

# **The end of investors privileges? European campaigns against ISDS**

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Network – 17/04/17



# About the Seattle to Brussels network

- formed in the aftermath of the World Trade Organisation's (WTO) 1999 Seattle Ministerial
- challenging the corporate-driven trade agenda of the European Union and European governments
- developed as a response to the increasing need for European coordination among civil society organisations
- kickstarted the movement against TTIP and CETA in Europe





.. and many more

1) The trade movement in Europe –  
some context

2) Attempts to save ISDS

- Investment Court System (ICS)
- Multilateral Investment Court (MIC)

3) A European campaign against ISDS  
in all its forms

3) Next steps

# THE STATE OF EU TRADE

2018



- EU & Customs union (Andorra, Monaco, San Marino, Turkey)
- European Economic Area (Norway, Iceland, Liechtenstein)
- Applied preferential trade agreement (FTA, EPA, DCFTA)
- Preferential agreement awaiting application
- Pending negotiations for a preferential trade agreement
- Potential preferential trade partners
- Pending negotiations for a stand-alone investment agreement
- Preferential agreement in the process of modernisation

@Trade\_EU  
#EUTrade

Source : DG trade



# Looking back at the movement

- Powerful and diverse national campaigns in all EU member states since 2013
- Specific angles in each country, and for each organisation
- One European tool uniting everyone (a European petition)
- A wide range of other actions (local activities, demonstrations, advocacy, actions)



