formulations of IIA provisions have enabled investors to challenge core domestic policy decisions – for instance, in environmental, financial, energy and health policies. They have also generated unanticipated, and at times inconsistent, arbitral interpretations of core IIA obligations, resulting in a lack of predictability as to the kinds of State measures that might violate a specific IIA provision.”

–[UNCTAD, “Chapter 3: Recent Policy Developments and Key Issues,” *World Investment Report 2017: Investment and the Digital Economy*; May 9, 2017](#)

United Nations Independent Expert on the Promotion of a Democratic and Equitable International Order Calls for the Abolition of ISDS

“Over the past twenty-five years, bilateral international treaties and free trade agreements with investor-state-dispute-settlement have adversely impacted the international order and undermined fundamental principles of the UN: state sovereignty, democracy, and the rule of law. It prompts moral vertigo in the unbiased observer.”

–[Mr. Alfred de Zeyas, *International trade: UN Expert Calls for Abolition of Investor-State Dispute Settlement Arbitrations*; October 26, 2015](#)

Organisation for Economic Co-operation and Development (OECD): ISDS Landscape Has Been Transformed by ‘Arbitration Industry’

“Some ISDS cases raise important public policy issues – e.g. claims involving health-motivated regulation of cigarette marketing brought against Australia and Uruguay. Moreover, in some cases, the amount of claimed compensation is high enough – hundreds of millions or even billions of dollars – to seriously affect a respondent country’s fiscal position. The ISDS landscape has also been transformed in recent years by new participants. An arbitration industry has emerged... The EUR 1.4 billion claim brought by power generation company Vattenfall against Germany in 2009 involved German lawyers from the expanding German arbitration bar on both sides of the case. A more recent and related development is the emergence of third party financing (TPF) of claims, linked to the high costs and high potential damages awards characteristic of arbitral awards in investment disputes. These developments have increased the likelihood that government action will be subject to heightened scrutiny in the ISDS system in the future.”

–[OECD, *Investor-State Dispute Settlement Public Consultation: May-July 2012*; Aug. 8, 2012](#)

Business and Pro-Free Trade Voices Against ISDS

Removing ISDS Is Smart Politics

“Moreover, it may be time for policymakers to rethink certain traditional disciplines of FTAs. In particular, they could focus on aspects that have become the most polarizing and, substantively, do not necessarily generate sufficient positive impact to justify this degree of divisiveness. In this regard, no provision has been as controversial and polarizing in so many economies involved in trade negotiations as ISDS. ... Now is the time to explore other methods to protect foreign investments that are effective but less polarizing. Certain long-standing provisions of trade agreements, specifically ISDS, are worthy of reconsideration, particularly if doing so would help rebuild support for trade.”

[–Asia Society Policy Institute \(ASPI\) issue paper, written by an ASPI “Trade Forum” chaired by Wendy Cutler, former Acting Deputy USTR, and comprised of former trade ministry officials from Australia, Japan, New Zealand and South Korea; Jan. 2018](#)

“The vast majority of U.S. companies doing business in Mexico and Canada have not used or benefited from the ISDS provisions, while the inclusion of ISDS raises significant concerns for other stakeholders. Given the development levels of the countries involved (i.e., members of Organization for Economic Cooperation and Development), we believe including ISDS provisions in NAFTA is unnecessary.”

[–American Automotive Policy Council submission to the Federal Register, June 15, 2017](#)

“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*; Oct. 11, 2014](#)

“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, Cato Free Trade Bulletin No. 57, March 4, 2014](#)

Substantive Critique of ISDS

“These provisions, formally known as Investor-State Dispute Settlement (ISDS), grant greater rights to foreign corporations than to domestic businesses such as ours, while exposing important

local, state, and federal policies to challenge... We urge you to eliminate ISDS from past U.S. trade deals – beginning with the NAFTA renegotiation – and to withdraw from any and all negotiations that would expand ISDS, namely the China Bilateral Investment Treaty and the Transatlantic Trade and Investment Partnership.”

