

Understanding Our Economy



When Free Trade Agreements Are Not So Free

(NAPSA)—As a successful businessman and negotiator, President Trump ran much of his campaign on promises of updating established international trade agreements to benefit American businesses and their workforces. Needless to say, he has taken on a challenge that many of his predecessors, with their focus on diplomatic relations, were unable to achieve. Time will show whether this 45th president will be able to fulfill this challenge, but many American businesses are relying on him to not only improve their freedom to trade internationally but to protect their assets from loopholes that continue to hurt their business.

Omissions and oversights in international agreements can cost millions of dollars and American jobs.

One particular example of what many consider an unfair trade agreement is the Australia-United States Free Trade Agreement (AUSFTA), which lets Australia claim it does not have to resolve any investment disputes with U.S. companies in a neutral forum. This is counter to the majority of the 30 trade agreements between Australia and other nations that do contain investor-state dispute settlement provisions. The only countries that don't have a specific procedure for investor-state arbitration are Japan and the United States.

One Firm's Story

Closing this loophole would offer a heavy financial respite for business ex-



Australia's Prime Minister Malcolm Turnbull and U.S. President Donald J. Trump.

ecutives such as John Campion, CEO of APR Energy, a privately owned company that provides emergency electricity to industries and countries around the world.

In late 2013, APR leased \$70 million worth of generators and other facilities to the Forge Group Power Pty Ltd, an Australian company that had contracted with Horizon Power, a state-owned public utility in Western Australia. The project was designed to address a severe power shortage in that state.

In February 2014, the Forge Group was placed under voluntary administration liquidation and all assets were seized by receivers appointed by their largest creditor, the Australia and New Zealand Banking Group Ltd. These assets included the leased property belonging to APR. The receivers claimed title to APR's property based on Australia's Personal Property Securities Act of 2009, under which all leased personal property becomes

“owned” by the bankrupt company's estate to the exclusion of the lessor if the lessor does not file a registration statement. The legal claim prevented APR from using its own facility to produce electricity and caused significant financial injury to APR. This injury includes significant amounts of money simply to buy back the facility to use it, tens of millions of dollars of revenue, a substantial loss of value to the company, and layoffs. Moreover, the total economic loss from this specific action exceeds \$260 million for APR.

The recourse APR currently has for this financial loss is uncertain because Australia has rejected APR's demands to submit the dispute to arbitration.

As this suggests, the lack of a defined procedure under the AUSFTA appears to be prejudicial to U.S. companies and banks.

What Can Be Done

It is hoped by many American businesses and financial institutions that the recent meeting between President Trump and the Australian Prime Minister Malcolm Turnbull will mean the start of a renegotiation of what may look like a minor detail in a large trade agreement but that has the potential to cost company's revenue and American workers their jobs.

Many people are asking their legislators what they think of this issue. Senators can be reached at www.senate.gov and members of the House at www.house.gov.