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# **ISDS/ICS clause in FTAs: facilitating commerce or undermining democracy?**

Peterson NNAJIOFOR\*

This article raises questions on the ramifications of the increasing use of the Investor-to-State Dispute Settlement clause also called Investor Court System in new Free Trade Agreements. It delves into the hypothetical future of international trade relations, and what ISDS clauses may portend for the democratic process and institutions in member/signatory countries. Many Latin-American countries are signatories to these trade agreements and are already being affected by its nefarious consequences. Argentina's ongoing case serves as a good example.

Keywords: FTA, ISDS, ICS, TPP, TTIP, Transnational corporations

## **Introduction**

The TransPacific Partnership free trade agreement (TPP) and the Transatlantic Trade and Investment Partnership (TTIP) also known as the Transatlantic Free Trade Agreement (TAFTA) are the latest of the new generation of free trade agreements. These new generation free trade agreements (FTAs) are completely different from previous agreements in a number of ways. The most important and impressive aspects of these agreements is the huge size of the signatory countries both economically and geographically.

The TTIP agreement, if successful, will represent 34.5% of world GDP, 25.3% of world exports, 29.2% of world imports, 56.8% of world FDI inward Stock, 70.2% world FDI outward stock, 55.2% world M&A (mergers and acquisitions) sales and 18.7% World M&A purchases (D.S. Hamilton & J.P. Quinlan 2016). Population-wise, the two parties represent over a billion people.<sup>1</sup>

On the TPP side, the figures are equally significant. Together, these two agreements cover close to 70 % of world commerce, an unprecedented level of international cooperation on trade. Another important point to be noted is the scope of these agreements as well as the declared objectives of the concerned parties. According to the Sierra Club, a long-time opponent of free trade agreements, over 90 percent of the areas covered by these agreements actually do not concern trade directly.<sup>2</sup> Thus, the larger parts of these agreements deal with governance and control at the global level. Different groups both in the signatory-countries and outside them are quite vociferous in their criticism of different aspects of the agreements from issues concerning environmental protection, democratic governance, social justice, human rights to the increasing power struggle between private corporations and public institutions. Different stakeholders are very skeptical about some of the possible ramifications of these agreements in the future. This skepticism is due to the fact that the new FTAs could be said to be establishing the rules and regulations for the control of present and future world trade.

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<sup>1</sup> Citizens and residents.

<sup>2</sup> "The Transatlantic Free Trade Agreement: What's at Stake for Communities and the Environment", [http://ttip2014.eu/files/content/docs/Full%20documents/The Sierra TIP Report 2.pdf](http://ttip2014.eu/files/content/docs/Full%20documents/The%20Sierra%20TIP%20Report%202.pdf) consulted February 20, 2017.

The huge size of the areas concerned by these agreements, their scope as well as their objectives<sup>3</sup> make all the clauses and conditions in the agreement highly crucial. However, for the purposes of this study, we will be focusing mainly on one aspect of these new generation FTAs: The Investor-State Dispute Settlement (ISDS) clause also known as Investor Court System (ICS).<sup>4</sup> This clause is increasingly being included in FTAs all over the world.

Simply put, ISDS/ICS is a legal framework put in place to protect private investments. Its inclusion in the draft copies of the TTIP has been quite controversial<sup>5</sup> on both sides of the ideological spectrum. The ISDS/ICS can be considered as the main legal arm of the new FTAs. It provides for the settlement of disputes through an arbitral tribunal outside the jurisdiction of state judicial systems. The espoused aims are the facilitation and expedition of trade conflict settlements in order to avoid lengthy litigation processes in state courts and their politicization. Let us proceed first to the origins of ISDS/ICS for a better comprehension of this matter.

### **Brief history of ISDS/ICS**

ISDS/ICS in trade agreements is really not a new phenomenon. Its roots go back to the Middle Ages. Tietje and Baetens (2014) trace the foundations of ISDS/ICS to the investment protection concessions negotiated by Venetian merchants with sovereigns to avoid paying duties at Byzantine ports in the 10<sup>th</sup> century. Genoese sailors followed their suit and then the English kings in the 12<sup>th</sup> century. Tietje and Baetens recorded the change in the 17<sup>th</sup> and 18<sup>th</sup> centuries during the emergence of nation states, when sovereigns started negotiating these concessions. From these concessions were to develop the main structures of the current ISDS/ICS when states without colonial possessions resorted to these agreements to protect their investments. The United States drafted its first agreement with France in 1778 and then in 1794, the Treaty of Amity, Commerce, and Navigation, also known as the Jay Treaty, was signed between the United States and Britain.<sup>6</sup> The latter established mixed dispute resolution commissions to settle state-to-state, and state-to-individual disputes resulting from the War. Thus, it was arguably the first treaty to create the underlying structure of subsequent international investment treaties and ultimately the ISDS/ICS structure.<sup>7</sup> The fundamentals of the Jay Treaty would remain the model used in international investment treaties till the end of the Second World War and the creation of the Bretton Wood institutions, and later, the adoption of the New York Convention of 1958.<sup>8</sup> From the end of the Second World War onwards, most of the FTAs including aspects of ISDS/ICS clauses were signed by the United States with countries mostly in Latin America,

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<sup>3</sup> “Trans Pacific Partnership, Preamble”, <https://www.mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Text/0.-Preamble.pdf> consulted February 15, 2017.

<sup>4</sup> Investor Court System (ICS) was adopted by the EU during the course of preparing this paper, as the new term to replace the controversial Investor-State Dispute Settlement (ISDS). For the purposes of this paper, we will use a combination of both terms (ISDS/ICS) to avoid confusion.

<sup>5</sup> Daniel J. Ikenson, “A Compromise to Advance the Trade Agenda: Purge Negotiations of Investor-State Dispute Settlement”, *CATO Institute Free Trade Bulletin*, 4 March 2014, <http://www.cato.org/publications/free-trade-bulletin/compromise-advance-trade-agenda-purge-negotiations-investor-state>. Last consulted on February 21, 2016.

<sup>6</sup> “Treaty of Amity Commerce and Navigation, between His Britannick Majesty and The United States of America, by Their President, with the advice and consent of Their Senate (“The Jay Treaty”)” (signed 19 November 1794), [http://avalon.law.yale.edu/18th\\_century/jay.asp](http://avalon.law.yale.edu/18th_century/jay.asp) last consulted February 21, 2016.

