

China FTA allows foreign investors to sue governments over domestic law

MEDIA RELEASE November 18, 2014

China FTA includes rights for investors to sue governments over changes in domestic law but full text remains secret

After all the positive news about access for Australian farmers to Chinese markets, the [government summary](#) ^[1] of the China-Australia Free trade agreement briefly mentions that it includes [special rights for foreign investors](#) ^[2] to sue governments for damages if a change in domestic law can be claimed to harm their investment, known as ISDS, Dr Patricia Ranald, Coordinator of the Australian Fair Trade and Investment Network (AFTINET) said today.

We could face a scenario where Chinese investors could sue local, State or Federal governments for damages over a change in environmental or other regulation. We have also opposed this provision in the Trans-Pacific Partnership Agreement with the US, Japan and nine other Pacific Rim countries, because ISDS is clearly against the national interest, Dr Ranald said.

The Philip Morris tobacco company is currently using such rights in an obscure Australia-Hong Kong investment agreement to sue the Australian government over plain packaging legislation, despite the fact that the Australian High Court found that they were not entitled to compensation under Australian law. Australian High Court [Chief Justice French](#) ^[3] has recently criticised the impact of ISDS cases on national court decisions, Dr Ranald said.

The [reports](#) ^[4] of three Australian Parliamentary inquiries show that these international tribunals lack the independence and consistency of national legal systems. They are made up of investment law experts who can be lawyers one month and arbitrators the next, and there is no system of precedents or appeals, resulting in inconsistent decisions which generally favour investors, Dr Ranald added.

Claimed safeguards for health and environment legislation in ISDS clauses in recent agreements have not prevented foreign investors from suing governments over health and environmental laws. The US Lone Pine mining company is suing the Québec provincial government over environmental regulation of gas mining. The Eli Lilly pharmaceutical company is suing the Canadian national government because of a court decision refusing a patent. And the French company the Veolia is suing the Egyptian government over a contract dispute which includes a rise in the minimum wage for workers, Dr Ranald said.

It is a predictable pattern with this government that we have a grand announcement that a deal has been completed but the text remains secret and the details cannot be scrutinised. All we have is the government's own summary which emphasises the positives. With trade agreements, the devil is always in the detail. We call for the full text of the China free trade agreement to be released well before it is

signed for public and parliamentary scrutiny,? said Dr Ranald.

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[1] <http://www.dfat.gov.au/fta/chafta/fact-sheets/key-outcomes.html>

[2] <http://theconversation.com/trans-pacific-partnership-piles-up-challenges-for-democracy-32815>

[3] <http://www.hcourt.gov.au/assets/publications/speeches/current-justices/frenchcj/frenchcj09jul14.pdf>

[4] http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Foreign_Affairs_Defence_and_Trade/Korea-Australia_Free_Trade_Agreement/~/_media/Committees/fadt_ctte/Korea-Australia_Free_Trade_Agreement/report/report.pdf