Welcome to this hands-on guide to campaigning in Europe against trade deals such as CETA and TTIP. Its aim is to support you as a national or local campaigner, by helping you to sharpen your arguments and inspiring you to turn your knowledge into action. The guide is divided into two parts:

**PART 1** looks at how to build an advocacy campaign that will influence political agendas. It focuses particularly on lobbying: when to lobby and whom; why it might make sense to coordinate your lobby activities with others; and how to sustain your campaign over time.

**PART 2** will help you sharpen your arguments. It provides key talking points on two hotly debated topics: the infamous ISDS mechanism in all its forms, and the EU-Canada trade agreement (CETA). These two topics will be at the heart of the trade debate in all EU member states in 2016 and we want you to feel prepared. TTIP as such will not be addressed in Part 2, but many of the arguments developed here will also help you handle debates about TTIP too.

Apart from giving you the tools to start a successful campaign, this guide can also be used as a resource for collective training sessions. In such training sessions, we suggest campaigners practise their own answers to ISDS and CETA myths, and empower each other to challenge and educate politicians at all levels. Together we are one European movement. Be inspired!
PART 1: BUILDING AN ADVOCACY CAMPAIGN

Advocacy is one way of transforming one's anger at these toxic trade deals into political power. Advocacy tools can include: going out onto the streets to protest, emailing, letter writing, and lobbying influential people in order to achieve specific goals.

#1 LOBBYING TO PROMOTE YOUR CAMPAIGN

The word ‘lobbying’ can have a very negative ring to it. Corporations invest millions every year in influencing policymaking at all levels, often at the expense of people and the environment. But when planning a strategy for stopping a trade deal like CETA or TTIP, lobbying should be considered as a useful influencing tool. If we want to abolish corporate privileges like the ISDS system, we have to have allies in the relevant political institutions. Our elected representatives are there to listen to our concerns and to take them on board when making decisions. Lobbying can help ensure this happens.

Action by grassroots social movements and more private forms of advocacy like lobbying are two sides of the same coin. Having the backing of 3 million ECI signatories, the visibility of hundreds of protest marches and the attention of the press, will help to drive your anti-TTIP and CETA message home when talking to elected representatives. Having people in key institutions conveying the strong messages of the wider campaign to the political arena will make it impossible for policymakers to ignore those messages. A standalone protest rarely stopped a trade agreement. But having thousands of citizens protesting and engaging their elected representatives in every possible way can achieve great change.
#2 WHO TO LOBBY, AND WHY

A range of actors have the power to stop CETA and TTIP. Some have the direct ability to stop the deals (governments, the European Parliament), others have power over the first group (national parliaments and national politicians).
**MEMBER STATE GOVERNMENTS** are debriefed by the European Commission and its team of negotiators after each round of negotiations. In the Council they then discuss the EU position and will eventually have to sign the deals. CETA is expected to be presented to the Council for final approval in the first half of 2016.

CETA and TTIP can only go through if EU member states support them. In spite of various media claims, no member state currently officially opposes CETA or TTIP in the Council. But if one big member state – or several small ones – were to oppose the agreements, it would put an end to them. Every national government in the EU has a minister responsible for international trade. He or she, as well as his or her staff, is an obvious target for citizens’ lobbying efforts. Other ministers, like the environment minister or the health minister, can also be crucial allies if they are convinced that CETA and TTIP will undermine their advances or contradict their policy stance.

**SUGGESTED ACTION**

Do more research on the members of your government. Who are the? How can you contact them? Have they made any statements on CETA and TTIP in the past? Is your national alliance already in contact with them?

**THE EUROPEAN PARLIAMENT** will also have to agree to the deals in the so-called ratification phase. Even if their formal yes or no vote only takes place once the negotiations are over and the deal has been accepted by the Council, they still have some degree of influence over the negotiations. However at present there are not enough Members of the European Parliament (MEPs) opposed to CETA and TTIP to stop the deals when ratification comes. Members of the European Parliament are generalists: they don’t know every detail of the trade policy debate. Meeting them and sharing your concerns is therefore a key part of your advocacy work. You can meet your MEP in Brussels, in Strasbourg (France), or at home in their constituency. They are also easy to contact by phone, or email, and many of them are active on social media.

**SUGGESTED ACTION**

Look up the MEPs for your constituency, and/or the list of your national MEPs on the internet. Who are they? What are they working on, besides CETA and TTIP? How did they vote on the TTIP resolution in July 2015? Does your national alliance already have contact with them?
THE JULY 2015 TTIP RESOLUTION
Over the spring and summer of 2015, members of the European Parliament debated TTIP in detail. A non-binding resolution was agreed upon by almost two thirds of the Parliament in July 2015. It is broadly supportive of TTIP and of the negotiations, and fails to set clear red lines to protect either European citizens or the environment. It does not oppose ISDS. While a majority of MEPs from the European Peoples Party (right-wing), the Social Democrats and the liberal group voted in favour of this pro-TTIP text, some MEPs from each group rebelled and opposed the resolution, or abstained. You can check how your national MEPs voted by using Vote Watch: http://www.votewatch.eu/en/term8-negotiations-for-the-transatlantic-trade-and-investment-partnership-ttip-motion-for-resolution-vote-.html#/##vote-tabs-list-1

NATIONAL PARLIAMENTS may have to ratify CETA and TTIP, but this is not yet confirmed and it may be years before they get to vote on the issue. Until then, their importance derives from their influence on national governments and their ability to raise the profile of the issue in the national media. They can ask parliamentary questions to the trade minister, request public hearings, speak to the press about the dangers of the deal and table parliamentary resolutions. Like MEPs, they are generalists who will need your expertise and your analysis and recommendations to be able to initiate and promote debate on this issue.

