



16 August 2018

Senator Alex Gallacher,  
Chair  
Senate Foreign Affairs, Defence and Trade References Committee  
Parliament House  
CANBERRA ACT 2600

Dear Senator Gallacher

Thank you for the opportunity for the Minerals Council of Australia to appear before the Foreign Affairs, Defence and Trade Committee's inquiry into the TPP-11 on 30 July 2018.

I am writing to respond to questions from Committee members which were taken on notice.

**Senator Patrick, Petroleum exports to Vietnam**

**Senator PATRICK:** *You mentioned refined petroleum to Vietnam. Do we actually export refined petroleum? That's an area where I would have thought, particularly to Vietnam, Singapore would have been all over us.*

**Mr Davis:** *I'd have to take that on notice and have a look at the trade statistics, particularly with respect to Vietnam. I do know there are both imports and exports by Australia of refined petroleum globally, in aggregate, but I would have to check about Vietnam.*

**Senator PATRICK:** *I was just looking at the quantum of where the advantage lies.*

**Mr Boettcher:** *A lot of petroleum does go to ASEAN countries, in aggregate. In terms of Vietnam specifically, I'd have to take that on notice. A lot of it goes to the region.*

The value of Australian exports of petroleum to Vietnam in recent years is provided in the following table, based on the Department of Foreign Affairs and Trade's *Composition of Trade 2017* report and associated pivot tables.

Exports to Vietnam	2012	2013	2014	2015	2016	2017
Crude petroleum	\$37,224,000	na	\$111,000	na	\$163,000	\$69,523,000
Refined petroleum	\$1,689,000	\$2,761,000	\$11,406,000	\$13,402,000	\$9,510,000	\$8,611,000

### **Chair and Senator Patrick, ISDS**

**CHAIR:** *I'd appreciate it if, on notice, someone could give us a snapshot of those cases—just a very brief, dot point sort of snapshot of them. When we are working out that ISDS is supported by the Minerals Council, we need to know exactly why.*

**Senator PATRICK:** *Can I ask also for an order of magnitude in terms of the damages or the remedy being sought? Is it tens of millions, hundreds of millions, billions?*

**Ms Constable:** *We can take that on notice, but I can also table the four cases for you in an attachment today so that you've got that ready at hand.*

The United Nations UNCTAD Investment Dispute Settlement Navigator database contains information about international arbitration cases initiated by investors against States pursuant to international investment agreements. This database identifies four cases where Australian companies have initiated treaty-based arbitrations. Details of these cases, including amounts of compensation claimed, where available, are provided in the attached schedule. UNCTAD notes that its database is based on publicly-reported cases and may not be exhaustive.

### **Senator Moore, ISDS**

**Senator MOORE:** *Ms Constable, I'm also going to ask a couple of questions on that and then a more general question. I know that your industry has a very strong international network and that people talk a lot and learn from each other. Is there an international position from the minerals area about the ISDS clauses in trade?*

**Ms Constable:** *We're unaware of that. We'd have to take that on notice.*

**Senator MOORE:** *Sure. The reason I ask—and it follows on from the same range of questions—is that we've had evidence about Canada, particularly, where they have been subject to a range of litigation around this space, and most of it has been by the minerals or extractive industries. They are big figures and they range from issues about the environment to even issues about indigenous consultation. It just seems that that is a concern from people who work in the wider trade area—that there does seem to be a process around the extractive industries that favours this particular ISDS process. I'm interested to know whether there's any linkage in that space.*

**Ms Constable:** *We'll take that on notice.*

The MCA is not aware of the views of mining industry bodies internationally about investor state dispute settlement.

Yours sincerely

**TANIA CONSTABLE PSM  
CHIEF EXECUTIVE OFFICER**

**ATTACHMENT**

<b>Year case initiated</b>	<b>Case name</b>	<b>Summary details</b>	<b>Amount claimed by investor</b>	<b>Outcome of original proceedings</b>	<b>Amount awarded by tribunal</b>	<b>Respondent State</b>	<b>Home State of investor</b>	<b>International Investment Agreement</b>
2017	Kingsgate v. Thailand	Claims arising out of alleged indirect expropriation of Chatree gold mine, owned by claimant's local subsidiary Akara, through measures by the Government in 2016, including non-renewal of Akara's processing licence for the mine beyond 2016 and an order to close the mine and suspend all gold mining and related activities in Thailand by end of 2016.	Data not available	Pending	Matter pending	Thailand	Australia	Thailand-Australia Free Trade Agreement (2005)
2012	Churchill Mining and Planet Mining v. Indonesia	Claims arising out of the unilateral revocation by the Government of mining licenses in which the claimants held interests.	US\$1,315 million	Decided in favour of State	Matter decided in favour of State	Indonesia	United Kingdom (Churchill Mining)  Australia (Planet Mining)	Indonesia-UK Bilateral Investment Treaty (1976) Australia-Indonesia Bilateral Investment Treaty (1992)
2012	Tethyan Copper v. Pakistan	Claims arising out of decision by Pakistani province of Balochistan to refuse the application by claimant's local operating subsidiary for a mining lease in respect of the Reko Diq gold and copper site.	Data not available	Pending	Matter pending	Pakistan	Australia	Australia-Pakistan Bilateral Investment Treaty (1998)
2010	White Industries v. India	Claims arising out of alleged judicial delays by Government of India that left the claimant unable to enforce an ICC award for over nine years concerning a contractual dispute with Coal India, a State-owned mining entity.	A\$8.7 million	Decided in favour of investor.	A\$4.1 million	India	Australia	Australia-India Bilateral Investment Treaty (1999)