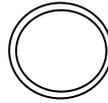


Trans-Pacific Partnership INVESTOR-STATE DISPUTE SETTLEMENT

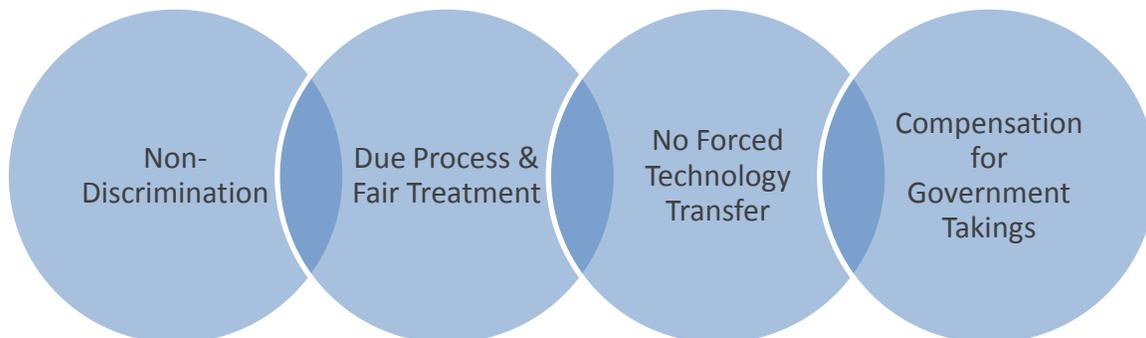
The investment chapter of the Trans-Pacific Partnership (TPP) agreement promotes the rule of law by providing individuals, non-profits, and businesses that invest in these markets with the same fundamental protections provided under the U.S. Constitution – from non-discrimination and fair treatment to private property protections – to guard against foreign government mistreatment.

Investor State Dispute Settlement (ISDS) is not new and is not novel. It is a 50-year old arbitration procedure, supported by over 150 countries, that can be found in thousands of agreements among countries. The TPP makes improvements to this procedure by requiring documents and proceedings to be made public, enhancing procedural safeguards, and clarifying that ISDS panels do not impact a government's sovereign acts.



WHO IS PROTECTED? These rules apply to individuals, non-profits, and businesses that seek to make, are making, or have made an investment in a foreign country. The investment could be as simple as owning private property in a foreign country or having an office there but could also include more complex activities.

WHAT PROTECTIONS? The protections are basic rights that apply to all individuals and property-owners and ones that in the United States we often take for granted. They include non-discrimination; due process; fair treatment; the right to transfer capital; compensation for government takings; and freedom from forced localization requirements and forced technology transfers.



WHAT PROCESS? Any individual investor or a non-profit or business investor has the ability to seek monetary remedies before a neutral arbitration panel if it believes that a TPP government has violated these rights.

ISDS must be administered under international arbitral rules with arbitrators who are held to the highest ethical standards.

Transparency is a core component of the ISDS process. Panels require public briefings and open hearings and non-parties can submit amicus briefs.

The TPP has new provisions to improve the ISDS process with rules to improve neutrality and the functioning of this key enforcement tool.

FINDINGS FROM CSIS

As found by the Center for Strategic and International Studies (CSIS):

- ◆ When investors do prevail, awards are a small fraction of the initial claim. Awards are, on average, less than 10 cents on the dollar.
- ◆ Most U.S. claimants are individuals or small businesses.
- ◆ The vast majority of cases have arisen in countries with weak rule of law records (e.g., Venezuela and Argentina). Most countries have never experienced a dispute.

WHAT IMPACT ON LAWS AND REGULATIONS? Each TPP country retains its sovereign right to maintain its own laws and regulations. ISDS panels can only order monetary penalties. In practice, no ISDS panel has ever found against a non-discriminatory, generally-applied public welfare law or regulation.

WHY ISDS? ISDS provides a means to enforce international agreements that typically cannot be reviewed by a domestic court in the United States or elsewhere. ISDS also ensures a neutral forum for an investor where impartial referees review the merits of a case, following a rules-based, non-politicized approach.

WHY PROTECT U.S. INVESTMENT OVERSEAS? U.S. investment overseas has helped U.S. firms to access consumers overseas. Businesses that invest overseas export more products, invest more in U.S. research and development, and pay their U.S. workers more than businesses that do not invest overseas. While the United States has strong rules guaranteeing fundamental protections for investments, not all other governments do. **Without ISDS, U.S. investors of all types can be subject to discrimination, violations of basic rights of fairness or the confiscation of property – actions that undermine U.S. interests and American jobs.**

WHAT IS THE TRACK RECORD OF ISDS? The United States has faced only 18 sets of claims over the last 30 years and has won every single one of the 13 completed cases. In the much-discussed *Methanex* case, the investor had to pay the U.S. government more than \$3 million in legal fees. In contrast, thousands of property cases are filed every year in U.S. courts against the U.S. government. A detailed review of the NAFTA cases noted that “[m]ost investment claims do not challenge the government’s ability to legislate or regulate as such, but are administrative in character, challenging a government’s treatment of an individual investor in the context of a particular license, permit, or promise extended by government officials.” This review found that, “under NAFTA, direct challenges to the government’s legislative or regulatory rights have never succeeded.”