

REGULATORY INSTITUTIONS NETWORK (RegNet)

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AUSTRALIA

Productivity Commission  
Australian Government  
15 Moore Street, Canberra

3 September 2010

**Re: Draft Report on Bilateral and Regional Trade Agreements**

In response to the call for submissions on the Commission's Draft Report on Bilateral and Regional Trade Agreements, I am writing to provide comments on the sections of the Report that deal with investor-state dispute settlement (ISDS).

I am encouraged by the "cautious approach" that the Commission recommends with regard to the adoption of ISDS in future trade agreements negotiated by the Government of Australia. The Commission has already received an excellent submission from Aisbett and Bonnitcha on the economics of investment protection. My comments pertain instead to the "risk for governments when making domestic policy decisions" created by ISDS and "concerns with the way third-party arbitration operates". These are very important issues for the Australian Government to consider and it is appropriate for the Commission to highlight them in its final report. I have written about both issues in a submission to DFAT on ISDS in the proposed Trans Pacific Partnership Agreement. I am attaching this submission as I believe it may also prove useful for the Commission.

I am additionally attaching a statement, released on 31 August 2010, signed by over 30 academics (including several eminent professors), which provides a very sharp critique of the current system for the resolution of investor-state disputes.

If the Commission requires further information on any of the issues discussed in these attachments, I can be reached by email

Kind regards,

Dr. Kyla Tienhaara  
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