–[Letter to President Trump from 100 small business leaders and Ben Cohen and Jerry Greenfield \(co-founders of Ben & Jerry’s ice cream company\); July 12, 2017](#)

“ISDS should be removed from free trade agreements because it undermines how the free market is supposed to work. It is protectionism that socializes investment risk. Multinational companies that invest internationally should be savvy enough to conduct the appropriate cost-benefit analysis for their investments. The U.S. government should not be subsidizing outsourcing through ISDS.”

–[Daniel Ikenson, Cato Institute, in an ISDS press forum \(video\); Oct. 25, 2017.](#)

[See also: [Ikenson in *Forbes*, “To Save NAFTA, Kill Its Controversial Dispute Settlement Provisions,” Oct. 24, 2017](#)]

“If a U.S. natural gas company believes that the value of its assets has suffered on account of a new subsidy for solar panel producers, judicial recourse is available in the U.S. court system only. But for foreign companies, ISDS provides an additional adjudicatory option. This inequality of treatment seems to run afoul of the investment provisions in the Baucus-Hatch-Camp legislation (to extend fast-track trade promotion authority to the president), which state that the principal U.S. negotiating objectives regarding foreign investment are to: ‘[R]educe or eliminate artificial or trade distorting barriers to foreign investment, while ensuring that foreign investors in the United States are not accorded greater substantive rights with respect to investment protections than United States investors in the United States’... Foreign investors having recourse to the U.S. legal system and then, if that produces unsatisfactory results, to third-party ISDS procedures arguably constitutes greater substantive rights for them than for domestic investors, whose options are confined to the U.S. legal system.”

–[Daniel Ikenson, Cato Institute, Cato Free Trade Bulletin No. 57, March 4, 2014](#)

“... 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](#)

Law Professors and Economists

Law and Economics Professors

“Through ISDS, the federal government grants foreign investors – and foreign investors alone – the ability to bypass the robust, nuanced, and democratically-responsive U.S. legal framework. Foreign investors are able to frame questions of domestic constitutional and administrative law as treaty claims and take those claims to a panel of private international arbitrators, circumventing local, state, or federal domestic administrative bodies and courts. ISDS thus undermines the important roles of our domestic and democratic institutions, threatens domestic sovereignty, and weakens the rule of law... We urge you to stop any expansion of ISDS – namely through the China BIT and the TTIP – and to eliminate ISDS from past U.S. trade deals, beginning with NAFTA.”

–[230 U.S. law and economics professors in a letter to President Trump; Oct. 25, 2017](#)

“We... urge you to protect the rule of law and our nation’s democratic institutions and sovereignty by rejecting this TPP as long as ISDS is included. While there is still time, we urge you to pressure the United States Trade Representative (USTR) to change course in the TTIP negotiations and in negotiations of other prospective agreements, such as the Bilateral Investment Treaty (BIT) between the United States and China, to ensure that ISDS is not included in any of those pacts.”

–[223 U.S. law and economics professors in a letter to Congress; Sept. 7, 2016](#)

Legal Scholars

“ISDS is completely wrongheaded and unconstitutional. According to the appointments clause of our constitution, private individuals who are not accountable to our legislative or executive branch have no authority to interpret and render final judgment over U.S. laws.”

–[Bruce Fein, constitutional law expert and former associate deputy attorney general under President Ronald Reagan in an ISDS press forum \(video\); Oct. 25, 2017](#)

“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.”

–[Prominent U.S. legal scholars in letter to congressional leadership; 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 TTIP.”

–[More than 100 U.S. legal scholars in a letter to congressional leadership; 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 around the world in a public statement; July 2014](#)

Prominent Economists

“What makes these issues especially relevant now is that President Biden has launched this Americas Partnership for Economic Prosperity, and one of the main themes is fighting climate disaster and economic inequality, improving public health, strengthening democracy. To achieve any of these goals, ISDS has to go. It is a direct hindrance.”

