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Dear Committee Secretary

Re: Korea-Australia Free Trade Agreement (KAFTA)

The Australian Services Union writes to express strong opposition to the inclusion of Investor State Dispute Settlement (ISDS) provisions in the Korea-Australia Free Trade Agreement (KAFTA) and urges the inclusion of stronger provisions to protect the rights of workers and the natural environment.

The Australian Municipal, Administrative, Clerical and Services Union, trading as the Australian Services Union (ASU) welcomes the opportunity to provide comment to the Senate Foreign Affairs, Defence and Trade Committee in relation to the Korea-Australia Free Trade Agreement (KAFTA).

The ASU is one of Australia's largest Unions, and represents approximately 120,000 employees. Our members work in the public services and private sector industries and occupations. The ASU is a member of AFTINET (Australian Fair Trade & Investment Network Ltd) and as such, we are in receipt of their well researched information on issues related to ISDS and the Korea-Australia Free Trade Agreement.

Given the experiences of many nations in relation to ISDS, it seems incredulous that the Australian government would include such provisions in any free trade agreement.

ISDS provisions undermine democratic processes by enabling foreign investors to sue governments for compensation where they consider domestic law or policy harms their investment. ISDS provisions enable corporate interests to override legitimate public policy measures which are in the interest of community health, workers rights and environmental protection.

Global experience of the use of ISDS provisions has indicated the readiness of wealthy corporations to use ISDS provisions against the interests of communities and nation states. The efforts of the Philip Morris Tobacco Company in suing Australia and Uruguay over tobacco packaging regulation is an example which drew the particular attention of other nations which are considering similar plain packaging legislation. The union is of the view that citizens and their governments have a right to determine how best to safeguard public health and it should not be over-ridden by the interests of powerful foreign companies.

Many nation states have found that, as a result of ISDS provisions, the cost of running cases and related compensation can have crippling impacts on their economy (often running into hundreds of millions of dollars and in some cases billions of dollars). Such potential impacts can inhibit governments from initiating legitimate domestic legislation. It is therefore not surprising that there are an increasing number of governments refusing to sign agreements containing such provisions. Indeed, it is significant that many governments are withdrawing from ISDS. For example, Indonesia has recently announced it will terminate all 67 bilateral investment treaties.

The supposed "safeguards" included in the KAFTA are not sufficiently adequate to prevent foreign investors from suing governments over health, environment or other public interest policy and legislation. These same "safeguards" have proved to be ineffective in other agreements with potentially devastating impacts on the capacity of governments to work in the interests of its own people. For example, the ASU is aware that the Government of El Salvador has been sued by Pacific Rim Mining Corporation under the Central American Free Trade agreement because of a ban the government had imposed on mining in order to preserve limited groundwater resources.

The inclusion of ISDS provisions in a free trade agreement sends a signal to the community that the Australian Government is prepared to put foreign company interests ahead of the interests of its own people, its own resources and its national wealth. It also indicates that it would not be concerned about the consequences of such provisions on the citizens of other nations. For these reasons the Union opposes the ISDS provisions in free trade agreements.

In addition, the KAFTA should include commitments to international labour rights and these should be enforced by government to government disputes processes of the agreement. The KAFTA labour chapter has relatively low standards and weak labour commitments but even these are not enforceable. As a union, we are concerned about the rights and wellbeing of workers and their families, as such, we consider the lack of adequate labour protections in the KAFTA to be totally unacceptable.

We recommend that this committee call on the Australian Government to join the growing number of nations which refuse to include ISDS in free trade agreements and to review the KAFTA with the interest of the public and the environment in mind. We also wish to advise that we would be pleased to accept any further opportunity to support the submission made by AFTINET (Australian Fair Trade & Investment Network Ltd).

Yours faithfully,

Yours faithfully

Greg McLean OAM