

What claims does the Australian Government make about safeguards to protect health and environmental policy from investor-state dispute settlement (ISDS) - and how do they stack up in the final text of the Trans Pacific Partnership Agreement (TPP)?

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Claims made about ISDS safeguards in the Australian Government's fact sheet on the TPP and investment: ¹	Relevant chapter and TPP provision(s)	Comments with respect to health and environmental issues
<p>There is explicit recognition that TPP Parties have an inherent right to regulate to protect public welfare, including in the areas of health and the environment.</p>	<p>PREAMBLE² [relevant extracts]</p> <p>The Parties to this Agreement, resolving to:....</p> <p>RECOGNISE their inherent right to regulate and resolve to preserve the flexibility of the Parties to set legislative and regulatory priorities, safeguard public welfare, and protect legitimate public welfare objectives, such as public health, safety, the environment, the conservation of living or non-living exhaustible natural resources, the integrity and stability of the financial system and public morals;</p> <p>RECOGNISE further their inherent right to adopt, maintain or modify health care systems;</p> <p>PROMOTE high levels of environmental protection, including through effective enforcement of environmental laws, and further the aims of sustainable development, including through mutually supportive trade and environmental policies and practices;</p> <p>HAVE AGREED as follows: [remainder of TPP]</p>	<p>This part of the Agreement is not legally enforceable. Where specific legal obligations in the TPP conflict with these aspirations, those specific legal obligations will prevail.</p> <p>For example, the text of the intellectual property chapter requires Parties to provide at least 5 years of market exclusivity for biologic products. This obligation is widely expected to compromise public health in those countries which do not currently provide market exclusivity for biologics, and will reduce the options all countries have to modify their health care systems.</p>

¹ <http://dfat.gov.au/trade/agreements/tpp/outcomes-documents/Pages/outcomes-investment.aspx> Claims are reproduced verbatim but punctuation is altered for the table format.

² <http://mfat.govt.nz/downloads/trade-agreement/transpacific/TPP-text/0.%20Preamble.pdf>

	<p>CHAPTER 9: INVESTMENT³</p> <p>Article 9.15: Investment and Environmental, Health and other Regulatory Objectives</p> <p>Nothing in this Chapter shall be construed to prevent a Party from adopting, maintaining or enforcing any measure otherwise consistent with this Chapter that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental, health or other regulatory objectives.</p>	<p>TPP countries can take regulatory action for environmental or health reasons provided it is “otherwise consistent with this Chapter”. This phrase undermines the safeguard and means that its interpretation can be a matter for dispute in a tribunal.</p>
<p>Australia’s tobacco control measures cannot be challenged.</p>	<p>CHAPTER 29: EXCEPTIONS AND GENERAL PROVISIONS⁴</p> <p>Article 29.5: Tobacco Control Measures¹²</p> <p>A Party may elect to deny the benefits of Section B of Chapter 9 (Investment) with respect to claims challenging a tobacco control measure¹³ of the Party. Such a claim shall not be submitted to arbitration under Section B of Chapter 9 (Investment) if a Party has made such an election. If a Party has not elected to deny benefits with respect to such claims by the time of the submission of such a claim to arbitration under Section B of Chapter 9 (Investment), a Party may elect to deny benefits during the proceedings. For greater certainty, if a Party elects to deny benefits with respect to such claims, any such claim shall be dismissed.</p> <p>¹² For greater certainty, this Article does not prejudice: (i) the operation of Article 9.14 (Denial of Benefits); or (ii) a Party’s rights under Chapter 28 (Dispute Settlement) in relation to a tobacco control measure.</p> <p>¹³ A tobacco control measure means a measure of a Party related to the production or consumption of manufactured tobacco products (including products made or derived from tobacco), their distribution, labeling, packaging, advertising, marketing, promotion, sale, purchase, or use, as well</p>	<p>The inclusion of this safeguard is undoubtedly a positive development and a win for public health. It means that the type of claim brought by Philip Morris Asia against Australia’s tobacco plain packaging laws (under the investment treaty between Hong Kong and Australia) will not be possible under the TPP in Australia and other countries that choose to make use of this safeguard. It applies to a broad range of tobacco control measures.</p> <p>But it has a number of limitations:</p> <ol style="list-style-type: none"> 1) It is optional rather than a complete exclusion: countries can elect to deny the right to use ISDS for claims challenging a tobacco control measure. Tobacco companies may pressure countries not to make use of the safeguard. 2) It only applies to ISDS and not to other chapters and provisions of the TPP.

