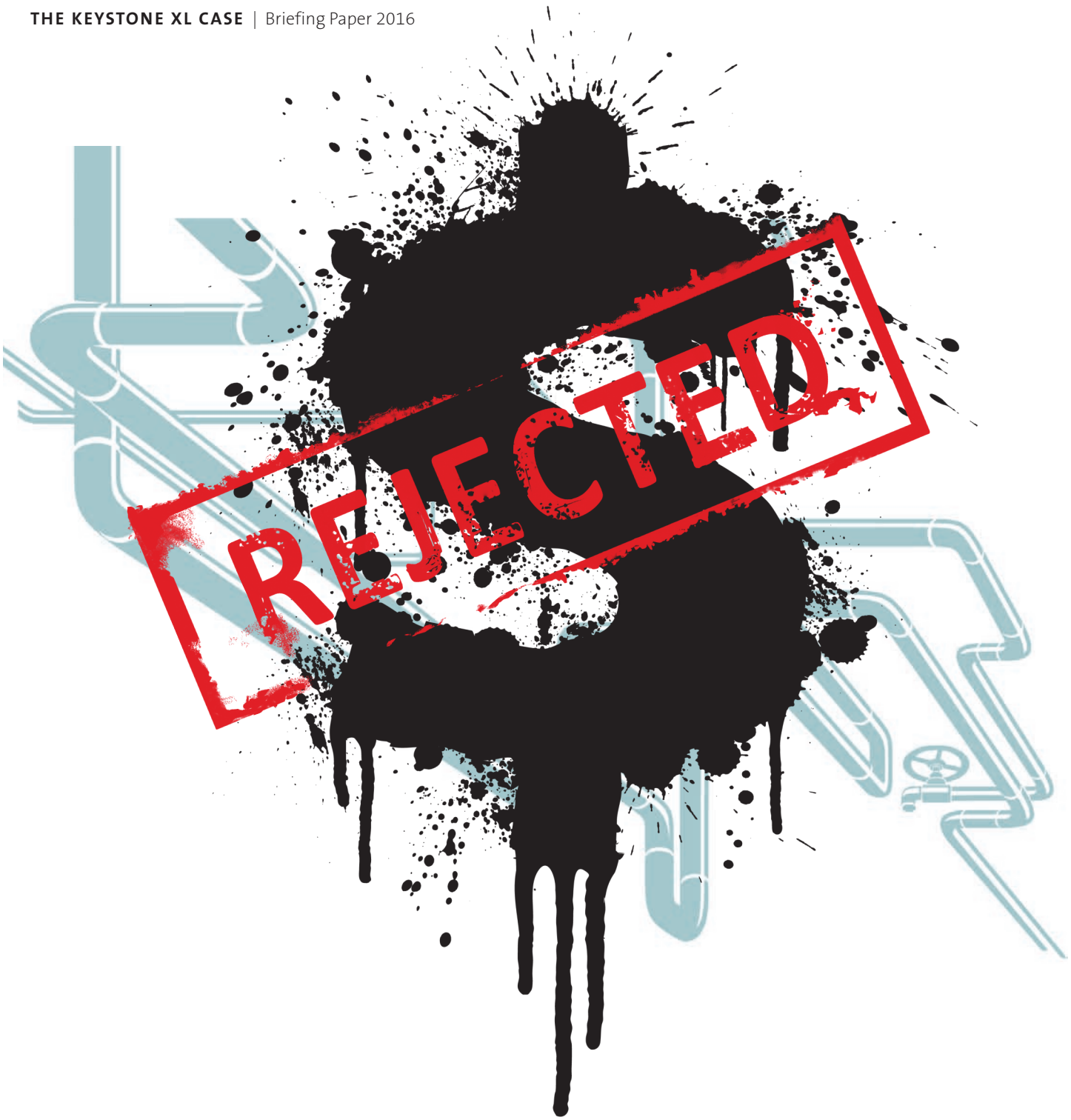
OIL CORPORATIONS VS CLIMATE

HOW INVESTORS USE TRADE AGREEMENTS TO UNDERMINE CLIMATE ACTION

THE KEYSTONE XL CASE | Briefing Paper 2016



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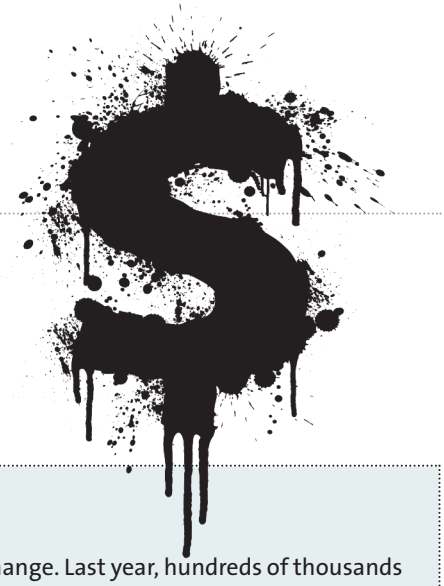


INTRODUCTION

Countries around the world have reached a critical moment in the fight against climate change. Last year, hundreds of thousands of people marched in the streets demanding climate action, more than 190 countries reached a climate agreement in Paris, and renewable energy became more affordable and accessible to communities across the globe. Meanwhile, in sharp contradiction to that, countries negotiated new trade deals that would empower fossil fuel corporations to undermine the exact climate and conservation policies that are needed to tackle the climate crisis.

In January, the Canadian company TransCanada announced its plan to sue the U.S. government for more than US$15 billion under the North American Free Trade Agreement (NAFTA). The company claimed that it deserved this amount as compensation for the Obama Administration's rejection of the Keystone XL pipeline: one of the world's most notorious and reviled proposed fossil fuel projects, which the Obama Administration rejected amidst widespread concerns of its threat to communities, the environment, and a stable climate. If the environmental community needed a reminder of how trade policies threaten climate progress, it had arrived.

Rather than learning lessons from trade agreements like NAFTA, governments in the United States, the European Union, Canada, and many other countries are now pushing for even more trade and investment agreements that would expand the very tool that TransCanada is using to challenge the rejection of the Keystone KL pipeline: the investor-state dispute settlement (ISDS) system which empowers corporations to sue governments for up to billions of dollars in private trade tribunals.

