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Submission to the Senate Inquiry on the Customs Amendment (Comprehensive and Progressive Agreement for Trans-Pacific Partnership Implementation) Bill 2018 (provisions) Customs Tariff Amendment (comprehensive and progressive agreement for the Trans-Pacific Partnership.) Bill 2018

Thank you in advance for reading my submission.

## INTRODUCTION

### **LEGISLATION CONCERNS re IMPLEMENTATION**

I am very concerned about the implementation of the legally binding TPP- 11 trade treaty over our countries legislation with its overreach over our system of law due to the addition of the ISDS legal provision.

I once held the belief that past big international treaties were binding due to the fact that they had public welfare in mind. In direct contradiction to that belief this huge international treaty appears to be made to assist global corporations due to the adjunct of another legally binding provision the ISDS. The ISDS has overreach over most of this treaty. It allows global corporations to bypass our courts and to take legal action for compensation from our country possibly for huge amounts of money over our changes to our laws in our country, once implemented and the contract takes effect, if any new domestic law/ legislation affects their profits. The TPP-11 does have public welfare as a primary concern. It apparently overrides public interest laws in our country.

The number of global corporations that could be involved with us through this TPP-11 could be huge, in view of all of the countries involved in this massive agreement, and the fact that this trade treaty covers almost all aspects of trade and services. This complexity increases the risk of the ISDS legal provision being used against us for compensation in the future.

The ISDS legal provision involved in this huge contract is made to protect overseas corporations from loss of profits. The ISDS legal provision seems to be something like having a covenant or caveat on property, except it is over our laws. It will impede over our ability to make Legislation (Acts of law) for the future for fear of having legal action being taken against our country for financial compensation.

Parliament will have to think twice about whether a law that may be necessary to make domestically will hurt overseas investors in many varied areas. That will stifle our countries growth for the future. It can stifle our autonomy and our democracy and the welfare and interest of Australians and our environment and many other areas where we ordinarily would have had the democratic will and voice of the people in decision making. The peoples voice should be carried through via our elected parliament members. The people loose democracy if we have that right superseded by some of the big global corporations.

### **THE TPP-11 TRADE TREATY SHOULDN'T HAVE AN ISDS**

The implementation of TPP-11 Treaty with its overarching ISDS has to be looked at wholly. It's a whole huge legally binding contract under international law. The dangerous risk where prior submissions fall short in assessing this treaty is that certain industry sectors have cherry picked benefits for themselves and have not assessed this TPP-11 for what it actually is. It's a huge legally binding contract with possibly limitless amounts of global corporations that will have the ultimate power to seek massive amounts of compensation if we do anything to our laws in the future that limits any of their profits from our country.

Germany had merely a simple contract with a Swedish nuclear energy utility provider Vattenfall and now have an ISDS case against them \$5.4 billion dollars for wanting to phase out nuclear energy gradually.

So why have a huge contract with so many global corporations with this legal clause over almost every aspect of possible trade and service provision for our country with this clause.

## **CUSTOMS AMMENDMENT**

### **Food Security and Product Risk**

It appears that levels of radiation in some overseas countries food and water and milk spiked after Fukushima and some countries saw acceptable radiation levels for emergencies go above what the World Health Organization levels had listed as safe from the Codex Alimentarius.

Overall our Australian food grown here, for trade purposes, and our consumption, is generally uncontaminated, safe and nutritious. The clean green image of our food is a very big factor in why it is sought after overseas.

We need to ensure that imported food, through customs, for our consumption by us, and our food grown here does not become contaminated by many of the things that have caused some of the countries overseas to have more contamination in food. Contributing factors to food contamination are contamination in soil, water, higher levels of pesticides in and on food and some countries even still have levels of radiation due to nuclear energy accidents of the past.

We need to ensure that we have access to our own produce and that overseas corporations do not gain monopoly over our domestic markets. There is nothing to be gained if we become a nation that has ill health due to eating more unhealthy food. It would actually be bad for our health budget.

This year imported pomegranate seeds for consumption caused a hepatitis A outbreak. Apparently, this came from the same overseas supplier that was responsible for the Hepatitis A outbreak here only a couple of years ago, from their frozen berries. Overseas foodstuffs can obviously have problems.

I know that at the border we used to test for radioactivity in food. It is not clear to me how this will work now. I think relying on overseas corporation's total honesty would be foolish.

I am not sure if some trade now bypasses samples for inspection.