<sup>7</sup> C. Tietje & F. Baetens, “The Impact of Investor-State-Dispute Settlement (ISDS/ICS) in the Transatlantic Trade and Investment Partnership”, 19 at [http://www.eumonitor.eu/9353000/1/j4nvgs5kjg27kof\\_j9vvik7m1c3gyxp/vjn8exgvufya/f=/blg378683.pdf](http://www.eumonitor.eu/9353000/1/j4nvgs5kjg27kof_j9vvik7m1c3gyxp/vjn8exgvufya/f=/blg378683.pdf) last consulted on February 21, 2017.

<sup>8</sup> “The New York Convention”, [http://newyorkconvention1958.org/index.php?lvl=more\\_results&look\\_ALL=1&user\\_query=\\*&autolevel1=1&revision=25](http://newyorkconvention1958.org/index.php?lvl=more_results&look_ALL=1&user_query=*&autolevel1=1&revision=25) last consulted on February 21, 2017.

Asia and Africa. Other countries, mainly in the West did the same thing. The main objective of these contracts was to protect investments in countries that were considered too risky for business. This is the reason why most of the agreements were signed with countries that were considered economically or politically unstable.

The new development in the last couple of decades is that the new ISDS/ICS clauses are being inserted in FTAs between developed and rather politically and relatively economically-stable countries like in the case of the TTIP. The inclusion of these clauses in FTAs between developed and rather stable countries as is the case in the TTIP, CETA and to some degree TPP pushes some groups to question the reasons for these clauses and to suggest that there are other ulterior motives behind the agreements.

### **Reasons for criticisms and opposition**

As mentioned above, ISDS/ICS clauses were originally never meant to be used in stable, functioning democracies with advanced and functioning legal systems. Its main objective was to protect investors doing business in unstable foreign countries with weak judicial systems from arbitrary decisions of governments in those countries notably concerning expropriation or seizure of investments in the form of capital or properties. ISDS/ICS in that case was a sort of insurance against business risks. Logically, in developed countries with advanced and functioning legal systems like the United States, Canada, and most countries of the European Union, ISDS/ICS seems redundant and unnecessary.

Why then are these clauses being inserted in the FTAs and Bilateral Investment Treaties being signed by these countries?

### **Arguments for the ISDS/ICS clauses**

In order to fully understand and analyze the tenets of ISDS/ICS in the new-generation FTAs, it would be worthwhile to look at some of the arguments presented in support of it. The most compelling of these arguments are those presented by the EU Commission's Directorate General for Trade (DG Trade) in its fact sheets which states that:

'The main reason for having an ISDS/ICS mechanism is because in many countries investment agreements are not directly enforceable in domestic courts. Therefore, an investor who finds him or herself discriminated against or whose investment is expropriated cannot invoke investment protection rules before the domestic court to get redress.'<sup>9</sup> (DG Trade, 2013).

Specifically, the Commission used the federal system in the U.S. and its two levels of judiciary at the state level and at the federal level as an example for the need for ISDS/ICS in the TTIP and other EU FTAs. Three cases were used as illustrative examples, *Loewen v. United States*, *Mondev v. United States* and the *Havana Club case*. In *Loewen v. United States*, the commission stated that "*an investor involved in a contractual dispute worth \$5m was ordered to pay damages of \$500m before he could appeal.*" In *Mondev v. United States*, it noted that, "*an investor could not sue the Boston Redevelopment Authority because of an immunity clause.*" In

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<sup>9</sup> EU DG Trade, "Fact sheet: Investment Protection and Investor-to-State Dispute Settlement in EU agreements", 26 November 2013, [http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc\\_151916.pdf](http://trade.ec.europa.eu/doclib/docs/2013/november/tradoc_151916.pdf)

the Havana Club case, it observed that “*Pernod Ricard, a French investor has been prevented from using one of its trademarks for over 10 years.*”<sup>10</sup>

J. Kleinhesterkamp (2014) observes that these arguments are very weak since “*they are “no evidence for any broader or systemic problem that would require some remediation through international law rather than judicial reform.”* He goes further to state that “*a closer look suggests that the two cases as well as the Pernod Ricard case, actually undermine the strength of the Commission’s argument rather than supporting (sic) it.*”<sup>11</sup> And that it is not clear how ISDS/ICS in the TTIP could achieve a different result in those cases.

The Commission equally stated that there was a need to have ISDS/ICS clauses inserted in its FTAs with developed nations with functioning advanced legal systems because

*“The fact that a country is a developed country and has a strong legal system does not always guarantee that foreign investors will be adequately protected. There are several examples of cases where a developed country has expropriated a foreign investor, not paid compensation and prevented them from going to local courts. In these circumstances, investors are left without anywhere to bring a claim for compensation, unless there is an ‘ISDS/ICS’ provision in the investment agreement. »*<sup>12</sup> (DG Trade, date)

And to buttress its argument on the importance of ISDS/ICS system in contrast to national courts, the commission stated that enforcement of obligations in national courts is not always easy and provided three arguments to support this point. The first one notes that an investor may prefer not to litigate against the host country in that country’s courts “*because it might think they are biased or lack independence.*” The second argument states that “*investors might not be able to access the local courts in the host country.* It mentioned cases “*where countries have expropriated foreign investors, not paid compensation and denied them access to local courts.* And the third argument is that “*countries do not always incorporate the rules they sign up to in an investment agreement into their national laws. When this happens, even if investors have access to local courts, they may not be able to rely on the obligations the government has committed itself to in the agreement.*”<sup>13</sup>

On the part of the United States, the argument essentially states that ISDS/ICS “*creates a fair and transparent process, grounded in established legal principles, for resolving individual investment disputes between investors and states.*”<sup>14</sup> It went further to list the following “eight facts” about the ISDS/ICS in trade agreements in which the US is a signatory:

1. “Provide basic legal protections for American companies abroad that are based on the same assurances the United States provides at home.
2. Protect the right of governments to regulate in the public interest.

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<sup>10</sup>“Answers given by Mr De Gucht on behalf of the Commission”, January 27, 2014, <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2013-013215&language=EN> consulted on February 21, 2017.

<sup>11</sup> J. Kleinhesterkamp, “Is there a Need for Investor-State Arbitration in the Transatlantic Trade and investment Partnership (TTIP)?” February 14, 2014. Available at *Social Sciences Research Network*: <http://ssrn.com/abstract=2410188> or <http://dx.doi.org/10.2139/ssrn.2410188> consulted on September 21, 2017.