Corporations have already brought nearly 700 ISDS cases against more than 100 governments.[1] Yet governments are seeking to expand these corporate privileges to tens of thousands of additional corporations, including major polluters, in the 12-nation Trans-Pacific Partnership (TPP), the U.S-EU Transatlantic Trade and Investment Partnership (TTIP), and the EU-Canada Comprehensive Economic and Trade Agreement (CETA).

In order to tackle the climate crisis, the U.S., EU, Canada and other countries need to reject "VIP" treatment for corporations and say no to any trade agreement that includes special rights for foreign investors. Doing so is critical in the fight to protect our communities, our democracy, and our climate.

Authors: Courtenay Lewis, Colin Roche, Natacha Cingotti. **For more information visit:** www.foeeurope.org | www.sierraclub.org | www.transportenvironment.org | www.canadians.org **Design:** www.onehemisphere.se **Cover images:** © D. Colja, A. Baidin, jointstar/Shutterstock.

KEYSTONE XL REJECTION: A HISTORIC VICTORY

The campaign to prevent the construction of the Keystone XL pipeline was a major environmental victory. What began as a fight by local communities to oppose the project grew into an international movement. Ultimately these efforts led the Obama Administration to reject the project in November 2015, in a decision widely celebrated by environmental advocates in the U.S. and worldwide.[2]

Originally proposed in 2008, the Keystone XL pipeline would have carried 830,000 barrels per day of tar sands crude from Alberta, Canada across North America to the Gulf Coast of the U.S., where it would be refined and mostly shipped to markets overseas.[3] In 2012 the Obama Administration approved the southern leg of this pipeline despite fierce opposition from local groups concerned with its threats to their land and water.[4] The northern leg, however, was particularly controversial because it would have expanded oil companies' capacity to export Canada's tar sands, one of the dirtiest sources of fuel on the planet.[5] This would have both increased greenhouse gas emissions from highly-emitting fossil fuels that climate experts say need to stay in the ground, and threatened communities living near tar sands projects and pipelines.

