

# “Sentence First, Verdict Afterwards”: The Alice in Wonderland World of Fast-tracked Secret Trade Agreements

By [Ellen Brown](#)

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Region: [USA](#)

Theme: [Global Economy](#)

*‘Let the jury consider their verdict,’ the King said, for about the twentieth time that day.*

*‘No, no!’ said the Queen. ‘Sentence first-verdict afterwards.’*

*‘Stuff and nonsense!’ said Alice loudly. ‘The idea of having the sentence first!’*

*‘Hold your tongue!’ said the Queen, turning purple.*

*‘I won’t!’ said Alice.*

*‘Off with her head!’ the Queen shouted at the top of her voice.*

— Lewis Carroll, “Alice’s Adventures in Wonderland”

Fast-track authority is being sought in the Senate this week for the Trans-Pacific Partnership (TPP), along with the Trade in Services Agreement (TiSA) and any other such trade agreements coming down the pike in the next six years. The terms of the TPP and the TiSA are so secret that drafts of the negotiations are to [remain classified for four years or five years, respectively](#), after the deals have been passed into law. How can laws be enforced against people and governments who are not allowed to know what was negotiated?

The TPP, TiSA and Transatlantic Trade and Investment Partnership (or TTIP, which covers Europe) will collectively [encompass three-fourths of the world’s GDP](#); and they ultimately seek to encompass nearly 90 percent of GDP. Despite this enormous global impact, fast-track authority would allow the President to sign the deals before their terms have been made public, and send implementing legislation to Congress that cannot be amended or filibustered and is not subject to the constitutional requirement of a two-thirds treaty vote.

While the deals are being negotiated, lawmakers can see their terms only under the strictest secrecy, and they can be subjected to criminal prosecution for revealing those terms. What we know of them comes only through WikiLeaks. The agreements are being treated as if they were a matter of grave national security, yet they are not about troop movements or military strategy. Something else is obviously going on.

The bizarre, unconstitutional, blatantly illegal nature of this enforced secrecy was highlighted in a May 15th article by Jon Rappoport, titled “[What Law Says the Text of the TPP Must Remain Secret?](#)” He wrote:

It seems like a case of mass hypnosis. . . .

Members of Congress are scuttling around like weasels, claiming they can't disclose what's in this far-reaching, 12-nation trade treaty.

They can go into a sealed room and read a draft, but they can't copy pages, and they can't tell the public what they just read.

Why not?

If there is a US law forbidding disclosure, name the law.

Can you recall anything in the Constitution that establishes secret treaties?

Is there a prior treaty that states the text of all treaties can be hidden from the people?

To Congressmen who say they cannot reveal what is in a treaty that will adversely affect the lives of hundreds of millions of people, Rappoport says:

Wrong. You're lying. You can reveal secret text. In fact, it's your duty. Otherwise, you're guilty of cooperating in a RICO criminal conspiracy.

## A Corporate Coup d'État

What is going on was predicted by David Korten in his 1995 blockbuster, *When Corporations Rule The World*. Catherine Austin Fitts calls it a "corporate coup d'état."

This corporate coup includes [the privatization and offshoring of the judicial function](#) delegated to the US court system in the Constitution, through Investor-State Dispute Settlement (ISDS) provisions that strengthen existing ISDS procedures.

[As explained in The Economist](#), ISDS gives foreign firms a special right to apply to a secretive tribunal of highly paid corporate lawyers for compensation whenever the government passes a law to do things that hurt corporate profits — such things as discouraging smoking, protecting the environment or preventing a nuclear catastrophe. Arbitrators are paid \$600-700 an hour, giving them little incentive to dismiss cases. The secretive nature of the arbitration process and the lack of any requirement to consider precedent give wide scope for creative judgments – the sort of arbitrary edicts satirized by Lewis Carroll in *Alice's Adventures in Wonderland*.

To date, the highest ISDS award has been for \$2.3 billion to Occidental Oil Company against the government of Ecuador over its termination of an oil-concession contract, although the termination was apparently legal. Under the TPP, however, even larger and more unpredictable judgments can be anticipated, since the sort of "investment" it protects includes not just "the commitment of capital or other resources" but "[the expectation of gain or profit](#)." That means the rights of corporations extend not merely to their factories and other "capital" but to the profits they expect to receive. Just the threat of a massive damage award for impairing "expected corporate profits" could be enough to discourage prospective legislation by lawmakers.

[The Trade in Services Agreement adds additional barriers](#) to proposed legislation. TiSA involves 51 countries, including every advanced economy except the BRICS (Brazil, Russia, India, China, and South Africa). The deal would liberalize global trade in services covering

close to 80% of the US economy, including financial services, healthcare, education, engineering, telecommunications, and many more. It would restrict how governments can manage their public laws, and it could dismantle and privatize state-owned enterprises, turning those services over to the private sector. It would also block the emerging trend to return privatized services to the public sector, by limiting or prohibiting governments from creating or reestablishing public utilities and other “uncompetitive” forms of service delivery.

It seems that the TPP, TTIP and TiSA are not about the sort of “free trade” that would free local businesses to sell abroad. They are about freeing international corporations from the government regulation necessary to protect the economy, the people, and the environment. They are about preserving privatized monopolies and preventing competition from the public sector. And they are about moving litigation offshore into private arbitrary tribunals – the sort of tribunal that might have lost Alice her head, if she had not awakened from her bizarre dream.

*Urge your local representative to vote “no” on Fast Track. For more information, see —*

[\*Flush the TPP\*](#)

[\*The Citizens Trade Campaign\*](#)

[\*Public Citizen’s Global Trade Watch\*](#)

[\*Eyes on Trade\*](#)

*Ellen Brown is an attorney, founder of the [Public Banking Institute](#), and author of twelve books including the best-selling [Web of Debt](#). Her latest book, [The Public Bank Solution](#), explores successful public banking models historically and globally. Her 300+ blog articles are at [EllenBrown.com](#).*

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