#3 THE THREE STAGES OF A LOBBY MEETING: preparation, delivery of your message, follow-up

To maximize the impact of your lobby meeting, we suggest you follow three steps:

1) PREPARATION. Ask yourself the following questions: Who do you want to contact, and why? What are you trying to achieve by lobbying them? What is the best way to influence them? A phone call, email, letter, or a meeting? Once you have chosen your target, some additional research will be needed. What has this person said about TTIP in public? If s/he is an MEP, how did s/he vote on the July resolution? What other topics is s/he interested in? What can s/he gain from meeting you? Prepare your facts, stories, questions and main messages beforehand.

2) DELIVERY OF YOUR MESSAGE. Whatever channel you use to reach your target, some core principles will always apply: being polite and confident but not aggressive, for example. Remember: politicians are people too. Secondly, bear in mind that you do not have to convince them to oppose TTIP and CETA in your first meeting or conversation. Convincing someone is a complex and lengthy task. Many other things can be gained through your advocacy actions in the meantime (see #4).

3) THE FOLLOW-UP. This should include: sending an email to your target after your meeting or phone call with him/her, thanking the person for making the time and forwarding the material you promised to share (a research paper you quoted, an analysis you presented etc.), connecting him/her with other groups if requested, as well as sharing interesting information in the weeks and months following your first encounter. All of this follow-up work will reinforce your message and facilitate further contacts.
#4 WHAT TO AIM FOR?

A lobby meeting or a phone call can have many different objectives. It can seek to:

**A) OBTAIN INFORMATION.** For example, during a meeting with your trade minister or his/her staff, you could try to find out more about the various member states’ positions in the Council – and your trade minister’s position. Sometimes you will ask questions that the ministers cannot answer, but simply asking these questions may prompt them to go and look for an answer.

**B) INFORM/EDUCATE POLITICIANS.** This is the objective of most meetings. It can be done in an obvious way, with you and the politician agreeing that your meeting is a means of informing him/her about the issue. Or it can be done in an informal way: simply hearing your concerns will raise politicians' awareness! Many of them only have a very basic understanding of the contents of both CETA and TTIP. A meeting that is explicitly presented to the politician as an ‘information-sharing’ meeting is also a useful tactic for approaching hostile politicians who do not want to be convinced, but are interested in further information.

**C) DEMONSTRATE THERE IS PRESSURE FROM THEIR CONSTITUENTS.** Politicians tend to get worried if they feel that their voters are watching them. Showing that you are not alone but that a network of local organisations also strongly supports your “No CETA, no TTIP” message, or pointing to the large number of citizens who signed the ECI in your constituency could make your elected politician more willing to listen.

**D) CONVINCE HIM/HER TO VOTE A SPECIFIC WAY.** This type of advocacy meeting is critical when a vote is approaching, as was the case in the weeks before the July resolution in the European Parliament. The next big vote will probably be the CETA ratification in the European Parliament. Not all parliamentarians will be convinced that the whole deal should be rejected. You usually have to concentrate on one or two aspects that are particularly relevant for the person you are trying to lobby: a subject he/she worked on before, that he/she is defending in public. If you can convince him/her that his/her issue is under threat due to CETA or TTIP, this might change his/her mind.

The objective of the meeting will determine the approach and the message you adopt, but in all cases, preparation is key (see #3). Building a good working relationship with politicians takes time: we cannot convince them to vote one way or another in a single phone call. Getting to know them, sharing information, informing them about what citizens think of the deals and educating them is time-consuming but necessary. Ultimately it will help you change their mind when a vote comes up.

**READ MORE**
The self-organised European Citizens’ Initiative (ECI) Stop TTIP collected over 3 million signatures against TTIP and CETA from 7 October 2014 to 6 October 2015

https://stop-ttip.org/about-stop-ttip/

**SUGGESTED ACTION**

Before any engagement with a politician, write down what you expect to achieve, the points you want to raise and the questions you want to ask.
#5 WORKING TOGETHER AND HOLDING POLITICIANS ACCOUNTABLE

Even when multiple campaigns may be running concurrently, mass lobbies of politicians are still surprisingly uncommon. This is partly because elected representatives can often be perceived as more intimidating than they actually are. Organizing your advocacy collectively as a group can help to overcome people’s inhibitions about approaching politicians. Together you can define: your target (MP, MEP, minister etc.), your aims and strategy (see #3), the tool you wish to use (email, open letter, phone call, meeting etc.), and your key messages. Further down the line, the process of feeding back to the group on the outcome of your actions can also inspire others to engage in follow-up actions, thereby multiplying your impact and increasing the pressure on the targets of your actions.

Consider sharing the outcome of your actions via a short presentation to the group of campaigners you work with, a written summary on your blog or short reports on social media. Inform politicians that you will report on the outcome of your encounter: holding them accountable for what they tell you can help to minimize false promises. That said, the decision to share the outcomes of a lobby meeting publicly depends on what you are trying to achieve with your action and the kind of relationship you are trying to build with the politician. Some politicians may be less willing to talk openly or to share information with you if they know that the contents of the meeting will be made public.

If you have agreed with the politician that the content of the meeting will be shared publicly, you could opt for full transparency by setting up the meeting as an interview and filming it from beginning to end. This has been done by several campaigns and can inspire other citizens watching the video online to get involved.

SUGGESTED ACTION

Look for people in your community who are interested in taking action on this issue. Organise a peer training session where you take turns to practise communicating your arguments and give feedback to each other. Identify one or two advocacy targets; confirm what you are trying to achieve by engaging with these targets and the approach you will take. Then give the targets a call - on loudspeaker. Once you are done, debrief the conversation together, and decide how you will follow up with these targets.

