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The Transatlantic Trade and Investment Partnership Post-Democracy in its purest form

REMEMBER that referendum where Ireland agreed to join a single market with the United States? You know the one. When we agreed that corporations have the right to sue our government in special courts to strike out legislation that interferes with their profits?

No? Neither do I. And yet for the last couple of years, unaccountable bureaucrats have been meeting behind closed doors to discuss an agreement that allows for exactly this: the seldom mentioned but potentially far-reaching Transatlantic Trade and Investment Partnership (TTIP).

Among the many aspects of the TTIP to generate concern, it is the proposed Investor-State Dispute Settlement (ISDS) procedure that is the most potentially devastating feature. The Irish and UK governments, like those of the US and other EU countries, seem intent on setting up a separate judicial system exclusively for the use of corporations – in effect creating a two-tier system of justice. If corporations disapprove of a law, or believe it affects their “future anticipated profits”, they can seek (potentially massive) compensation.

Already, thanks to similar ISDS clauses in other bilateral and trilateral agreements, some mega-corporations are already engaged in litigation intent on striking down laws that might impinge on their ability to make profit. The tobacco company Philip Morris is currently suing Australia and Uruguay under such treaties, in response to their attempts to discourage smoking. It describes similar proposed legislation in Ireland and the UK – legislation that would ban branding on cigarette packets – as “unlawful”. Can we expect a challenge if TTIP passes? You can bet on it.

Elsewhere, a US oil firm in Ecuador and a Swedish nuclear company in Germany are suing governments on similar premises. An Australian mining firm is suing the government of El Salvador for hun-



dreds of millions of dollars for having the temerity to refuse them permission to mine gold, lest they poison the local water supply.

Because the laws that these corporations might challenge are not, as you might have first thought, unreasonable infringements on a firm’s operations, but are often those laws that governments pass for the overall good of society to protect the environment, avoid the over-exploitation of natural resources, set food safety standards, regulate medicine, improve the national health, and so on.

These special courts would, theoretically, take place before a tribunal of corporate lawyers. This makes sense, until you realise how difficult it would be to assemble a panel of experienced experts un-beholden to the potential plaintiffs and without anything to gain from such companies in the future.

Even the *Economist* newspaper – for over a century the champion of trade agreements and corporate freedom – has come out against the TTIP, describing the ISDS as “a way to let multinational companies get rich at the expense of ordinary people”.

Flawed though our democracies may be, they allow for open debate, public protest and the dissemination of information to allow people to decide how to act in debate and protest. With this in mind, it is the lack of transparency surrounding the TTIP’s negotiation thus far that has been the greatest affront to the democratic process, while the content represents a grave threat to the ability of our governments to regulate and legislate in the public interest.

As Bob Rees has written recently in these pages, power has been shifted gradually away from ‘the people’ to other forums above public scrutiny or challenge which are, as Colin Crouch describes, “small, private circles where political elites do deals with corporate lobbies”. For those who recognise this, the secrecy surrounding the TTIP will come as no surprise.

But, despite the clandestine nature of negotiations, campaigns against the TTIP are now gaining traction. Over the past few months, civil society organisations have held protests across Europe. We could yet succeed. The TTIP was defeated in 1998 when it was called the Multilateral Agreement on Investment and it can be defeated again if enough people voice their dissent. Are we wrong to believe that the interests of large corporations are already sufficiently well served by our justice system? I struggle to think of an occasion when they have been discriminated against.

Interestingly, in February 2015 the Irish Department of Jobs, Enterprise and Innovation finally felt compelled to publish a status update on the negotiations. In it is a very brief response to some very real concerns about the transparency of TTIP negotiations. It cites a number of moves being made to make details more accessible and cynically states that these initiatives “make the TTIP negotiations the most transparent free-trade negotiations yet”. I can only assume a typographical error in describing what has thus far been the most transparency-free trade negotiations in our lifetime.

9

Freedom of Religion
Is NOT
Freedom to
Discriminate