We are already seeing other contaminated products come into our country. White spot has come into Australia with prawns. It has wiped out some of our prawn industry.

Other products that have been of a questionable quality and standards in comparison to our standards have entered our country. Substandard steel and asbestos in fibro.

Our country always had strict customs and border control with standards that Australia could rely on. Good sensible standards and strong customs border protection and sampling and

testing at our borders that should not be diluted down to other countries standards. We need scrutiny and probably a strong regulatory system at the border for imports in the aim of having this TPP-11. We do not need regulations that are ineffective in ensuring safety standards are not met.

It appears some of our imported goods have been slipping already in standards and the risk here is also letting goods in that have diseases that could decimate other agricultural industries here.

I would also like to make note here also of glycosphate by Monsanto, which is now under Bayer due to a merger. We mostly all probably use this a bit sometimes here, as it is a very good weed killer, though the fact is that there has been a court case in America to do with glycosphate and cancer. I think in previous years they had legally challenged the World Health Organisation over labelling including potential risks to ensure that adequate care was taken during use.

I expect Monsanto will still challenge the result of the court case.

In general, global corporations appear to not always want to inform us, the consumers, of the possible risks of their products, they can go to great lengths and expense to avoid that so that their financial bottom line is not impacted and that of their shareholders

Hopefully our standards now will not merely rely wholly on a global corporations' honour system at their borders even more with possible TPP-11 implementation.

### **IMPLIMENTATING LEGISLATION**

As this TPP-11 treaty has an overarching ISDS legal provision that will override our countries legal system if global corporations seek compensation, legislation should not be enacted to make way for this to happen.

If enacted this whole contract will enable global corporations to have more law suits against us more easily, seeking financial compensation in a private corporation court like setting out of our countries legal jurisdiction.

The ISDS has too much overreach and can cost us in terms of money and democracy.

There has been an ongoing Swedish corporation case against Germany for phasing out Nuclear Energy. Despite Germany trying to settle this through their own legal system, the process was unsuccessful. Under the ISDS provision the Swedish company is seeking a massive \$5.4 Billion dollars.

Phasing out of anything that global corporations do here or with us, under this treaty, may be extremely difficult and costly. Yet we live in a world of rapid change and so we should have the flexibility to change and to change our laws. We should not be bound in a contract by these ISDS corporation laws that diminish our ability to change our laws and where cases are not even heard under our legal system. Self-determination and changing our laws with time should remain our unencumbered legal right.

Global corporations using this ISDS provision in corporation court use the extremely narrow determination and judgement to do with the contract and whether there's breach of contract and how much compensation is payable. Cut and dry.

This huge legal contract also has suspended provisions that were not eliminated and can be reactivated later.

America has the option to join later.

Summarising: This whole huge legally binding contract with its binding ISDS legal provision allows global corporations to seek compensation against us totally outside of our legal system and takes precedence.

It puts a big liability onto our country.

It is dangerous, as it undermines our democracy.

It has suspended clauses or provisions that can be reactivated.

It locks in things for our Nation that we may want or need to change with time.

It stops necessary self-determination and autonomy of our nation

Global corporations under this contract of TPP-11 have the legal right to seek compensation circumventing our countries legal system.

It was also made secretly.

Global corporations apparently had input into this contract when compiled originally as the TPP before it was slightly amended and became the TPP-11. Global Corporations under this can seek huge financial compensation from countries.

I honestly think this TPP-11 with the inclusion of an ISDS should not be allowed for our country as it presently stands. I think its recipe for disaster for our future and our future generations.

You only have to do research on the track record of some of the big global corporations to conclude that they should not have a foothold over our legal system by having an ISDS provision in a massive countries corporations treaty with us. America can also join back in and circumvent even more laws in our country.

America has very powerful corporations and lobby groups and they previously stated when the original TPP was trying to be rushed (fast tracked) through in their country, before their election and change in leadership and the dropping of the TPP, that they never loose ISDS cases.

At present we have a trade agreement with America without an ISDS which has not undermined our self-determination and autonomy to their big global corporations as much as it could if they were included back and the suspended provisions come back into force.

### **The EU would like to abolish ISDS FROM TRADE**

The European Court of Justice has only recently ruled that ISDS legal provisions undermines national legal autonomy and that it is incompatible with EU law.

