



12 August 2014

The Hon Andrew Robb AO, MP  
Minister for Trade and Investment  
c/- Goods and Investment Branch  
Department of Foreign Affairs and Trade  
R.G. Casey Building  
John McEwen Crescent  
BARTON ACT 0221

By email: [tpa@dfat.gov.au](mailto:tpa@dfat.gov.au)

Dear Minister Robb

### Submission on the Trans Pacific Partnership Agreement

Council, on 7 August 2014 considered a Notice of Motion from the Mayor, Councillor Simon Richardson, on the Trans Pacific Partnership Agreement. Following consideration and debate of the Notice of Motion Council resolved to send the following resolution as a submission to yourself, as the Minister for Trade and Investment:

**14-374 Resolved that Council:**

1. *Call on the Commonwealth Trade Minister to release the draft Trans Pacific Partnership (TPP) agreement for public consultation and parliamentary consideration prior to it being agreed to by Cabinet.*
2. *Request that the Trade Minister ensure that the TPP agreement does not contain provisions which:*
  - a) *Enable a foreign investor to sue governments for damages over policy, laws or regulations at the local government level*
  - b) *Restrict local government policies which encourage local employment, support local economic and industry development and encourage good employment practices and initiatives*
  - c) *Restrict local government policies which encourage good environmental practices and initiatives*
  - d) *Restrict local government supply and regulation of services or require the commercialisation of services*
  - e) *Prevent local government procurement policy from giving preference to local suppliers*
3. *Write to LGNSW and the National General Assembly of Local Government seeking their support for the resolution and any assistance.*
4. *Authorise Council's delegates to the LG NSW Annual Conference 2014 to share and discuss this motion if opportunities arise.*
5. *Send this resolution as a submission to the Commonwealth Trade Minister.*



Therefore in accordance with Parts 1, 2 and 5 of Resolution 14-374, I write this submission on behalf of Council to call on you to release the draft Trans Pacific Partnership (TPP) Agreement for public consultation and Parliamentary consideration prior to it being agreed to by Cabinet. Further, Council requests that you ensure that the TPP Agreement does not contain provisions which:

- a) Enable a foreign investor to sue governments for damages over policy, laws or regulations at the local government level.
- b) Restrict local government policies which encourage local employment, support local economic and industry development and encourage good employment practices and initiatives.
- c) Restrict local government policies which encourage good environmental practices and initiatives.
- d) Restrict local government supply and regulation of services or require the commercialisation of services.
- e) Prevent local government procurement policy from giving preference to local suppliers.

The following background notes are provided from the Notice of Motion submitted to Council by Councillor Richardson in support of the Council's request.

To understand the context from where this NOM has sprung, it is important to note:

- That Australia is in the final months of negotiating the Trans Pacific Partnership Agreement (TPP) with the United States and ten other Pacific rim countries.
- That these negotiations happen in secret and that the public and the Australian Parliament will not see the contents of the agreement until after it has been signed.
- The final TPP agreement may have an impact on local government that will not be realised until after the Agreement is signed.

Concerns about both the secrecy around and the contents within the TPP are widespread, both here and across the other nations that are part of the negotiations. The Australian Fair Trade and Investment Network is but one; it is a network of 60 community organisations and many more individuals which advocates for fair trade based on human rights, labour rights and environmental sustainability. Although a trade agreement may seem remote from the concerns of local government, this agreement is relevant to local government precisely because it is not mainly about trade issues like reduction of tariffs or taxes on imports.

Although the details of the negotiations are secret we know from government statements, industry submissions and some leaked documents that the agenda is being driven by the US, on behalf of its major industries and corporations.

Most of the 29 TPP chapters are about changes to domestic law which suit the interests of these industries and many are modelled on US law. The aim is to create uniform regulation across the region. Unfortunately US industry interests do not often coincide with national and community interests in other countries.

Many of these proposals could have negative effects on the regulation and services provided by local government in Australia and other countries.

#### Investor- State Dispute Settlements (ISDS)

Concerning local governments, industry submissions and leaked documents have revealed proposals for Investor- State Dispute Settlements (ISDS), the right of foreign investors to sue

governments for damages over domestic law or policy if they can allege it harms their investment. The disputes are heard by international investment tribunals. Their major concern is whether investments have been harmed and whether the investor has been given fair and equitable treatment, rather than whether the law or policy is in the public interest. Even if the case is unsuccessful, legal fees and fees paid to arbitrators mean that governments have to spend millions of dollars defending the case.

The inclusion of ISDS in any trade agreement is a dangerously short-sighted policy, which could lead to local, state and federal governments having to pay hundreds of millions of dollars in legal fees and compensation. It could also have dire consequences for the ability of governments to legislate democratically in response to community concerns, such as those of rural communities which want more government regulation of coal seam gas mining for environmental reasons.

For example, the US Lone Pine mining company is currently using an investor rights clause in the North American Free Trade Agreement to sue the Canadian Quebec government for \$250 million because it dared to conduct an environmental review of gas mining. [Fifty-four Australian rural groups](#) have written to the Trade Minister expressing their strong opposition to investor rights to sue governments because they fear similar action could be taken here following the NSW and Victorian Government state environmental reviews of coal seam gas mining.

The Howard Coalition government did not agree to include ISDS in the US-Australia Free Trade Agreement. The Productivity Commission found in 2010 that there were no economic benefits from ISDS and recommended against it. The previous ALP government had a policy against including ISDS in trade agreements.

However the current Coalition Government has said it is prepared to negotiate the inclusion of ISDS in trade agreements.

There have been examples of local governments being sued by foreign investors. The US Metalclad company used ISDS provisions in the North American Free Trade Agreement and was successful in suing a Mexican local government for US \$16.2 million because of a refusal for a waste dump permit on the grounds that it would contaminate local water sources.

Like most trade agreements the details of the TPP negotiations are secret, and Cabinet will make the decision authorising the Trade Minister to sign it. The text is published and reviewed by the Joint Standing Committee on Treaties only after it is signed. The committee can only make recommendations without changing the text. Parliament cannot change the text, and can only vote on the legislation required to implement the agreement. Many provisions, including ISDS, do not require legislation.

It does not take Sherlock Holmes to conclude that the community within Byron Shire believe that domestic laws and policies at all levels of government should be determined through public debate and democratic Parliamentary processes, not secretly decided in trade negotiations. Governments should not be restricted by trade agreements from developing new laws, regulation and policies in response to community debate and concerns. The text of the TPP should be released for public debate and discussion before the decision is made to sign it.

Other TPP chapters which could impact on local government: services, government procurement and libraries

#### Services

The services chapter of the TPP has a negative list structure, which means it applies to all services unless they are specifically excluded. Because the text is secret, we do not know if local government services have been excluded. If local government services are not excluded, they must be treated as commercial services and opened up to competition from

international investors. Trade rules like national treatment and non-discrimination apply to them, and governments have less ability to regulate them. This means that governments cannot require minimum levels of local investment, or that the investor must locate the service in a certain area, employ or train local people or use local products. Regulation of services must also be "not more burdensome than necessary" for investors.

#### Procurement

It is not clear whether local government procurement will be included in the TPP. If local government procurement is included, then government purchasing policies must also apply to national treatment and non-discrimination rules for foreign tenderers. This means there can be no requirements for local content provisions and no preference for local firms in government procurement.

Should you require any further information in respect of the Resolution adopted by Council, please do not hesitate for your Office to contact myself on 02 6626 7122.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Arnold', written in a cursive style.

Mark Arnold  
Corporate and Community Services