



British American Tobacco Australia Limited  
Submission to the Joint Committee on Treaties  
Inquiry into the Singapore Free Trade Agreement – Amendment

1 May 2017

British American Tobacco Australia Limited (BATA) would like to thank the Committee on the opportunity to make this submission to the inquiry into the *Singapore Free Trade Agreement – Amendment*.

In particular, BATA wishes to address Article 22 *Tobacco Control Measures* of Section B: Investor-State Dispute Settlement (ISDS). BATA is strongly opposed to the purpose of this proposal in that it would ‘carve-out’ tobacco from the ISDS under the Singapore-Australia Free Trade Agreement (SAFTA).

BATA considers that a sector-specific exclusion from the ISDS for tobacco is unnecessary, as the provisions contained in existing trade and investment agreements already permit governments to take appropriate public health measures.<sup>1</sup>

Basic principles such as national treatment, most-favoured-nation treatment, the minimum standard of treatment and compensation for expropriation have been the cornerstones of international investment policy for over half a century. They have not prevented countries from adopting measures to protect public health and, for example, implementing the World Health Organisation’s (WHO) Framework Convention on Tobacco Control (FCTC).

Investors depend on investment provisions in free trade agreements and bilateral investment treaties to open new markets, ensure fair and non-discriminatory treatment and provide a dispute settlement mechanism to defend rights against arbitrary government action. An industry-specific exception would undermine the objective of a high standard agreement that would boost cross-border investment and send a troubling signal that SAFTA parties are prepared to depart from strong investment protections.

Further, at the WHO FCTC 7th Conference of the Parties (COP7) in November 2016, health officials from countries worldwide discussed proposals calling for differentiated treatment or exclusion of tobacco from investment protections. However, health officials worldwide refused to adopt these proposals, reaffirming previous rejections of such proposals tabled at COP6 in October 2014.<sup>2</sup>

Excluding the tobacco industry from investment protections is unwarranted and sets a precedent for countries to pursue other sector-specific carve-outs for industries such as food or alcohol.

It is hoped that the concerns of BATA in respect of SAFTA are taken into account, principally that specific exclusion of tobacco from the ISDS sets an unnecessary and dangerous precedent.

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<sup>1</sup> Article 18(b) of the SAFTA states “... nothing in this Chapter shall be construed to prevent the adoption or enforcement by a Party of measures necessary to protect human, animal or plant life or health”

<sup>2</sup> <http://www.who.int/fctc/cop/cop7/Documentation-Decisions/en/> Decision FCTC/COP7(21),