“the EU argued that foreign investors could undermine decisions by democratically elected governments by filing suits in private courts”. Quote from business section of Deutsche Welle (ap/uhe Reuters. AFP) dated 05.09.18

There have also been many objections by intelligent and noted people and noted organisations against having an ISDS clause in the original TPP and in the TPP-11. A section in TPP-11, does appear to say that some regulation is permitted though it does not say that we can legislate new laws (Acts). I believe lists of countries laws have to be handed in at some point.

### **BORDER PROTECTION**

Our forefathers fought for the autonomy and democracy of this Nation. They fought to protect our people and our country. Yet, this contract allows global corporations to have rights that override our laws and hence our democracy.

We protect our borders and yet the ISDS provision of this treaty will allow global corporations to circumvent around our countries legal system. Each and every global corporation will have

the legal right to seek compensation out of our own legal jurisdiction, perhaps for many millions of dollars, or even more as seen in the case against Germany where their right to self-determine and phase out one type of energy carries a huge ISDS liability against them.

This ISDS right of global corporations to basically sue us for perhaps massive amounts of money inhibits our right to have a definite choice for our own future. It puts us between a rock and a hard place. We either can self-determine change or our other choice is to have a legal suit for a massive compensation. This is exactly what the biggest problem is by adding an ISDS to this so-called free trade treaty.

This free trade treaty is actually presently more like a preferential treaty. It gives far too much power to global corporations over our nation, considering the fact that global corporations actually normally do not have our best interests at heart as their aim is most usually just to make money.

This contract falls short in many areas. Our rights are eroded and public interest laws are also eroded. Some laws in different areas appear to have already tweaked to pave the way for this. I expect more changes will still be made if this is legally passed by our current government. Unfortunately, if we allow this we will never get many of our laws and rights back without an extremely costly battle.

I think we are in fact basically somewhat opening the border to be almost somewhat overtaken legally by global corporations that will have too much power over our nation and its people and our laws.

I expect our forefathers would be disgusted if we just let this happen.

## **RISKS**

A huge risk factor is some of the merely suspended provisions, as apparently agreed on by other countries. These are only suspended and can be reactivated.

ISDS cases have sharply risen of late. It appears that the global corporations/investors see this as an easy way to make money via compensation if they are at all stifled financially by a nations law.

The fact that the TPP-11 covers so many areas exposes us to many risks some direct and some indirect.

### **ENVIRONMENT Risks under TPP-11**

The TPP- 11 is bad for the environment.

Many of the ISDS cases against countries for compensation are on environmental grounds. TPP-11 appears to have weak provisions to protect our environment.

The Corporations are constructed to make money, irrespective of barriers. Therefore, when countries try to protect various parts of their environment it can be seen as a barrier to seek compensation for. Poorer countries tend to fold as they can't afford the costs of compensation and pay outs and consequently their environment and water has in places become contaminated.

Richer countries like Germany have fought on a few environmental areas against big corporations.

The financially biggest case for compensation against them has been lodged by the Swedish utility provider Vattenfall due to Germany wanting to phase out Nuclear energy over an approximate ten year period. As stated earlier this original case No. ARB/12/12 was not able to be settled through the domestic court system, and the fact is, this ISDS case lodged by Vattenfall is seeking \$ 5.4 million dollars compensation from Germany.

Vattenfall apparently didn't disagree with Germanys decision to phase out Nuclear energy, it just wanted hefty compensation for their decision. Germanys decision was made due to the fact that they wanted phase out Nuclear Energy mostly due to the major contamination caused by Fukushima disaster. I make note here that it apparently contaminated some of Japans groundwater and land causing fairly dangerous levels of radiation/contamination to some of their food chain and was leaking dangerous radiation into the Pacific. Radiation from meltdowns can have a very long life.

Apart from major accidents, the global corporations appear to often have breaches of environmental regulations, the concern for making money appears to surpass the concern for other countries environments.

The environment chapter is actually weak in this TPP-11 and is not fully enforceable and falls short as a protective measure.

The treaty does not directly mention or address Climate Change. It makes some mention of emissions but not specifically greenhouse gas emissions. It is debatable.

Climate Change seems bypassed in this trade treaty. This seems wrong and favours the corporations doing business as usual. This is not reassuring with climate change at our doorstep in a land where bushfires start easily when temperatures soar. Where droughts can be made worse by climate change.

Climatic change definitely appears to be happening and it will ultimately cause expense to our Nation in the future, as it will, I expect, create havoc and damage.

