

The Committee Secretariat
Foreign Affairs, Defence and Trade Committee Department of the Senate

Re: ISDS and the TPP

Why do I feel like history is repeating itself again? We have been here before with the USFTA (Australia US free trade agreement) so what are we doing giving away more of our national sovereignty in the name of 'Free Trade' and minuscule improvements in access to one of the most protected economies in the world, the US? Perhaps the coalition government thinks this is worthwhile because we will gain more power to oppress economically less powerful states in our own region?

Does no one see the elephant in the room? The G8 countries were unsuccessful in their efforts to enforce global trade rules on the world via the WTO which were arranged in back room deals to suit the interests of the existing powerful economies. Now we have the US and pilot fish like Australia doing the next best thing: setting up regional FTA's between themselves and hand picked weaker economies without little power to resist to achieve the same ends. NAFTA has overwhelmingly advantaged the US at the expense of Mexico and Canada.

THERE IS NO SUCH THING AS FREE TRADE - the concept has been invented by powerful countries to maintain their position at the top of the economic heap at the expense of the rest of the planet. If it were truly free, trade would require less agreements not a myriad of new ones.

The US wants special rights for foreign investors (read US investors), included in the Trans Pacific Partnership (TPP). This will allow corporations to sue governments for millions of dollars if they perceive their investments may be 'harmed' by a law or policy, even if that law or policy is designed to protect public health or the environment. The proposal is known as Investor-State Dispute Settlement, or ISDS.

In another sign of the global retreat from transparent governance and democratic principles, these disputes are heard by international investment tribunals, who are completely unrepresentative of the people most likely to be effected by their decisions. Any tribunal that prioritises investor rights above the public interest cannot adjudicate on disputes effecting national governments without undermining the whole point of democracy, an independent judiciary or any of the other safeguards of national legal systems humans have struggled through history to establish.

Australia's democratic parliament and court system is already being undermined by an ISDS provision in an obscure 1993 Hong Kong-Australia investment treaty. After a group of tobacco companies tried and failed to get compensation through the Australian High Court over the plain packaging legislation, US-based tobacco company, Philip Morris, moved some of its investments to Hong-Kong so it could use this agreement to sue the Australian Government. Philip Morris clearly believes that an international investment tribunal will give it a more favourable decision. In this instance a decision taken by a sovereign government to protect the health of the citizens who voted for it may be set aside because an industry whose products have been proved to cause cancer has been given the power to challenge national health policy. How is this even conceivable?

Under the North American Free Trade Agreement (NAFTA) US corporations have used ISDS to sue governments for tens of millions of taxpayers' dollars over legitimate health and environment legislation. Currently, the US Lone Pine energy company is using ISDS provisions in NAFTA to sue the provincial government of Quebec for \$250 million because it suspended shale gas mining pending an environmental study in response to community concerns. What were the French and American revolutions fought for if not to ensure that the oppression of the many by the powerful few could never happen again, and here we are handing those hard won rights away for the most pathetic of short-term gains.

America (and the world) has already seen what the powerful gas fracking industry can and does do to people and the environment in the name of energy security, often with the support of the Federal and state governments. In Australia, farmers and members of communities influenced the NSW government to regulate coal seam gas activity close to residential suburbs and rural industries. But if Australia agrees to ISDS rules in the TPP, foreign companies could sue state governments for damages over this kind of regulation. Even if the government wins the case, it can cost millions in legal fees. We cannot allow the democratic rights of citizens to be trumped by corporate and financial interests, government is supposed to be there to protect its people against the worst depredations of individuals and entities whose only goal is profit for themselves and damn the rest.

Trade minister Robs 'safe guards' in the TPP are nothing more than a sop to the wingers. "Carve-outs" and "exclusions" in areas like public welfare, healthcare and the environment have not worked other trade agreements to protect the public interest. For example, the Peru -US Free Trade Agreement and the US-Central America Free Trade Agreement didn't stop the Renco lead mining company from suing the Peruvian government when they were required to clean up their lead pollution, or the Pacific Rim company from suing the El Salvador government because it refused a mining license for environmental reasons. Investors have pursued cases in other countries by claiming the process of developing the law did not include "fair and equitable" treatment for them. The coalition's secretive and undemocratic approach to the getting the agreement through is reflective of the undemocratic nature of the agreement itself. The unseemly effort has a nasty air of authoritarianism about

If even the Howard government did not agree to ISDS in the Australia-US Free Trade Agreement in 2004, why would anyone agree now. However, since the Coalition's 'trade policy' is to negotiate on ISDS, I urge the Government to oppose clauses in the TPP that grant special rights for foreign investors to sue governments.

Show me there is still a reason to believe in democratic government in Australia

Yours sincerely,

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