

**Article notes: November 15, 2013**  
**Citizen Trade Policy Commission**

***Investor-State Dispute Resolution: The Monster Lurking Inside Free Trade Agreements; Glyn Moody, Techdirt.com, 4/16/13)***

- Recent FTA's have included provisions authorizing the use of the Investor-State Dispute Resolution (ISDR) process as a means of resolving trade disputes between international corporations and sovereign nations;
- However, the current WTO agreement does not provide for the same type of ISDR mechanism as do more recent FTAs. Instead of empowering corporations to unilaterally bring trade disputes to a ISDS arbitration panel, the current WTO agreement stipulates that a corporation must first convince a sovereign nation that it has a legitimate trade grievance before it can be brought to the WTO for resolution;
- Originally, the use of current day ISDRs was justified by the perceived need to protect corporations from weak government structures in developing nations. But in recent years, ISDS has been used to challenge laws and regulations in highly developed countries when an alleged trade violation has occurred;
- The article quotes Lori Wallach of Public Citizen's Global Trade Watch as saying, "*The dirty little secret about [the negotiation] is that it is not mainly about trade, but rather would target for elimination the strongest consumer, health, safety, privacy, environmental and other public interest policies on either side of the Atlantic. The starkest evidence ... is the plan for it to include the infamous investor-state system that empowers individual corporations and investors to skirt domestic courts and laws and drag signatory governments to foreign tribunals.*"
- A recent report from the UN Conference for Trade and Development stated that 62 ISDR cases were initiated in 2012 which is the most ever. In total, by the end of 2012, 244 ISDR cases had been concluded and of those 42% were decided in favor of the State, 31% were resolved in favor of the investor and 27 % were settled;
- Although these statistics suggest that nations are winning more of the ISDR cases, the article points out that the legal costs to the nations can be significant and when a nation loses, the potential fines can be enormous; in 2012, an investor was awarded \$1.77 billion in a dispute with Ecuador.

***A Transatlantic Corporate Bill of Rights: Investor privileges in EU-US trade deal threaten public interest and democracy (Seattle to Brunswick Network, Corporate Europe Observatory and Transnational Institute; October 2013)***

- Written from a European perspective, this 12 page report warns against the dangers of negotiating the TTIP to authorize ISDRs which could be used by US corporations to overturn and undermine EU laws and regulations. The report also points out that this same process can be used by European corporations to subvert US laws;
- Recently, the threat of cases being brought up through ISDRs has often resulted in the back tracking or repeal of important legislation in the fields of environmental protection and public health and safety;

- Recent ISDR cases have involved investor challenges regarding:
  - Green energy policy;
  - Pharmaceutical policy;
  - Anti-smoking legislation;
  - Toxic chemical bans;
  - Environmental restrictions on mining;
  - Health insurance policies; and
  - Economic policy.
- Corporate lobbying groups have worked hard to push for inclusion of ISDR provisions in the TTIP; the US Chamber of Commerce has suggested that inclusion of ISDR in the TTIP should be considered as the “gold standard” for future “investment agreements”;
- Many nations are steering away from the use of ISDRs because they are perceived as contrary to the public interest;
- Inclusion of ISDRs in the TTIP will encourage international energy corporations like Chevron to challenge EU restrictions on the practice of fracking as a means of shale gas development;
- ISDRs are strongly supported by many prominent law firms which have a vested interest in the high legal fees that they receive from corporations in the ISDR process;
- Many public interest and citizen groups are mobilizing to oppose inclusion of ISDR in the TTIP; and
- A number of EU member states are beginning to question why ISDR is needed in the TTIP when both the US and the EU have highly developed and functioning judicial systems.

**Letter to President Obama about treatment of pharmaceutical and medical device pricing in the TPP (numerous public interest organizations; 11/8/13)**

- Fifteen national organizations, including the AARP, Consumers Union and AFSCME, wrote a letter to President Obama on 11/8/13 expressing their grave reservations about USTR proposals for the TPP which will limit the ability of federal and state governments to use programs like Medicare, Medicaid and the Affordable Care Act to effectively moderate increasing costs for prescription drugs and medical devices;
- The letter also expresses concerns about TPP provisions which would bind the US 12 year exclusivity period for brand name biologic drugs; an
- In addition the letter strongly urges that the TPP negotiating process be made much more transparent and points out that the current process excludes health care advocates while allowing access to pharmaceutical corporations.

**This transatlantic trade deal is a full-frontal assault on democracy (George Monbiot, The Guardian, 11/4/13)**

**This EU-US trade deal is no “assault on democracy” (Ken Clarke, The Guardian, 11/11/13)**

These two columns, which appeared in recent issues of The Guardian, provide contrasting perspectives on the desirability of the TTIP.