#6 LOBBYING OTHER ACTORS

In order to persuade politicians to stop CETA and TTIP, many more organisations and institutions will have to join our efforts – from consumer organizations, student unions, trade unions, the media, environmental and health agencies to SME associations, member states’ permanent representations in Brussels, etc. All of these actors could be valuable allies and exert influence over politicians. The process of approaching them is the same as when contacting politicians: try to identify the key allies you need, and the reasons why you need them. Identify contacts and key people inside these institutions and build a relationship with them via an information exchange. Show them that this issue really matters to ordinary citizens as a way of convincing them to embrace our work and join the struggle against CETA and TTIP.
Two different types of institutions stand out: local authorities and political parties. Both are relatively close to citizens and easier to approach than, for example, trade ministers or parliamentarians. Getting in contact with them is a good first action. Once these actors have been won over, local representatives – mayors, for example – can bring a bottom-up perspective to the political discourse. Moreover mayors often have close links with members of national parliaments and influence in the political parties. When the base of a party pushes for its leader to oppose CETA and TTIP, it makes it harder for the leader to ignore the negative critique of these trade agreements.

**Suggested Action**

Campaign for your city to pass a TTIP-free resolution: hundreds of cities across Europe have already done it, including Amsterdam, Barcelona and Brussels.

**Read More**


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#7 Sustaining Your Campaign in the Long Run

By Clara Buer (Greenpeace Germany)

Campaigns often seek to achieve goals which cannot be achieved within the set timeframe. Therefore it is important to think of ways of keeping yourself motivated throughout the ups and downs of a campaign. If you bear in mind the following tips, you are more likely to sustain your campaign through to the point at which you achieve your goals.

1) **Identify Ways to Keep Yourself Informed.** This can easily be done through websites, social media, Google alerts, or by signing up to specialized mailing lists, meaning that people subscribed to such a list in order to receive information or organize themselves as a group. Try to **connect** with other people who have a common interest in stopping TTIP and CETA - whether in your neighbourhood, city or online.

2) **Work Together.** Try to plan your activities as a group and set collective goals which everyone works hard to achieve. Together you can brainstorm ideas for activities and organise them. Working in a group also allows you to share out the tasks instead of doing everything yourself. When distributing tasks, you could ask: who will monitor the news? Who will make contact with other groups or networks? Who will do press and social media work? Who will take responsibility
for sharing knowledge within the group? Who will manage the finances and fundraising? Who is the expert for which topic? Remember – it is not about doing everything yourself, but making sure the work gets done. Try to establish ground rules and ways of working for the group and meet regularly face-to-face so as to keep up the team spirit.

3) REALIZE YOUR IDEAS. The list of potential activities you could consider is endless – whether it is collecting signatures in your neighborhood, or organizing awareness-raising activities or protests.

4) TAKE A BREAK. It is important to take a break after activities that have demanded a lot of your time. But try to stick to the group’s agreed ways of working and keep holding regular meetings. Taking breaks is important for recharging your batteries and rekindling your motivation for the next activities. No one can sustain a non-stop campaign.

5) CELEBRATE YOUR SUCCESSES! This is an important one to remember. Be proud of what you have achieved. And be sure to look out for the next opportunities!

IN SHORT:
“Campaigns have ups and downs. Surf the waves and stick to your agreed ways of working to get over the downs. Stay in contact with like-minded people and you will get through the difficult times.”
**PART 2: SHARPENING YOUR ARGUMENTS**

Part 2 of this guide seeks to sharpen your arguments and is structured as a training session. It also seeks to debunk some classic free trade myths by providing key talking points on two hotly debated topics: the infamous ISDS mechanism in all its forms, and the EU-Canada trade agreement, CETA. You are likely to have to debate these issues at some point in your advocacy work.

While this training does not provide detailed answers to the arguments you will encounter, it offers tips and key talking points for dealing with common claims. Further links are provided to more in-depth information to help you build your expertise to whatever level you wish.

**HOW TO USE PART 2 (POSSIBLE ‘TRAIN THE TRAINERS’ INSTRUCTION):**

**SUGGESTED EXERCISE:** read the myths and see if you can come up with one or two talking points to counter them. These myths come directly from past debates and discussions with EU and national politicians. You might have heard some of them before. Write down your talking points, check ours, and build your own answer to counter the myths. If possible, get together with other campaigners/activists and practise your talking points, asking tricky questions and giving each other feedback. You can also practise presenting the two hot topics we discuss below.

Once you have prepared, put your knowledge into action!

**WATCH EXISTING DEBATES TO PREPARE**

See for example “Does the EU’s “Investment Court System” put an end to ISDS? Public Debate”, https://www.youtube.com/watch?v=QXE-LIMorTQ

or “Hearing of Commissioner designate: Cecilia Malmström” 29-09-2014.


**#1 WHAT IS ISDS?**

ISDS is the abbreviation for the **Investor State Dispute Settlement** mechanism included in many **Bilateral Investment Treaties (BITs)**. Its stated aim is to protect investors against discriminatory...
policies and give them additional security which – in theory – will then boost Foreign Direct Investment (FDI). The first BIT that included an ISDS mechanism was an investment agreement between the Netherlands and Indonesia signed in 1968.

In practice, ISDS means foreign investors can sue states for perfectly legitimate policy decisions, using an increasingly broad interpretation of investor protection rights. An investor can sue a state, for example, for being both ‘expropriated’ and ‘indirectly expropriated’. Indirect expropriation is a very vague term and can refer, in principle, to any policy that threatens an investor’s profits, or sometimes even simply its future profit expectations. Raising environmental standards, for example, can become an ‘indirect expropriation’ if investors can successfully argue that the implementation of these standards will affect their profits.

