CETA

NO PRIVILEGED RIGHTS TO SUE STATES FOR CORPORATIONS

AK WIEN ÖGB DGB

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"Stop TTIP & CETA! For fair world trade" – mass rally on 10 October 2015 in Berlin

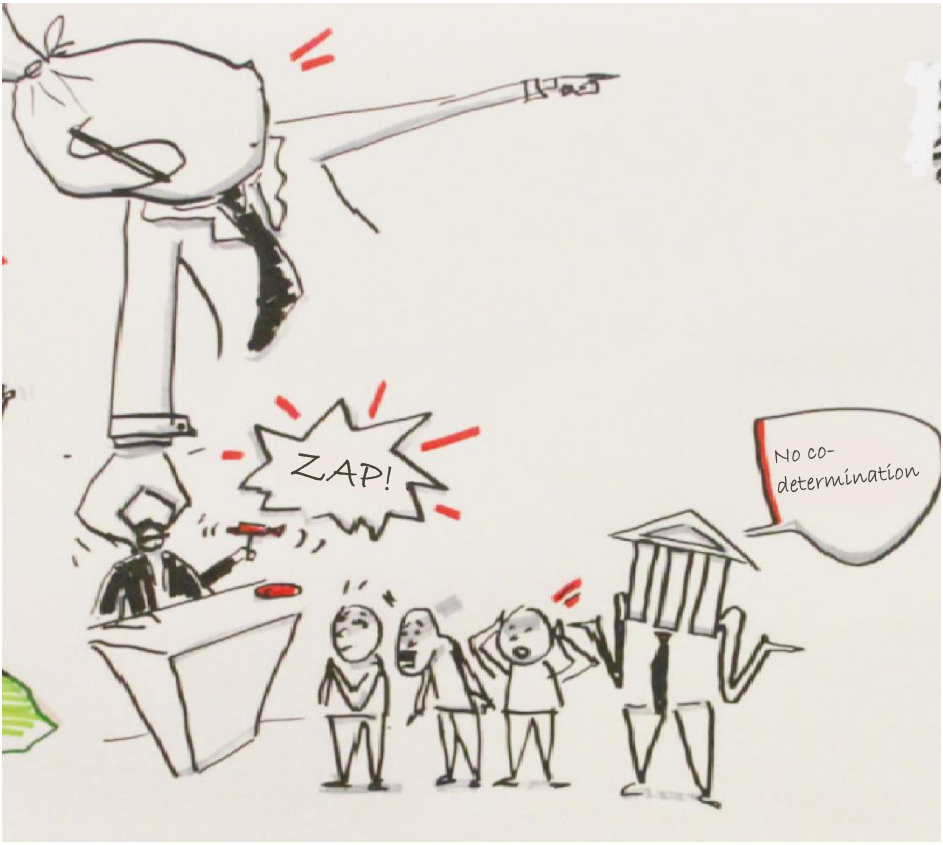
CETA - NO PRIVILEDGED RIGHTS FOR CORPORATIONS TO SUE STATES

A large portion of the criticism of the many recent trade agreements which the EU is currently negotiating is directed at the rights of investors to sue governments (Investor-State Dispute Settlement, ISDS). As a result of the massive public pressure the European Commission revised the arbitration proceeding in the ISDS system at the end of 2015. Its new name is now Investment Court System (ICS).

The ICS proposal was published in the context of the negotiations between the EU and the USA (Transatlantic Trade and Investment Partnership – TTIP). But the reformed arbitration court will also be applied to the free trade agreement between the EU and Canada (Comprehensive Economic and Trade Agreement/CETA). Some criticisms about the arbitration proceeding were incorporated in the reforms by the European Commission. Nevertheless, the main criticism of privileged rights to sue and parallel justice for multinational corporations has been maintained.

ONE-SIDED PRIVILEGED RIGHTS FOR FOREIGN INVESTORS

CETA is to give foreign investors more rights than any other group in society. Only foreign investors can bring claims against regulations in the public interest that impact their investments. By comparison, domestic investors are worse off since they can only appeal to national courts within the framework of national laws. Whereby, foreign investors can choose the most favourable verdict from national courts in Canada or EU countries or the new Canadian-European arbitration court. There is no good reason for incorporating these special rights into CETA and putting the interests of investors ahead of the general welfare of the public!



"Graphic recording" at the alternative conference "Alternatives on Trade Policy" involving TTIP Stoppen Austria, ÖGB, PRO-GE, Vida, younion, GPA-djp held in Vienna on 22 September 2015

While extensive investors' rights will be incorporated, there is a lack of investor obligations: misconduct by companies cannot be actioned. Rather the decision to include this powerful instrument in CETA opens up the possibility for foreign investors to take action against democratically adopted regulations. In certain circumstances forms of worker participation as the rights of workers to have a say in supervisory boards of stock companies, could be attacked as a form of indirect expropriation because corporate decisions can be blocked.

Investment protection in CETA contains the same extensive clauses for investors that have already resulted in environmental and social laws being attacked in many cases (see text box on page 5). The guarantee of "fair and equitable" treatment and protection against indirect expropriation continues to allow corporate groups to sue when threatened with the loss of future profits.