³ <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP-text/9.%20Investment%20Chapter.pdf>

⁴ <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP-text/29.%20Exceptions%20Chapter.pdf>

	<p>as enforcement measures, such as inspection, recordkeeping, and reporting requirements. For greater certainty, a measure with respect to tobacco leaf that is not in the possession of a manufacturer of tobacco products or that is not part of a manufactured tobacco product is not a tobacco control measure.</p>	<p>3) It does not apply to the TPP’s state-to-state dispute settlement process. This means that tobacco companies can still persuade TPP countries to pursue disputes with other TPP countries - so we could still see the sorts of legal challenges that Australia is facing from other countries over tobacco plain packaging through the World Trade Organization’s state-to-state dispute settlement process. Previous experience suggests that the tobacco industry is quick to take any opportunity to do this.</p> <p>4) It only applies to manufactured tobacco products, not tobacco leaf. It is unclear whether it applies to e-cigarettes.</p>
<p>Certain ISDS claims in specific policy areas in Australia cannot be challenged, including:</p> <ul style="list-style-type: none"> ◦ social services established or maintained for a public purpose, such as social welfare, public education, health and public utilities ◦ measures with respect to creative arts, Indigenous traditional cultural expressions and other cultural heritage ◦ Australia’s foreign investment policy, including decisions of the Foreign Investment Review Board. 	<p>CHAPTER 9: INVESTMENT</p> <p>Article 9.1: Definitions</p> <p>investment agreement means a written agreement⁵ that is concluded and takes effect after the date of entry into force of this Agreement⁶ between an authority at the central level of government⁷ of a Party and a covered investment or an investor of another Party and that creates an exchange of rights and obligations, binding on both parties under the law applicable under Article 9.24(2) (Governing Law), on which the covered investment or the investor relies in establishing or acquiring a covered investment other than the written agreement itself, and that grants rights to the covered investment or investor:</p> <p>(a) with respect to natural resources that a national authority controls, such as oil, natural gas, rare earth minerals, timber, gold,</p>	<p>The safeguard for social services in the investment chapter (Footnote 9) only applies to formal written investment agreements, not to all types of ISDS claims.</p> <p>The Annex II Schedule of Australia⁵ also lists social services established or maintained for a public purpose, including health, as non-conforming measures for some obligations in the Cross-Border Trade in Services and Investment chapters. Personal health information, the collection, distribution and procurement of blood and blood-related products and services, and subsidies programs under the Pharmaceutical Benefits Scheme and Medicare Benefits Scheme, or successor programs, are specifically mentioned.</p>

⁵ <http://www.mfat.govt.nz/downloads/trade-agreement/transpacific/TPP-text/Annex%20II.%20Australia.pdf>

	<p>iron ore and other similar resources,⁸ including for their exploration, extraction, refining, transportation, distribution or sale;</p> <p>(b) to supply services on behalf of the Party for consumption by the general public for: power generation or distribution, water treatment or distribution, telecommunications, or other similar services supplied on behalf of the Party for consumption by the general public;⁹</p> <p>⁹ For the avoidance of doubt, this subparagraph does not cover correctional services, healthcare services, education services, childcare services, welfare services or other similar social services.</p> <p>CHAPTER 29: EXCEPTIONS AND GENERAL PROVISIONS</p> <p>Article 29.8: Traditional Knowledge, Traditional Cultural Expressions and Genetic Resources</p> <p>Subject to each Party's international obligations, each Party may establish appropriate measures to respect, preserve and promote traditional knowledge and traditional cultural expressions.</p> <p>CHAPTER 9: INVESTMENT</p> <p>Annex 9-H</p> <p>1. A decision under Australia's foreign investment policy, which consists of the <i>Foreign Acquisitions and Takeovers Act 1975</i>, <i>Foreign Acquisitions and Takeovers Regulations 1989</i>, <i>Financial Sector (Shareholdings) Act 1998</i> and associated Ministerial Statements by the Treasurer of the Commonwealth of Australia or a minister acting on his or her behalf, on whether or not to approve a foreign investment</p>	<p>However, this only applies to certain obligations in the Cross-Border Trade in Services and Investment chapters⁶, not all possible grounds for ISDS (such as claims of expropriation or a breach of the Minimum Standard of Treatment).</p> <p>(Measures with respect to creative arts, Indigenous traditional cultural expressions and other cultural heritage are also listed as non-conforming measures in Annex II Schedule of Australia for certain obligations in the Cross-Border Trade in Services and Investment chapters.)</p>
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⁶ These services are not subject to: National Treatment (CBTS Chapter and Investment Chapter); Most Favoured Nation Treatment (CBTS Chapter and Investment Chapter); Local Presence; Performance Requirements; Senior Management and Boards of Directors; and Market Access obligations.

