

5. Tighter Regulation of Mining

Many aspects of mining are causing concern, including health and safety, remediation obligations, mining the seabed and conservation land, and fracking. The TPPA targets 'behind the border' measures of governments. That will cover all mining-related rules and decisions, including at local and regional government levels.

The biggest threat is from the investment chapter. The majority of international investment disputes involve natural resources and the environment, especially mining. **The threat of a dispute is intended to get a government to back down.**

If that fails a formal dispute can drag out for years and mining companies have big pockets for such plays. The [OECD estimates](#) that legal and arbitration costs in these cases averages US\$8 million. Compensation claims of hundreds of millions, or sometimes billions, of dollars 'can seriously affect a respondent country's fiscal position'.

'Investment' includes a company that seeks to or conducts mining operations, its investors, companies that service the industry, and the actual licenses and permits.

Investors would rely on two rules: 'fair and equitable treatment' and 'indirect expropriation'. The ad hoc investment tribunals that hear investment disputes have given these rules a strongly pro-investor interpretation. Recent agreements have tried to restrict the scope of these rules, but the first time they were tested the tribunal [sidestepped them](#). **The US insists that the (limited) exception for public health, conservation and environment does not apply to the investment chapter.**

Recent disputes by US mining companies under TPPA-style rules include:

- US mining company [Lone Pine Resources](#) has notified a [US\\$250 million dispute](#) against Canada under NAFTA. It claims that Quebec's two-year moratorium on fracking violates its expectation of a stable business and legal environment and its 'right to mine'.
- [Occidental Petroleum](#) received the biggest award ever of [US\\$1.76 billion](#), plus \$589 million in compound interest, against Ecuador in 2012 under a TPPA-style US investment treaty. The tribunal found Ecuador breached the rules on fair and equitable treatment and expropriation even though Occidental breached the contract in ways that entitled the state to cancel it.
- Chevron (previously Texaco) has fought remediation of the Amazon basin for 18 years. It wanted the case to be heard in Ecuador's courts and lost. It then claimed the US\$18 billion judgement breached its rights under the US-Ecuador investment treaty. The [investment tribunal's approach](#) has been controversial, including ordering Ecuador to [suspend enforcement](#) of the national court's decision.

Oceania Gold has indicated its willingness to use such disputes by recently buying all the shares in Canadian Pacific Rim mining, which is involved in a prolonged investment dispute with El Salvador for not granting it a mining licence.

The US also says investors should be able to use investor-state arbitration to enforce natural resources-related contracts with a TPPA state, bypassing domestic courts.

The TPPA would give the industry, especially US-affiliated mining companies, new weapons to challenge re-regulation of the mining industry by threatening long and costly disputes, as they are doing all over the world.