## SIGNATURES BY MEMBER STATES

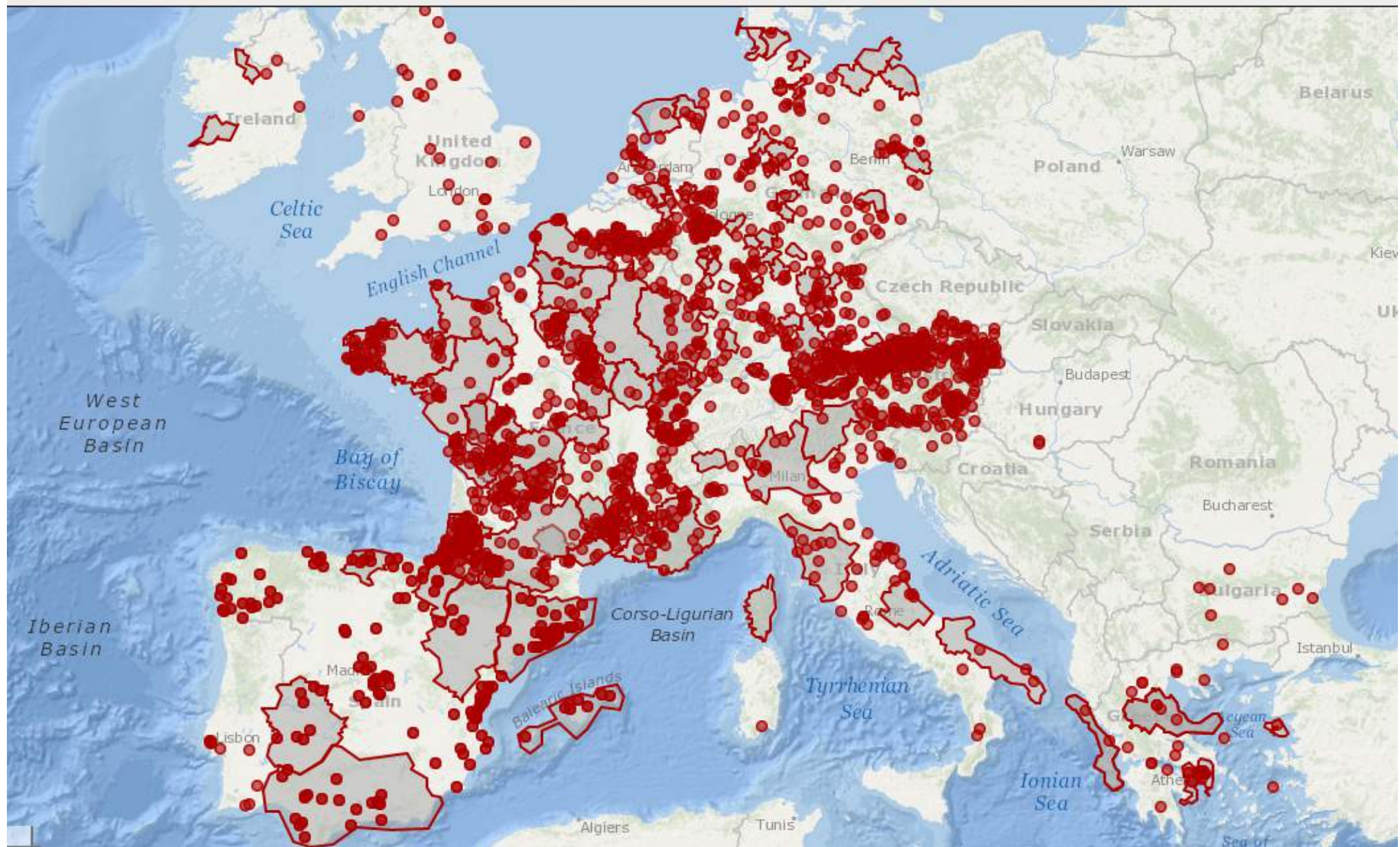


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## TTIP, CETA and TiSA-free zones in Europe





# Results

- TTIP negotiations blocked, even before the Trump election
- TTIP is a toxic topic for European politicians
- TTIP talks restarting as a « solution » to the current trade war?



**Donald J. Trump**  @realDonaldTrump · 12h

European Union representatives told me that they would start buying soybeans from our great farmers immediately. Also, they will be buying vast amounts of LNG!



11K



14K



63K



**Donald J. Trump**  @realDonaldTrump · 12h

Great to be back on track with the European Union. This was a big day for free and fair trade!



7.3K



16K



77K





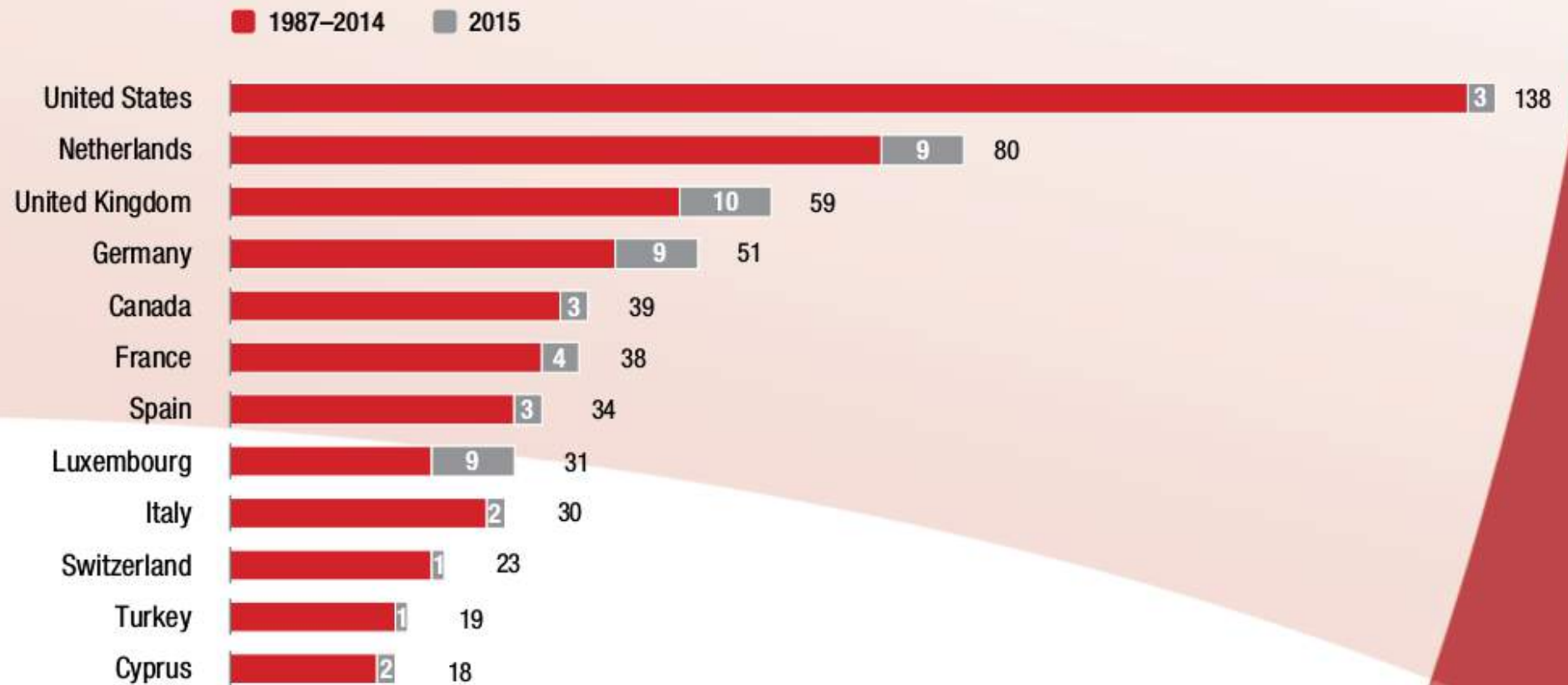
- A **special private justice system for corporations**, to sue states if their profits are threatened
- ISDS : Investor to State Dispute Settlement
- Many shocking cases
  - | German exit from nuclear power
  - | State debt restructuring in Greece
  - | Increase of the minimum wage in Egypt
  - | Cases in Argentina after the financial crisis
  - | Moratorium on fracking....
- Became a mainstream issue in several European countries in 2014

