



The TTIP trade deal will throw equality before the law on the corporate bonfire

The Transatlantic Trade and Investment Partnership is a reckless destruction of democratic principles. But we can beat it



A protest against the planned TTIP free trade agreement in Brussels last month. 'Public understanding is lethal to this attempted corporate coup,' Photograph: Jonas Sch LI/ Jonas Sch II/dpa/Corbis

If a government proposes to abandon one of the fundamental principles of justice, there had better be a powerful reason. Equality before the law is not ditched lightly. Surely? Well, read this and judge for yourself. The UK government, like that of the US and 13 other EU members, wants to set up a separate judicial system, exclusively for the use of corporations. While the rest of us must take our chances in the courts, corporations across the EU and US will be allowed to sue governments before a tribunal of corporate lawyers. They will be able to challenge the laws they don't like, and seek massive compensation if these are deemed to affect their *"future anticipated profits"*.

I'm talking about the proposed **Transatlantic Trade and Investment Partnership** (TTIP) and its provisions for *"investor-state dispute settlement"*. If this sounds incomprehensible, that's mission accomplished: public understanding is lethal to this attempted corporate coup.

The TTIP is widely described as a trade agreement. But while in the past trade agreements sought to address protectionism, now they seek to address protection. In other words, once they promoted free trade by removing trade taxes (tariffs); now they promote the interests of transnational capital by downgrading the defence of human health, the natural world, labour rights, and the poor and vulnerable from predatory corporate practices.

The proposed treaty has been described by the eminent professor of governance Colin Crouch as *"post-democracy in its purest form"*. Post-democracy refers to our neutron-bomb politics, in which the old structures, such as elections and parliaments, remain standing, but are uninhabited by political power. Power has shifted to other forums, unamenable to public challenge: "small, private circles where political elites do deals with corporate lobbies".

Investor-state dispute settlement – ISDS – means allowing corporations to sue governments over laws that might affect their profits. The tobacco company **Philip Morris is currently suing Australia and Uruguay**, under similar treaties, for their attempts to discourage smoking. It describes the UK's proposed rules on plain packaging as *"unlawful"*: if TTIP goes ahead, expect a challenge.

Corporations can use the courts to defend their interests. But under current treaties, ISDS lets them apply instead to offshore tribunals operating in secret, without such basic safeguards as judicial review and rights of appeal. As Crouch notes, this is not just post-democracy, but “post-law”.

Tomorrow the TTIP is debated in the House of Commons. Next month negotiations resume between the US and EU. So you’d have imagined that our government might, by now, have sought to justify it. There is only one possible justification for a separate judicial system: a failure by existing courts to fairly arbitrate businesses’ legal claims. So which judicial systems in the US or EU treat corporations unfairly?

I have asked this question (via Twitter) to the business secretary, Vince Cable; his deputy, Lord Livingston; and the Conservative leader in the European parliament, Syed Kamall. Resounding silence. I have asked it in this column, three times. Nothing. I have asked the business department by phone. After an attempt by its spokesman to suggest that there could be something wrong with the US system, and a subsequent failure to explain what this might be; he sent me this statement:

“Investor protection is needed as domestic courts are not the typical route for investors to seek redress.” Not the typical route? That’s it?

In the House of Commons, the MP **Zac Goldsmith asked the business minister** to name the occasions in the past five years in which companies in the EU or US have been discriminated against in courts across the Atlantic. Answer: the government “does not have access to relevant information”.

The European commission argues that

“the main reason for having an ISDS mechanism is because in many countries investment agreements are not directly enforceable in domestic courts”.

Perhaps. But none of those countries are in the proposed trading bloc. A condition of EU membership is “an independent and efficient judiciary” with “legal guarantees for fair trial procedures”. What is a provision designed to protect investors in failed states doing in a treaty between the EU and the US?

David Cameron has attempted a different argument. At the G20 summit last year he said:

“We’ve signed trade deal after trade deal and there has never been a problem in the past.”

It’s the dangerous driver’s defence: I’ve done 100mph loads of times, and I’m still alive, aren’t I?

Yes, we’ve been lucky so far; luckier than other nations in Europe, which so far have been sued 127 times under investor-state clauses in other treaties. The Czech Republic, Slovakia and Poland have had to pay out enough money to have **employed 380,000 nurses for a year**. Investor-state cases are **escalating rapidly**: as corporations begin to understand the power they’ve been granted, they will turn their attention from the weak nations to the strong ones.

No one will provide a justification because no one can. To protect transnational capital from a non-existent risk, our governments are recklessly abandoning the principle of equality before the law.

I believe we can win this. We’ve won it before, when the treaty they now call TTIP was the **Multilateral Agreement on Investment**. After a massive public response it was defeated in 1998. Now they are trying again, with a different name.

Already **two petitions** have gathered 2.5m signatures between them. In response, the EU has frantically been making concessions. For the first time in its history, it has **made its negotiating positions public**. It has launched a **consultation on investor-state dispute settlement** (though still, after six months, not published the results); promised protections for public services; and proposed to improve the offshore arbitration system – while still failing to explain what’s wrong with the courts we already possess. These are desperate concessions from an organisation that knows the window is closing: if it can’t secure an agreement before the next US election, TTIP is probably finished.

So keep marching, keep signing, keep joining the campaigns that have come together under the **Stop TTIP banner**. In an age of ecocide, food banks and financial collapse, do we need more protection from predatory corporate practices, or less? This is a reckless, unjustified destruction of our rights. We can defeat it.

➤ A fully referenced version of this article can be found at **Monbiot.com**