<sup>12</sup> “DG Trade Factsheet”, op cit. p. 2

<sup>13</sup> Ibid.

<sup>14</sup> USTR Tradewinds, <https://ustr.gov/about-us/policy-offices/press-office/blog/2014/March/Facts-Investor-State%20Dispute-Settlement-Safeguarding-Public-Interest-Protecting-Investors> consulted on February 28, 2017.

3. Do not impinge on the ability of federal, state, and local governments to maintain (or adopt) any measure that they deem necessary.
4. Do not expose state or local government to new liabilities.
5. Provide no legal basis to challenge laws just because they hurt a company's profits.
6. Include strong safeguards to deter frivolous challenges to legitimate public interest measures.
7. Ensure fair, unbiased, and transparent legal processes.
8. Ensure independent and impartial arbitration.”<sup>15</sup>

The above points and arguments essentially highlight the preference for ISDS/ICS systems over national courts by the EU and the US. They basically argue that the public courts and judicial systems in both the E.U. and the U.S. are incompetent when it comes to international business dispute settlements and that cases relating to business should be treated in private courts. Stating that ISDS/ICS provides basic legal protections for American companies abroad that are based on the same assurances the United States provides at home is in essence saying that the E.U. for example cannot provide adequate legal protections for businesses. This is paradoxical given that the EU and the U.S. have always been very vocal about the fairness and impartiality of their judicial systems, which they often laud as the best in the world.

The United States and Australia, in the recent past have refused the inclusion of ISDS/ICS in their bilateral trade agreement arguing that both countries have “*robust, developed legal systems for resolving disputes between foreign investors and government*” (Kleinheisterkamp 2014) This example shows that advanced systems of court that can handle any legal disputes resulting from FTAs and BIT agreements exist in the U.S. and the E.U. and improvements and modifications could be made in case of inadequacies if necessary. But the two parties prefer to hand over the power of arbitration to non-state and undemocratic entities in this case. This begs the question: Why choose ISDS/ICS, a system of dispute settlement completely outside the jurisdictions of public courts?

From all indications, there appears to be no real logic or rationale to support the choice of the ISDS/ICS system in these new FTAs. The only logical reason behind this choice might have nothing to do with the espoused statements of both parties regarding rule of law and strong judicial protections but rather with the continuous transfer of power from the public and democratic system to the private corporate system. In the last decades, the powers of the state have gradually been chiseled down and handed over to corporate interests. The massive privatization of public companies that started in the early eighties under the conservative leaderships of Ronald Reagan in the U.S and Margaret Thatcher in the U.K. was the first major attack on government power and its credibility notably on matters affecting the business world. This first breach opened a way for subsequent attacks by corporate interests on the right of governments to control, legislate and govern in the interests of the citizens. Billions of dollars have been spent by corporations through their powerful lobby groups in Washington and Brussels and all the seats of power on both sides of the Atlantic to make sure that corporate interests are protected at all times and at all costs. The success of these attacks is what we are witnessing in the current power play between corporate interests and public interests. It is the main reason behind the erosion of government power in most areas of the economy leading to massive distrust of elected officials by their citizens.

The success of the corporate lobbies has created a system whereby taxpayers are left to bear the costs and burden of corporate risks and mistakes whereas the gains and profits are transferred

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<sup>15</sup> Ibid.

to shareholders and the corporate elite. The most symbolic and recent example is the case of the 2007/2008 financial crises of which the consequences are still being felt today. It is worthy of note that the corporate operatives and interests responsible for the crisis went scot-free and basically nobody was punished nor penalized to pay for the huge errors except the taxpayers. The ongoing negotiations and conditions being imposed on nations like Greece is another example of the citizens bearing the costs of inept and unconscionable private investment decisions. In this case, EU taxpayers are being forced to shoulder the bills of mainly ill-advised corporate lending to the Greek government and financial institutions. The privatization of public spaces in various cities across Europe and the United States is also another example of corporate takeover of public goods for the benefits and profits of their shareholder despite public outcry and opprobrium.

The increased secrecy surrounding the negotiations of these new FTAs tends to validate this hypothesis.

Civil society, public stakeholders, the majority of elected officials and the general public were largely kept outside the negotiating process for these agreements whereas the corporations and their lobby groups had quasi-unrestricted access to the negotiations.

Molly Scott Cato, Green Party of England and Wales Member of European Parliament (MEP) denounced this culture of secrecy surrounding the TTIP negotiating process after being obliged to sign a 14-page document undertaking not to reveal the contents of the documents to her constituency or to journalists.<sup>16</sup> She noted that, “*all discussions about TTIP have been hypothetical, since the negotiations are taking place in secret.*” Most telling however is the percentage of consultations between the EU commission and stakeholders. Molly Scott Cato reported that 92% of groups involved in the negotiation consultations have been corporate lobbyists and that out of the 560 lobby encounters the EU commission had, 520 were with corporate lobbyists and only 26 (4.6%) were with public interest groups.<sup>17</sup> She stated that for every encounter with a trade union or consumer group, there were 20 with companies and industry federations and that she left the secured reading room at the EU library where the documents were locked without any sense of reassurance either that the process of negotiating the trade deal was democratic, or that the negotiators are operating on behalf of the citizens.

Among the major corporate lobbyists involved in most meetings with the EU commission, Corporate Europe Observatory identified the following groups<sup>18</sup>:

BusinessEurope: the European employers’ federation and one of the most powerful lobby groups in the EU.

Transatlantic Business Council: listed as a corporate lobby group that represents more than 70 EU and US-based corporations.

ACEA: a European car lobby group lobbying on behalf of big US and EU manufacturers such as Ford, Renault, BMW, and so on.

CEFIC (the European Chemical Industry Council): which lobbies on behalf of big corporations on both sides of the Atlantic such as Dow chemicals, Bayer, BASF and so on.

European Services Forum: represents large services companies and federations notably Deutsche Bank, Telefonica, and TheCityUK.

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<sup>16</sup> CATO Molly Scott, “I’ve seen the secrets of TTIP, and it is built for corporations not citizens, The Guardian”, February 4, 2015, <http://www.theguardian.com/commentisfree/2015/feb/04/secrets-ttip-corporations-not-citizens-transatlantic-trade-deal> consulted September 17, 2017.