–[Joseph E. Stiglitz quoted in a Rethink Trade press release, October 25, 2023](#)

“ISDS is a disgrace, and it is becoming a sham as well because it is being gamed massively now by hedge funds and by law firms that see this as even more than venue shopping – just absolute harassment and pressure of governments all over the world.”

–[Jeffrey Sachs, world-renowned professor of economics, in a press call; Sept. 7, 2016](#)

“ISDS therefore leads to two separate tracks of rights and remedies. Domestic citizens must play by the rules established by Congress, which give us the important right to challenge government action, but also set democratically determined limits on our ability to bring claims, balancing the need for policy space of the government with the rights of domestic constituents. But with ISDS, foreign companies don't have to follow those rules. When government action -- even action taken for a legitimate and important public purpose -- hurts foreign companies' economic interests, those companies can sue the government for their lost profits. This distorts the rules of the legal

system and makes the economic interests of some foreign corporations much more powerful than the interests of domestic constituents.”

[–Op-ed in CNN.com by Lise Johnson \(Columbia Center on Sustainable Investment \(CCSI\)\), Lisa Sachs \(CCSI\) and Jeffrey Sachs \(Columbia University’s Earth Institute\); Feb. 19, 2016](#)

Civil Society Organizations Against ISDS

200+ Civil Society Groups Call for the Removal of ISDS From Existing U.S. Trade and Investment Agreements

“Civil society efforts in Colombia and across the hemisphere have been demanding their governments work to end ISDS. Ten European countries have abandoned the Energy Charter Treaty over its ISDS rights for fossil fuel companies, and the European Union as a whole is considering withdrawing. Australia, New Zealand, and other countries have signed side letters to exclude themselves from ISDS in various pacts, and a number of countries including South Africa, India, and Indonesia have worked to exit investment treaties with ISDS. Continued movement away from ISDS by the United States would be a powerful signal to other governments considering taking similar action.”

–[200+ Civil Society Organizations’ Letter to U.S. President Joe Biden Urging him to Terminate ISDS; November 1, 2023](#)

Civil Society Organizations Demand the Removal of ISDS in NAFTA

“Growing public opposition to the expansive corporate privileges at the heart of the North American Free Trade Agreement (NAFTA) took center stage as the fourth round of NAFTA talks began today in Washington, D.C. U.S., Mexican and Canadian civil society organizations delivered more than 400,000 petitions demanding that NAFTA’s expansive corporate rights and protections and Investor-State Dispute Settlement (ISDS) be eliminated during renegotiations.”

–[Press release for delivery to Congress of 400,000 petition signatures, sponsored by 40 civil society organizations; Oct. 11, 2017](#)

“To create good-paying jobs, eliminate threats to our communities and otherwise benefit the majority, NAFTA must... eliminate rules... that empower corporations to attack democratic policies in unaccountable tribunals. NAFTA was the first U.S. trade agreement to include special privileges for investors and the Investor-State Dispute Settlement (ISDS) regime that make it less risky for employers to relocate jobs offshore, while simultaneously threatening democratic policymaking at home and abroad. ISDS grants new rights to multinational corporations to sue governments before panels of corporate lawyers... The corporations need only convince the lawyers that a law or safety regulation violates their broad NAFTA rights. Their decisions are not subject to appeal. Already, corporations have used ISDS to challenge bans on toxic chemicals, land use policies, forestry and water policies, financial regulation, court rulings that support access to medicine and protections for our climate. Broad corporate rights, including ISDS, must be eliminated from NAFTA in order to... safeguard nations’ right to democratically determine their own public interest policies.”