	<p>proposal, shall not be subject to the dispute settlement provisions under Section B (Investor-State Dispute Settlement) or Chapter 28 (Dispute Settlement).</p>	
<p>Non-discriminatory regulatory actions to safeguard public welfare objectives, such as public health, safety or the environment, do not constitute indirect expropriation, except in rare circumstances.</p>	<p>CHAPTER 9: INVESTMENT</p> <p>Annex 9-B Expropriation</p> <p>(b) Non-discriminatory regulatory actions by a Party that are designed and applied to protect legitimate public welfare objectives, such as public health,³⁷ safety and the environment, do not constitute indirect expropriations, except in rare circumstances.</p> <p>³⁷ For greater certainty and without limiting the scope of this subparagraph, regulatory actions to protect public health include, among others, such measures with respect to the regulation, pricing and supply of, and reimbursement for, pharmaceuticals (including biological products), diagnostics, vaccines, medical devices, gene therapies and technologies, health-related aids and appliances and blood and blood-related products.</p>	<p>This safeguard will not prevent ISDS claims from being made, but may increase the chance that a tribunal will decide an ISDS case over a health or environmental measure in a government’s favour. The phrase ‘except in rare circumstances’ leaves a loophole for corporations to exploit.</p> <p>US investors are currently arguing that their circumstances are rare in a case against Costa Rico over measures to protect the nesting grounds of an endangered species, the giant leatherback sea turtle.</p>
<p>The fact that a subsidy or grant has not been issued or renewed, or has been reduced, does not breach the minimum standard of treatment obligation, even if it results in loss or damage to the investment. This includes subsidies issued under Australia’s Pharmaceutical Benefits Scheme.</p>	<p>CHAPTER 9: INVESTMENT</p> <p>Article 9.6: Minimum Standard of Treatment¹⁵</p> <p>5. For greater certainty, the mere fact that a subsidy or grant has not been issued, renewed or maintained, or has been modified or reduced, by a Party, does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result.</p> <p>¹⁵ Article 9.6 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 9-A (Customary International Law).</p> <p>Article 9.7 Expropriation and Compensation</p> <p>6. For greater certainty, a Party’s decision not to issue, renew or maintain a subsidy or grant, or decision to modify or reduce a subsidy or grant,</p>	<p>These safeguards may go some way towards protecting the Pharmaceutical Benefits Scheme and Medicare Benefits Scheme from ISDS claims (for example over decisions about subsidising or reducing the level of subsidy for a specific drug or service).</p> <p>However, the inclusion of the phrases “the mere fact” in Article 9.6.5 and “standing alone” in Article 9.7.6 narrows the protection provided by these clauses: this language means that a decision not to issue not to issue, renew or maintain a subsidy or grant (or to modify or reduce a subsidy or grant) is not grounds for ISDS <i>on its own</i>.</p>