While national courts can be used by everyone, ISDS is only available to foreign investors. ISDS cases are not comparable to cases put before a national court. Contrary to a domestic court where independent judges take final decisions, an ISDS tribunal includes only three arbitrators. One is chosen by the investor, one by the state and one has to be agreed upon by both parties. Instead of independent judges, these arbitrators are private lawyers who are paid a lot of money per hour and case. The procedure is very costly for governments and can add up to millions of euros. In the end the three arbitrators decide either in favour of the investor or against it. Investors and governments can also choose to settle for an amount of money both parties agree upon, and/or agree that the state will change its policy. This for example has happened in the first Vattenfall case against Germany considering the construction of a coal power plant in Hamburg Moorburg. Contrary to national courts, there is no appeal mechanism. The first verdict is also the final one. Since the cases take place in secret, neither the total number of ISDS cases nor the final decision on each claim is known.

**IN SUM, THIS IS A HIGHLY FLAWED SYSTEM FOR THE FOLLOWING MAIN REASONS:**

* __it is completely one sided. It is only investors that can sue states. States cannot sue investors within ISDS for violating human rights, or for environmental degradation or other violations. Moreover states cannot win ISDS cases; the best case scenario for them is to not lose them. Even then, they still have to pay legal costs and tribunal fees.*

* __ISDS is an attack on democracy. Legitimate decisions taken in the public interest can be challenged by big business in front of an extra-judicial entity. Even though the arbitrator’s decisions cannot reverse a law, the threat of having to pay very costly compensation can be sufficient to persuade a state to change all or parts of the policy in question to reach a settlement.*

* __ISDS is a blunt instrument for keeping government policies in line with investors’ interests. In many cases just the threat of an ISDS case has prevented governments from adopting certain policies. This so-called ‘chilling effect’ further demonstrates the power ISDS gives to investors.*

* __In the last 20 years the arbitration industry has expanded considerably. From 38 known cases in 1996, the number had increased to 608 by the end of 2014. As arbitrators profit directly from ISDS cases, they have a keen interest in generating more cases and pushing investors to open cases.*

Thanks to campaigners across Europe, ISDS is now widely recognised as a highly unfair system giving excessive powers to just one group: multinational corporations. Under immense pressure from citizens and civil society, several member states and the European Commission are doing their best to save the system by reforming it. To win the trade debate, campaigners against CETA and TTIP will have to challenge this ‘reform agenda’. In our opinion, there is no point in reforming a system that by definition grants special rights to big business. (See claim #5).

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Until the EU’s Lisbon Treaty came into force, investment protection was the sole competence of EU member states. Most already have hundreds of BITs containing the ISDS mechanism. But only nine member states – in Central and Eastern Europe – have bilateral investment treaties with Canada and the USA. From 2011 onwards the European Commission received additional mandates to include investment protection in ongoing trade negotiations with countries like Canada, Singapore and India as well as in newly opened negotiations like TTIP. Such Comprehensive Trade Agreements are much wider than investment agreements and cover almost all sectors of our economies. The inclusion of ISDS in CETA and TTIP would expand the investment flows covered by ISDS tremendously and therefore increase the likelihood of European governments being sued through ISDS.

BIT - BILATERAL INVESTMENT TREATY:
Type of International Investment Agreement between two countries which is intended to promote and protect the investments made by companies from those two countries in each other’s territory. A BIT grants legally binding rights to investors and creates obligations on the part of the host governments.

#2 “EU MEMBER STATES ALREADY HAVE OVER 1200 INVESTMENT AGREEMENTS IN PLACE: ISDS IS NOT NEW AND THEREFORE NO DANGER”

SHORT ANSWER:
ISDS is already a problem in all of the existing treaties, but it would be even more of a problem with CETA and TTIP as these treaties would cover much broader economic areas and bigger investment flows.

LONG ANSWER:
Including ISDS in CETA and TTIP would undoubtedly result in many more ISDS cases against EU member states. Although EU member states already have a large number of existing Bilateral Investment Treaties (BIT) which include ISDS (mostly with countries from the global south), these agreements do not relate to significant investment flows. With these existing agreements, it is corporations from EU member states that are exporting capital (through overseas investments) and using ISDS to sue developing countries when their profits are endangered. This situation would dramatically change with ISDS in CETA and TTIP: the amount of investment flows covered would be significantly larger and include investments made by corporations on both sides of the Atlantic.

Currently only 8% of US-owned firms operating in the EU have access to ISDS through existing BITs between mainly Central and Eastern European member states and the USA. If ISDS is included in TTIP, all investment flows would be covered. More than 47,000 U.S.-owned companies would be newly empowered to launch ISDS attacks on European policies and government ac-
Massively Expanding the Reach of the Current ISDS System

With TTIP

Today

- 28 EU countries could be sued, directly, compared to only 9 today
- 100% of US investment in the EU covered, compared to only 1% today
- 51,495 companies could sue directly, compared to 4,500 today

81% of these corporations have subsidiaries in Canada and would therefore get access to ISDS via the EU-Canada trade deal without even needing TTIP. Meanwhile the arbitration industry has been actively promoting claims over the last few years, resulting in a sharp increase in the number of ISDS cases – from a dozen in the mid-1990s to more than 608 known cases by the end of 2014. The signing of new treaties covering more and more investment flows combined with a powerful and growing arbitration industry are fuelling this system. While investors have already claimed at least 30 billion euros in compensation from EU member states under existing bilateral investment treaties, this amount will increase drastically with TTIP and CETA, and EU taxpayers will be footing the bill.

