



AFTINET
Australian Fair Trade
& Investment Network Ltd

128 Chalmers Street
Surry Hills, NSW, 2010
Phone: 02 9699 3686
Fax: 02 9699 3717
Email: campaign@aftinet.org.au
ACN 097 603 131
ABN 83 659 681 462
www.aftinet.org.au

19 September, 2013

The Hon Andrew Robb AOMP
Minister for Trade and Investment
Parliament House
Canberra ACT 2600

Dear Mr Robb,

The Australian Fair Trade and Investment Network is a network of organisations which advocate for fair trade based on human rights, labour rights and environmental sustainability.

Our organisations are concerned about the Trans-Pacific Partnership free trade agreement (TPPA) being negotiated between Australia, the US, Canada, Mexico, Chile, Peru, Japan, New Zealand, Brunei, Singapore, Malaysia and Vietnam. The agreement has been promoted as a 21st century agreement, which would promote trade and protect workers' rights and the environment, while allowing governments to continue to regulate in the public interest.

However, as negotiations are nearing the end point, it is clear that there are many highly contested proposals which affect key areas of Australian government regulation, including health and access to medicines, cultural and environmental legislation. These policies should be decided through public and parliamentary processes, not through trade negotiations conducted behind closed doors.

As pressure mounts to complete the negotiations, we note that a number of industry groups have publicised their views on what should be included in the TPPA in terms of removal of trade barriers.

As unions and civil society organisations representing millions of Australians, we ask the Australian government not to trade away the right to regulate for health, environmental and other public purposes. We therefore ask you to:

- reject proposals which would enable foreign investors to sue governments for damages in an international tribunal over health and environment legislation (like tobacco regulation and regulation of coal seam gas mining), known as Investor-State Dispute Settlement (ISDS) (See summary below)
- reject proposals for the expansion of the scope and/or duration of patents on medicines, which would delay the availability of cheaper generic medicines and lead to higher prices for medicines in Australia and other countries
- reject proposals which would result in higher medicine costs to government and to consumers by undermining the independence and ability of Australia's Pharmaceutical Benefits Scheme to evaluate medicines for both their clinical effectiveness and value for money, and to set affordable prices for medicines

- reject proposals for increased copyright at the expense of consumers, including libraries, schools and internet users
- reject proposals for reduction of Australian content in government purchasing, and for reduction of Australian content in audio-visual media
- reject proposals for restricting government regulation of food labeling, including nutrition labeling and labeling of genetically engineered food
- reject any other proposals which would reduce the capacity of government to regulate in the public interest

We ask you to support proposals for enforceable workers' rights based on International Labour Organisation conventions and for enforceable environmental protections based on United Nations Conventions.

Finally we ask you to release the text of the agreement for public and Parliamentary discussion before it is signed by Cabinet.

We look forward to your reply

Yours sincerely



Dr. Patricia Ranald
Convenor, Australian Fair Trade and Investment Network

This letter is endorsed by the following organisations:

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Australian Fair Trade and Investment Network
 Australian Council of Trade Unions (ACTU)
 Australian Catholic Social Justice Council
 Australian Conservation Foundation
 Public Health Association of Australia
 Australian Manufacturing Workers Union
 Australian Nursing and Midwifery Federation
 Australian Pensioners and Superannuants Federation (APSF)
 Australian Services Union
 Australian Education Union
 Finance Sector Union
 National Union of Workers
 National Tertiary Education Union
 United Voice Union
 NSW Retired Teachers Association
 New South Wales Nurses and Midwives' Association

Combined Pensioners and Superannuants Association of NSW Inc
World Vision Australia
ActionAid
Union Aid Abroad - APHEDA
Friends of the Earth
Greenpeace
Australian Marine Conservation Society
Catholic Religious Australia
Catholics in Coalition for Justice and Peace
Columban Mission Institute, Centre for Peace Ecology and Justice
Gene Ethics
MADGE Australia Inc
Edmund Rice Centre
Fair go for Pensioners NSW
AID/WATCH
SEARCH Foundation
The Grail Global Justice Network
Queensland Conservation
North Queensland Conservation Council
Householder's Options to Protect the Environment Inc (HOPE)
Capricorn Conservation Council
Gecko - Gold Coast and Hinterland Environment Council Assoc. Inc
Logan and Albert Conservation Association Inc Qld (LACA)
Cassowary Coast Alliance
Unfolding Futures
Sisters of Charity
WTO Watch QLD
The Alliance to Expose GATS

Why ISDS should be excluded from the TPPA

Investor-State Dispute Settlement (ISDS) provisions have been included in bilateral investment treaties and some free trade agreements over the last 20 years. As their use has grown, so has criticism of them. When ISDS is included in trade agreements, a single foreign investor can sue a government for millions of dollars of damages if the government adopts policies which could reduce the value of its investment. The cases are heard by tribunals of international investment lawyers which give more consideration to whether the investment was harmed, rather than whether the law or policy was in the public interest. These tribunals also lack the independence of national courts. Arbitrators can also be advocates, the hearings are secret, and there is no system of appeals or precedents, resulting in inconsistent decisions. The Australian Productivity Commission 2010 report found that ISDS had no economic benefits, was a financial and regulatory risk for governments, and recommended against its inclusion in trade agreements.

ISDS is already being used to undermine Australian democratic legislation and the decisions made by the Australian High Court. The Philip Morris tobacco company is trying to use an obscure 1993 Australia-Hong Kong investment agreement to sue the Australian government for damages in an international tribunal over the 2012 tobacco plain packaging legislation, which had bipartisan support. Philip Morris has persisted with this case despite the fact that Australian High Court found that the law was a public health measure and the tobacco companies had no right under Australia law to damages for the legislation. The company believes the ISDS tribunal will give them a more favourable decision.

In the 2004 Australia-United States Free Trade Agreement, the Howard Coalition government rejected the US proposal for ISDS because of widespread public opposition to it. This means US companies cannot use this agreement to sue Australian governments. Philip Morris, a US company, had to move some assets to Hong Kong and claim to be a Hong Kong investor in order to sue. However, if Australia agrees to include ISDS in the Trans-Pacific Partnership Agreement, it will be far easier for tobacco companies to sue Australian governments.

US company sues Quebec for regulating gas mining: don't let it happen in Australia

ISDS threatens the ability of our government to legislate democratically in response to community concerns about CSG mining and other issues that directly affect them.

The 1994 North American Free Trade Agreement involving the US, Canada and Mexico, does include ISDS. There have been over 60 cases of governments being sued, many because they implemented legislation to protect public health or the environment. Currently, the US Lone Pine energy company is suing the provincial government of Quebec for \$250 million because it suspended shale gas mining pending an environmental study. The Quebec government acted in response to public pressure from the community to examine health and environmental impacts.

In a similar way, farmers and members of communities in NSW and Victoria influenced their state governments to also adopt moratoria to examine the impact of coal seam gas mining (CSG) on land use and the environment.

Following an independent study in NSW, a number of new regulations were adopted restricting coal seam gas activity close to residential suburbs and rural industries. If Australia agrees to ISDS in the TPPA, foreign companies investing in CSG could sue state governments for damages over regulation of CSG.

The Australian government should not agree to include ISDS in the TPPA.

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