	(a) in the absence of any specific commitment under law or contract to issue, renew or maintain that subsidy or grant; or (b) in accordance with any terms or conditions attached to the issuance, renewal, modification, reduction and maintenance of that subsidy or grant, standing alone, does not constitute an expropriation.	A previous leaked draft indicated that the Australian Government was seeking to completely exclude certain health-related programs from ISDS (the Pharmaceutical Benefits Scheme, Medicare Benefits Scheme, Therapeutic Goods Administration and the Office of the Gene Technology Regulator). These exclusions were abandoned. The subsidy safeguards which have been adopted instead do not have the same scope or certainty. It remains to be seen whether they will be effective.
Government action which may be inconsistent with an investor's expectations does not constitute a breach of the minimum standard of treatment obligation, even if it results in loss or damage to the investment.	CHAPTER 9: INVESTMENT Article 9.6: Minimum Standard of Treatment¹⁵ 4. For greater certainty, the mere fact that a Party takes or fails to take an action that may be inconsistent with an investor's expectations does not constitute a breach of this Article, even if there is loss or damage to the covered investment as a result. ¹⁵ Article 9.6 (Minimum Standard of Treatment) shall be interpreted in accordance with Annex 9-A (Customary International Law).	The inclusion of this safeguard is an improvement on the most recent leaked draft. But the safeguard only applies to the Minimum Standard of Treatment, not to the Expropriation commitments. The fact that Article 9.6 must be interpreted in accordance with Customary International Law may also limit and undermine the effectiveness of this safeguard.
The ISDS mechanism in the TPP also includes procedural safeguards to enhance the arbitration process. These include: [all points listed below in separate rows]	CHAPTER 9: INVESTMENT	The procedural safeguards listed in the remainder of the table address some of the concerns about ISDS that have been raised. However, they do not address: <ul style="list-style-type: none"> • Lack of an independent judiciary (arbitrators can continue to be practising advocates) • The absence of an appeals process • Lack of precedents
• a requirement that hearings will be open to the public, and that documents filed in the	Article 9.23: Transparency of Arbitral Proceedings 2. The tribunal shall conduct hearings open to the public and shall determine, in consultation with the disputing parties, the appropriate	

<p>arbitration, as well as the tribunal's decision, will be made public;</p>	<p>logistical arrangements. If a disputing party intends to use information in a hearing that is designated as protected information or otherwise subject to paragraph 3 it shall so advise the tribunal. The tribunal shall make appropriate arrangements to protect such information from disclosure which may include closing the hearing for the duration of the discussion of that information.</p> <p>Article 9.23 Transparency of Arbitral Proceedings 1. Subject to paragraphs 2 and 4, the respondent shall, after receiving the following documents, promptly transmit them to the non-disputing Parties and make them available to the public: (a) the notice of intent; (b) the notice of arbitration; (c) pleadings, memorials and briefs submitted to the tribunal by a disputing party and any written submissions submitted pursuant to Article 9.22.2 (Conduct of the Arbitration) and Article 9.22.3 and Article 9.27 (Consolidation); (d) minutes or transcripts of hearings of the tribunal, if available; and (e) orders, awards and decisions of the tribunal.</p>	
<ul style="list-style-type: none"> • a right for any TPP Party that is not involved in an ISDS case to make oral and written submissions; 	<p>Article 9.22 Conduct of the Arbitration 2. A non-disputing Party may make oral and written submissions to the tribunal regarding the interpretation of this Agreement.</p>	
<ul style="list-style-type: none"> • the ability to permit submissions from interested individuals, including from civil society and non-governmental organisations; 	<p>Article 9.22 Conduct of the Arbitration 3. After consultation with the disputing parties, the tribunal may accept and consider written amicus curiae submissions regarding a matter of fact or law within the scope of the dispute that may assist the tribunal in evaluating the submissions and arguments of the disputing parties from a person or entity that is not a disputing party but has a significant interest in the arbitral proceedings. Each submission shall identify the author; disclose any affiliation, direct or</p>	