WHAT HAPPENED SO FAR...

So far 696 ISDS lawsuits are known, whereby industrial countries were sued in 40 per cent of cases by foreign companies. So there are numerous examples showing the opportunities open to foreign investors to take action against legitimate measures and regulations they dislike.

- For years the Canadian and US public and civil society groups have been fighting to stop the mega project Keystone XL – an oil pipeline that is intended to transport oil extracted from tar sands from the Canadian province of Alberta through the USA to the Gulf of Mexico. President Obama rejected the project on environmental grounds. The Canadian company TransCanada is now suing the USA for 15 billion US dollars under the NAFTA trade agreement between Canada, the USA and Mexico.
- In 2012 the French company Veolia sued Egypt on the basis of the bilateral investment agreement between France and Egypt. The company argues, that the contract of waste disposal with the city of Alexandria is violated. The city rejected changes to the contract which Veolia wanted in order to offset higher costs – triggered by inter alia the introduction of a minimum wage. Veolia is demanding compensation payment of 82 million Euro.
- In 2013 the US company Bilcon wanted to extend a stone quarry and build a mining port in an ecologically sensitive region in the east of Canada. Following protests in the region, a decision-making body appointed by the government recommended, that the project should not be approved due to potentially negative environmental consequences. The provincial governments acted on this recommendation and refused to approve the port. Bilcon filed an action under the NAFTA dispute settlement and won. It is now a question of the amount of compensation. Bilcon is demanding USD 300 million.

IT IS STILL POSSIBLE TO SUE AGAINST NEW LAWS

The present ISDS cases show what we could be facing with these privileged rights for corporations. The prospect of demands for billions in compensation and lawsuits lasting years raises the fear that governments will consider very carefully whether and how they regulate. Will new laws be formulated from the outset so that they comply with the "needs" of investors? In order to deal with these problems, a provision in CETA-Treaty states specifically that countries have the "right to regulate". But the wording is far too weak and doesn't change anything. The right to regulate is intended to ensure that regulatory measures can continue to be issued as long as they are "legitimate" and not "manifestly excessive". Labour protection measures are not listed explicitly as legitimate regulations. The "right to regulate" alone will not prevent governments being put under pressure from severe claims impending of lawsuits and hence refrain completely from introducing regulations or will water them down. Because what is ultimately legitimate and reasonable for investors lies in the interpretation and decision of the arbitrators. The "right to regulate" is no warranty for taxpayers not to pay billions of Euro caused by the cost of lawsuits and compensation payments.

SUBSTANTIVE SHORTCOMINGS REMAIN IN THE ICS ARBITRATION SYSTEM

Some elements have been introduced to ICS that are similar to the due process of law. Cases are to become more transparent and there will be a court of appeal so that cases can be reviewed once more. Investors now have less influence to select their "judges". But only a small group of lawyers that have already been active in international arbitration is eligible to be judges – these are lawyers with the experience to know how to enforce the interests of companies against governments. This comes together with the terms of remuneration (very low basic wage with daily rates according to the amount in dispute). Some judges could make a mint in the job. Therefore, the independence of arbitration judges is rightly being called into question.

Despite improvements and corrections, the main criticisms have not be addressed: If CETA were to be adopted and ratified in its final form, the chapter on investment protection will contribute to laws passed by democratically elected Parliaments coming under fire from private investors who see their profits as being in danger.

That is why workers and trade unions from all over Europe spoke out at an early stage against investors' rights to sue governments – especially when the countries negotiating have highly developed legal systems and their national courts would be equally capable of deciding such disputes independently and even-handedly.

Workers, consumers, and small and medium-sized enterprises must not in the end become the losers of new trade agreements such as CETA. Trade must be arranged so that it is beneficial to all.

CETA IS TTIP THROUGH THE BACK DOOR – OUR DEMANDS

Closer trade relations are to be welcomed, but not at the cost of workers. Important concerns were ignored. As it stands, CETA must not be ratified. We want fair trade!

NO PRIVILEDGED RIGHTS FOR CORPORATIONS

We continue to reject the introduction of investors' special rights to sue states (ISDS/ICS). The elements of reform that were only introduced to the CETA agreement as a result of public pressure are not sufficient because investors' special rights still take precedence over the public interest.

PUBLIC SERVICES BELONG TO ALL AND HAVE NO PLACE IN A TRADE AGREEMENT

We demand the full and unambiguous exclusion of public services such as water, energy, transport, social insurance, healthcare, municipal services, education, social services and culture from all provisions of the CETA agreement. The positive list approach must be applied to all other services.

ENFORCEABLE ILO CORE LABOUR STANDARDS

Core labour standards and more far-reaching labour standards of the ILO must be incorporated as mandatory provisions in trade agreements. Violations must be penalised.

HIGH SOCIAL, HEALTH AND ENVIRONMENTAL STANDARDS

It is to be feared that mutual recognition or the harmonisation of important prohibitions or regulations to protect health, workers or food safety will be relaxed or even repealed. There are no apparent exemptions for sensitive areas. The precautionary principle that represents the European model must be incorporated explicitly.

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