

Bloomberg Businessweek

Eight Reasons to Dislike the Obama Administration's Trade Agenda

By [Peter Coy](#)
April 22, 2014

The Cato Institute is a reliable defender of free trade. But even that libertarian think tank is suspicious of one of the Obama administration's main priorities in free-trade negotiations in the Atlantic and Pacific basins.

Dan Ikenson, director of Cato's Herbert A. Stiefel Center for Trade Policy Studies, argues that the Obama administration should give up on trying to include a procedure that allows companies to force governments into binding arbitration when they feel that their interests have been harmed. We examined this procedure, technically known as [investor-state dispute settlement](#), in a *Bloomberg Businessweek* article last month. In one egregious case, Philip Morris ([PM](#)) has brought an arbitration case in Hong Kong challenging Australia's plain-packaging law for cigarettes. The tobacco company says the law prevents it from marketing its brand in violation of a treaty between Australia and Hong Kong.

Here's the key paragraph from Ikenson's [article](#):

As is true of most populist causes, buried beneath the enabling mythology and hyperbole are some kernels of truth. One such truth, which this paper seeks to distill from the vacuous, anti-capitalist hyperventilation surrounding the trade agenda, is that the so-called Investor-State Dispute Settlement (ISDS) mechanism, which enables foreign investors to sue host governments in third-party arbitration tribunals for treatment that allegedly fails to meet certain standards and that results in a loss of asset values, is an unnecessary, unreasonable, and unwise provision to include in trade agreements. Although detractors may not know it by name, ISDS is a significant reason why trade agreements engender so much antipathy. Yet, ISDS is not even essential to the task of freeing trade. So why burden the effort by carrying needless baggage?

The U.S. Trade Representative's office [argues](#) that the accusations against the dispute resolution mechanism are unfair.

Boiled down, here are Ikenson's eight reasons for believing Obama should back down and leave the investor-state dispute resolution mechanism out of negotiations on the Trans-Pacific Partnership and the Transatlantic Trade & Investment Partnership:

1. It's overkill. Governments will generally do the right thing to preserve their reputations as friendly places for investment.
2. Countries that give in and agree to arbitration may become less willing to compromise on such other issues as market access.
3. It could encourage outsourcing by making other countries as safe for investment as the U.S. is.
4. It gives foreign companies operating in the U.S. an advantage over domestic companies: They can bring cases via trade arbitration, which domestic players can't do.
5. U.S. laws and regulations will be exposed to arbitration challenges "with increasing frequency."
6. Investor-state dispute settlement "is ripe for exploitation by creative lawyers."
7. "ISDS reinforces the myth that trade primarily benefits large corporations."
8. Dropping the arbitration language would improve the U.S. position in negotiations on trade deals. It would assuage reasonable critics, thus thinning out "what now appears to be an angry mob" of opponents.

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