<sup>17</sup> Ibid.

<sup>18</sup> Corporate Europe Observatory, “TTIP: a corporate lobbying paradise” at <http://corporateeurope.org/international-trade/2015/07/ttip-corporate-lobbying-paradise> consulted on March 4, 2017.

EFPIA: Europe's largest pharmaceutical industry association representing transnational corporations such as GlaxoSmithkline, Pfizer, Eli Lilly, Astra Zeneca, Novartis, Sanofi, and Roche.

FoodDrinkEurope: EU's largest lobby group in the food industry representing giant corporations such as Nestlé, Coca Cola, and Unilever.

US Chamber of Commerce: the wealthiest of all US corporate lobbies.

Digital Europe: which lobbies on behalf of corporations like Apple, Blackberry, IBM, and Microsoft.<sup>19</sup>

The whole process in Molly Scott Cato's opinion, from the implicit accusation of industrial espionage against MEPs, *"to the recognition about who is actually engaged in the negotiations, makes it clear that it was a corporate discussion and not a democratic one."*

In conclusion, Molly Scott Cato observed that the TTIP vision *"arises from a sense of the need to order and control; the sense that uniformity is equivalent to security. But it is also clear that the decisions are made by corporations whose very DNA is the profit motive, and which are legally required to serve shareholders at the expense of all others."*

Matthias Fekl, the French trade minister stated that the *"total lack of transparency" surrounding the TTIP negotiations posed a "democratic problem"*.<sup>20</sup>

The fact that most of the groups cited above have been actively lobbying against the interests of the general public<sup>21</sup> does not help to assuage the fears of their critics.

On the U.S. side, Robert Smith, NPR host, commented on the trade agreement as follows:

*In Washington DC they love secrecy, but even by Washington standards this amazed me. "In the basement of the US capitol, there is a room, a locked soundproof room, and the only people allowed in this room are US senators, and they can't bring their assistants, they can't bring their phones, they can't even take notes in there. "Inside this room is not codes for our nuclear weapons, it's not CIA files, it's not the documents that tell us an alien landed in Roswell. No, in this room is the text of a trade deal (sic)."*<sup>22</sup>

This cloak of secrecy surrounding FTA negotiations has made it difficult for observers to believe that they are good for the citizens of the signatory countries. This has led to widespread suspicion and controversy and pushed civil groups and scholars to question the conditions in the agreements and to demand the outright exclusion of parts of the agreement notably the sections concerning ISDS/ICS.<sup>23</sup>

Thus, the case of ISDS/ICS clauses in FTAs whereby elected members of parliament and other government officials are being obliged to sign nondisclosure documents before they can be allowed to consult trade documents under negotiation and the wide potential ramifications of these clauses appear to be just another stage of the increasing clout and influence of

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<sup>19</sup> Idem

<sup>20</sup> Lee Williams, "TTIP: Three million people sign petition to scrap controversial trade deal", Independent Newspaper, October 5, 2015 at <http://www.independent.co.uk/news/business/ttip-three-million-people-sign-petition-to-scrap-controversial-trade-deal-a6680411.html> consulted March 4, 2017.

<sup>21</sup> Idem

<sup>22</sup> Boren Z.D. "TTIP controversy: Secret trade deal can only be read in secure 'reading room' in Brussels", Independent Newspaper, August 14, 2015.

<sup>23</sup> See Stiglitz Joseph, "On the Wrong Side of Globalization", *The New York Times*, March 15 2014 at [http://opinionator.blogs.nytimes.com/2014/03/15/on-the-wrong-side-of-globalization/?\\_r=0](http://opinionator.blogs.nytimes.com/2014/03/15/on-the-wrong-side-of-globalization/?_r=0) consulted February 20, 2016.



corporations in their quest for more dominance and control of public policy and discourse. If access to the main tools of negotiations by democratically elected officials is restricted, who then, apart from corporations, direct and control the process? ISDS/ICS clauses in FTAs, and FTAs in general could thus be seen as a web of parallel legal frameworks being put in place by corporations and investors to challenge and ultimately overpower state legal systems while government officials, like pawns, are there merely to facilitate this process.

One of the initiatives against ISDS/ICS signed by close to 300 civil society groups and associations identified 7 main reasons why ISDS/ICS should be excluded from the TTIP, TPP and similar trade treaties and agreements in the future.<sup>24</sup> The reasons are the following:

1. *It would empower corporations to sue governments over measures to protect the environment, health and workers.*
2. *It means that billions in taxpayer money could be paid to compensate corporations, including for missed future profits.*
3. *It is a sure-fire way to bully decision-makers, potentially curtailing desirable policymaking.*
4. *It would give powerful rights and privileges to foreign investors, without any obligations.*
5. *Since only investors can sue, there is an incentive for arbitrators to side with them to bring more lawsuits and fees.*
6. *It is likely to be incompatible with EU law, as it sidelines European courts and is fundamentally discriminatory.*
7. *It risks locking us into a legal straightjacket, as it will be practically impossible to remove investor privileges from larger trade deals.*<sup>25</sup>

The following is a brief analysis of the reasons

#### **Reason number 1:**

*It would empower corporations to sue governments over measures to protect the environment, health and workers.*

Despite the assurances on both sides of the Atlantic from the US government and the EU Commission, the fear that ISDS/ICS in the TTIP will empower corporations to sue governments over measures to protect environment, health and workers seems to be quite widespread. Over three million people have signed the petition against the TTIP citing ISDS/ICS (ICS) as one of the major areas of concern.<sup>26</sup> The number of legal cases against governments by corporations under the ISDS/ICS clause of trade agreements has been on the increase in the past decades.<sup>27</sup> A report by the Sierra Club found that by the end of 2012, over 500 ISDS/ICS cases were launched by corporations against 95 governments on areas including but not limited to environmental regulations, land-use laws, energy and other socially beneficial policies.<sup>28</sup> Rachel Wellhausen of the University of Texas at Austin noted that foreign investors have sued at least 120 different countries more than 650 times between 1990 and 2014.<sup>29</sup> Most of these

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<sup>24</sup> Corporate Europe Observatory, “Statement against Investor Protection in TTIP, CETA, and other trade deals” at <http://corporateeurope.org/international-trade/2016/02/statement-against-investor-protection-ttip-ceta-and-other-trade-deals> consulted February 28, 2017.

<sup>25</sup> *Idem.* op. cit.