## A parallel justice system for corporations #2

- ISDS only available to corporations to sue states, states cannot sue corporations
- No obligations for corporations
- Arbitrators are corporate lawyers, with plenty of conflicts of interest
- No limit on the awards amount : billion dollars liability for tax payers



**Figure 3. Most frequent home States of claimants, total as of end 2015** (Number of known cases)



Source: ©UNCTAD, ISDS Navigator.



## A parallel justice system for corporations #3

- Investment protection is the most important issue for the European trade movement
- « ISDS » – Investors to state dispute settlement – is now the most toxic acronym in European politics
- We used **toxic cases**
- Insisted on **the millions of € of tax payer money** made by corporate lawyers & the arbitration industry (in a context of austerity)
- Organised tens of **high level trainings** with social movements, highlighting cases relevant to each of them



# A parallel justice system for corporations #4

ICS, Investment Court System : same old

- In 2014, European commission was forced to change the name of the system to save it : « **ICS** » - **Investment court system**

- Not fixing the flaws – it is still a parallel **one sided** system for corporations to sue states, even when they regulate in the public interest

- Still a **huge expansion** of investors privileges

- Very large opposition of Europe civil society



# A parallel justice system for corporations #5

## ICS

- Special rights for investors are still the same (and unacceptable)
- The system even institutionalises expensive interpretations of the definitions
- The dispute settlement process :
  - is **a little bit** more transparent
  - Is **a little bit** protected against conflict of interests (in theory)
  - relies on a « roster » of arbitrators (no party-appointment anymore)
  - arbitrators get a 3000€ fixed salary on top of their fees (paid by the states)

# A parallel justice system for corporations #5

## MIC

- Second attempt to save the system :  
The **Multilateral Investment Court (MIC)**
- Very dangerous, would be a global, institutionalised corporate court!
- Red herring & legitimisation of massive expansion of the ISDS system
- Permanent lock-in
- De-legitimisation of alternatives (treaty termination and substantial revisions)
- a significant transfer of power to private capital owners & lawyers (from people, Parliaments, courts)





Rights for people, not for  
corporations !

