

Trade Pact Contains A Hidden Danger

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I want to thank the Press Club for inviting me here to talk about ISDS. I am here, as are the other members of the panel, because I think the ISDS provisions of the TPP are of immense importance. But these provisions are hidden away in the 6000-page TPP that is usually discussed in terms of its impact on more familiar issues like jobs and the economy. As a result, the ISDS provisions are not getting anything like the attention their true importance deserves.

I am concerned that our country may take a critical and irreversible step in adopting TPP without even knowing that ISDS, with all its ramifications, is there. So our goal today is to make what is happening visible and discussible.

You have heard from our previous speakers what ISDS is, how around the world corporations are successfully suing under ISDS to contest a virtually unlimited range of government actions. These include, among many others, measures relating to taxation, environmental regulation, rates for water and electricity, health insurance regulation, and so on.

If we pass TPP in its present form we will have those suits here. Corporations will be able to sue our government if profitability is lost due to the actions of our national government, or even of any of our state or local governments, and these claims will not be heard in our court system, but in a special international tribunal whose principal concern has historically been corporate profitability.

But why do we want the alleged harm to be assessed in this way by ISDS; why do we not use our own normal courts?

Our court system has evolved in our country over long stretches of time and much experience. Why should our governments be obliged at every turn to be sued and pay for hypothetical lost profitability at the command of a small corporate-dominated international tribunal? Why are we pushing in TPP to make this happen?

Whatever the TPP says on paper, ISDS does in practice give corporations a way to sue, and be compensated, completely outside of our normal legal system. ISDS provides a system with different norms and with different, very pro-corporate results. Again: Why should we want to move in this direction?

And this effect of ISDS extends to states or municipality. For example, if some city, say Seattle, raised its minimum wage or changed in some other way that reduced the profitability of some foreign business there, under ISDS there could be a basis for a suit against the U.S. government.

Whether the suit would succeed would depend on many more factors, but this possibility would have to be considered whenever that change is discussed. This is certainly allowing the preservation of corporate profits to shape democracy.

We should not imagine that somehow we will be immune from being sued. Even under the World Trade Agreement, other nations have gained a hand in shaping our laws. Last December, Congress, under threat of retaliation, withdrew the legislation it had passed in 2002 about labeling meat and other fresh products by country of origin, after WTO tribunals ruled such labeling violated the WTO charter.

Right now under NAFTA, a Canadian corporation is suing the U.S. government (President Obama) for \$15 billion for refusing to go ahead with the next portion of the Keystone pipeline. And I believe the way these things are judged under ISDS, they have a strong case.

If TPP goes through, with many major nations involved, we will see an enormous escalation of these claims. Corporations will not hold back. They have too much at stake.

I have no doubt the great global corporations will vigorously pursue this ISDS path to influence the actions of governments at all levels.

What we have here in ISDS is by far the greatest grab for corporate influence over governments that I have ever seen, or even imagined.

My hope for this event today is that it will help to bring what is happening out into the full light of day.