

From: Bob Garrard [mailto:rgarrard@bigpond.net.au]
Sent: Saturday, 24 January 2015 3:45 PM
To: Trans-Pacific Partnership Agreement
Cc: zz [External] Philip.ruddock.mp@aph.gov.au
Subject: The TPP - Trans-Pacific Partnership

Dear DFAT Custodian of Australia's TPP Participation, (cc my Federal Member Philip Ruddock)

Get Up is warning Australians of some dangers to Australian sovereignty should Australia sign up to the TPP.

Even if some of the dangers that Get Up are warning of are not true, there has to be some validity to their concerns.

My first concern is that I have heard nothing of the TPP until now. I have read this document just now: [TPP overview \[PDF 655 KB\]](#) | [Text only version of the presentation \[DOCX 305 KB\]](#)

I am certainly no expert in trade matters but I am concerned when I hear that Australia would consider trading off its sovereignty for some supposed economic advantage.

The following points from the document struck me:

1. The provisions on Technical Barriers to Trade (TBT) in the TPP aim to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade.
2. The TPP includes provisions that focus on procedures to ensure fair, transparent and non-discriminatory treatment of suppliers in government procurement.
3. The Minister for Trade and Investment, the Hon Andrew Robb AO MP, has stated clearly that the Government would not accept an outcome that would adversely affect the Pharmaceutical Benefits Scheme, or Australia's health system more generally. (Media Release, 11 December 2013)

Point 1 may sound ok when looking from Australia's view but what about when, say, Malaysia, or Malaysian corporations, claim that our standards are an unnecessary obstacle to their trade with us!

Point 2 would allow overseas corporations to sue Australia if we decide to offer a contract to a local supplier.

Point 3 – well what can I say – I do not trust Andrew Robb to be looking after the interests of ordinary Australians.

Then I read the article below by Ken Sievers. I don't think that the DFAT TPP overview document mentioned this:

Probably the most dangerous feature of the agreement as it now stands is the introduction of an Investor State Disputes Settlement (ISDS) system, in which foreign corporations are allowed to sue countries in order to protect the profitability of their investments.

Are you able to deny that the ISDS will be introduced?

And I don't think the TPP overview gave any hint of this:

The TPP is another step in the direction of total market deregulation in the interests of international big business and is another threat to Australia's national sovereignty. What is at stake is democratic society's ability to regulate a market economy in the broad public interest. The TPP would constitute a further shift of power towards corporate rule without the normal means of democratic accountability, such as elections, advocacy and public protest.

The ISDS provisions of the treaty authorize the establishment of supra-national tribunals, which would be independent of any other judicial system, to arbitrate disputes between corporations and states. A leaked text reveals the extreme corporate privilege that these investor-state tribunals constitute. Under the TPP, if a company believes an Australian law endangers its "expected future profits," it can challenge the government at an investor-state tribunal. This tribunal has the power to overrule Australian laws and levy fines against the Australian state. The fundamental assumption is that corporations can sue sovereign states, but sovereign states cannot sue corporations operating in their territory. These tribunals [are a one-way street](#).

These already exist and only benefit corporations:

Such tribunals already exist as a part of the World Bank and the UN. Normally they consist of three corporate lawyers, unaccountable to any electorate, who rotate between acting as prosecutors (suing governments on behalf of corporations) and judges in other disputes. These tribunals are not bound by precedent and there is no appeal mechanism. When an investor-state tribunal rules in favour of a foreign investor, the government must hand the corporation an amount of taxpayer money decided by the tribunal. The obvious consequence of the threat of such challenges by corporations is that states will either change or weaken their regulations to avoid the fines, or avoid enacting legislation which might attract a fine in the first place.

Is this true?

Some examples from Latin America: "In 2009, the government of Uruguay, following recommendations from the World Health Organization, increased the size of health warnings on cigarettes packages. A year later, it was sued for US\$2 billion by tobacco giant Philip Morris which claimed Uruguay had expropriated its trademark. Back in 2000, when Argentina was in a deep economic crisis, the government eased people's hardship by freezing electricity and water tariffs. It has since been battling over 40 lawsuits demanding multi-million dollar compensations. After an Ecuadorian court ordered Chevron to pay US\$18 billion in damages and clean up for oil-drilling-related contamination in the Amazonian rainforest, Chevron counter-sued Ecuador arguing that the government breached its investment treaty with the US by allowing the legal case to continue."

