

Communist Party of Australia
74 Buckingham St
Surry Hills NSW 2010

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Foreign Affairs, Defence and Trade Committee Department of the Senate
Committee fadt.sen@aph.gov.au

PO Box 6100,
Parliament House,
Canberra ACT 2600

The Committee Secretariat

Senate Inquiry into Trade Agreement Process

The Communist Party of Australia welcomes the opportunity to make this submission to the Senate Inquiry into the Commonwealth's treaty processes.

We make this submission in support of changes being made to Australia's Trade Agreement Process to ensure greater transparency and accountability.

Currently, the negotiating of texts is kept strictly secret, the closed negotiations give privileged access to corporate insiders but elected representatives and the public are excluded from the debate. At the end of negotiations Cabinet authorises the signing of the final text before it becomes available to Parliament. The text is then tabled in Parliament for 20 sitting days and goes to the Joint Standing Committee on Treaties for review before the legislation to implement the agreement is presented to Parliament. The committee reports to Parliament but recommendations of the committee are not binding on Cabinet and in fact it is very difficult to change anything in the agreement after the initial signing. It is only after this that the text becomes public.

The conflict of interest between corporations hard wired to maximise profit – even if it comes at the cost of our fresh water sources, our public health laws and our basic services – and policy making designed to serve the public interest is mediated by the democratic process.

Trade agreements become legally binding instruments with government-to-government dispute processes that include the application of trade sanctions if agreements are violated. In some cases trade agreements also contain separate investor-state dispute settlement clauses (ISDS), which allow a single investor to sue a government for damages if a government law or policy 'harms' their investment.

We have a genuine concern that Agreements signed without proper scrutiny and debate may lead to government decision-making being bound to the interests of foreign corporations and not take into account the interests of the country. The government will have to anticipate any potential for arbitration claims when formulating public policy. This could result in measures for the wellbeing or

benefit of the Australian people not being taken for fear of being sued under an ISDS. The Trans Pacific Partnership (TPP) currently being negotiated has an ISDS on the table and there is evidence that the Australian government may already be influenced in preparation for the TPP through leveling of the playing field for foreign capital by the dismantling of state-owned enterprises such as Medibank Private and the proposed dismantling of Australia Post and Medicare that could be viewed by corporations as having unfair advantage. The inclusion of clauses in Agreements such as an ISDS could put at risk affordable medicines and Australia's Pharmaceutical Benefits Scheme. The Australian people have a right to full disclosure when such important interests may be at risk.

The working people of Australia should never see their tax dollars being redirected away from health, education and infrastructure spending to defend government policy or to pay compensation to foreign investors for claims against domestic laws or policy on the grounds it reduces their investment.

The European Commission has recently taken leadership in the negotiations over a Trans-Atlantic Trade and Investment Partnership (TTIP) to release text proposals to the public and with all Members of the European Parliament, beyond just the limited membership of the International Trade Committee. Public consultation on an ISDS in the TTIP attracted about 150,000 replies, the most ever received for this type of consultation in the EU and the majority (88%) did not want an ISDS clause in TTIP.

We understand that there is currently a draft of the TPP that is mostly agreed upon by those negotiating the deal. We strongly urge the Trade Minister to release the unbracketed text and to release the negotiating positions for text that is bracketed now, and going forwards as any future proposals are made. The public has a legitimate interest in knowing what has already been decided on its behalf and what is now at stake.

The Communist Party of Australia invites you to consider the recent announcement from the European Commission as a welcome precedent to follow thereby re-affirming your commitment to fundamental principles of transparency and public participation in rulemaking.

The Communist Party of Australia calls on changes to be made to the current Trade Agreement processes that include:

- Regular public and parliamentary consultations throughout negotiations and for negotiating texts to be released as they become available. This has been done in World Trade Organisation negotiations, where position papers and draft texts are released on the WTO website before an agreement is signed.
- Studies to be undertaken of the likely economic, social and environmental impacts of the agreement and made public for debate and consultation.
- For Parliamentary debate and vote on the full text of trade agreements before the decision to sign them is made.

We would welcome the opportunity to give evidence at a public hearing.