4 The hidden cost of EU trade deals – Friends of the Earth Europe. https://www.foeeurope.org/hidden-cost-eu-trade-deals
#3 “WE NEED ISDS TO ATTRACT INVESTMENT”

In its public consultation notice, the European Commission states that “investment protection agreements create a framework that encourages investment.”

**SHORT ANSWER:**
There is no clear evidence proving a link between investment treaties and investment flows.

**LONG ANSWER:**
Research suggests that these treaties are not a decisive factor in whether investors invest abroad. In a response to a parliamentary question by MEP Fabio de Masi, European Trade Commissioner Cecilia Malmström recently admitted that most studies showed no ‘direct and exclusive causal relationship’ between international investment agreements and foreign direct investment (FDI). The experiences of many countries show that the promise of foreign investment when signing International Investment Agreements has not been fulfilled. South Africa, for example, has cancelled some of its bilateral investment treaties (BITs) with EU member states from the 1990s. One of the reasons given for this decision is that it has not received significant inflows of Foreign Direct Investment from countries with whom it has treaties, but it received investments from jurisdictions with which it has no BITs. Another striking example is Brazil. It is the only country in Latin America that has never ratified a BIT that includes ISDS and yet receives the largest amount of foreign investment in the region. Hungary and Slovenia are the only two Central and Eastern European Union countries that have no BITs with the US. Yet, during the last 10 years, Hungary has been the highest recipient of US FDI in the region.

**READ MORE**

#4 “ISDS MAINTAINS A FAIR BALANCE BETWEEN INVESTOR PROTECTION AND STATES’ RIGHT TO REGULATE.”

**SHORT ANSWER:**
The ISDS system only gives rights to corporations at the expanse of people and governments. It is a one-sided process granting huge privileges only to foreign investors.

**LONG ANSWER:**
This statement is fundamentally flawed: it assumes that investors’ privileges and democratic decisions are equally important and should therefore be balanced. It shows great contempt for citizens’ rights to shape their societies. Assuming that there should be a balance, it is clearly tipping towards investors. ISDS creates a parallel legal system only accessible to ‘foreign’ investors. Local entrepreneurs, citizens, and communities are protected by national laws and courts, and by human rights – including the protection of private property. Foreign investors are protected by all these laws, plus the extensive special rights awarded to them through investment agreements, including access to a parallel legal system which is likely to rule in their favour.

In addition to being discriminatory, ISDS is one-sided: only investors can instigate cases and only investors are guaranteed rights and privileges without any obligations to contribute to public policy objectives or respect environmental, social, health, safety or any other standards. Therefore states never ‘win’ a case: all they can do is not lose it. Even then they still have to pay for their legal defence. Sometimes corporations do not even have to sue: the threat of having to pay (possibly exorbitant sums of) compensation can be enough to deter states from regulating in the public interest of its citizens. This is called the ‘chilling effect’.

The ISDS mechanism has other built-in, pro-investor bias. For example, investor-state disputes are usually settled by for-profit arbitrators. Unlike judges, these arbitrators do not have a fixed salary but are paid per hour per case, and the recent EU proposal for a ‘new’ Investment Court does not fix this problem. A non-reciprocal system, where only the investors can bring claims, creates a strong incentive for tribunals to favour the investor – because investor-friendly rulings and extensive interpretations pave the way for more cases and more income for arbitrators in the future.
#5 “WE KNOW THAT THE OLD ISDS WAS NOT PERFECT, BUT WE HAVE FIXED IT THANKS TO THE NEW REFORM PROPOSAL”

**SHORT ANSWER:**
The various reform proposals are not addressing the core problems of ISDS (#4) and are being used tactically in order to continue with ISDS in TTIP, CETA and future trade and investment agreements.

**LONGER ANSWER:**
The European Commission has already claimed at least twice that it has ‘fixed ISDS’. The first such claim was made in connection with the investment chapter of CETA. Now the same claim is being made in relation to an ‘Investment Court System’ (ICS), made public in November 2015. The Commission is proposing the ICS be discussed in the TTIP negotiations. Changing the name of ISDS to an ‘Investment Court System’ is a clever move because it suggests that the ‘new’ ISDS will meet the standards of national courts. However this could not be further from truth. The Commission’s ICS proposal would introduce two major changes:

- It would install an appeal mechanism.
- In contrast to the ongoing practice of ISDS, the arbitrators would come from a pool of just 15 lawyers appointed for 6 years by the EU and the US in the case of TTIP.

It is true that these two proposed changes would address some of the broader criticisms considering the procedure from civil society organisations, academics and trade unions. Nevertheless, the new proposal falls short of addressing the fundamental problems with ISDS for the following reasons:

**[A]** Under the new proposals, foreign investors would still be able to directly sue countries for compensation over health, environmental, financial and other domestic safeguards that they believe undermine their rights. Therefore the system would still be able to cause regulatory chill, preventing governments from acting in the public interest.

**[B]** Both proposals still give for-profit lawyers the power to make judgements about the public policies of sovereign states from a purely commercial, profit-driven perspective. Choosing
from a pool of 15 lawyers, as proposed by the Commission for TTIP, does not turn them into independent judges.

C) In both proposals, the ‘modern’ ISDS would still be a purely one-sided tool that only gives rights to investors without any obligations to contribute to public policy objectives or respect environmental, social, health and safety or any other standards.

D) No changes are being proposed to the wide interpretation of ‘investment,’ ‘indirect expropriation,’ or ‘fair and equitable treatment’.

To fix the problems of the past, the flawed investor-state arbitration system needs to be rejected entirely and control mechanisms established to halt abuse by transnational corporations. There are no convincing arguments that support the inclusion of ISDS in any treaty (see box on attracting investment), and no reasons that justify maintaining this flawed system.

