

**C L I F F O R D**  
**C H A N C E**

**CLIFFORD CHANCE**

LEVEL 7, 190 ST GEORGES TERRACE  
PERTH, WA 6000  
AUSTRALIA  
TEL +618 9262 5555  
FAX +618 9262 5522

[www.cliffordchance.com](http://www.cliffordchance.com)

By email: [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

10 October 2016

Committee Secretary  
Joint Standing Committee on Treaties  
PO Box 6021  
Parliament House  
Canberra ACT 2600

Dear Members of the Committee

I refer to your ongoing inquiry into the Trans-Pacific Partnership. In the evidence I gave at the hearing in Perth on Wednesday 5 October 2015, I took one question on notice and also referred to two research papers.

**Question taken on notice**

The question I took on notice concerned the total number of known instances of Australian companies/investors bringing Investor-State Dispute Settlement (**ISDS**) proceedings against foreign States. I stated my belief that the total number was 11, but, having conducted further research, I believe the number is 10. The relevant cases are listed below:

1. *Lighthouse Corporation Pty Ltd and Lighthouse Corporation Ltd, IBC v. Democratic Republic of Timor-Leste*, ICSID Case No. ARB/15/2, registered 14 January 2015, based on private contract (pending);
2. *African Petroleum Gambia Limited (Block A1) v. Gambia*, ICSID Case No. ARB/14/6, registered 12 March 2014, based on private contract (pending);
3. *African Petroleum Gambia Limited (Block A4) v. Gambia*, ICSID Case No. ARB/14/7, registered 12 March 2014, based on private contract (pending);
4. *Tullow Uganda Operations Pty Ltd and Tullow Uganda Limited v. Uganda*, ICSID Case No. ARB/13/25, registered 26 September 2013, based on private contract (concluded);

JSCOT\_TPP\_SRL

5. *Tullow Uganda Operations PTY LTD v. Uganda*, ICSID Case No. ARB/12/34, registered 31 October 2012, based on private contract (pending but possibly concluded – status not clear);
6. *Tethyan Copper Company Pty Ltd v. Pakistan*, ICSID Case No. ARB/12/1, filed 12 January 2012, based on Australia-Pakistan BIT (pending);
7. *Planet Mining Pty Ltd v. Indonesia*, ICSID Case No. ARB/12/40, registered 26 December 2012, based on Indonesia-Australia BIT (pending; consolidated with *Churchill Mining v. Indonesia*, ICSID Case No. ARB/12/14, registered 22 June 2012, based on Indonesia-UK BIT);
8. *Russell Resources International Limited et al v. Democratic Republic of Congo*, ICSID Case No. ARB/04/11, registered 6 April 2004, based on private contract (discontinued under ICSID Administrative and Financial Regulation 14(3)(d) on 10 February 2009);
9. *Misima Mines Pty. Ltd. v. Papua New Guinea*, ICSID Case No. ARB/96/2, registered 29 April 1996 (discontinued under ICSID Arbitration Rule 44 on 14 May 2001); and
10. *White Industries Australia Limited v. India*, UNCITRAL, filed in 2010, based on Australia-India BIT (concluded - award rendered 30 November 2011).

Further information for cases 1-9 above is available on the website of the International Centre for Settlement of Investment Disputes. Please note that, as I said in my evidence, there may be more examples than the 10 cases listed above, as some forms of ISDS are conducted on a private and confidential basis.

### **Papers referred to or tendered**

At the beginning of my evidence, I commented on the evidence of Dr Jeffrey Wilson concerning the trend towards multilateralism in trade and investment treaty practice. In this context, I handed-up a paper of mine titled "*Green multilateralism: the changing interface between environmental regulation and the investment treaty system*". The citation for that paper is as follows:

Sam Luttrell, "Green multilateralism: the changing interface between environmental regulation and the investment treaty system", in Kate Miles (ed.), *Research Handbook on Environment and Investment Law* (Elgar Publishing, forthcoming, 2016)

Later in my evidence, in answering a question (posed by the Member for Forrest, Ms Nola Marino MP) concerning the potential for Australia to face ISDS claims by United States

**CLIFFORD CHANCE**

investors, I referred to a 2014 research paper prepared for the Ministry of Foreign Affairs of The Netherlands. The citation for that research paper is as follows:

Christian Tietje & Freya Baetens, "*The Impact of Investor-State-Dispute Settlement (ISDS) in the Transatlantic Trade and Investment Partnership - Study Prepared for Minister for Foreign Trade and Development Cooperation, Ministry of Foreign Affairs, The Netherlands*", MINBUZA-2014.78850 (2014)

The part of the Tietje/Baetens paper that I quoted in my answer is on page 9.

I hope this information is useful to the Committee. I take this opportunity to thank the Committee for involving me in this important process. If I can be of any further assistance to the Committee, please let me know.

Yours faithfully

Dr Sam Luttrell  
Counsel  
**Clifford Chance**