

This transatlantic trade deal is a full-frontal assault on democracy (4.11.2013)

Brussels has kept quiet about a treaty that would let rapacious companies subvert our laws, rights and national sovereignty

The lies behind this transatlantic trade deal (2.12.2013)

Plans to create an EU-US single market will allow corporations to sue governments using secretive panels, bypassing courts and parliaments.

Both articles were published by George Monbiot in the Guardian and can be viewed on his website www.monbiot.com and on *Twitter*: [@georgemonbiot](https://twitter.com/georgemonbiot).

The following text is taken from the articles with some editing to avoid repetition.

Remember that referendum about whether we should create a single market with the United States? You know, the one that asked whether corporations should have the power to strike down our laws? No, I don't either. Mind you, I spent 10 minutes looking for my watch the other day before I realised I was wearing it. Forgetting about the referendum is another sign of ageing. Because there must have been one, mustn't there? After all that agonising over whether or not we should stay in the European Union, the government wouldn't cede our sovereignty to some shadowy, undemocratic body without consulting us. Would it?

The purpose of the [Transatlantic Trade and Investment Partnership](#) is to remove the regulatory differences between the US and European nations. The most important issue is the remarkable ability it would grant big business to sue the living daylights out of governments which try to defend their citizens. It would allow a secretive panel of corporate lawyers to overrule the will of parliament and destroy our legal protections. Yet the defenders of our sovereignty say nothing.

The toxic mechanism through which this is achieved is known as [investor-state dispute settlement](#). It's already being used in many parts of the world to kill regulations protecting people and the living planet.

Where this has been forced into other trade agreements, it has allowed big corporations to sue governments before secretive arbitration panels composed of corporate lawyers, which bypass domestic courts and override the will of parliaments. Already it is being used by mining companies to sue governments trying to keep them out of protected areas; by banks fighting financial regulation; by a [nuclear company contesting Germany's decision to switch off atomic power](#).

No longer able to keep this process quiet, the European commission has instead devised a strategy for lying to us. A few days ago an [internal document was leaked](#). This reveals that a "dedicated communications operation" is being "co-ordinated across the commission". It involves, to use the commission's chilling phrase, the "management of stakeholders, social media and transparency". Managing transparency should be adopted as its motto.

The message is that the trade deal is about "delivering growth and jobs" and will not "undermine regulation and existing levels of protection in areas like health, safety and the environment". Just one problem: it's not true.

From the outset, the transatlantic partnership has been driven by corporations and their lobby groups, who boast of being able to "co-write" it. Persistent digging by the [Corporate Europe Observatory](#) reveals that the commission has held eight meetings on the issue with civil society groups, and 119 with corporations and their lobbyists. Unlike the civil society meetings, these have taken place behind closed doors and have not been disclosed online. Though the commission now tells the public that it will protect "the state's right to regulate", this isn't the message the corporations have been hearing. In an interview last week, Stuart Eizenstat, co-chair of the Transatlantic Business Council – instrumental in driving the process – was asked if companies whose products had been banned by regulators would be able to sue [see footnote]. Yes. "If a suit like that was brought and was successful, [it would mean that the country banning the product would have to pay compensation](#) to the industry involved or let the product in." Would that apply to the European ban on chicken carcasses washed with chlorine, a controversial practice permitted in the US? "That's one example where it might."

What the commission and its member governments fail to explain is why we need offshore arbitration at all. It insists that domestic courts "might be biased or lack independence", but which courts is it talking about? It won't say. Last month, while trying to defend the treaty, the British minister Kenneth Clarke said something revealing: "Investor protection is a standard part of free-trade agreements – it was designed to support businesses investing in countries where the rule of law is unpredictable, to say the least." So what is it doing in an EU-US deal? Why are we using measures designed to protect corporate interests in failed states in countries with a functioning judicial system? Perhaps it's because functioning courts are less useful to corporations than opaque and unjust arbitration by corporate lawyers.

As for the commission's claim that the trade deal will produce growth and jobs, this is also likely to be false. Barack Obama promised that the US-Korea Free Trade Agreement would increase US exports by \$10bn. They immediately fell by \$3.5bn. [The 70,000 jobs it would deliver? Er, 40,000 were lost.](#) Bill Clinton promised that the North American Free Trade Agreement would create 200,000 new jobs for the US; [680,000 went down the pan.](#) As the commentator Glyn Moody says: "The benefits are slight and illusory, while the risks are very real."

