

Ladies and Gentlemen:

I have reviewed your Draft Report on Bilateral and Regional Trade Agreements (July 2010). There are a number of statements in that Draft Report with which I disagree. However, I am not a citizen of Australia and therefore I do not consider it appropriate to comment generally. As a United States citizen, though, I do wish to correct one clear error in the Draft Report relating to the U.S. On p. 13.20, the Draft Report states "The Commission understands that no US business has been unsuccessful in pursuing an ISDS claim against a foreign government." That statement is not at all correct. U.S. investors have had their claims dismissed in their entirety in a number of ISDS cases, among them the following 16 awards.

Merrill & Ring v. Canada
UPS v. Canada
Azinian v. Mexico
Fireman's Fund v. Mexico
Gami v. Mexico
Texas Water Claims v. Mexico
Thunderbird v. Mexico
Waste Management v. Mexico
Empresa Eléctrica del Ecuador v. Ecuador
Champion Trading Company v. Egypt
Genin v. Estonia
CCL v. Kazakhstan
Link Trading Joint Stock Company v. Moldova
Noble Ventures v. Romania
Mihaly v. Sri Lanka
Generation Ukraine v. Ukraine

The award in every one of the foregoing disputes is public and easily found on naftaclaims.com, investmentclaims.com or ITA, as well as (in the case of the NAFTA awards) the official NAFTA sites of the three governments party to that agreement. I believe proper research may identify other ISDS cases, in addition to the foregoing, in which U.S. claimants were unsuccessful. In light of the patently poor research on this point, before relying on other research done by whichever organization provided the Commission with this inaccurate information, I recommend you carefully review that other research for possible error.

I attach a completed submission cover sheet for your records.

Thank you.

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