Bushfires appear to be increasing with drier, hotter conditions much more in Australia already and have caused damage to towns/villages. Big cities are also at risk. The bushfire in Sydney in April of this year was spurred on by winds and a hotter than usual autumn. It burnt a vast tract of land and came close to the Nuclear Reactor in Sydney, that is a low-level radiation facility, where medical goods are made.

## **WATER SECURITY RISKS**

With more multinational or global corporations operating in our country we also need to protect our water and waterways from contamination and also from the over granting of water to the mining sector. If mining increases to the extent suggested in trade, we need to rethink making grants freely to our water irrespective of what a global corporation may pay for it.

Water allocations should be capped. It is not smart for our future as a trading nation, to give unlimited water grants to some sectors and leave our farmers and agriculture and their potential food production ability drier for the future. Both mining and agriculture rely on water. Both produce commodities that are for the domestic market and export.

Water is essential for life. We can grow almost anything if we have water. We need to ensure that global mining and global corporations are not allowed to take too much and that they don't contaminate it.

In reality, the mining sectors do have a history of water contamination of varying degrees,

wastewater, salinity, accidents, spills, major contamination and in cases even wilful negligence. Ultimately, it appears under this TPP-11, we could be a host nation to even more global Mining Corporations which could be a concern for our future water supplies, given time.

There has appeared to be some problems with some overseas mining corporations in regards to other contamination, apart from water. We need to be able to hold them responsible for damages. Bonds taken by governments in the past have proven inadequate sums of money in clean ups. Corporations claiming insolvency as Linc Energy did, after their massive contamination, would see the state government paying approximately 80-million-dollar bill in restitution and cleaning the contamination. Legislation on Corporations working here appears inadequate and protective towards shareholders in insolvency cases. It seems, in the Linc Energy case, the State government has had a legal battle on its hands to try to get some money back to help in restitution and clean up.

### **ESSENTIAL SERVICES.**

The TPP-11 also seems bad for essential services. The trade in services section appears to freeze services at current levels preventing governments responding to the future. Time changes needs. It seems wrong that future governments hands are tied by this contract with making future decisions. Areas that need consideration are the financial services, energy services, vocational services, all of these services seem very problematic at the moment.

The financial services sector: Banking, though probably not technically an essential service, though it is essential to the life of anyone that basically lives and survives in Australia. This service has displayed corporation mindset to us all lately when they have wilfully put profits over people at any cost, as seen in the Royal Commission for Banking. In the Banking Royal Commission, a woman from the banking sector, that was being questioned, thought it was merely common practice to take advantage of the public as long as the profits were made and the shareholders were making money.

Will we have stricter laws concerning other financial institutions working in our country? It appears the Royal Commission has not completed and handed down its findings yet. I think we should know what could be in stall for us before we are locked to other potential member countries corporations of the TPP-11.

Clearly corporation law here, needs overhaul first.

### **WORKERS**

The TPP states that workers can come into our country from various countries to work as temporary workers here. Labour market testing seems diminished. This is another problem in this contract. It creates less opportunities for our young people looking for work here. Last time I checked the young generation here have a huge underemployment/employment figure. I fail to see how it will help our economy into the future if we have overseas people taking away more jobs here under this contract. Overseas people will most likely take the money they save out of our economy and back into their country. The legally binding TPP 11 is bad for workers' rights. It is also bad for workers safety as some already diluted laws in our country are already seeing a spike in workplace accidents. One death just a couple of days ago.

It appears an aim of the TPP-11 is only profit making for the global corporations while discounting workers health and safety.

So if we have already diminished our laws that should protect workers can we get them back if these workplace accidents continue once the TPP-11 is instituted? My thoughts are no. If they are legislated. This basically probably goes for any of the other legislated Act of parliament that should protect us but may cause profit loss by any global/multinational corporation that is working here under the terms of the TPP-11. We can only fiddle with some regulations.

## **FINANCE**

The economic benefits of this TPP 11 seem negligible from what I have researched.

The contract also has a high liability factor included.

We will have limited ability to protect most things via new legislation for the future if it effects a multitude of corporation's bottom line we will have to pay global corporations' compensation. That costs.

I refer back to the section above on environment where Germany has an ISDS case and is supposed to pay \$5.4 Billion in compensation to Vattenfall due to Germany phasing out Nuclear Energy over a ten-year period.

Imagine the cost if we decide we no longer want a sector and phase it out with time in this huge contract with so many global corporation players. Some sectors that will be locked in by this contract may not be as necessary, as technology and time may supersede them.