- In his column arguing against the need for the TTIP, George Monibut makes the following points:
  - The avowed purpose of the TTIP is to remove regulatory trade barriers between Europe and the US;
  - The TTIP will accomplish the removal of regulatory trade barriers through the use of ISDRs which undermine a nation state's sovereignty;
  - Recently ISDRs have been used to sue:
    - Australia for certain tobacco regulations ;
    - Argentina for restrictions on utility bills;
    - El Salvador for certain mining regulations; and
    - Canada for enforcement of certain pharmaceutical patent restrictions;
  - ISDRs can't be used by citizens for protection against corporate excesses;
  - ISDRs have a powerful chilling effect on potential legislation in both the US and the EU; and
  - The TTIP proposes to usurp functional and effective US and EU judicial systems with the imposition of a new "extrajudicial" system in the form of ISDRs.
- In his column responding to the previous piece, Ken Clarke advocates for the TTIP by making the following points:
  - The TTIP is an trade deal of unprecedented scope between the US and the EU which will create a free market for 800 million people living in the US and in the EU with a potential to increase the combined GNP by £180 billion (British pounds);
  - Adoption of the TTIP could reduce or eliminate expensive export tariffs and protect current liberal trading rules used by the British government;
  - The threat of ISDRs is completely overblown and their use can be appropriately regulated and adjusted in the TTIP negotiating process; and
  - The TTIP cannot be accurately described as a boon for large corporations and in fact will tend to favor smaller businesses through the harmonization of industrial and manufacturing standards.

**Letter to USTR and NSA on surveillance in the realm of international trade policy (38 national organizations; 11/12/13)**

- 38 diverse national organizations, including Food & Water Watch, Friends of the Earth U.S., Greenpeace, Public Citizen and U.S. PIRG, sent a letter dated 11/12/13 to the USTR and the National Security Agency (NSA) asking for a full disclosure as to whether the NSA has spied on domestic trade advocacy groups on behalf of the USTR.

**KEI analysis of Wikileaks leak of TPP IPR text, from August 30, 2013 (James Love, <http://keionline.org/node/1825>; 11/13/13)**

- Knowledge Ecology International (KEI) has published the complete copy of the negotiated text regarding the Intellectual Properties (IP) Chapter for the TPP. This document, dated 8/30/13, was leaked to Wikileaks who then passed it on to KEI for publication on their website;
- The IP Chapter is 95 pages in length, contains 296 footnotes and 941 instances of bracketed text with considerable detail on the negotiating positions of the TPP countries;
- In general, the negotiated text has the potential to expand the reach of intellectual property rights by;
  - increasing the duration of patents,
  - making patents easier to obtain;
  - creating the concept of intellectual property rights for data;
  - expanding right holder privileges; and
  - increasing penalties for copyright and patent infringement.
- KEI suggests that the IP chapter is detrimental to efforts to access knowledge, creating access to medicine and for efforts to innovate;
- KEI also maintains that the US appears to have the most anti-consumer and anti-freedom negotiating positions and that other TPP countries are willing to follow the hard-line US position in negotiating the IP chapter of the TPP;
- The KEI blog piece also points out that the TPP is being negotiated in near total secrecy but that nearly 700 corporate advisors have been cleared to review the text and provide advice to the USTR;
- From the KEI perspective, the leaked IP chapter demonstrates that the USTR position will result in *“new global legal norms that would allow foreign governments and private investors to bring legal actions and win huge damages, if TPP member countries does not embrace anti-consumer practices. “*

**WikiLeaks publishes secret draft chapter of Trans-Pacific Partnership ( Alex Hern and Dominic Rushe, The Guardian; 11/13/13)**

- The Guardian’s story on the Wikileaks publication of the leaked IP Chapter of the TPP focuses on the extreme secrecy and lack of transparency used so far to negotiate the TPP;
- Wikileaks founder Julian Assange claims that the leaked IP chapter proves that the US is trying impose a highly restrictive view of intellectual property on the world and stated that *“If you read, write, publish, think, listen, dance, sing or invent; if you farm or consume food; if you're ill now or might one day be ill, the TPP has you in its crosshairs.”*;
- The Guardian article also mentions that a US foreign policy lobbying organization, Just Foreign Policy, has offered Wikileaks a \$70,000 reward for publication of the entire TPP text. The publication of the single leaked IP chapter does not yet meet the criteria for the reward.

**House Stalls Trade Pact Momentum (Annie Lowrey, New York Times, 11/12/13)**

- The Obama administration’s efforts to rush through the congressional approval of the TPP is hitting some significant roadblocks;

- 151 House Democrats (including Maine Representatives Chellie Pingree and Mike Michaud) have signed a letter opposing the administration's Fast Track Authority proposal regarding approval of the TPP;
- In addition, 22 House Republicans have also signed a separate letter to the President indicating similar opposition to the Fast Track proposal, thereby raising the total of House members who oppose Fast Track Authority to 173;
- Lori Wallach of Public Citizen commented, "*This could be the end of T.P.P. All these other countries are like, 'Wait, you have no trade authority and nothing you've promised us means anything? Why would we give you our best deal?' Why would you be making concessions to the emperor who has no clothes?*";
- USTR Michael Froman continues to defend and promote the effort to have Fast Track approved by Congress before the end of the year. Ambassador Froman maintains that Fast Track represents an opportunity for Congress to codify an approach for negotiation of trade agreements like the TPP and that the TPP is important as a "*longstanding tool for shaping U.S. trade policy on behalf of the American people.*"; and
- Many members of Congress are concerned about issues surrounding food safety, intellectual property, privacy and the continued health of the US automobile industry. In addition, there is great concern among members of Congress regarding the level of secrecy that has been used by the administration to negotiate the TPP.

