

**Peru Australia Free Trade Agreement (PAFTA)
Joint Standing Committee on Treaties
Response to Questions on Notice
Department of Foreign Affairs and Trade (DFAT)**

Question

Is the coverage of ISDS broader in TPP-11 compared with the Peru-Australia Free Trade Agreement in terms of covering aspects outside of the 'Investment' chapter?

Answer

An ISDS claim concerning PAFTA may only be brought in relation to commitments in the Investment Chapter. ISDS does not apply to the Financial Services Chapter. The PAFTA outcome in this regard is different from TPP-11. An ISDS claim concerning the TPP-11 may be brought in relation to commitments in the Investment Chapter and a limited number of commitments in the Financial Services Chapter.

Question

Why did the Korea-Australia Free Trade Agreement (KAFTA) chapter on Technical Barriers to Trade and Sanitary and Phytosanitary Measures specifically exclude the application of ISDS? Could you clarify the difference between ISDS and dispute settlement in that context?

Answer

Chapter 5 of the *Korea-Australia Free Trade Agreement* (KAFTA) chapter on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) does not specifically exclude the application of investor-state dispute settlement (ISDS), because ISDS does not apply to obligations in the TBT and SPS Chapters. Rather, the Chapter excludes state-to-state dispute settlement from applying to the Chapter (Articles 5.11 & 5.18). In KAFTA ISDS only applies to breaches of: an obligation under [Section A](#) of the investment Chapter; an investment authorisation; or an investment agreement (Article 11.16). In KAFTA ISDS also applies to certain obligations in the financial services Chapter (Article 8.1).

In PAFTA ISDS only applies to breaches of an obligation under [Section A](#) of the Investment Chapter (Article 8.20). Dispute settlement under free trade agreements is a state-to-state process. Separately, ISDS under free trade agreements involves an individual or corporation bringing proceedings against a state.