



## *the* **TRANS-PACIFIC PARTNERSHIP**

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes various countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.



## **Upgrading & Improving Investor-State Dispute Settlement**

U.S. businesses and investors operating abroad often face a heightened risk of bias and discrimination. Investor-state dispute settlement (ISDS) is a mechanism that provides neutral international arbitration to ensure that Americans doing business abroad receive the same kinds of protections—such as protection from discrimination and expropriation without compensation—that are available to companies and investors doing business in the United States under U.S. law. This mechanism allows for an impartial, law-based approach to resolve conflicts and promotes development, rule of law, and good governance around the world. TPP also serves to modernize and reform ISDS by including clearer language and stronger safeguards that raise standards above virtually all of the other 3,000 plus investment agreements in force today.

### **THE BASIC FACTS ON ISDS**

- **TPP specifically protects the right of governments to regulate in the public interest.** We would never negotiate away our right to do so, and we don’t ask other countries to do so either. This is true for public health and safety, the financial sector, the environment, and any other area where governments seek to regulate.

- ISDS ensures that American businesses and investors do not face discrimination, nationalization, or abuse when doing business abroad. Through TPP, we can put in place **higher standards and stronger safeguards** for ISDS.
- ISDS is found in more than **3,000 existing agreements** around the world, covering **180 countries**. The U.S. has taken part in **51 of these agreements with ISDS** over the last 30 years.
- **The United States has never lost an ISDS case.** We have had only **13 cases brought to conclusion against us**, and the United States has **prevailed in every case**. And in part because we have continued to **raise standards through each agreement**, in recent years we have seen a drop in ISDS claims, despite increased levels of cross-border investment. Only one new case has been brought against the United States in the last five years.
- More than **half of companies that initiate ISDS cases are small- and medium-sized businesses or individual investors**, so the millions of American workers they employ stand to potentially benefit from strong ISDS protections.

### **HOW TPP UPGRADES AND IMPROVES ISDS**

TPP includes new ISDS safeguards that close loopholes and raise standards higher than any past agreements. **Some of these new safeguards in TPP include:**

- **Right to regulate.** New TPP language underscores that countries retain the right to regulate in the public interest, including on health, safety, the financial sector, and the environment.
- **Burden of proof.** TPP explicitly clarifies that an investor bears the burden to prove all elements of its claims, including claims on the minimum standard of treatment (MST).
- **Dismissal of frivolous claims.** TPP includes a new standard permitting governments to seek expedited review and dismissal of claims that are manifestly without legal merit.
- **Expectations of an investor.** TPP explicitly clarifies that the mere fact that a government measure frustrates an investor's "expectations" does not itself give rise to an MST claim.
- **Arbitrator ethics.** TPP countries will provide detailed additional guidance on arbitrator ethics and issues of arbitrator independence and impartiality.

- **Clarifying rules on non-discrimination.** TPP explicitly clarifies that tribunals evaluating discrimination claims should analyze whether the challenged treatment distinguishes between investors or investments on the basis of legitimate public welfare objectives.
- **Scope of available damages.** TPP explicitly limits damages that an investor can recover to damages that an investor has actually incurred in its capacity as an investor, to address concerns about claimants seeking ISDS damages arising from cross-border trade activity.

TPP also includes a range of important additional ISDS safeguards. Many of these safeguards go beyond what was included in past trade deals like NAFTA. **These key ISDS safeguards include:**

- **Transparency.** TPP requires ISDS panels to “conduct hearings open to the public” and to make public all notices of arbitration, pleadings, submissions, and awards.
- **Public participation.** Members of the public and public interest groups—for example, labor unions, environmental groups, or public health advocates—can make *amicus curiae* submissions to ISDS panels “regarding a matter of fact or law within the scope of the dispute.”
- **Remedies.** A government can only be required to pay monetary damages. ISDS does not and cannot require countries to change any law or regulation.
- **Challenge of awards.** All ISDS awards are subject to subsequent review either by domestic courts or international review panels.
- **Expedited review and dismissal of claims.** As in U.S. courts, TPP allows panels to review and dismiss certain unmeritorious claims on an expedited basis.
- **Attorney’s fees for frivolous claims.** A panel may award attorney’s fees and costs in cases of frivolous claims.
- **Expert reports.** A panel can consult independent experts to help resolve a dispute.
- **Binding interpretations.** TPP countries can agree on authoritative interpretations of ISDS provisions that “shall be binding on a tribunal.”
- **Consolidation.** A panel can consolidate different claims that “arise out of the same events or circumstances.” This protects against harassment through duplicative litigation.

## **What's in the Trans-Pacific Partnership?**

Learn everything you need to know about what's in the deal and who it helps.

**[WWW.USTR.GOV/TPP](http://WWW.USTR.GOV/TPP)**