Some of the sectors that we will be locking in, in terms of compensation via private inter-state dispute settlement courts are not very time tested in terms of safety and viability into the future. There are many disputable areas already with some of the global corporations. Our world is rapidly changing and our climate appears to be also changing. This should ring alarm bells that we should be more flexible in our planning for the future and not lock in things that may need to change with time.

I think that we would be much better off in the long term to have bilateral agreements as they pose less risk as they can be clearer and specifically targeted and they do not have the same potential to negatively impact our country.

I am not sure if the productivity commission has been asked by government to reassess this new TPP-11.

That the productivity commission stated once that may be a good idea to not have such costly monopolies and that entrenching monopolies is the opposite of free trade.

It appears that this TPP-11 may be similar to giving corporate favours instead of free trade.

## **CONCLUSION**

There are of course individual benefits included in the treaty that appeal to certain sectors, or people or individuals, who will profit from this and will want it ratified.

This treaty though needs to be measured and assessed overall as a whole, as the whole body is a legally binding contract with a legal ISDS provision to basically sue us.

It appears the whole content of this TPP-11 contract is enforceable under International Law.

Public interest laws here may indeed conflict with the corporation's powers of the ISDS legal provisions, as this treaty appears mainly made for the global corporations /investors and their shareholders and was made also somewhat by corporations.

Our legal system is bypassed by this treaty. Jurisdiction with ISDS cases is taken away and out of



our countries legal system, into a corporation type of court where global corporations seek compensation from countries. It is not like our legal system here. Our country has absolutely no rights to take global corporations operating with us under this treaty to corporation court and ask for compensation.

The incidence of ISDS cases seeking compensation has sharply risen. Global corporations/investors appear to take advantage of ISDS legal provisions.

The ISDS provision is basically what cements this huge contract more and makes it very difficult for us if we need to change anything in the future. We will be "between a rock and a hard place" in the future. Our world is changing rapidly. Our climate is even changing. To lock ourselves into something so huge that is undermining our ability as a nation in future decision making seems preposterous.

*It puts a liability onto our country.*

*It is dangerous, as it undermines our democracy.*

*It has suspended clauses or provisions that can be reactivated.*

*It locks in things for our Nation that we may need to change with time.*

*It stops necessary self-determination and autonomy of our nation*

Our children's voices should be important in decision making in the future, They should not be impacted by global corporations in meeting their basic primary needs in our own country in the future. Our country has uncontaminated water and food at present and global corporations should not be able to impact that by way of creating big monopolies through this system. It appears some global food corporations are not the most upfront when it comes to the health of their food. Profits appear to be what they care about It appears profits are the main concern and driver for most global corporations. Corporations, it appears to me, are often driven by lack of moral compasses. Even in our own Banking sector in the current Royal Commission, a woman, who was an employee, that was being questioned thought it was merely common practice to take advantage of the public as long as the profits were made and the shareholders were making money.

Our children's future should also not be disadvantaged by governments inaction on climate change and live in a world with possible runaway climate change because of global corporations *push* by some sectors to keep their monopolies.

Our children should also be able to find work in our own country and not have that scope seemingly more limited by this treaty.

It seems like it should just be common sense to look after our children's basic rights for the future.

Our forefathers fought for democracy and those rights.

The ISDS in this contract with global corporations /investors can basically undermine our ability to make new laws in our own country and hence rights that would protect our children's future in our own country.

Many much more intelligent people than me also think the overarching ISDS legal provision in this huge treaty is dangerous for our country. Common sense tells me that having to pay out huge amounts of compensation is a very big deterrent by governments to change a contract

once instituted with a global corporation, let alone many global corporations that will be incorporated through this one treaty.

The UN has been critical of the ISDS. Human Rights rapporteur urged for the original TPP not to contain an ISDS.

I make note here again of the decision by the EU that the ISDS legal provisions undermines national legal autonomy. It appears they want to eliminate ISDS in trade and replace it with something less dangerous for them.

The EU have said “that foreign investors could undermine decisions by democratically elected governments by filing suits in private courts.”. Quote from business section of Deutsche Welle (ap/uhe Reuters). 5.9.18

There is much to be concerned about with this treaty as a whole legal instrument, in terms of investors and global corporations undermining Australia’s legal autonomy and hence future. Why allow Australia to be put at such risk and disadvantage.

Legislating for this seems very wrong.

I think there are very good reasons why implementing for this should be rejected and the whole TPP-11 with its overreaching ISDS that bypasses our legal system should be rejected and not be ratified.

Thank you,  
Linda Link.