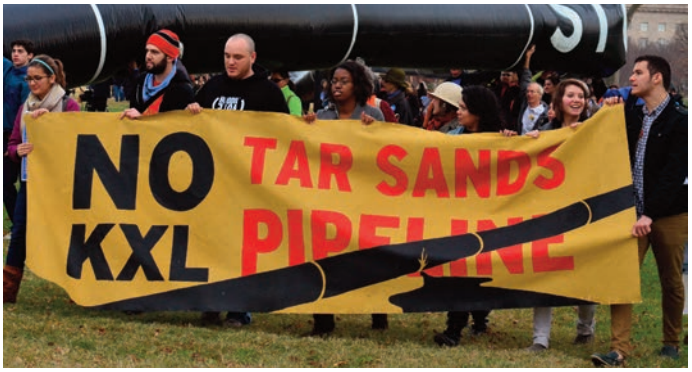
In the fight against Keystone XL, Indigenous leaders, farmers, and ranchers in the path of the project stressed that a spill from the pipeline would threaten their lands and livelihoods, citing examples like the 2010 Enbridge tar sands spill which poured more than 840,000 gallons of tar sands crude oil into Michigan's Talmadge Creek and Kalamazoo River.[6] Environmental health experts demonstrated that tar sands development in Alberta has devastated the land and water of First Nations communities, released toxic chemicals that poisoned and sickened these communities,[7] and threatened local species of fish and wildlife.[8] Environmental justice experts warned that increased tar sands development from projects like Keystone XL would exacerbate the contamination of already-polluted refining communities in the Gulf, because of tar sands' particularly toxic chemical properties.[9]

Communities and climate experts also stressed major concerns with the climate implications of Keystone XL. Climate scientists, economists, and Nobel Laureates detailed the project's risks to a stable climate.[10] The State Department's own analysis found that Keystone XL would have led to the equivalent of up to 168 million metric tons of carbon dioxide being emitted into the atmosphere every year.[11] Over its projected 50-year lifetime it would have generated up to 8.4 billion metric tons of greenhouse gas emissions,[12] an amount greater than the total annual greenhouse gas emissions of the U.S.[13] For years, Keystone XL's significant threats led people around the U.S. and the world to call on the Obama Administration to reject the pipeline through marches and protests, letters, and analyses. Finally, on November 6, 2015, President Obama announced the rejection of the project, highlighting that global leadership in tackling climate change meant fossil fuels cannot be rampantly developed without constraints.[14] In making this decision, the Obama Administration listened to communities that stressed its threats to their livelihoods, air, water, and climate, and determined that it was not in the interests of the public.

TRANSCANADA'S REVENGE

Frustrated by the rejection of its project, TransCanada decided to retaliate using special rights for foreign corporations that exist in the North American Free Trade Agreement (NAFTA).

On January 6, 2016, TransCanada announced its notice of intent to launch an ISDS case against the U.S. over the delay and ultimate rejection of the Keystone XL pipeline.[15] The company declared that it would seek more than US$15 billion in compensation for alleged costs that it had incurred and "expected revenues" that it claimed it would have earned from the pipeline (hypothetical 'expected' profits are often demanded in ISDS cases). TransCanada has reportedly invested US$3.1 billion[16] in the project and but is demanding five times this amount from the U.S. public. Under NAFTA rules, TransCanada will be able to follow this notice by launching its case as early as May 2016.