<sup>26</sup> Williams, op. cit.

<sup>27</sup> Citizen, Investor State Chart at <http://www.citizen.org/documents/investor-state-chart.pdf> consulted March 4, 2016.

<sup>28</sup> Sierra Club, “The Transatlantic Free Trade Agreement, What’s at Stake for Communities and the Environment”, June 2013, p. 18.

<sup>29</sup> Wellhausen Rachel, “Investors have controversial new rights to sue countries. Here’s why this matters for the U.S.”, *The Washington Post*, November 30, 2015.

cases were brought by wealthy corporations against developing countries. But there are increasingly more and more cases by companies against developed nations since the inclusion of ISDS/ICS in recent free trade agreements between developed economies as in the case of NAFTA. The following are good examples:

Lone Pine Resources sued Canada in 2012 for US\$250 million in damages over the moratorium on shale gas exploration and development under the St. Lawrence River.

Mobil (ExxonMobil) and Murphy Oil sued the Canadian government over fees required by the Canadian government to fund research and development in Newfoundland and Labrador. An ICSID tribunal granted the companies USD \$13 million plus interests.

Clayton and its subsidiary Bilcon sued the Canadian government for USD \$300 million over Canada's Department of Fisheries and Ocean report that found that the activities of the company in basalt mining might be dangerous for the environment notably for some most endangered species in the region. An ISDS/ICS tribunal ruled in favor of the company in March 2015.

Ethyl brought a case against the Canadian government over the government's ban of the use of MMT a toxic gasoline additive. Canada settled the case for US \$13 million.

AbitibiBowater, a Delaware incorporated company with headquarters in Canada successfully challenged the Newfoundland and Labrador government's decision to confiscate the company's assets after the latter closed a paper mill in Newfoundland making 800 workers redundant. The Canadian government settled the case for US \$122 million.

TransCanada Corporation is suing the US government for US \$15 billion over the Obama administration's refusal to approve the Keystone XL pipeline project citing environmental concerns.

Vatenfall, a Swedish energy firm is suing the German government through ICSID for damages including lost profits amounting to US \$4.6 billion due to the German government's decision to phase out nuclear powered reactors and embrace renewable energy sources.<sup>30</sup>

These are just a few examples of the use of ISDS/ICS clauses against governments in developed nations. It is important to note that these cases will most likely increase exponentially under TPP and TTIP because of the sheer size of the number of companies involved in these new FTAs.

## **Latin America**

Latin American countries have been the most attacked by companies using ISDS litigations. More than a quarter of all known ISDS cases were against Latin American countries making it the region with the highest cases of ISDS (Titi and Fach Gómez, 2016). Argentina is one of the countries with the highest number of cases. Davi Dayen observed that *“As of January 2017, of the 767 ISDS cases initiated in the United Nations Conference on Trade and Development (UNCTAD) at least 59 were brought against Argentina » Making the country the most targeted*

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<sup>30</sup> These examples were taken from Citizen, Investor State Chart at <http://www.citizen.org/documents/investor-state-chart.pdf> consulted March 4, 2017.

country by ISDS tribunals. And that « Since 2002, Argentina has paid \$980 million in ISDS awards and spent millions of taxpayer money on ISDS litigation”.<sup>31</sup>

The nationalization of Aerolíneas Argentinas (Argentina’s national airline) serves as an illustrative example. Burford Capital investment, a group mainly specialized in the funding of corporate litigation invested \$13 million on behalf of the original Spanish investors who initiated litigation proceedings against Argentina for expropriation after the nationalization of Aerolíneas Argentinas. They won the case and Burford Capital’s share of the penalty award was \$140 million. This outcome is one of the examples of what is now called Zombie litigations. It is the takeover of cases by rich investors speculating on ISDS lawsuits for profits. Dayen (2017) reported that 60% of ISDS cases sought or obtained third party funding before lodging their complaints. Investors have even bought companies in order to sue governments under the ISDS clause.

Latin American countries in general have been the most affected by the ISDS suits. More than a quarter (27%) of all known ISDS cases were against Latin American countries making it the region with the highest cases of ISDS. (Titi & Fach Gómez 2016). Bolivia’s Foreign Minister reported that out of 232 ISDS cases brought against countries in the region, Corporations won in 230 of them.<sup>32</sup> This makes the arguments in the next question more poignant.

## **Reason number 2:**

*It means that billions in taxpayer money could be paid to compensate corporations, including for missed future profits.*

Billions of taxpayers’ money is already being used to pay for arbitration costs and damages. Cross (2013) states that “investors have made claims of up to USD\$114 billion, and 2012 saw the highest ever award of an ISDS/ICS claim, of USD\$1.77 billion (UNCTAD 2013a).<sup>33</sup>

Despite assurances from the U.S. government that ISDS/ICS “provide no legal basis to challenge laws just because they hurt a company’s profits”, the aforementioned examples of ISDS/ICS challenges against states actually tend to show the opposite.

Increasingly, more ISDS/ICS cases against states are claiming damages including lost profits and in some cases even projected profits are included in the claims. A good example is the case brought by TransCanada Corporation against the United States. The cost of TransCanada’s Keystone pipeline project was USD \$3 billion but the company asked to be compensated for US \$15 billion factoring in the profits it would have made in the lifetime of the project if it had been approved.<sup>34</sup> Another case in point, still ongoing, is that of Mercer International, a US-based company. Approximately 75 percent of the US \$250 million Mercer is claiming represents the projected profits Mercer calculated that it would have made had the Canadian energy regulations not allegedly discriminated against its subsidiary Celgar. It is noteworthy to state that even when states win cases, taxpayers still lose because of the huge costs that ISDS/ICS litigation entails.

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<sup>31</sup> David Dayen “A Monster Payday in Argentina Shows a Flaw in Trump’s NAFTA Renegotiation” , *The Intercept*, July 28, 2017.

<sup>32</sup> “Gobierno Bolivariano denuncia convenio con CIADI”, available at: [http://www.mre.gov.ve/index.php?option=com\\_content&view=article&id=18939:mppre&catid=3:comunicados&Itemid=108](http://www.mre.gov.ve/index.php?option=com_content&view=article&id=18939:mppre&catid=3:comunicados&Itemid=108) consulted September 30, 2017

<sup>33</sup> Cross Ciaran, “The treatment of non-investment interests in investor-state disputes: Challenges for the TAFTA/TTIP Negotiations”, *The Transatlantic Colossus*, Ed. Daniel Cardoso et al., Bertelsmann Stiftung, Berlin, December 2013, p. 78.