Plans for a European campaign  
against corporate courts in  
2019

# 6 reasons for a campaign against ISDS in Europe in 2018/19

- 1.** ISDS = fundamental danger for social & environmental justice
- 2.** Global impact of abolishing ISDS in the EU
- 3.** Current effort of re-legitimisation, expansion and lock-in lead by the EU
- 4.** The opposition to ISDS unifies our movement
- 5.** Re-centers our narrative on corporate power
- 6.** We can win this







# Steps required

Abolishing ISDS in Europe requires :

1. Stopping the **expansion** of ISDS (prevent new agreements containing ISDS)
2. **Exiting** treaties already containing ISDS (ECT, BITs..)
3. Stopping the EU's **global corporate court** proposal (Multilateral Investment Court)



# A European campaign against ISDS

- A shared European tool to unite us (signature collection)
- Diverse and decentralised activities all around Europe
- Plurality of strategies & tactics
- Possibility to connect with campaigns against ISDS on other continents

Corporate power =

- Climate crisis & environmental crisis
- Social crisis & inequalities



Change track, people and the planet first!

I ~~SDS~~

STOP CORPORATE  
POWER GRAB

Thank you

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## How investor rights in EU trade deals sabotage the fight for energy transition

Avoiding catastrophic climate change is the defining challenge of our time. If we are to have a chance of preventing extremely dangerous levels of global warming, much of the world's fossil fuels – oil, coal and gas – must be left in the ground, unexploited. Societies need to move to an energy system based on renewable sources like sun, wind and water.

This colossal change will require strong action from public authorities. But their ability to introduce the right laws and regulations is severely constrained by a little-known but very powerful legal system. This international investment regime has ensnared many countries in its legal nets in the last decades.

Thousands of trade and investment agreements signed between countries allow multinational companies to sue governments if changes in policy – even in rules to protect the environment or fight climate change – are deemed to reduce their profits. By the end of 2014, there were 608 of these investor lawsuits known to be taking place within international tribunals. The costs of these suits weigh heavily on governments, in the form of hefty legal bills and weakened social and environmental regulations.

A growing number of investor-state lawsuits target government initiatives in the energy sector, ranging from the phase out of nuclear power to moratoria on environmentally-risky shale gas development ('fracking'). As law firms make money each time that an investor sues a state, this encourages more and more corporate lawsuits: for example, over legislation in the renewables sector.

Despite the evident risk to energy transition, even more trade and investment deals are in the pipeline that would empower corporations to challenge strong government action on climate change. Amongst them is the Transatlantic Trade and Investment Partnership (TTIP), currently under negotiation between the EU and the US, and the Comprehensive Economic and Trade Agreement (CETA) between the EU and Canada, for which ratification could start in 2016.

Yet while big polluters are lobbying heavily for these deals, a growing movement is turning against the corporate power grab. Indeed, there is now more public scrutiny and debate about trade and investment agreements than there has been in years.

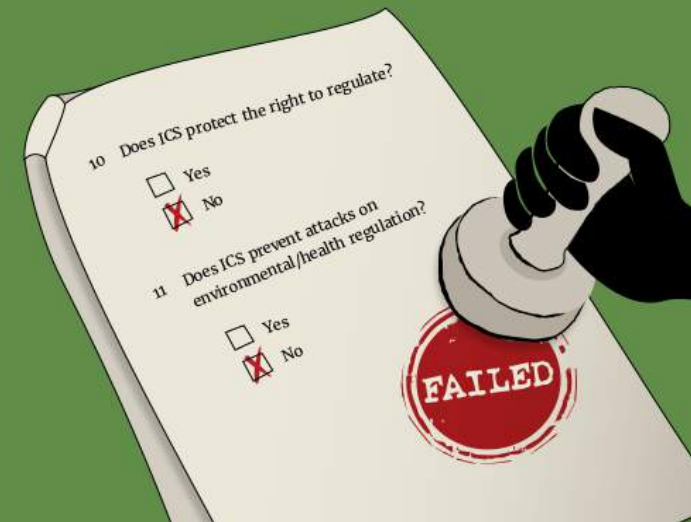


*Polluters' Paradise – How investor rights in EU trade deals sabotage the fight for energy transition*