Keystone XL Rally, 2012.
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FOOTNOTES:

1 http://investmentpolicyhub.unctad.org/News/Hub/Home/458
2 www.newsweek.com/read-full-transcript-president-obamas-speech-rejecting-keystone-xl-pipeline-391609
3 http://priceofoil.org/2014/11/20/fact-checking-keystone-xl-exports/
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5 Fail: How the Keystone XL Pipeline Flunks the Climate Test. Sierra Club, 2013. Available at https://content.sierraclub.org/beyondoil/sites/content.sierraclub.org.beyondoil/files/documents/kxl-climate-report.pdf
6 All risk no reward, the Alberta Clipper Tarsands Pipeline expansion, Courtenay Lewis, Sierra Club. https://content.sierraclub.org/beyondoil/sites/content.sierraclub.org.beyondoil/files/albertaclipperreport.pdf
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8 Canadian Aboriginal Concerns With Oil Sands, Danielle Droitsch and Terra Simieritsch Pembina Institute 2010 Available at: www.pembina.org/reports/briefingnoteosfntoursep10.pdf
9 Public Comment on Keystone XL, Dr. Earthea Nance, Texas Southern University, 2014.
10 *'Jimmy Carter comes out against Keystone XL pipeline'*, Washington Post, April 16, 2014 www.washingtonpost.com/news/post-politics/wp/2014/04/16/jimmy-carter-comes-out-against-keystone-xl-pipeline/
11 Final Supplemental Environmental Impact Statement for the Keystone XL Project, Executive Summary United States Department of State Bureau of Oceans and International Environmental and Scientific Affairs, January 2014, p. 15 Available at: http://keystonepipeline-xl.state.gov/documents/organization/221135.pdf
12 Secretary Kerry and President Obama Have Strong Basis to Find the Proposed Keystone XLTar Sands Pipeline Is Not in the National Interest Available at: http://switchboard.nrdc.org/blogs/aswift/Keystone%20XL%20NID%20Backgrounder%20(Final%203-27-14).pdf
13 Climate Change Indicators in the United States, United States Environmental Protection Agency. Available at: www3.epa.gov/climatechange/science/indicators/ghg/us-ghg-emissions.html
14 www.whitehouse.gov/the-press-office/2015/11/06/statement-president-keystone-xl-pipeline
15 ransCanada Corporation & TransCanada PipeLines Limited v. The Government of the United States of America, Notice of Intent, January 6, 2016, at paras. 10 and 50, www.italaw.com/sites/default/files/case-documents/ITA%20LAW%207030.pdf
16 ransCanada Fights Keystone Denial With $15 Billion Appeal , Bloomberg, January 6 2016, Available at: www.bloomberg.com/news/articles/2016-01-06/transcanada-files-suit-over-keystone-xl-will-take-writedown

THE TRANSCANADA CASE

ISDS
INVESTOR-STATE DISPUTE SETTLEMENT

Investorstate dispute settlement (ISDS) provisions are included in the new wave of trade deals involving the EU, Canada and the United States – the most prominent being the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), and the Comprehensive Economic and Trade Agreement (CETA).

While the exact form and structure of the ISDS proposals might differ slightly from one agreement to the other, they all give foreign investors extremely broad rights and empower them to ask arbitration tribunals not accountable to any domestic legal system to order host governments to pay financial compensation for regulations and laws that they think get in the way of those rights.

ISDS is a system that provides foreign investors with VIP treatment over the rest of society. Unlike domestic investors, foreign investors can bypass the national legal system and bring their claims straight to tribunals staffed by corporate lawyers with a financial interest in keeping the system alive (since they are paid for each case).

ISDS is a one-way street. Foreign investors are granted rights without any obligation, such as respect for environmental, social, health and safety or other standards. Citizens abused by the activities of fossil fuel corporations, mining companies, banks, food multinationals or chemical producers do not have access to the same rights in cases where multinational companies are responsible for human rights violations or environmental degradation.

Finally, ISDS is dangerous because the mere threat of potential claims can have a chilling effect on governments that are keen to enact ambitious public interest regulations – because of the potential burden of future claims on public budgets.