<sup>34</sup> Democracy Now, “TransCanada Sues the U.S. for \$15B for Rejecting Keystone XL. Will This Be the New Normal Under TPP?” [http://www.democracynow.org/2016/1/7/transcanada\\_sues\\_the\\_us\\_for\\_15b](http://www.democracynow.org/2016/1/7/transcanada_sues_the_us_for_15b) consulted February 15, 2017.

### Reason number 3:

*It is a sure-fire way to bully decision-makers, potentially curtailing desirable policymaking.*

Legislative or regulatory chill is the expression normally used to define this bullying of decision-makers and lawmakers. It is believed that fear of lawsuits arising from ISDS/ICS clauses ultimately influences national legislatures and governments pushing them to think twice before legislating. Tietje and Baetens (2014) define regulatory chill as a situation whereby “a state actor will fail to enact or enforce bona fide regulatory measures because of a perceived threat of investment arbitrations.”<sup>35</sup> Tienhaara (2011) observed that “the purpose of investment law is to ‘chill’ the promulgation of measures designed with discrimination and protectionism in mind.”<sup>36</sup> Tietje and Baetens (2014) identified three major categories or kinds of “chill”. The first one is anticipatory chill “where policy-makers take into account potential disputes with foreign investors before they begin drafting regulatory or legislative changes for the public interest. They observe that this is the most difficult to identify of all the categories of chill. The second one is called the specific response chill, which represents a situation whereby a specific regulatory measure is chilled once policy-makers “become aware of the risk of an investor-state dispute”. This they say can come from actual, threatened, or perceived disputes. And the third one is the precedential chill that occurs in cases whereby policy-makers or legislators change a regulation in response to a settled or resolved investor-state dispute out of fear that future arbitrations may use the arbitral decision as precedent against them.”<sup>37</sup>

However, after their presentation of evidence of governmental acts and case studies from arbitration cases in support and against regulatory chills, Tietje and Baetens concluded that ISDS/ICS does not lead to regulatory chill. This conclusion may seem strange especially given the fact that their study showed primary evidence to the contrary.

Most notable of this evidence is the statement of a legal adviser to the Sri Lankan Foreign Ministry that declared that, “Sri Lanka believes that an expansive interpretation of regulatory measures could circumvent the national policy space hindering the government’s right to regulate, creating a risk of “regulatory chill”, with governments hesitant to undertake legitimate regulatory measures in the public interest for fear of claims for compensation being preferred by investors.”<sup>38</sup>

In line with this statement, the Indonesian government announced plans to terminate over 60 bilateral investment treaties it has with other countries in which elements of ISDS/ICS are found. These treaties include those it signed with China, France, Singapore, the United Kingdom and so on, with effect from July 2015.<sup>39</sup>

The Financial Times noted that a number of governments have reportedly retreated from passing some laws for fear of potential ISDS/ICS lawsuits or modifying legislation to avoid

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<sup>35</sup> Tietje Christian & Baetens Freya, “The Impact of Investor-State-Dispute (ISDS/ICS) in the Transatlantic Trade and Investment Partnership”, Study prepared for the Minister for Foreign Trade and Development Cooperation, Ministry of Foreign Affairs, The Netherlands, Ref: MINBUZA-2014.78850, June 2014, p. 39.

<sup>36</sup> K. Tienhaara, “Regulatory chill and the threat of arbitration: A view from political science”, Chester Brown & Kate Miles (Eds.) *Evolution in Investment Treaty Law and Arbitration* (2011) 607.

<sup>37</sup> Tietje & Baetens, op. cit. p. 41

<sup>38</sup> Ibid. p. 42

<sup>39</sup> Netherlands Embassy in Jakarta, Termination Bilateral Investment Treaty, <http://indonesia.nlembassy.org/organization/departments/economic-affairs/termination-bilateral-investment-treaty.html> and B. Bland, “Indonesia to Terminate More Than 60 Bilateral Investment Treaties,” *Financial Times*, (26 March 2014), available at <http://www.ft.com/cms/s/0/3755c1b2-b4e2-11e3-af92-00144feabdc0.html#axzz34QJuirDj> consulted March 12, 2017

lawsuits.<sup>40</sup> Brickhill & Du Plessis used *Piero Foresti v. South Africa* (ICSID Case No. ARB (AF)/07/1), to show how investors were exempted from a South African legislation aimed at “redressing the enduring legacy of apartheid.” This exemption was granted after some European investors claimed to be put at a disadvantage by the South African government policies and forced the government to reach a settlement with them and to pay USD\$5 million in legal fees (Cross 2013). In another instance, Germany is believed to have weakened its environmental regulations on coal-powered energy generation plants due to Vattenfall’s ICSID case against the German government. The Canadian government has been accused on several occasions of modifying and adjusting legislation to avoid ISDS/ICS lawsuits. In *Clayton v. Bilcon, 2008*, the dissenting members of the tribunal that awarded USD\$300 million (damages pending) state that:

*“Once again, a chill will be imposed on environmental review panels which will be concerned not to give too much weight to socio-economic considerations or other considerations of the human environment in case the result is a claim for damages under NAFTA Chapter 11. In this respect, the decision of the majority will be seen as a remarkable step backwards in environmental protection.”*<sup>41</sup>

In addition to the Ethyl Case mentioned above, the case of public auto insurance to check the rates of private insurance companies in Canada and the case of open-pit mines in Indonesia<sup>42</sup> are all examples pointing to regulatory chill. But due to the fact that this aspect of ISDS/ICS appears to be the most complex part to prove owing to the difficulty in detecting with precision when it is a factor in legislation and when it is not makes proponents of ISDS/ICS to continue claiming that there is no “smoking gun” evidence to prove that regulatory chill is caused by ISDS/ICS. The facts and the numerous cases that we presented above, however, point to the contrary and tend to corroborate the fact that ISDS/ICS is a significant factor in regulatory chills in addition to business lobbying.

