

Free Trade Agreements: The Bypassing of Democracy to Institute Economic Plunder

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The EU is currently negotiating a far-reaching free trade agreement with the US, the Transatlantic Trade and Investment Partnership (TTIP). There are plans to enshrine extra powers for corporations in the deal as a result of a strong and persistent campaign by industry lobby groups and unscrupulous law firms to allow powerful corporations to challenge regulations both at home and abroad if they affect profits.

The watchdog organization Corporate Europe Observatory (CEO) states that EU member states could find domestic laws to protect the public interest quite useless as they become challenged in secretive, offshore tribunals where national laws have no weight and politicians no powers to intervene.

It would enable US companies investing in Europe to bypass European courts and challenge EU governments at international tribunals whenever they find that laws in the area of public health, environmental or social protection interfere with their profits. EU companies investing abroad would have the same privilege in the US. This proposed agreement (and others like it around the world) is essentially a charter for the systematic destruction and dismantling of legislation that exists to protect the hard won rights of workers and ordinary people.

Across the world, big business has already used such investor-state dispute settlement provisions in trade and investment agreements to claim massive sums in compensation. It is often the case that the mere threat of a claim or its submission is enough for legislation to be shelved or diluted. In fact, tribunals, consisting of ad hoc three-member panels hired from a small club of private lawyers riddled with conflicts of interest, have granted billions of Euros to companies, courtesy of taxpayers.

With India and the EU, among others, also currently negotiating a free trade agreement, it all adds up to big companies trying to by-pass legislation that was implemented to safeguard the public's rights. Kavaljit Singh of the Madhyam research institute in India argues that we could see the Indian government being sued by multinational companies for billions of dollars in private arbitration panels outside of Indian courts if national laws, policies, court decisions or other actions are perceived to interfere with their investments. It constitutes little more than an old-fashioned recipe for imperialist plunder by Western interests (1).

Singh's concerns should be dismissed at our peril because CEO provides

many examples of where and when the by-passing of national legislation has already happened. Through bilateral investment treaties, US tobacco giant Philip Morris is suing Uruguay and Australia over their anti-smoking laws. The company argues that warning labels on cigarette packs and plain packaging prevent it from effectively displaying its trademark, causing a substantial loss of market share.

And then there is the case of Swedish energy giant Vattenfall, which launched an investor-state lawsuit against Germany, seeking €3.7 billion in compensation for lost profits related to two of its nuclear power plants. The case followed the German government's decision to phase out nuclear energy after the Fukushima nuclear disaster.

When Argentina froze utility rates (energy, water, etc.) and devalued its currency in response to its 2001-2002 financial crisis, it was hit by over 40 lawsuits from companies like CMS Energy (US) and Suez and Vivendi (France). By the end of 2008, awards against the country had totalled US\$1.15 billion.

On the basis of the North American Free Trade Agreement (NAFTA) between the US, Canada and Mexico, US company Lone Pine Resources Inc. is demanding US\$250 million in compensation from Canada. The 'crime': The Canadian province of Quebec had put a moratorium on 'fracking', addressing concerns about the environmental risks of this new technology to extract oil and gas from rocks.

At the end of 2012, Dutch insurer Achmea (formerly Eureko) was awarded €22 million in compensation from Slovakia. In 2006, the Slovak government had reversed the health privatisation policies of the previous administration and required health insurers to operate on a not-for-profit basis.

It is also interesting to note that Chevron initiated arbitration to avoid paying US\$18 billion to clean up oil-drilling-related contamination in the Amazonian rainforest, as ordered by Ecuadorian courts. The case has been lambasted as egregious misuse of investment arbitration to evade justice.

EU and US companies have used these lawsuits to destroy any competition or threats to their profits by challenging green energy and medicine policies, anti-smoking legislation, bans on harmful chemicals, environmental restrictions on mining, health insurance policies, measures to improve the economic situation of minorities and many more.

Various corporate lobby heavyweights all advocate the inclusion of investor-state arbitration in the EU-US free trade agreement. This is also part of a hope that an EU-US deal would set a global 'gold standard', a model for investment protection for other agreements around the world.

If governments and parliaments fail to act to protect the public's interests, powerful corporations will acquire carte blanche to rein in democracy and curb policies devised for the public good. Before long, countries across the globe could see the opening of the floodgates for GMOs and shale gas, the threatening of digital and labour rights and the empowering of corporations to legally challenge a wide range of necessary and decent regulations which they dislike and label as 'barriers to trade'.

This represents a clear attack on national sovereignty and democracy and is a damning indictment of the cosy and often 'revolving-door' nature of relationships between corporate officials/lobbyists and bureaucrats/government officials. If successful, such free trade agreements would cement corporate ability to raid taxpayers' coffers even further or to wholly dictate national policies and legislation.

Are we to see the concept of democracy being totally abandoned in favour of blatant corporate plunder under the guise of 'free trade' but which is anything but!?

Notes

Much of the material for this article was sourced from the website of Corporate Europe Observatory. The only way to roll back the power of corporations and their strategies outlined in the article is by being informed and actively resisting. Visit CEO at: <http://corporateeurope.org/get-involved>

1) <http://colintodhunter.blogspot.co.uk/2013/04/giving-thieves-key-to-your-home-eu.html>

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