During its financial crisis, and in response to public anger over rocketing charges, Argentina imposed a freeze on people's energy and water bills (does this sound familiar?). It was sued by the international utility companies whose vast bills had prompted the government to act. For this and other such crimes, it has been forced to pay out over a billion dollars in compensation. In El Salvador, local communities managed at great cost ([three campaigners were murdered](#)) to persuade the government to refuse permission for a vast gold mine which threatened to contaminate their water supplies. A victory for democracy? Not for long, perhaps. The Canadian company which sought to dig the mine is now suing El Salvador for \$315m – for the loss of its anticipated future profits. In Canada, the courts revoked two patents owned by the American drugs firm Eli Lilly, on the grounds that the company had not produced enough evidence that they had the beneficial effects it claimed. Eli Lilly is now [suing the Canadian government for \\$500m](#), and demanding that Canada's patent laws are changed.

These companies (along with hundreds of others) are using the investor-state dispute rules embedded in trade treaties signed by the countries they are suing. The rules are enforced by panels which have none of the safeguards we expect in our own courts. The hearings are held in secret. The judges are corporate lawyers, many of whom work for companies of the kind whose cases they hear. Citizens and communities affected by their decisions have no legal standing. There is no right of appeal on the merits of the case. Yet they can overthrow the sovereignty of parliaments and the rulings of supreme courts.

You don't believe it? Here's what one of the judges on these tribunals says about his work. "When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all ... Three private individuals are entrusted with the power to review, without any

restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament."

There are no corresponding rights for citizens. We can't use these tribunals to demand better protections from corporate greed. As the [Democracy Centre](#) says, this is "a privatised justice system for global corporations".

Even if these suits don't succeed, they can exert a powerful chilling effect on legislation. One Canadian government official, speaking about the rules introduced by the North American Free Trade Agreement, remarked: "I've seen the letters from the New York and DC law firms coming up to the Canadian government on virtually every new environmental regulation and proposition in the last five years. They involved dry-cleaning chemicals, pharmaceuticals, pesticides, patent law. Virtually all of the new initiatives were targeted and most of them never saw the light of day." Democracy, as a meaningful proposition, is impossible under these circumstances.

This is the system to which we will be subject if the transatlantic treaty goes ahead. The US and the European commission, both of which have been captured by the corporations they are supposed to regulate, are pressing for investor-state dispute resolution to be included in the agreement.

The commission justifies this policy by claiming that domestic courts don't offer corporations sufficient protection because they "might be biased or lack independence". Which courts is it talking about? Those of the US? Its own member states? It doesn't say. In fact it fails to produce a single concrete example demonstrating the need for a new, extrajudicial system. It is precisely because our courts are generally not biased or lacking independence that the corporations want to bypass them. The EC seeks to replace open, accountable, sovereign courts with a closed, corrupt system riddled with conflicts of interest and arbitrary powers.

Investor-state rules could be used to smash any attempt to save the NHS from corporate control, to re-regulate the banks, to curb the greed of the energy companies, to renationalise the railways, to leave fossil fuels in the ground. These rules shut down democratic alternatives. They outlaw leftwing politics.

So where are our elected representatives? Fast asleep. Labour MEPs, now frantically trying to keep investor-state dispute mechanisms out of the agreement, are the exception; the rest are in Neverland. The treaty is likely to advantage the corporations of both the US and the EU, while disadvantaging their people. It presents a danger to democracy and public protection throughout the trading area.

This is why there has been no attempt by the UK government to inform us about this monstrous assault on democracy, let alone consult us. This is why the Conservatives who huff and puff about sovereignty are silent. Wake up, people we're being shafted.

Caroline Lucas, one of the few MPs interested in the sovereignty of parliament, has published an early-day motion on the issue. It has so far been signed by seven MPs. For the government, [Clarke argues](#) that to ignore the potential economic gains "in favour of blowing up a controversy around one small part of the negotiations, known as investor protection, seems to me positively Scrooge-like".

Quite right too. Overriding our laws, stripping away our rights, making parliament redundant: these are trivial and irrelevant beside the issue of how much money could be made. Don't worry your little heads about it.

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*This footnote was appended on 16 December. Mr Eizenstat has asked us to make clear he was not talking about investor-state agreements in the interview and was only referring to the EU obligations if a successful suit was brought under WTO regulations.