READ MORE

For more on investor protection, see: S2B statement, Courting foreign investors – October 6 Why the Commission’s proposal for an “Investment Court System” still fails to address the key problems of foreign investors’ privileges.

http://www.s2bnetwork.org/isds-courting-foreign-investors/

Analysis from Gus von Harten – Key Flaws in the European Commission’s Proposals for Foreign Investor Protection in TTIP.


For more information on ISDS check the audio-visual platform “The ISDS Files” on S2B’s website: http://www.s2bnetwork.org/the-isds-files/

For more information on the wording and the implications of current negotiations, check annex 1 and 2 in Trading Away Democracy.

http://corporateeurope.org/international-trade/2014/11/ceta-trading-away-democracy
PART B: LET’S TALK ABOUT CANADA

2016 will bring the EU-Canada agreement, CETA, back on stage. This is the project which Canadian and EU representatives proudly presented to the public in September 2014. Since then, it has become more important than ever to include CETA in our arguments and actions, along with the controversial and widespread debate in Europe and the US on TTIP.

Although CETA would create a far smaller market than the one that will be created through TTIP, it is a comprehensive and aggressive trade and investment agreement nevertheless. Indeed, CETA has been labelled a blueprint of TTIP.

Modern trade agreements are no longer primarily focused on tariff and non-tariff barriers to trade products but encompass whole areas of economic and political regulations and market access, not only for products but also for services and investments. Investment protection, government procurement, public services, harmonisation of standards, regulatory cooperation, and the agricultural sector are all aspects we will touch on in this guide.

Let’s take a closer look at some of the myths about CETA.

#1 WHAT IS CETA?

CETA (Comprehensive Economic Trade Agreement) has been negotiated between the EU and Canada since 2009. The talks were concluded in September 2014. Since then, the agreement has been undergoing so-called ‘legal scrubbing’ and translation in preparation for ratification in 2016 (see steps for ratification page 3). While there is growing public awareness about the timetable and content of the TTIP negotiations, CETA is on the verge of being ratified but is not receiving the scrutiny or attention it deserves.

CETA includes the most controversial part of TTIP: Investor State Dispute Settlement (ISDS) with all its problems and dangers. Even if TTIP were never to be concluded or its ISDS mechanism were to be removed, more than 80% of US corporations will be able to use their Canadian
subsidiaries and sue EU member states using ISDS in CETA.

Public services are particularly vulnerable because CETA locks in current levels of liberalization, making it difficult for future governments to reverse privatization of any kind of public service in the EU or support or subsidize local initiatives, or particular services or forms of production.

Consequently CETA’s ratification process will be at the heart of the trade debate in 2016. While it is not yet clear whether national parliaments will have to ratify CETA, we know that the European Parliament will have the right to say NO.

READ MORE
For a short presentation of CETA, watch this video:
https://www.youtube.com/watch?v=Zd_WQ21iKI8

For a list of material on CETA, see:
http://www.s2bnetwork.org/issues/eus-free-trade-agreements/ceta-material/

#2 CETA’S INVESTMENT CHAPTER IS REFORMED AND FIXES ALL THE PROBLEMS WITH ISDS AND INVESTMENT PROTECTION.

SHORT ANSWER:
The ‘reforms’ arguably make things worse as the definitions and provisions are very broad and favour investors. CETA will also increase the sectors and companies covered by ISDS. And it will provide a backdoor for US investors.

LONG ANSWER:
While there is a lot of critical engagement with ISDS in Europe, this is mainly focused on TTIP. The EU-Canada deal has less of a profile, even though it also contains an investment chapter with ISDS. The Commission claims that ISDS has already been reformed in CETA. However, experts say that a) these ‘reforms’ will not prevent abuse by investors and arbitrators and b) CETA’s investor protections would arguably grant even greater rights to foreign investors than past agreements like NAFTA (the 1994 US-Canada-Mexico agreement), especially but not limited to the financial sector. This increases the risk that foreign investors will use CETA to constrain future government policy, as described in the previous chapter.

As Global Justice Now writes:
*There are many US companies which are likely to use subsidiaries in Canada in order to take advantage of the ISDS provisions in CETA, including Wal-Mart, Chevron, Coca Cola and Monsanto. 81% of the 41,000 US companies which would gain access to ISDS via TTIP have Canadian subsidiaries and could therefore use CETA, even if TTIP is stopped or changed. This type of ‘treaty shopping’ is widely used in the arbitration business and the EU reform of ISDS in CETA will not limit this option substantially.*
Canada is also home to highly litigious companies of its own. OceanaGold is a Canadian mining firm that is currently suing El Salvador for $301 million because the Government did not grant the company a mining license for the gold mining project El Dorado in 2009 (owned by Commerce Group Corp at the time). The company had failed to provide the necessary papers such as an environmental assessment, all land titles for the mining area and a feasibility study with a developmental plan. In the meantime El Salvador declared a moratorium on all mining projects in the country in order to protect water supplies. Contamination and over-use of water by mining activities is a global phenomenon which rarely results in the mining companies paying any compensation and El Salvador is no exception. Another Canadian mining company, Lone Pine Resources, even sued its own government through ISDS by using a US subsidiary to pose as a ‘foreign’ company and attempting to extract $250 million in compensation for Quebec’s moratorium on fracking. Gabriel Resources – another mining company – is attacking Romania for refusing to grant it a permit for exploration of the largest European cyanide-based gold and silver mine in the Romanian Apuseni Mountains at Rosia Montana.”

In sum, the investment chapter in CETA will significantly expand the scope of investment arbitration, exposing the EU and its member states to unpredictable and unprecedented liability risks.