–[Letter from the Citizens Trade Campaign \(coalition of labor, environmental, consumer and other organizations representing 12 million people\) to President-elect Trump; Jan. 13, 2017](#)

“NAFTA’s investor-state dispute settlement (ISDS) system has empowered multinational corporations like ExxonMobil to bypass our courts, go to private tribunals, and demand money from taxpayers for policies that affect corporate bottom lines. Corporations have used NAFTA to challenge bans on toxic chemicals, the decisions of environmental review panels, and protections for our climate. They have extracted more than \$370 million from governments in these cases, while pending NAFTA claims total more than \$35 billion. The cases are heard not by judges, but by corporate lawyers outside the normal court system. Broad corporate rights, including ISDS, must be eliminated from NAFTA to safeguard our right to democratically determine our own public interest protections.”

–[Statement signed by 15 environmental and other organizations, *Replacing NAFTA: Eight Essential Changes to an Environmentally Destructive Deal*; April 2017](#)

“NAFTA has consolidated corporate control over many aspects of agriculture in ways that are unfair to farmers, farmworkers, and consumers. It was the first trade deal signed by the U.S. to include the controversial investor-to-state dispute settlement (ISDS) mechanism, which allows foreign companies to sue for damages over laws, rules or actions that allegedly undermine their profits. ISDS disputes in NAFTA have already been used to challenge rules on softwood lumber, high fructose corn syrup and pesticides. U.S. trade policy should: Remove ISDS provisions in NAFTA and other trade agreements. Investment disputes should be dealt with under existing national legal systems.”

–[Statement endorsed by six agriculture and food safety organizations; Jan. 27, 2017](#)

“...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.”

–[Letter to USTR Froman from AARP and 13 other organizations; Sept. 4, 2014](#)

Press Accounts Indicate Rising Opposition to ISDS

Pulitzer Finalist *BuzzFeed* Investigative Series

“...an 18-month BuzzFeed News investigation... has exposed an obscure but immensely consequential feature of these trade treaties, the secret operations of these tribunals, and the ways that business has co-opted them to bring sovereign nations to heel. The BuzzFeed News investigation explores four different aspects of ISDS... [showing] how the mere threat of an ISDS case can intimidate a nation into gutting its own laws, how some financial firms have transformed what was intended to be a system of justice into an engine of profit, and how America is surprisingly vulnerable to suits from foreign companies.”

–[Four-part exposé from Pulitzer Prize-winning journalist Chris Hamby for *BuzzFeed*; Aug. 2016](#)

The Economist

“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*; Oct. 11, 2014](#)

Financial Times

“... 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... 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*; Oct. 6, 2014](#)

Wall Street Journal

“Dispute resolution boards have become a lightning rod for opponents of globalization from across the political spectrum. Millions of citizens, from the U.S. to the U.K., Germany, and New Zealand, have rallied against trade deals that include such entities. They argue that supranational tribunals have thwarted the power of elected policy makers, citing the hundreds of millions of dollars in fines such bodies have levied against governments in a series of highly politicized cases in recent years.”

–[“Trade Tribunals Draw Ire Outside Nafta, Too,” *Wall Street Journal*, Aug 16, 2017](#)

Huffington Post

“Instead of helping companies resolve legitimate disputes over seized assets, ISDS has increasingly become a way for rich investors to make money by speculating on lawsuits, winning huge awards and forcing taxpayers to foot the bill. Here’s how it works: Wealthy financiers with idle cash have purchased companies that are well placed to bring an ISDS claim, seemingly for the sole purpose of using that claim to make a buck. Sometimes, they set up shell corporations to create the plaintiffs to bring ISDS cases. And some hedge funds and private equity firms bankroll ISDS cases as third parties.”

