



US Investment Policy & Campaigning

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Sarah Anderson, Institute for Policy Studies
sarah@ips-dc.org

Existing US Investment Agreements

- ▶ trade agreements with 15 countries
- ▶ bilateral investment treaties with 41 countries

Favorite theme of U.S. corporate lobbyists:

EU has more than us!

We're falling behind!!

How US investor protections go further than others

- ▶ Pre-establishment rights (no discrimination against foreign investors at establishment and acquisition stage. US investors want to open up new markets, not just protect existing ones.)
- ▶ Prohibition on capital controls (the vast majority allow no exceptions to prevent or mitigate financial crisis)

Candidate Obama v. President Obama



Candidate Obama: 2008 -- Pretty Good--

- ▶ *"I will ensure that foreign investor rights are strictly limited and will fully exempt any law or regulation written to protect public safety or promote the public interest."*

President Obama: 2009-10 -- Not that Bad --

- ▶ **BIT Review:** Created a diverse advisory body to give input into a new model Bilateral Investment Treaty.
- ▶ **Trans-Pacific Partnership:** Said this would be a "21st Century trade agreement." Other countries: Australia, Brunei, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam.
- ▶ **Bush trade deals:** No big push to pass pending deals with Korea, Panama, Colombia

Obama: Early 2011 -- Getting Worse --

- ▶ **Capital Controls:** 250+ economists signed letter to Obama administration, urging trade reforms to allow capital controls to prevent and mitigate financial crisis.
- ▶ **Treasury Secretary Geithner response:** Countries don't need capital controls.



Ricardo Hausmann, Director, Harvard Center for International Development



Joseph Stiglitz, Nobel laureate



Nancy Birdsall, President, Center for Global Development

Obama: Fall 2011 -- Even Worse --

- ▶ As Occupy Wall Street exploded, Obama pushed the three pending trade agreements through Congress, with no changes to investment rules.



They even made our nice labor secretary clap for the US-Colombia FTA

Trans-Pacific Partnership Negotiations

No evidence of a fresh US approach on investment.

Leaked document shows their position on access to medicines in the IPR chapter is worse than Bush administration.

US campaign strategies

- ▶ Spending less time lobbying U.S. negotiators, more time building international ties, especially in TPP countries.
- ▶ Australia has rejected investor-state dispute settlement, which opens up a big opportunity.

Increased work around key cases

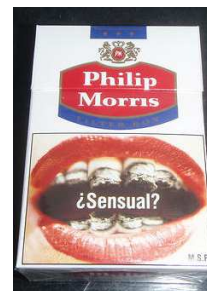
- ▶ **Pacific Rim:** Using CAFTA to sue El Salvador because they were denied gold mining permits on environmental grounds.
- ▶ Media strategy around ICSID ruling on jurisdiction – expected by end of November.



Philip Morris v. Uruguay and Australia

Suing over cigarette packaging restrictions.

Their claim: limiting space for logos “expropriates” the value of their investment in branding.



Renco v. Peru



U.S.-based Renco is suing under the US-Peru FTA. Peru canceled Renco's license for a smelter because it failed to complete environment cleanup work it committed to doing.

Common Argument:

“US government hasn’t lost any cases yet, so they probably never will.”

Possible Explanations for US No-loss Record:

1. Strong defense lawyers (may not always be the case)
2. Luck of the draw. Tribunals are not required to follow judicial precedent and have issued contradictory rulings

3. Canada has been the only major capital exporter among IIA partners (will change with US-Korea FTA. Korean investment in US in 2009: \$12 billion)

4. Political pressure on tribunals. Fear that if US loses a big case, whole system could be in jeopardy.