	<p>indirect, with any disputing party; and identify any person, government or other entity that has provided, or will provide, any financial or other assistance in preparing the submission. Each submission shall be in a language of the arbitration and comply with any page limits and deadlines set by the tribunal. The tribunal shall provide the disputing parties with an opportunity to respond to such submissions. The tribunal shall ensure that the submissions do not disrupt or unduly burden the arbitral proceedings, or unfairly prejudice any disputing party.</p>	
<ul style="list-style-type: none"> • a requirement that the burden of proof rests with the claimant to establish its claim against a government, which also directs tribunals to decide cases in accordance with established interpretations of investment commitments; 	<p>Article 9.22 Conduct of the Arbitration</p> <p>7. For greater certainty, if an investor of a Party submits a claim under this Section, including a claim alleging that a Party breached Article 9.6 (Minimum Standard of Treatment), the investor has the burden of proving all elements of its claims, consistent with general principles of international law applicable to international arbitration.</p>	
<ul style="list-style-type: none"> • rules preventing a claimant pursuing a claim in parallel proceedings, such as before an Australian court; 	<p>Article 9.20: Conditions and Limitations on Consent of Each Party</p> <p>1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.18.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims brought under Article 9.18.1(a)) or the enterprise (for claims brought under Article 9.18.1(b)) has incurred loss or damage.</p> <p>2. No claim shall be submitted to arbitration under this Section unless:</p> <p>(a) the claimant consents in writing to arbitration in accordance with the procedures set out in this Agreement; and</p>	

	<p>(b) the notice of arbitration is accompanied:</p> <p>(i) for claims submitted to arbitration under Article 9.18.1(a) (Submission of a Claim to Arbitration), by the claimant’s written waiver; and</p> <p>(ii) for claims submitted to arbitration under Article 9.18.1(b)(Submission of a Claim to Arbitration), by the claimant’s and the enterprise’s written waivers,</p> <p>of any right to initiate or continue before any court or administrative tribunal under the law of a Party, or any other dispute settlement procedures, any proceeding with respect to any measure alleged to constitute a breach referred to in Article 9.18 (Submission of a Claim to Arbitration).</p> <p>3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 9.18.1(a) Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 9.18.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant’s or the enterprise’s rights and interests during the pendency of the arbitration.</p>	
<p>•expedited review of claims that are baseless, or manifestly without legal merit;</p>	<p>Article 9.22 Conduct of the Arbitration</p> <p>4. Without prejudice to a tribunal’s authority to address other objections as a preliminary question, such as an objection that a dispute is not within the competence of the tribunal, including an objection to the tribunal’s jurisdiction, a tribunal shall address and decide as a preliminary question any objection by the respondent that, as a matter of law, a claim submitted is not a claim for which an</p>	

	<p>award in favour of the claimant may be made under Article 9.28 (Awards) or that a claim is manifestly without legal merit.</p> <p>(a) An objection under this paragraph shall be submitted to the tribunal as soon as possible after the tribunal is constituted, and in no event later than the date the tribunal fixes for the respondent to submit its counter-memorial or, in the case of an amendment to the notice of arbitration, the date the tribunal fixes for the respondent to submit its response to the amendment.</p> <p>(b) On receipt of an objection under this paragraph, the tribunal shall suspend any proceedings on the merits, establish a schedule for considering the objection consistent with any schedule it has established for considering any other preliminary question, and issue a decision or award on the objection, stating the grounds therefor.</p> <p>(c) In deciding an objection under this paragraph that a claim submitted is not a claim for which an award in favour of the claimant may be made under Article 9.28 (Awards), the tribunal shall assume to be true the claimant's factual allegations in support of any claim in the notice of arbitration (or any amendment thereof) and, in disputes brought under the UNCITRAL Arbitration Rules, the statement of claim referred to in the relevant article of the UNCITRAL Arbitration Rules. The tribunal may also consider any relevant facts not in dispute.</p> <p>(d) The respondent does not waive any objection as to competence, including an objection to jurisdiction, or any argument on the merits merely because the respondent did or did not raise an objection under this paragraph or make use of the expedited procedure set out in paragraph 5.</p> <p>5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited</p>	
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	<p>basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal’s competence, including an objection that the dispute is not within the tribunal’s jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.</p>	
<p>•the ability of TPP Parties to issue interpretations of the Agreement, which must be followed by ISDS tribunals;</p>	<p>Article 9.24: Governing Law 3. A decision of the Commission on the interpretation of a provision of this Agreement under Article 27.2.2(f) (Functions of the Commission) shall be binding on a tribunal, and any decision or award issued by a tribunal must be consistent with that decision.</p>	
<p>•mechanisms to disincentivise unmeritorious claims, such as through the award of costs against a claimant and the ability for a respondent government to recoup costs;</p>	<p>Article 9.22 Conduct of the Arbitration 6. When the tribunal decides a respondent’s objection under paragraph 4 or 5, it may, if warranted, award to the prevailing disputing party reasonable costs and attorney’s fees incurred in submitting or opposing the objection. In determining whether such an award is warranted, the tribunal shall consider whether either the claimant’s claim or the respondent’s objection was frivolous, and shall provide the disputing parties a reasonable opportunity to comment.</p> <p>Article 9.28 Awards 4. For greater certainty, for claims alleging the breach of an obligation under Section A with respect to an attempt to make an investment, when an award is made in favour of the claimant, the only damages that may be awarded are those that the claimant has proven were sustained in the attempt to make the investment, provided that the claimant also proves that the breach was the proximate cause of those damages. If the tribunal determines such claims to be frivolous,</p>	