– [“The Big Problem with the Trans-Pacific Partnership’s Super Court That We’re Not Talking About,” *Huffington Post*, Aug. 29, 2016](#)

Global Arbitration Review

“In a lecture in Miami, Alexis Mourre has suggested the arbitration community is ‘losing’ the fight to ensure the survival of ISDS, endangering the future of commercial arbitration in the process, and should instead contemplate a return to the contractual protection of investments... the investor-state dispute settlement system is in crisis because ‘we—the defenders of the idea’ have been ‘politically defeated’, the French arbitrator and former president of the ICC Court told an audience at the first ever Miami Arbitration Week. ‘We have lost the battle of public opinion,’ and, ‘to a large extent, the battle of legitimacy’”

– [Alison Ross, “We’re losing the ISDS fight, warns Mourre” *Global Arbitration Review*; January 19, 2024](#)

Public Officials and CSOs Opposed ISDS Provisions in Previous Trade Negotiations

U.S.: Legislators Oppose ISDS in the TPP

“We write to underscore the fundamental flaws of the Trans-Pacific Partnership (TPP) agreement... First and foremost, the agreement includes investor-state dispute settlement (ISDS), which means our country’s own public health, worker safety, and environmental standards, among others, are vulnerable to corporate challenges. Recent investigative reporting by BuzzFeed reveals the extent to which ISDS has become an integral part of profit-maximizing strategies for corporations. ISDS challenges, and even mere threats of ISDS challenges, have been used to secure extractive permits over community objections, to get executives out of criminal convictions, and to exonerate managers connected to a factory’s lead poisoning of children. Such a corporate handout does not belong in our trade agreements.”

–[Letter from Sen. Brown and 11 other Democratic senators to President Obama; Sept. 29, 2016](#)

“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 Senators Warren, Edward Markey \(D-Mass.\) and Tammy Baldwin \(D-Wis.\) to USTR Michael Froman; Dec. 17, 2014](#)

“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 [the Transatlantic Trade and Investment Partnership] TTIP, or at the very minimum, that it not apply to the financial sector.”

–[Letter from House Financial Services Committee Ranking Member Maxine Waters \(D-Calif.\) and three Democratic members to Treasury Secretary Jack Lew and USTR Froman; Dec. 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 Obama; Dec. 17, 2014](#)

Australia: Opposed Inclusion of ISDS in Free Trade Agreements

Australia opposed inclusion of ISDS in its FTA with the United States, which was implemented in 2005. In the TPP talks, Australia 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. Ultimately, due to political tradeoffs, Australia agreed to ISDS in the final TPP text.

– [Leaked copy of the TPP Investment Chapter; June 2012](#)

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

– [Letter from EU member states to Commissioner Malmström; Oct. 21, 2014](#)

European Commission: Skeptical of ISDS in the TTIP

“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.”

– [President-elect Juncker; Oct. 22, 2014](#)

European Association of Judges (EAJ)

“The EAJ does not see the necessity for such a court system. The judicial system of the European Union and its member states is well established and able to cope with claims of an investor in an effective, independent and fair way. The European Commission should promote the national systems for investor’s claims instead of trying to impose on the Union and the member states a jurisdiction not bound outside the decisions both of the ECJ and the supreme courts of the member states... The European Union and its member states have a well-functioning judicial system which is capable of protecting the rights of an investor in all areas of law. It should be central to an international treaty on trade and investment, to apply this system to investors as the central body to safeguards its rights.”

[–Statement from the EAJ on the European Commission’s insufficient fix for ISDS in TTIP, the “Investment Court System;” Sept. 9, 2015](#)

France: High Level Official Opposes 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.”

[–French Secretary of State for Foreign Trade Matthias Fekl in a speech to the French Senate on the TTIP; Nov. 17, 2014](#)

Netherlands: Parliamentary Motion Opposes ISDS in the TTIP

“...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 [Canada-EU Comprehensive Economic and Trade Agreement] CETA agreement ... calls on the Government to speak out against an ISDS clause in TTIP and CETA.”