Tar Sands, Alberta.
© Dru Oja Jay, Dominion

In its notice of intent, TransCanada claimed that the U.S. violated four foreign investor rights under NAFTA, listed below.[17] If an ISDS tribunal agrees with TransCanada on any one of these claims, it could order the U.S. to pay compensation to the company:

- Minimum Standard of Treatment (MST): TransCanada claims that the U.S. violated its right to the vague "minimum standard of treatment" promised to companies in NAFTA and other trade agreements (including the TPP, CETA and, likely, TTIP), arguing that the U.S. led the company to develop "reasonable expectations" that the Obama Administration would approve the pipeline, only to ultimately reject it.
- Protection against Indirect Expropriation: TransCanada alleges that the U.S. "substantially deprived" the company of its investment in the project.
- National Treatment: The company indicates that the U.S. has treated American pipeline companies better than TransCanada.
- Most-Favoured Nation Treatment: The company also implies that the U.S has treated other international pipeline companies better than TransCanada.

It is not surprising that TransCanada has relied on the MST argument. Alleged MST violations have been the source of three out of four investor wins in ISDS cases under U.S. trade and investment agreements.[18] ISDS tribunals have often decided that governments violated companies' broad and vague MST "rights" when a government has implemented policies such as environmental safeguards that a company portrays as "arbitrary," or that modify a regulatory environment on which a company "reasonably relied" when it began investing.[19]

In arguing that the U.S. denied it a "minimum standard of treatment," TransCanada specifically points to widespread U.S. public opposition to the pipeline project as evidence that the Obama Administration's rejection of the pipeline was "arbitrary" and thwarted its "expectations." The company states that, whereas in 2010 the State Department was "inclined" to approve the project, subsequently "politicians and environmental activists...continued to assert that the pipeline would have dire environmental consequences" which ultimately led the Obama Administration to reject it for "symbolic reasons, not because of the merits."[20] This is in spite of the fact that the State Department estimated that, over its lifetime, Keystone XL would have enabled the release of more

FOOTNOTES:

17 TransCanada Corporation & TransCanada PipeLines Limited v. The Government of the United States of America, Notice of Intent, January 6, 2016, at paras. 10 and 50, www.italaw.com/sites/default/files/case-documents/ITA%20LAW%207030.pdf
18 Lori Wallach, "'Fair and Equitable Treatment' and Investors' Reasonable Expectations: Rulings in U.S. FTAs & BITs Demonstrate FET Definition Must be Narrowed," Public Citizen, September 5, 2012
19 See, for example, William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Government of Canada, UNCITRAL, PCA Case No. 2009-04, Award on Jurisdiction and Liability, March 17, 2015, at para. 445. Available at: www.italaw.com/sites/default/files/case-documents/italaw4212.pdf
20 TransCanada Corporation & TransCanada PipeLines Limited v. The Government of the United States of America, Notice of Intent, January 6, 2016, at paras. 3, 11-12. Available at: www.italaw.com/sites/default/files/case-documents/ITA%20LAW%207030.pdf

DIFFERENT AGREEMENTS, THE SAME FLAWS

greenhouse gas emissions than the U.S.'s total greenhouse gas emissions in a year.[21] In fact, ISDS rules allowed TransCanada to demand billions of dollars for a project that the Obama Administration rejected because they deemed that its threats to the environment and communities were not in the national interest.

TransCanada's MST claim demonstrates that under today's trade and investment rules, governments cannot change policies in response to the public's environmental, social, health and other concerns without the risk of paying companies billions of dollars in compensation. This not only challenges a central pillar of democracy, whereby constituents move their leaders to adopt better policies, but also strongly undermines governments' ability to create critical safeguards for the public and the environment.

At the time of this report's publication, TransCanada has only announced its intent to bring an ISDS case against the U.S. However, the confidence with which the company has threatened to challenge one of the most high-profile environmental victories in recent years indicates that corporations, including fossil fuel firms, are increasingly emboldened by ISDS victories.[22] **Half of the new ISDS cases launched in 2014 targeted policies affecting oil and gas extraction, mining, or power generation.**[23] Instead of reducing the growing ISDS threat to our environmental protections, CETA, TPP and TTIP would empower thousands of additional corporations to use unaccountable ISDS tribunals to challenge such public interest policies around the world.

