

# KOREA- AUSTRALIA

## FREE TRADE AGREEMENT



## Fact Sheet: Investor-State Dispute Settlement (ISDS)

The Korea-Australia Free Trade Agreement (KAFTA) Investment Chapter and ISDS provisions do not prevent the Government from regulating in the public interest and contain explicit safeguards to protect legitimate government regulation in areas such as public health and the environment. These include:

- general exceptions including for measures to protect human health and the environment;
- safeguards built into the core obligations of the Investment Chapter, which include a confirmation that, except in rare circumstances, non-discriminatory actions to protect legitimate public welfare objectives do not constitute expropriation;
- schedules of 'reservations' which allow Australia to maintain existing measures and to reserve policy space to maintain or adopt new measures in sensitive areas including with respect to security, human health and creative arts; and
- procedural safeguards built into the ISDS mechanism, such as an expedited procedure to promptly dismiss frivolous claims.

ISDS does not apply to decisions made concerning investments which are subject to review under Australia's foreign investment policy.

An ISDS claim can only be made on the basis of a breach of an investment obligation:

- an investor must establish a breach of a treaty obligation under the Investment Chapter of KAFTA or a breach of an investment agreement between the investor and the government of the other Party; and
- an ISDS claim cannot be based on a breach of commitments in other parts of the FTA including the intellectual property or environment chapters.

Australian investors in Korea are able to use the ISDS mechanism to protect their investments.