[–Motion passed by the Dutch Parliament; Nov. 19, 2014](#)

Germany: High Level Officials Speak Out Against ISDS in the 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](#)

“The German Magistrates Association sees no need for the establishment of a special court for investors. The Member States are all constitutional states, which provide and guarantee access to justice in all areas where the state has jurisdiction to all law-seeking parties. It is for the Member

States to ensure access to justice for all and to ensure feasible access for foreign investors, by providing the courts with the relevant resources. Hence, the establishment of an ICS is the wrong way to guarantee legal certainty. In addition, the German Magistrates Association calls on the German and European legislators to significantly curb recourse to arbitration within the framework of the protection of international investors.”

[–Germany’s largest professional organization of judges and public prosecutors, the German Magistrates Association \(known by its German acronym, DRB\) in an opinion paper; Feb. 2016](#)

Belgium: Province of Wallonia Holds Up EU’s Signing of CETA Over Inclusion of ISDS

“We want absolutely no private arbitration mechanisms,” Paul Maignette, premier of Wallonia province of Belgium, referring to ISDS in casting his “no” vote that held up the EU’s signing the CETA agreement with Canada.

[–Paul Maignette, premier of Wallonia province, Oct. 24, 2016](#)

Civil Society Organizations on Both Sides of the Atlantic Opposed ISDS in 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... [by granting] 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... 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.”

[–Letter to EC Commissioner for Trade Karel de Gucht from 178 U.S. and EU civil society organizations; Dec. 16, 2013](#)

“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 civil society organizations in a letter to USTR Froman and Commissioner de Gucht; July 10, 2014](#)

“TACD [the Trans Atlantic Consumer Dialogue] recommends that the U.S. and EU exclude investor-state dispute settlement in any form... from any trade agreement. Existing levels of protection in the EU and the U.S. are surely enough to guarantee legal security for investors.”

[–TACD Resolution: Response to European Commission ISDS “Reform” Proposal; Jan. 2016](#)

U.S. Organizations Opposed ISDS in TPP

“The TPP’s Investment Chapter and its ISDS system would grant foreign firms greater rights than domestic firms enjoy under U.S. law. One class of interests — foreign firms — could privately enforce this public treaty by skirting domestic laws and courts to challenge U.S. federal, state and local decisions and policies on grounds not available in U.S. law and do so before extrajudicial tribunals authorized to order payment of unlimited sums of taxpayer dollars. Under the TPP, compensation orders could include the “expected future profits” a tribunal determines that an investor would have earned in the absence of the public policy it is attacking.”

–[1,500 civil society organizations in letter to Congress; Jan. 7, 2016](#)

“The Trans-Pacific Partnership (TPP) and the Transatlantic Trade and Investment Partnership (TTIP), as proposed, would empower an unprecedented number of fossil fuel corporations, including some of the world’s largest polluters, to challenge U.S. policies in tribunals not accountable to any domestic legal system. There, the firms could use the trade pacts’ broad foreign investor rights to demand compensation for U.S. fossil fuel restrictions. These “investor-state dispute settlement” (ISDS) cases would be decided not by judges, but by lawyers who typically represent corporations. We strongly urge you to eliminate this threat to U.S. climate progress by committing to vote no on the TPP and asking the U.S. Trade Representative to remove from TTIP any provision that empowers corporations to challenge government policies in extrajudicial tribunals.”

–[450 environmental organizations in letter to Congress; June 6, 2016](#)

“Consumers Union and Consumer Federation of America urge you not to support approval of the Trans-Pacific Partnership (TPP)... if presented at any time in its current form. ... The risk that the TPP will become a vehicle for undermining important consumer protections is further exacerbated by the inclusion of the Investor-State Dispute Settlement procedure, or ISDS. This procedure allows industry to bypass the established regulatory agencies and courts, and to demand compensation from governments in private arbitration tribunals based on claims that consumer protection rules are reducing foreign corporate profits. ... ISDS does not belong in the TPP, and its inclusion is a fatal flaw.”

–[Letter to Congress from Consumers Union and Consumer Federation of America; Sept. 6, 2016](#)

“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... 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 to Congress from Americans for Financial Reform coalition of 250 groups; Dec. 19, 2013](#)