April 2016

## Investment Court System put to the test

*New EU proposal will perpetuate investors' attacks on health and environment*

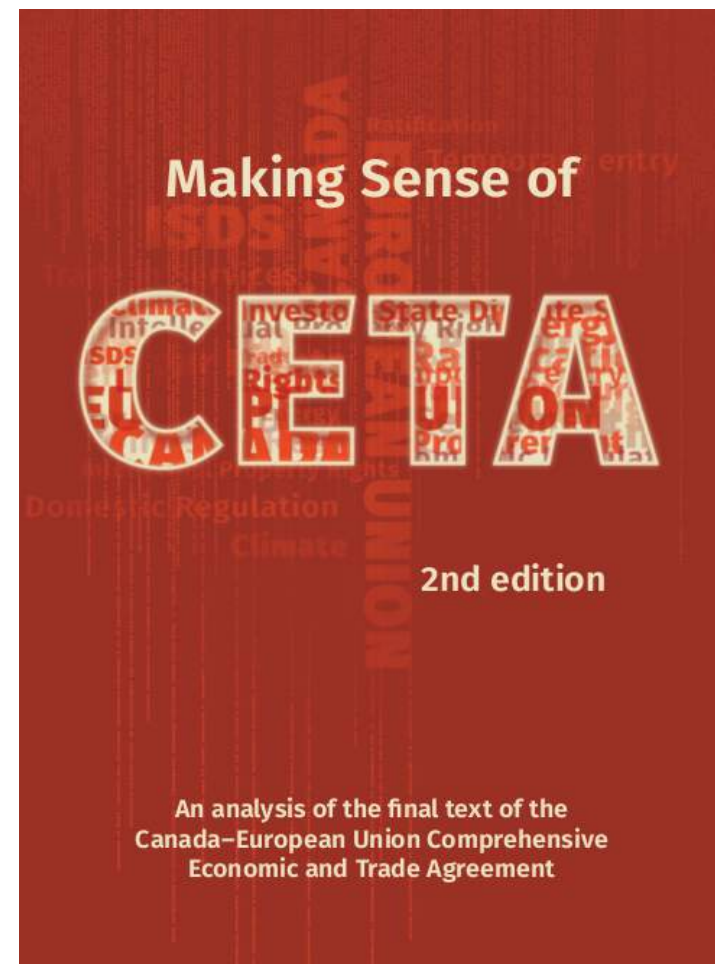


*ICS put to the test – New EU proposal will perpetuate investors' attacks on health and the environment*