READ MORE
For more information on ISDS in CETA and additional examples of controversial projects of Canadian mining companies in the EU see: Trading Away Democracy. http://corporateeurope.org/international-trade/2014/11/ceta-trading-away-democracy


THE CETA LOOPHOLE
RIGHT TO SUE FOR CANADIAN INVESTORS AND FOR 41,811 U.S. COMPANIES HAVING SUBSIDIARIES IN CANADA
#3 THERE IS NO RACE TO THE BOTTOM WITH CETA

SHORT ANSWER:
Even though no standard will be downgraded directly by CETA, the idea of accepting each other’s standards endangers our standards in various fields in the long run. ‘Regulatory cooperation’ is inviting big business to harmonise industry standards without taking citizens’ interests and safety into account.

LONG ANSWER:
CETA is explicit in its ambition to reduce regulations affecting businesses. Governments will be expected to provide corporations with licensing procedures that are as ‘simple as possible’ and that do not ‘unduly complicate or delay their activities’. But what does ‘unduly complicate or delay’ really mean? Wide and unclear provisions like these open the gates to all sorts of challenges of public enquiries, assessments and other obligations, on the grounds that they are overly complicated or time-consuming – even if they are legitimate or in the public interest. While the CETA text refers to harmless-sounding ‘regulatory cooperation’, in practice this could lead to a reduction in standards in either the EU or Canada, depending on who has the stricter regulations. This could lead to a race to the bottom in areas such as food safety, workers’ and consumers’ rights, environmental and health regulation. It could further tie the hands of governments by requiring them to consult with foreign governments before instituting new regulations that might have a bearing on Canadian trade and investment interests. The process will be overseen by a new body, the Regulatory Cooperation Forum, which is only vaguely defined and appears to be open to the direct influence of corporate lobbyists. Unlike TTIP, however, regulatory cooperation within CETA is mostly voluntary. While this is preferable, the power of voluntary measures to increase corporate influence should not be underestimated.

The EU’s precautionary principle is not comparable or interchangeable with Canada’s approach which only prevents the sale of products if there is direct proof of harm, as in the US. This means that medication, agricultural produce, food additives and other products can be marketed much more quickly. In Canada and the US, the safety measures built into the system are more a mechanism for extensive compensation. By contrast, in Europe the precautionary principle is a core element of EU regulatory policy and yet it hardly appears as a concept in CETA (or in the parts of the TTIP which have come to light so far). In CETA, exception rules which refer to precaution have only been applied very specifically to occupational health and safety and environmental protection.

Furthermore CETA could prevent future regulation or stricter standards as potentially every new regulation could be challenged by foreign investors using the ISDS mechanism.

READ MORE
For more information on CETA and standards, see Global Justice Now briefing: CETA, TTIP’s ugly brother. http://www.globaljustice.org.uk/resources/ceta-ttips-ugly-brother
#4 “CETA IS A GOOD DEAL FOR FARMERS AND FOOD PRODUCERS”

By Berit Thomsen (AbL – Arbeitsgemeinschaft bäuerliche Landwirtschaft e.V.)

SHORT ANSWER:
CETA is a good deal for the agro-business and food production industry, but small farmers will have to deal with additional competition and growing market pressure.

As explained above, Canada and the EU have different standards in food production and health (#3). Here we will highlight two examples from the pork and dairy industries.

In Canada the use of hormones in meat production is permitted while in Europe it is not. Pigs fed with hormones and ractopamin grow faster. In order to retain this ban on hormones and ractopamin for future imports from Canada, the European Commission has had to accept an extremely high level of market access in the sensitive European meat sector compared to other free trade agreements. If CETA is signed, Canada could export up to 80,549 tons of hormone-free pork into the EU without paying any duty (page 35 – CETA5). This is a 16-fold increase in previous duty-free quotas.

Production costs in Canada are significantly lower than in the EU (AbL6). Canada’s pork processing sectors are highly concentrated, with approximately 70% of pork processed by Olymel and Maple Leaf Foods (National Farmers Union7). If these companies manage to establish a hormone and ractopamin-free production system, more cheap meat will enter the European pork market. More meat will also exert a downward pressure on prices of meat in the EU at a time when our own over-production is already putting pressure on the prices and profits for our pork farmers.

Meanwhile, our dairy industry will be allowed to export cheese to Canada via duty-free quotas. Once CETA is ratified, the current quota will double to 31,072 tons. This could lead to Canadian dairy farmers losing 4% of their national cheese market (Sinclair 20148). It will be easy for European dairy companies to sell cheese because milk products from European farms are currently very cheap due to a recent and further liberalization of our dairy market policy. In Canada prices are much higher due to Canada’s quota system for dairy products which grants farmers a better price. In contrast to the EU, these prices actually cover their production costs.

In both examples, dairy companies in Europe and pork companies in Canada would profit from CETA, enabling them to sell their cheap products...
and improve their share of markets outside of their countries. The losers are farmers on both sides of the Atlantic and a quality food system. Once CETA is in place, it will be more difficult to introduce new or higher standards in any part of the food production system (compare #3).

READ MORE

#5 “PUBLIC SERVICES ARE PROTECTED IN CETA”

SHORT ANSWER:
CETA will have a negative impact on public services. This includes the level and control of quality as well as changes or new regulations affecting public services that have been opened up to private investors. It will complicate, if not prohibit, the remunicipalisation of public services and endanger citizens’ rights to basic services like energy, health care or water – for the sake of private profits.

