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Geneva, 2nd April 2014

Mr David Sullivan
Committee Secretary
Senate Foreign Affairs, Defence and Trade Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email to fadt.sen@aph.gov.au

IndustriALL Global Union Submission to Australian Senate

Trade and Foreign Investment (Protecting the Public Interest) Bill 2014

Dear Mr Sullivan,

Thank you for the opportunity to comment on the Trade and Foreign Investment (Protecting the Public Interest) Bill 2014.

[IndustriALL](#) is a global union representing the collective interests of 50 million workers in mining, energy and manufacturing industries in 140 countries. IndustriALL has severe concerns about the impacts of the inclusion of investor-state dispute settlement (ISDS) provisions in trade agreements on the capacity of governments to legislate to protect their own citizens.

By entering into such agreements, governments enable corporations to challenge and effectively nullify domestic laws while granting no comparable rights to governments or individuals to hold corporations accountable. Australia has a well-respected and strong legal system and there is absolutely no justification for creating a mechanism to allow corporations to bypass legal process.

There are examples from around the world where such procedures included in trade agreements have been used against the nation state:

- \$22 million paid in fines by the government of the Slovak Republic after it reversed the liberalisation of its health insurance
- The as yet unresolved case of big tobacco suing the federal government of Australia after its introduction of plain packaging for cigarettes
- The billion-dollar lawsuit faced by Indonesia from UK-listed Churchill Mining, in addition to several unrelated threats of costly litigation from international companies unhappy with a new mining law
- \$250-million damage suit being pursued by Lone Pine Resources against Canada as a result of Quebec's moratorium on fracking
- Attempts by Veolia in Egypt to take action under ISDS against the Egyptian government for raising the minimum wage
- Action by the Swedish company Vattenfall against the German Government for restricting the use of nuclear power
- The award of \$17 million by a NAFTA tribunal to Metalclad against the Mexican government for allowing a small town in central Mexico to refuse to allow the US corporation to build a hazardous waste landfill that could have contaminated local groundwater and jeopardized a fragile ecosystem.

There is real danger in corporations using these legal avenues to undermine a national government's ability to legislate in the best interests of its own population. If a foreign investor doesn't like a law, rule, judgment or administrative decision, all it has to do is argue that the decision or measure violated its right to "fair and equitable treatment" or that it might reduce its expected profits. Furthermore, ISDS provisions give additional legal rights only to foreign investors. There is no reason that foreign-owned property should be better protected than property owned by a country's own citizens.

Germany and France have already rejected the inclusion of an ISDS provision in the Trans-Atlantic Trade and Investment Partnership (TTIP). In response to widespread protests against ISDS in Europe, the European Commission has instituted a public consultation process to provide an opportunity for public examination and debate of this undemocratic system. Countries including South Africa, Venezuela and Ecuador have been working to reduce their exposure to ISDS. South Africa started to cancel some of its bilateral investment treaties that include such provisions and Ecuador and Venezuela have already terminated theirs. Most recently, Indonesia is planning to terminate more than 60 bilateral investment treaties that include ISDS provisions. The United Nations Conference on Trade and Development (UNCTAD) has recommended reform.

IndustriALL welcomes consideration by the Australian Senate of the Trade and Foreign Investment (Protecting the Public Interest) Bill 2014 and urges it to pass the bill and join France, Germany and a growing number of countries in rejecting ISDS provisions in trade agreements.

Yours sincerely

Jyrki Raina
General Secretary
IndustriALL Global Union