TRANS-PACIFIC PARTNERSHIP

ISDS provisions proposed in the TPP would replicate much of the ISDS language found in past U.S. trade and investment agreements, such as NAFTA. Under these agreements, tribunals have already ordered more than $3 billion[24] in compensation to investors attacking land use rules; water, energy and timber policies; health, safety and environmental protections; financial stability policies and more. Under NAFTA, foreign investors have launched ISDS claims against Canada alone at least 39 times.[25,26,27] If the TPP were to take effect, its investment chapter would expose TPP countries to an unprecedented increase in risk. For example, it would empower more than 9,000 foreign-owned firms from Japan, Australia and other TPP nations operating in the U.S. to challenge U.S. climate, environmental, and other public interest policies. That would double the ISDS liability facing U.S. policies and taxpayers.

TRANSATLANTIC TRADE AND INVESTMENT PARTNERSHIP

In the TTIP negotiations, the EU and the U.S. are preparing to massively extend the reach of investor privileges. In particular, the proposed agreement would give a major boost to companies eager to sue European governments. Currently just eight per cent of US firms operating in the EU are covered by ISDS (through bilateral treaties). €30 billion is known to have been claimed from EU member states through ISDS.[28] The inclusion of ISDS in TTIP would mean that more than 77,000 firms owned by U.S. and EU corporations[29] would gain new foreign investor privileges, empowering their parent corporations to demand compensation from EU and U.S. taxpayers over public interest policies.

In the face of a massive outcry from consumer groups, environmental organisations and trade unions, the European Commission has put forward a proposal for an "Investment Court System" that TTIP proponents claim addresses these concerns[30, 31] (see box).

However, this highly-flawed proposal ignores the elephant in the room: ISDS is not needed. The EU and the U.S. are each other's main trading partners, with high investment flows and strong court systems already in place on both sides of the Atlantic to ensure investor protection. Furthermore, the proposal for an "Investment Court System" ignores the outcome of the EU's own public consultation on the inclusion of special investors' rights in a future TTIP. Based on the proposed investment chapter for the EU-Canada trade agreement (CETA), an overwhelming 97 percent of surveyed respondents rejected ISDS completely.[32]

FOOTNOTES:

21 Secretary Kerry and President Obama Have Strong Basis to Find the Proposed Keystone XLTar Sands Pipeline Is Not in the National Interest Available at: http://switchboard.nrdc.org/blogs/aswift/Keystone%20XL%20NID%20Backgrounder%20(Final%203-27-14).pdf
22 Record Number of Investor-State Arbitrations Filed in 2015, February 2, 2106. Available at: http://investmentpolicyhub.unctad.org/News/Hub/Home/458
23 Investor-State Dispute Settlement: Review of Developments in 2014, May, 2015, para. 3. Available at: http://unctad.org/en/PublicationsLibrary/webdiaepcb2015d2_en.pdf,
24 Effects of Investment Treaties in the Global South, Council on Foreign Relations International Institutions & Global Governance Program and Civil Society, Markets and Democracy Initiative, April 2013. Available at: www.google.be/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0ahUKEwigo6TNsO_KAhVGCBoKHcCEBYMQFggbMAA&url=http%3A%2F%2Fwww.cfr.org%2Fcontent%2Fpublications%2Fattachments%2FMeeting_Presentation_Effects_of_Investment_Treaties_in_the_Global_South_4-23-13.pdf&usg=AFQjCNG9zisM1kpbde6JK43YCkXSeL2Nuw&bvm=bv.113943164,d.d2s&cad=rja
25 Table of Foreign Investor-State Cases and Claims Under NAFTA and other U.S. trade deals, June 2015. Available at: www.citizen.org/documents/investor-state-chart.pdf
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DIFFERENT AGREEMENTS, THE SAME FLAWS - CONTINUED

EU PROPOSAL FOR INVESTMENT COURT SYSTEM (ICS) IN TTIP REMAINS ISDS IN DISGUISE

Some of the major flaws[33] of the proposal can be summarised as follows:

- It still empowers foreign investors to bypass domestic courts and go to tribunals not accountable to any domestic legal system.
- This is not a court; it is still arbitration. Judges do not have a fixed tenure, with a fixed salary. They would be paid for each case, so would have a financial incentive to rule in favour of investors to attract more claims.
- Arbitrators are not independent "judges" as the Commission claims they are. These arbitrators would only need to be legally *qualified* to be a judge, or be jurists of recognised competence. Current private ISDS arbitrators would be able to be appointed as "judges" in the proposed Investment "Court."
- It maintains far-reaching rights for foreign investors, such as the possibility to claim that a new public interest policy that frustrated a company's "legitimate expectations" violates its right to "fair and equitable treatment" or, by reducing the value of its investment, constitutes an "indirect expropriation."
- It fails to protect the right to regulate. The weak wording leaves it up to arbitrators to interpret which governmental measures are "necessary" to achieve "legitimate" objectives.
- It keeps the potential for regulatory chill fully alive, by maintaining investors' right to claim large sums of public money when new regulations get in the way of their broad rights.
- It retains "VIP" treatment for foreign investors without obligations, such as compliance with environmental, social, health and safety or other regulatory standards.
- It grants no rights to the public or those abused by investors.

In two recent breakthrough statements, both the European Association of Judges[34] and Germany's largest association of judges and public prosecutors[35] criticised the European proposal for an "Investment Court System". In particular, the judges highlighted the fact that the ICS fails to meet international and European requirements for the independence of judges and they questioned the competence of the EU to establish such a court in the first place.

Due to the secrecy surrounding the TTIP negotiations, the official U.S. response to the European Commission proposal for ISDS in TTIP remains, at the time of writing this brief, hidden from the public. It is expected that civil society watchdogs will have to rely mostly on leaks in order to assess the evolution of the proposal in the future. In any case, an inclusion of ISDS – whatever name it takes - in a future EU-U.S. treaty would dramatically expand the scope of foreign investors' privileges.

THE EU CANADA COMPREHENSIVE ECONOMIC AND TRADE AGREEMENT (CETA)

Meanwhile, many U.S. firms with corporations in Canada may seek to bypass any 'reforms' in TTIP by simply using the ISDS mechanism currently on the table in the CETA agreement.

Civil society groups have already warned that the ISDS provisions included in CETA fail to address the fundamental flaws of the mechanism. Despite the European Commission hype, the CETA ISDS will not prevent highly controversial claims from happening again.

In addition, European Trade Commissioner, Cecilia Malmström, has indicated that the reforms proposed in relation to TTIP will not apply to CETA. This means that U.S. and European firms would continue to be able to use Canada as the base from which to attack protections in Europe for people and the environment. For example, about four out of every five U.S. companies operating in Europe could easily gain access to ISDS in CETA as a result of already having Canadian subsidiaries.[36]

And, since the "Investment Court System" keeps ISDS fully alive, even if it were to be included in CETA, it would not make the EU-Canada agreement more acceptable; CETA should be opposed at all costs.

FOOTNOTES:

33 Investment court system, ISDS in disguise: 10 reasons why the EU's proposal doesn't fix a flawed system, February 17, 2016. Available at: www.foeeurope.org/investment-court-system-ISDS-disguise-170216

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36 hen of Thousands of US Firms Would Obtain New Powers to Launch Investor-State Attacks Against European Policies Via CETA and TTIP, Public Citizen. Available at: http://citizen.org/documents/EU-ISDS-liability.pdf

CASE STUDY:
CANADA, ONE OF THE MOST SUED COUNTRIES IN THE DEVELOPED WORLD[37]

Canada has experienced many of the types of ISDS cases that could vastly multiply across the world though the passage of TPP, TTIP and CETA.

NAFTA, the free trade deal between Canada, the USA and Mexico that came into effect in 1994, was the first trade deal among developed countries to include an investor-state provision.

As a result of NAFTA, Canada now has faced more ISDS challenges than any other developed country in the world. Canada has been sued under ISDS more times than either the U.S. or Mexico. Of the 84[38, 39, 40] known NAFTA investor-state claims, 39 have been against Canada, 22 have targeted Mexico and 23 have targeted the U.S.

The Canadian Centre for Policy Alternatives reports that **almost two-thirds of claims against Canada involved challenges to environmental protection or resources management** that allegedly interfered with the foreign investor privileges of American corporations.

