



# Why Exactly Do We Need To 'Protect' US And EU Foreign Investments Through TAFTA/TTIP Anyway?

from the *risky-business* dept

By Glyn Moody  
January 15, 2014

Techdirt has already examined the issue of corporate sovereignty many times over the past year, as it has emerged as one of the most problematic areas of both TPP and TAFTA/TTIP. A fine article by Simon Lester of the Cato Institute examines [a hidden assumption in these negotiations](#): that an investor-state dispute settlement (ISDS) mechanism is needed at all.

Most of his post is devoted to the background of corporate sovereignty, and it provides a useful primer if you're still wondering what exactly ISDS is supposed to do, and why. Having established the framework, Lester concludes by making two key points:

*First, if a U.S. (or EU) company chooses to make an investment abroad, why should the U.S. (or EU) government go to bat for it at all? In the past, we used "gunboat diplomacy" to protect our companies. Now we use international lawyers. But why should we do anything? These companies have chosen another jurisdiction for their investment, which is fine. Companies should invest in whatever location makes the most economic sense. But in that situation, it is not clear why the investment is "ours" to worry about anymore. When multinationals invest all over the world, are they really "ours," or are they now just global entities?*

Business is inherently about taking risks -- if there were no risk, there would be no need for entrepreneurs. So why should a nation be expected to offer a kind of free insurance policy against those risks when they are incurred abroad -- not least because commercial policies doing that are [readily available](#)? Since fans of the free market think that the government should just get out of the way, surely they should extend this to foreign investment too?

Lester's other point is one that many people have made -- that ISDS is in any case unnecessary in an agreement between the US and EU:

*when the place of the investment is the EU or US, which have plenty of their own protections in domestic law, international law seems largely duplicative. International investment rules are an opportunity for lawyers to bring additional claims, but are not necessary for "protection" of foreign investment. Without some evidence that more is necessary, perhaps US-EU investment*

*rules should be limited to a basic promise to treat each other's investors equally, let governments settle disputes between themselves, and leave the international constitutional protections out of it.*