## The great CETA swindle

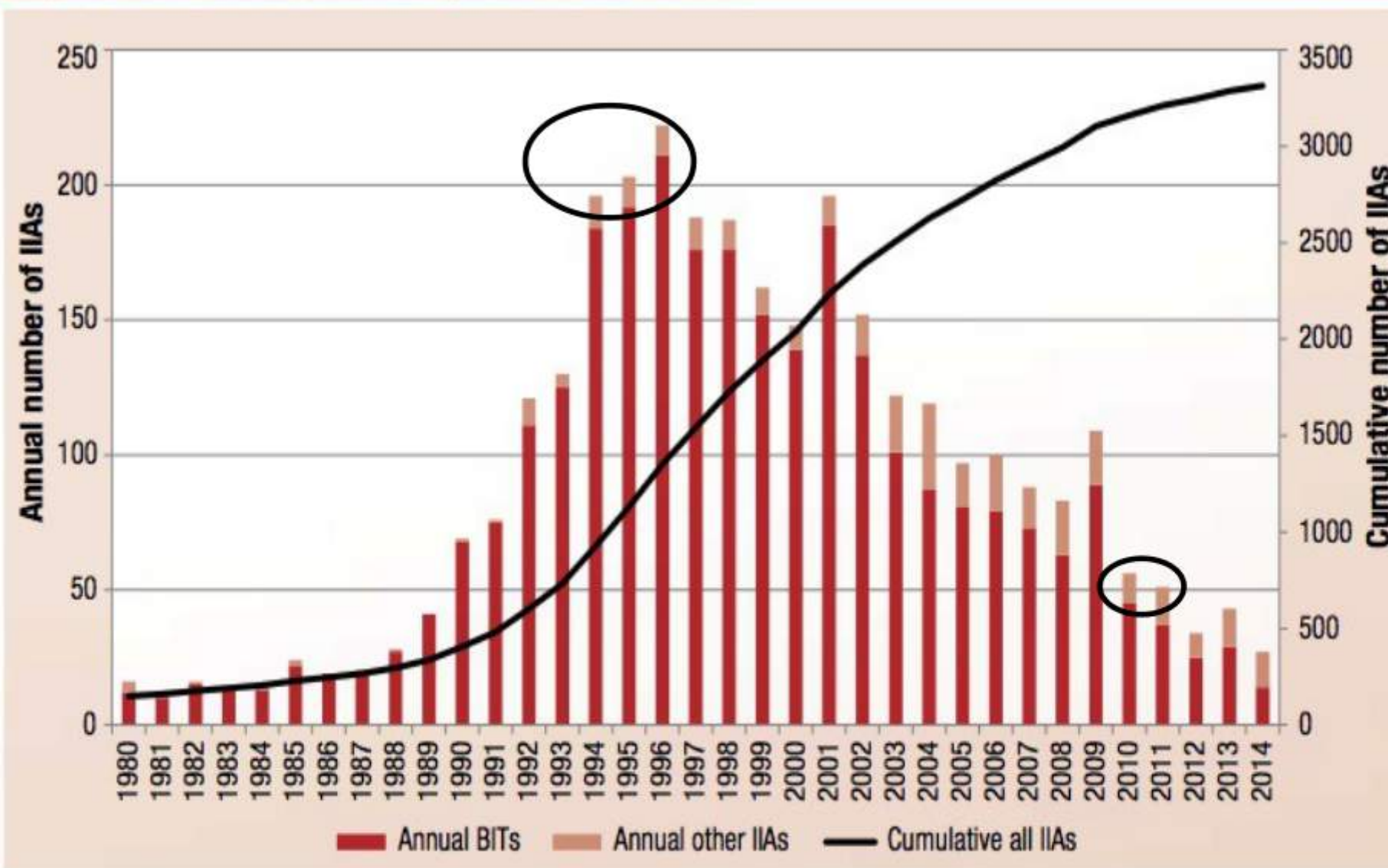
With a fast approaching European Parliament vote on the EU-Canada trade deal CETA and potential subsequent rows over its ratification in EU member states, CETA continues to draw heavy criticism. A close look at the text of the agreement – and recent declarations designed to reassure critics and gain support for its ratification – shows that concerns over CETA are well-founded. Behind the PR attempts by the Canadian Government and the European Commission to sell it as a progressive agreement, CETA remains what it always has been: an attack on democracy, workers, and the environment. It would be a major mistake to ratify it.