Arguing that regulatory chill is not a threat to state legislatures ergo to democracy because 47% of ISDS/ICS disputes were found by researchers to be associated with executive agencies of government while only 9% arise from legislative acts, and extolling the “virtues” of ISDS/ICS to the point of asking democratic legislatures to see it as advantageous for democracy and as an additional check on executive branch misbehavior (Tietje & Baetens 2014) may be considered as not only misleading but outright dishonest. It gives a simplistic interpretation of the interwoven relationship between the three branches of government making it appear as if the actions of the executive branch have no real impact on the other branches and on citizens and taxpayers. The result of regulatory chill remains nefarious for states no matter which branch of government happens to be involved.

#### **Reason number 4:**

*It would give powerful rights and privileges to foreign investors, without any obligations.*

Despite the fact that no consequential proof has been found establishing any link between foreign direct investment (FDI) in a given country and the country’s adoption of extensive investor protections such as ISDS/ICS clauses, the latter are being added in most of the new

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<sup>40</sup> Ibid. p.78

<sup>41</sup> “*William Ralph Clayton, William Richard Clayton, Douglas Clayton, Daniel Clayton and Bilcon of Delaware, Inc. v. Canada*, Dissenting Opinion of Professor Donald McRae, Ad hoc—UNCITRAL Arbitration Rules (2015)”, p. 19. Cited in Table of Foreign Investor-State Cases and Claims under NAFTA and other U.S. “Trade” Deals, Public Citizen, June 2015.

<sup>42</sup> Caron D. et al, “Practicing Virtue: Inside International Arbitration”, *Oxford University Press*, 2015, 553.

FTAs.<sup>43</sup> The major reason for the embrace of ISDS/ICS in these FTAs appears to be the powerful rights and privileges that ISDS/ICS grants to corporations without real obligations. The most important of these rights is the exclusive right to sue states without fear of reciprocity. States cannot really sue investors under the ISDS/ICS clause.<sup>44</sup> Only investors have this right and they have been using it without hesitation since they are assured that even if they lose the case, there will not be penalties in the form of countersuits or reimbursement of the opposite party's legal fees. This has led to a number of cases being initiated against states at times for pure financial gains.<sup>45</sup>

Another important point is the privilege of choosing which channel of litigation investors can pursue, ISDS/ICS or domestic legal systems or both. This grants unfair advantage to foreign investors compared to states or domestic investors because the latter have a limited list of choices in case of litigation. The fundamental principles of the ISDS/ICS system lie in the protection of investors against state policies and regulations that are considered unfair or that interfere with or have impacts on the business interests of foreign investors.<sup>46</sup> This principle has led to a lot of state policies being potentially considered and interpreted by ISDS/ICS tribunals, as tantamount to indirect expropriation or as breaching the standards of fair and equitable treatment. Further compounding issues is the fact that ISDS/ICS tribunals are organized on a case-by-case basis and do not recognize the *stare decisis* doctrine on which judicial precedents are based. This literally means that ISDS/ICS tribunals, composed of private individuals partly chosen by investors, have a quasi-unlimited power on the way they interpret cases brought in front of them. This is both a power and privilege that other legal organs do not have and it tips the balance of power largely in favor of corporations since they are the ones that initiate suits and hire the majority of ISDS/ICS tribunal judges. These points have led to serious claims that the ISDS/ICS is inherently biased in favor of investors and is democratically deficient.<sup>47</sup>

It is noteworthy to observe that ISDS/ICS protects the rights of investors to move their capital freely without any hindrance. While this seems normal it actually grants investors power to play the international trade system by investing and withdrawing capital to maximize profits without bothering about the socioeconomic and political consequences. These consequences are considered as externalities left for other stakeholders, notably workers and the state, to deal with. Ultimately, this leads to a situation whereby profits are privatized and protected for the benefit of investors, whereas risks and liabilities are left to states and taxpayers.

## **Reason number 5**

*Since only investors can sue, there is an incentive for arbitrators to side with them to bring more lawsuits and fees.*

This point mentioned briefly in the previous question remains one of the main concerns of the ISDS/ICS clause in FTAs. Given that only investors can sue, ISDS/ICS arbitrators who are generally professionals depend on these investors to remain in the ISDS/ICS business. This raises the question of neutrality and impartiality of the arbitrators since they risk losing lucrative cases and clients if the investors are not satisfied with the outcome of cases. Several studies

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<sup>43</sup> "TTIP: Why the EU-US trade deal matters" - *BBC News*, February 15, 2017.

<sup>44</sup> See Article 9 of the TPP Agreement.

<sup>45</sup> Dayen David, "A Monster Payday in Argentina Shows a Flaw in Trump's NAFTA Renegotiation", *The Intercept*, August 28, 2017.

<sup>46</sup> *Ibid.*

<sup>47</sup> Choudhury Barnali, "Recapturing Public Power: Is Investment Arbitration's Engagement of the Public Interest Contributing to the Democratic Deficit?" *Vanderbilt Journal of Transnational Law*, 2008, vol. 41, pp. 775-832.

have pointed to this issue and denounced its weaknesses. Eberhardt and Olivet (2012) criticized the ISDS/ICS for “*investing immense power in a small core of professional arbitrators who dominate the ISDS/ICS circuit.*”<sup>48</sup>

In essence, the ISDS/ICS clause in FTAs can be compared to some degree to the private arbitration systems being increasingly adopted and developed in different states today in the United States. According to Jessica Silver-Greenberg and Michael Corkery of the New York Times, the private arbitration system is increasingly eroding the powers of the state to judge and handing this power over to corporations through the private arbitration tribunals that have come to cover almost all areas of justice including criminal law. Corporations are gradually opting out of the public court system and choosing private arbitration that makes it possible for them not to be tried legally by courts and therefore render it difficult and at times impossible for their clients to sue them in courts.<sup>49</sup> This, of course, leads to a system where private arbitrators have the power to decide the fate of citizens without due process in claims of “*medical malpractice, sexual harassment, hate crimes, discrimination, theft, fraud, elder abuse and wrongful death.*”<sup>50</sup> The study noted that “*over the last ten years, thousands of businesses across the country – from big corporations to storefront shops – have used arbitration to create an alternate system of justice.*”<sup>51</sup> This alternate system, they observed, have the tendency of being in the favor of businesses, and private arbitrators have been used to replace judges and juries. These arbitrators commonly consider the companies as their clients. Myriam Gilles of the Benjamin N. Cardozo School of Law declared in that New York Times article that it amounted to the “*whole-sale privatization of the justice system*” and that “*Americans are actively being deprived of their rights.* Arbitration panels are generally filled with the same individuals just like in ISDS/ICS panels. These individuals most times have conflicting interests in that they are associated in the past or present with the companies or investors that they are judging. In some cases, they have even been found to be legal counsels of corporations or stockholders in subsidiaries of corporations they were meant to judge. This leads to accusations of partiality and bias against them and the system in general.