Cases include:

- **Lone Pine**, a Canadian energy company, is suing the Canadian government through its American affiliate for US$118.9 million (approximately €107.1 million)[41] because the province of Quebec introduced a temporary moratorium on oil and gas fracking under the St. Lawrence River. This challenge is even more concerning because it involves a domestic company using a foreign subsidiary to sue its own government.
- **Ethyl**, a U.S. chemical corporation, challenged a Canadian ban on imports of its gasoline that contained MMT, an additive that is a suspected neurotoxin. In a settlement, the Canadian government repealed the ban and paid the company US$13 million (approximately €10.2 million).
- **Bilcon** of Delaware is demanding US$300 million (approximately €270 million) in damages from the Canadian government after winning a NAFTA challenge when its plan to build a quarry and marine terminal was rejected by an environmental assessment panel. The project, located in an environmentally sensitive area of Nova Scotia, was rejected by the local community, in part due to its threats to endangered species.
- Chemical giant **Dow AgroSciences** used NAFTA to force the province of Quebec, after it banned 2,4-D,[42] a pesticide that many studies say has been linked to cancer and cell damage, to publicly acknowledge that the chemical does not pose an "unacceptable risk" to human health or the environment provided that the instructions on the label are followed.

These and other examples show that trade and investment agreements give transnational corporations incredible rights to impose their will on governments. But they are probably just the tip of the iceberg, because many new laws or changes to laws never come to light because of the "chilling effect" of governments avoiding certain public interest policies to avoid costly ISDS cases.

Tar Sands, Alberta.
© National Wildlife Federation

FOOTNOTES:

37 From Fighting CETA, TTIP and ISDS: Lessons from Canada, Maude Barlow, National Chairperson, Council of Canadians, October 2015. Available at: http://canadians.org/sites/default/files/publications/report-ceta-ttip-isds-1015.pdf
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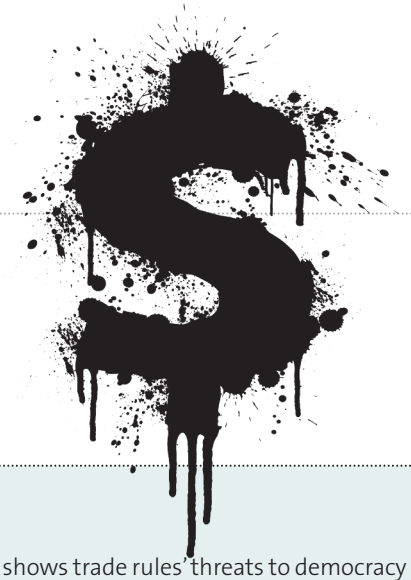
HOW INVESTORS USE TRADE AGREEMENTS TO UNDERMINE CLIMATE ACTION

THE KEYSTONE XL CASE | Briefing Paper 2016



TIME TO END SPECIAL PRIVILEGES FOR INVESTORS

TransCanada's case challenging the Obama Administration's decision to block Keystone XL shows trade rules' threats to democracy and the climate by giving foreign investors special rights (through ISDS). Even while negotiating the recent Paris Climate Agreement, the U.S., Canada and the EU have aggressively pursued the expansion of these investor rights with little consideration for their impact on the ability of governments to meet their climate commitments. The EU has even sought, contrary to the wishes of the European Parliament, for trade issues to be excluded from climate talks.[43] As long as special rights for corporate investors remain an element of trade agreements, trade agreements will continue to prioritize short-term corporate interests over the public good including policies that would help tackle the climate crisis.

Canada, the U.S. and the EU and its member states should:

- Refrain from including special, overreaching rights for foreign investors, including the ISDS or ICS mechanisms, in any new trade or investment agreements such as TTIP, TPP and CETA;
- Remove ISDS and overreaching foreign investor rights from all existing trade and investment agreements;
- Stop the passage of harmful trade agreements and redraw trade policy to prioritize and ensure the protection of human rights and the environment. This should include ensuring that challenges cannot be brought against climate change policies under trade and investment agreements.

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