Submission to JSCOT

**Submissions can be emailed directly to** jsct@aph.gov.au

**Date letterhead** (**if applicable)**

**To the members of the Joint Standing Committee on Treaties:**

**I/we submit that ratifying the TPP with ISDS inclusions will not be in Australia’s national interest because…**

1. **In contrast to what former Minister Robb has argued about historical trade deals which have included dispute settlement provisions, in the 21st century ISDS has evolved and is now an insidious threat to our democratic rights, environmental laws, and the Australian legal system.** Only 50 ISDS challenges occurred in the 50 years to 2000. Since 2000 more than 600 cases have been launched, the majority of these challenging environmental and resource regulations.

2. **While Australia has had trade agreements before with various nations, until now it has not had a free trade deal with the US that included ISDS provisions, and therefore has not been subject to ISDS lawsuits from litigious US multinationals.** (500 US multinationals were closely involved in shaping the negotiations for the TPP).

3. **ISDS will privilege foreign multinational investors, elevating them above citizens, legislatures, Australian Federal and State courts and even domestic corporations in violation of the basic principle of equality before the law.** Consequently, ISDS is clearly not in Australia’s national interest, as it presents an unacceptable risk to our sovereignty, legal system and core democratic values.

4. **ISDS has been extended to include compensation to multinationals for loss of future profits, resulting in claims often in billions of dollars against nations, the majority of which relate to environmental and resource industry regulations.** This expansion of ISDS provides aggrieved multinationals with the opportunity to both threaten and punish nations, leading many analysts to conclude that ISDS has led to [‘regulatory chill’](http://www.abc.net.au/radionational/programs/backgroundbriefing/isds-the-devil-in-the-trade-deal/6634538) - a reluctance by governments to act to protect the environment because of the risk of ISDS challenge.

4. **ISDS is not even needed in free trade agreements for nation states to successfully trade.** In its 2015 report on ISDS, the [Productivity Commission concluded](http://www.abc.net.au/radionational/programs/backgroundbriefing/isds-the-devil-in-the-trade-deal/6634538) that there was no proof that ISDS impacts positively on foreign investment, and that if Australia signs the Trans Pacific Partnership, the potential legal and financial risk could engender a chilling effect on public interest policy.

5. **Australian decision-makers must take heed of the growing global backlash against ISDS**. Governments around the world are now seeking to extricate themselves from this anti-democratic insertion into modern trade treaties.

6. **Decision makers should note that Australian voters are seeing mounting levels of expert opinion condemning free trade agreements like the TPP because of the inclusion of ISDS provisions.** These include Robert French, chief justice of Australia’s High Court, The United Nations Conference on Trade and Development (UNCTAD), Australia’s Productivity Commission and the ACCC.

7. **A** [**comprehensive economic analysis**](http://www.brisbanetimes.com.au/federal-politics/political-news/transpacific-partnership-will-barely-benefit-australia-says-world-bank-report-20160111-gm3g9w.html) **of the TPP by the World Bank has found that the Trans-Pacific Partnership ‘would boost Australia's economy by just 0.7 per cent by the year 2030.’** Australians are now asking why - if we get so little out of it - is the Australian Government pushing so hard to ratify this agreement which, through ISDS challenges, will attack our sovereignty, reduce our democratic rights and demonstrably weaken our capacity to regulate to protect the environment.

8. **Expert international** [**analysis of the TPP environment chapter text**](https://www.sierraclub.org/sites/www.sierraclub.org/files/uploads-wysiwig/tpp-analysis-updated.pdf) **has concluded that ‘the environment chapter would fail to protect the environment and in some respects falls short of past U.S. trade agreements,’** while leading international arbitration lawyer George Kahale has advised that critical loopholes in the investment chapter ‘leave Australia wide open’ to ISDS challenges on environmental and other public interest regulation.

**Conclusion**

Cabinet Secretary Arthur Sinodinos in November last year [refused to guarantee](https://newmatilda.com/2015/11/12/tpp-turnbull-government-cant-confirm-it-wont-be-sued-over-climate-regulation/) that the Australian government won’t be sued if it regulates on climate change, coal seam gas, or renewable energy when asked about ISDS provisions allowing companies to sue states under the Trans-Pacific Partnership. ISDS is an enormously costly system with no independent judiciary, precedents or appeals, which gives increased legal rights to global corporations which already have enormous market power, based on legal concepts not recognised in national systems and not available to domestic corporations. **We submit that provisions in the TPP that would confer greater legal rights on foreign businesses than those available to domestic businesses are unnecessary and not in the national interest, nor are unacceptable provisions that clearly would constrain the ability of Australian governments – State and Federal - to make laws on environmental and other public interest matters.**

Name

Address

Contact details