### **Reason number 6**

*It is likely to be incompatible with EU law, as it sidelines European courts and is fundamentally discriminatory.*

The arguments used above partly respond and substantiates this type of criticism. European courts especially the EU highest courts are supposed to be the courts with the highest jurisdiction in the European Union, however, the ISDS/ICS system undermines this supremacy of EU courts by establishing a parallel judicial system. The fact that ISDS/ICS tribunals have no real democratic backing highly contributes to the erosion of democracy in the EU. This argument applies equally to U.S. courts. In essence, the authority of public courts is being replaced or diminished by ISDS/ICS private tribunals making it possible for investors and corporations to be treated differently. This of course is discriminatory in a judicial system that is supposed to be free and fair for all. Alfred de Zayas, UN rapporteur’s statement on ISDS/ICS seems most suitable here:

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<sup>48</sup> Cited in Ciaran Cross, p. 76.

<sup>49</sup> Jessica Silver-Greenberg & Michael Corkery, “In arbitration, a privatization of the Justice System” *The New York Times*, February 15, 2017.

<sup>50</sup> *Idem.*

<sup>51</sup> *Idem.*

*“There is no justification for the existence of a privatized system of dispute settlement that is not transparent nor accountable and often results in aberrant arbitral awards. Indeed, the system has led to inconsistent, unpredictable and arbitrary awards that courts worldwide should refuse to implement as manifestly ill-founded and contrary to national and international ordre public”. ISDS/ICS is not needed. Investors can have their day in court before national jurisdictions bound by article 14 of the International Covenant on Civil and Political Rights, often with multiple appeal instances. Investors can also rely on diplomatic protection and inter-State dispute settlement procedures.*<sup>52</sup>

Suffice it to say here that the adoption of ISDS/ICS clauses in FTAs is inherently incompatible with a free and fair judicial system, which upholds the ideals that the U.S. and E.U. court systems and citizens have always striven to attain. The large scope of these agreements, the huge geographical expanse they cover and the immense population they affect make the ISDS arbitration method dangerous for democracy.

### **Reason number 7**

*It risks locking us into a legal straightjacket as it will be practically impossible to remove investor privileges from larger trade deals.*<sup>53</sup>

This is one of the legal issues at stake in ISDS/ICS clauses in FTAs. Once it is included in an agreement, it becomes very difficult to get out of it. This is why several observers have called for its exclusion from FTAs. Alfred De Zayas in his address to the United Nations above is an example.

The espoused objectives of the TTIP and TPP include the use of these agreements as models and templates for future trade agreements. This means that future trade treaties and agreements are going to include ISDS/ICS if it is left in the TPP and TTIP. And even without directly including ISDS/ICS, the scope of ISDS/ICS will make it easier for investors to invoke and demand similar powers and privileges as those of ISDS/ICS in future agreements in order to strongly protect their investments.

### **Conclusion**

The arguments and facts presented above appear to highlight the fact that ISDS/ICS clauses do not really have any sustainable, common good-oriented logical reason for their inclusion in FTAs most especially in those FTAs between the US, the EU or other developed nations like Canada or Australia. The inclusion of these clauses, however, could be interpreted as the expression of the victory of investors and corporations over governments and their citizens. The original objectives of these clauses being the protection of capital and investments in unstable, weak and poor countries without much bargaining power, it could be said that the imposition

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<sup>52</sup> De Zayas Alfred, “Statement by Alfred-Maurice de Zayas, Independent Expert on the promotion of a democratic and equitable international order at the 70th session of the General Assembly”, New York, October 26, 2015.

<sup>53</sup> Corporate Europe Observatory, “Statement against Investor Protection in TTIP, CETA, and other trade deals” at <http://corporateeurope.org/international-trade/2016/02/statement-against-investor-protection-ttip-ceta-and-other-trade-deals> consulted on February 28, 2017.



of these clauses on the EU, the US and Canada relegates these nations and group of nations to the same league with the poor, economically unstable and politically weak countries. It may mean that investors and corporations have defeated all opposition against them by making sure that investment risks are essentially transferred to other parties whereas profits are protected, and assured. ISDS/ICS systems will be there to ensure that corporate investments in general are protected from state regulation thus ensuring their profitability. We deem it important at the end of this study to note that while ISDS/ICS is inherently designed for foreign investors, it would be self-deceiving for anyone to believe that it is purely meant for foreign investors because in today's highly globalized corporate world, company names and founding origins are basically meaningless, while financial markets have become truly transnational. A huge percentage of companies that are considered as national flag bearers are in reality retained by share and debenture holders outside their national territories. In 2012 for example, approximately 53% of quoted company shares in the U.K. were owned by foreign interests<sup>54</sup> and the average for other European countries stood at 37% in 2006-2007 and has been expanding ever since<sup>55</sup>. This means that identifying what is foreign and what is not when it comes to investments has become very complex. This situation coupled with the fact that large and even medium-sized corporations, with their mastery of the intricacies of international trade legislations and their formidable web of branches, subsidiaries and shell companies, means that they can easily find ways of exploiting the ISDS/ICS system to their advantage. It will suffice to say that ISDS/ICS systems are meant for investors in general against non-investors. From our findings in this paper, they appear to contribute largely to undermining democratic institutions than facilitating commerce. But most importantly they aim to ensure the maximization and protection of corporate profits. Their inclusion in the new cross-regional free trade agreements like the TPP, TTIP or CETA would most likely forebode nothing but ill for democracy and good governance in the world economy.

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<sup>54</sup> Office for National Statistics, "Ownership of UK Quoted Shares: 2012", Statistical bulletin, at <http://www.ons.gov.uk/ons/rel/pnfc1/share-ownership---share-register-survey-report/2012/stb-share-ownership-2012.html> consulted March 14, 2016.

<sup>55</sup> Federation of European Securities exchanges, "Share Ownership Structure in Europe", December 2008. [http://www.fese.eu/images/SHARE\\_OWNERSHIP\\_SURVEY\\_2007.pdf](http://www.fese.eu/images/SHARE_OWNERSHIP_SURVEY_2007.pdf) consulted September 17, 2017

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