*The Great CETA swindle*



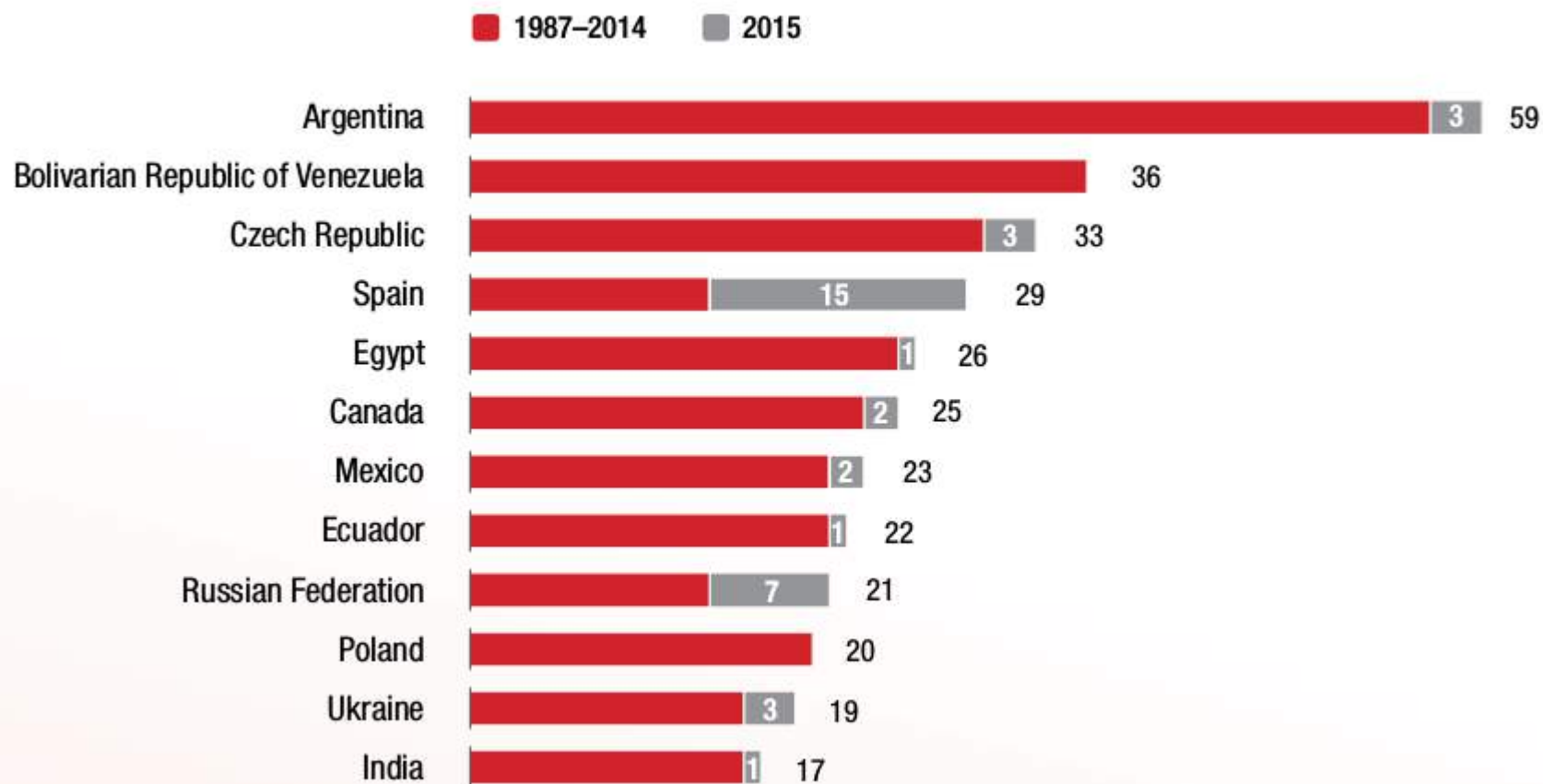
*Making sense of CETA*

**Figure 1. Trends in IIAs signed, 1980–2014**



Source: UNCTAD, IIA database.  
Note: Preliminary data for 2014.

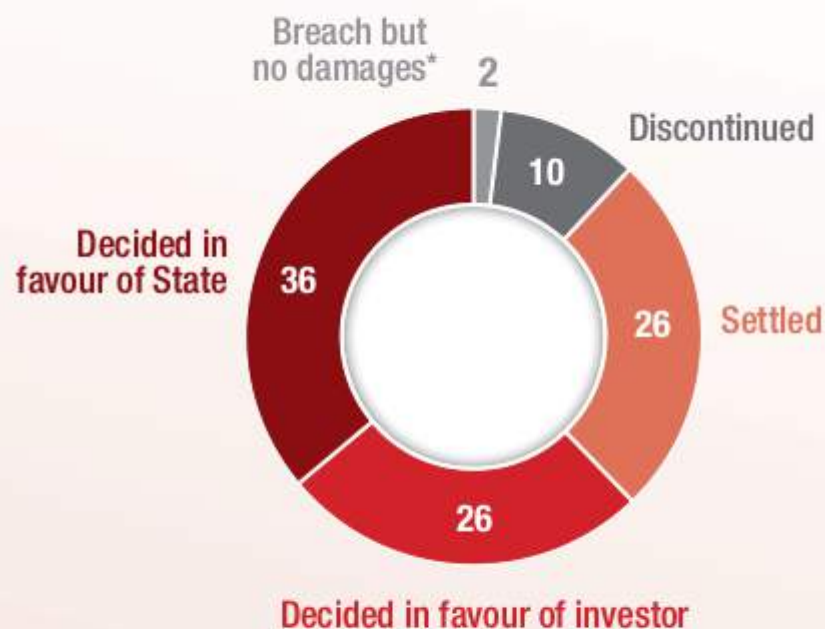
**Figure 2. Most frequent respondent States, total as of end 2015** (Number of known cases)



Source: ©UNCTAD, ISDS Navigator.