	the tribunal may award to the respondent reasonable costs and attorney's fees.	
•interim review and award challenges;	<p>Article 9.20: Conditions and Limitations on Consent of Each Party 3. Notwithstanding paragraph 2(b), the claimant (for claims brought under Article 9.18.1(a) (Submission of a Claim to Arbitration)) and the claimant or the enterprise (for claims brought under Article 9.18.1(b)) may initiate or continue an action that seeks interim injunctive relief and does not involve the payment of monetary damages before a judicial or administrative tribunal of the respondent, provided that the action is brought for the sole purpose of preserving the claimant's or the enterprise's rights and interests during the pendency of the arbitration.</p> <p>Article 9.22: Conduct of the Arbitration 5. In the event that the respondent so requests within 45 days after the tribunal is constituted, the tribunal shall decide on an expedited basis an objection under paragraph 4 or any objection that the dispute is not within the tribunal's competence, including an objection that the dispute is not within the tribunal's jurisdiction. The tribunal shall suspend any proceedings on the merits and issue a decision or award on the objection, stating the grounds therefor, no later than 150 days after the date of the request. However, if a disputing party requests a hearing, the tribunal may take an additional 30 days to issue the decision or award. Regardless of whether a hearing is requested, a tribunal may, on a showing of extraordinary cause, delay issuing its decision or award by an additional brief period, which may not exceed 30 days.</p>	It is not clear that any state has ever used this type of process successfully.
•time limits on bringing a claim;	<p>Article 9.20: Conditions and Limitations on Consent of Each Party 1. No claim shall be submitted to arbitration under this Section if more than three years and six months have elapsed from the date on which the claimant first acquired, or should have first acquired, knowledge of the breach alleged under Article 9.18.1 (Submission of a Claim to Arbitration) and knowledge that the claimant (for claims</p>	This is a standard clause.

	brought under Article 9.18.1(a)) or the enterprise (for claims brought under Article 9.18.1(b)) has incurred loss or damage.	
<ul style="list-style-type: none"> •a requirement for arbitrators to comply with rules on independence and impartiality, including on conflicts of interests. 	<p>Article 9.21</p> <p>6. The Parties shall, prior to the entry into force of this Agreement, provide guidance on the application of the Code of Conduct for Dispute Settlement Proceedings under Chapter 28 (Dispute Settlement) to arbitrators selected to serve on investor-State dispute settlement tribunals pursuant to this Article, including any necessary modifications to the Code of Conduct to conform to the context of investor-State dispute settlement. The Parties shall also provide guidance on the application of other relevant rules or guidelines on conflicts of interest in international arbitration. Arbitrators shall comply with that guidance in addition to the applicable arbitral rules regarding independence and impartiality of arbitrators.</p>	<p>We haven't yet seen any details of what will be in this Code of Conduct.</p> <p>CHAPTER 28 DISPUTE SETTLEMENT Article 28.10 Qualification of Panellists and Roster Members refers to the code of conduct contained in the Rules of Procedure.</p> <p>Article 28.12: Rules of Procedure for Panels indicates that the Rules of Procedure are established in accordance with Article 27.2.1(e)</p> <p>CHAPTER 27: ADMINISTRATIVE AND INSTITUTIONAL PROVISIONS Article 27.2.1(e) Functions of the Commission indicates that the Rules of Procedure will be established by the TPP Commission.</p>