LONG ANSWER:
There is a strong link between a country’s public services and the level of equality experienced by its citizens. One of the most important goals of CETA is to increase opportunities for big business to create profits from public services like health, education or access to water. There is no such thing as an actual exchange of the famous European ‘social model’ to Canada or other fairy tales; instead the agreement focuses on strengthening ‘private rights’. Although the Commission claims that public services are protected, in reality the opposite is the case. CETA introduces a whole new level of privatization of public services. A few governmental activities are exempted – namely the ‘activities carried out in the exercise of governmental authority’, so long as they are ‘neither on a commercial basis nor in competition with one or more economic operators’.9 This usually includes only the police, judiciary or central banks. For the majority of public services a negative list has been introduced. Every sector of public services that is not explicitly listed as an exemption is open to Canadian companies. This also includes public services that might not even exist yet.

The idea of ‘open markets’ introduced in trade agreements like CETA undermines the legitimacy of public services and strongly discourages governments from introducing new services or regulating existing ones. Current levels of liberalisation are locked in which limits the options to stimulate economic growth and local job creation through public procurement or the extension of public services. Remunicipalisation of health, transport, energy or water services as well as the public interest goals within these services will all be at risk. The EU itself has openly declared an interest in opening Canada’s water and electricity resources to corporate ownership.

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9 see CETA text: Chapter 10, Article X.1.2(c) and Chapter 11, Article 1.1(a)
Additionally, CETA provides corporations with an Investor-State Dispute Settlement (ISDS) mechanism which they can use to demand compensation when governments decide to deliver new services through the public sector or attempt to reverse a privatization or introduce any other regulations in a sector in which private investors are active. Even sectors excluded from the rest of CETA via the negative list are covered by ISDS. In the past, there have been many lawsuits against public interest policies with regard to services, such as the phasing out of fossil fuels or capping the price of water to keep it affordable for all citizens. Threats to use ISDS result in a ‘chilling effect’, dissuading governments from changing or strengthening regulations or providing services themselves (remunicipalisation).

To learn more about public services in CETA, read Public services under attack through TTIP and CETA: http://corporateeurope.org/international-trade/2015/10/public-services-under-attack-through-ttip-and-ceta

#6 “CETA IS A BALANCED DEAL: IT PROTECTS WORKERS AND THE ENVIRONMENT”

**SHORT ANSWER:**
Like all other European free trade agreements, CETA is a one-sided treaty. It is made for corporations, is heavily influenced by them, and guarantees only their rights and profits.

**LONG ANSWER:**
For five years, the CETA negotiations have been conducted behind closed doors. Civil society and citizens’ access to the texts were limited to leaks, while business lobbies had privileged access to the negotiations. The 1,600 pages of CETA text were only published in the week that the text was finalised, in September 2014. While deregulatory rules in CETA affecting existing and future workers’ rights and environmental regulations contain powerful enforcement mechanisms through State-to-state dispute settlement and ISDS, the parts of the treaty dealing with labour standards, decent work, environmental and climate protection are non-binding. As with all EU free trade agreements, the chapter on sustainable development in CETA does not include any enforcement mechanism. All standards, treaties, measures and codes listed can be followed by governments and corporations voluntarily, of course. But this means that nothing will change for the better as a result of CETA.

Meanwhile, ISDS allows foreign corporations to directly sue countries at private international tribunals for compensation over health, environmental, financial and other domestic safeguards that might undermine their right to make profit. In the past, investors have used ISDS to challenge many safeguard measures such as anti-smoking laws, bans on toxic substances and mining, requirements for environmental impact assessments, regulations relating to hazardous waste, and many more.
By protecting investors’ ‘legitimate expectations’ under the so-called ‘fair and equitable treatment’ clause and other broadly defined provisions, CETA has the potential to deepen the already very expansive interpretation of such clauses and create de facto the ‘right’ of companies to a stable regulatory environment, at the expense of the state’s right to regulate. It means that investors will be able to fight regulatory changes, even when these changes are in response to new knowledge or democratic decisions.

Canadian investment in mining is very high in Europe and ISDS cases in this particular sector have been increasing even before CETA comes into effect (see #2 for ISDS cases on mining). Meanwhile the transition to cleaner energy has been attacked in numerous cases. Vattenfall sued Germany for tightening environmental regulations in a coal-fired power plant, for example. In order to avoid having to pay compensation, the regulation has since been changed by the city of Hamburg. A second claim by Vattenfall for compensation for Germany’s decision to phase out nuclear power is still ongoing.

CETA will open up the opportunity for energy and mining companies from Canada (and the US) to step up controversial activities such as fracking. Only Bulgaria listed fracking as a reservation.

Equally problematic are broadly worded restrictions on regulation regarding non-trade related issues and areas. Restrictions on domestic regulation are not only applicable to services but also to other economic activities such as forestry, mining, fishing, oil and gas. Essentially, the policy space for adopting new measures across a range of sectors will be eroded. Environmental assessments or archaeological studies, for example, could easily be deemed ‘too complicated’ or ‘time-consuming’ (compare #3).

READ MORE

Read more information on the CETA sustainable development chapter in: The planned regulatory cooperation between the European Union and Canada and the USA according to the CETA and TTIP drafts, Peter-Tobias Stoll, Till Patrik Holterhus, Henner Gött (page 24, 4.5)


CONCLUSION

This guide has provided a brief overview of some of the main arguments in favour of TTIP and CETA and advice on how to counter these arguments. Many more myths and claims have surfaced which will be addressed in future versions.

Hundreds of high quality reports have now been published on every aspect of TTIP and CETA. You can find relevant reports and publications on more than 20 sub-topics (for example: regulatory cooperation or jobs and growth) on the S2B website or the websites of your national campaigns.

By training each other, practising and improving our arguments, and daring to directly contact elected representatives and the media, we will win this debate and stop these sinister trade deals!