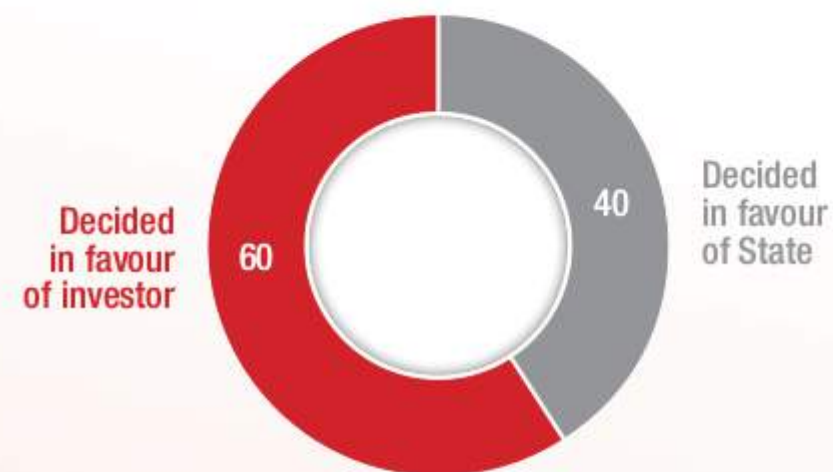
**Figure 6. Results of concluded cases, total as of end 2015** (Per cent)



\* Decided in favour of neither party (liability found but no damages awarded).

Source: ©UNCTAD, ISDS Navigator.

**Figure 7. Results of decisions on the merits, total as of end 2015** (Per cent)



Source: ©UNCTAD, ISDS Navigator.

Note: Excluding cases (1) dismissed by tribunals for lack of jurisdiction, (2) settled, (3) discontinued for reasons other than settlement (or for unknown reasons), and (4) decided in favour of neither party (liability found but no damages awarded).

# Trade and investment agreements: made for corporations by corporations.

- Trade and investment agreements: made for corporations by corporations (Lucile)
- A global view on the trade and investment regime (Joseph)
- Saving a broken system? EU proposal for a global corporate court (Fabian)
- Trade movement & global campaign, possible convergences?
  - A look at UNCITRAL (Layla)
  - G20 in Argentina & a look at LA (Bettina)
- Discussion

# Trade and investment agreements: made for corporations by corporations.

- Corporate power at the heart of trade and investment campaigns
- Special access to negotiations
- Countries negotiating in the name of their corporations : puzzling for many supporters
- Opening markets for corporations
- Which mechanisms are increasing corporate power the most in recent trade agreements?

# Trade and investment agreements: made for corporations by corporations.

- New generation trade agreements : changing how rules are made
  - « Regulatory cooperation »
  - Increased corporate capture of law making processes
- Trade agreements are straight jackets for governments
  - How do we regulate our national mining sector? How can we limit the power of big banks? Can we change dangerous rules on patents on seeds ?



# Trade and investment agreements: made for corporations by corporations.

- What are the new frontiers of the corporate agenda, and how do they push them in trade deals?
  - « Trade in services » – massive expansion
  - Targets the infrastructures & core ressource modern corporations need to function (technology, telecommunications, retail, finance, transport, delivery, data.....)
  - Also impacts public services

# Trade and investment agreements: made for corporations by corporations.

- Provisions on **investment** in free trade agreements (FTAs), or in bilateral investment agreements (BITs)
- Investment : from « facilitation » to « protection »
  - Preventing governments from choosing which corporation can invest in which sector or activity in their country
  - Investment protection : special rights & special justice system for corporations (ISDS)
  - A fundamentally unbalanced system – human rights vs. Corporate impunity