Is this true?

In Australia, a few people involved in the negotiations know the details, but they are not allowed to reveal them to Parliament, let alone the Australian public. The strategy is to minimize informed political and public debate until a deal is signed, and at this point any alterations become impossible.

So what response do you have specifically to my concerns, and to the concern that the TPP is being negotiated secretly as far as the average Australian is concerned.

I await your response.

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For your benefit here is the view of someone opposed to the concept of a TPP. Even if not all the concerns raised below are valid I am certain that most of them are. I am equally certain that DFAT and most members of the current Federal Cabinet, and my Federal Member are ALL going to claim that the TPP is a good thing for Australia. I cannot believe that integrity goes down the drain so quickly once people enter public office.

Why Australians should be worried about the TPP

[admin](#) — August 2, 2013 — [12 Comments](#)

by Ken Sievers, WikiLeaks Party member

What is the TPP?

The Trans-Pacific Partnership (TPP) is the so-called “free trade” agreement currently under negotiation between the US, Australia and several other countries. [1] The US hopes to finalize these negotiations [by October this year](#).

The goal of the TPP is to make it easier for big business and international corporations to act across borders without interference from states. The TPP will effectively erode state oversight in favour of corporate freedom in areas such as the environment, workers rights, food safety, internet freedom, the costs of medicine, and financial regulation.



Probably the most dangerous feature of the agreement as it now stands is the introduction of an Investor State Disputes Settlement (ISDS) system, in which foreign corporations are allowed to sue countries in order to protect the profitability of their investments.

The TPP is another step in the direction of total market deregulation in the interests of international big business and is another threat to Australia’s national sovereignty. What is at stake is democratic society’s ability to regulate a market economy in the broad public interest. The TPP would constitute a further shift of power towards corporate rule without the normal means of democratic accountability, such as elections, advocacy and public protest.

Corporations can sue countries in extrajudicial tribunals

The ISDS provisions of the treaty authorize the establishment of supra-national tribunals, which would be independent of any other judicial system, to arbitrate disputes between corporations and states. A leaked text reveals the extreme corporate privilege that these investor-state tribunals constitute. Under the TPP, if a company believes an Australian law endangers its “expected future profits,” it can challenge the government at an investor-state tribunal. This tribunal has the power to overrule Australian laws and levy fines against the Australian state.

The fundamental assumption is that corporations can sue sovereign states, but sovereign states cannot sue corporations operating in their territory. These tribunals [are a one-way street](#).

How do the tribunals work?

Such tribunals already exist as a part of the World Bank and the UN. Normally they consist of three corporate lawyers, unaccountable to any electorate, who rotate between acting as prosecutors (suing governments on behalf of corporations) and judges in other disputes. These tribunals are not bound by precedent and there is no appeal mechanism. When an investor-state tribunal rules in favour of a foreign investor, the government must hand the corporation an amount of taxpayer money decided by the tribunal.

The obvious consequence of the threat of such challenges by corporations is that states will either change or weaken their regulations to avoid the fines, or avoid enacting legislation which might attract a fine in the first place.

Some examples of decisions by these tribunals

Similar tribunals in other parts of the world have already ordered states to pay over \$3.5 billion to investing companies under existing U.S. agreements. These include payments over toxic bans, land-use policies, forestry rules, etc. More than \$14.7 billion remain in pending claims under U.S. agreements alone. Even when governments win, they often still have to pay for the tribunal’s costs and legal fees, which average \$8 million per case. The TPP would expand the scope of policies that could be attacked. For example, the TPP could be used to block the Australian government’s requirement that cigarette companies use plain packaging. If the policy was successfully challenged, Australia would either need to pay “compensation” to the relevant corporations and/or remove the rule altogether.

The TPP is being negotiated in complete secrecy

Why don’t you know anything about the TPP? Because the negotiations are completely secret. It is so secret that even in the US, Members of Congress, state governors, the press, and the public are not allowed to see drafts of the agreement. At the same time there are over 600 business representatives serving as official U.S. trade advisors who have full access to an array of draft texts and play an inside role in the process. In Australia, a few people involved in the negotiations know the details, but they are not allowed to reveal them to

Parliament, let alone the Australian public. The strategy is to minimize informed political and public debate until a deal is signed, and at this point any alterations become impossible.

Should Australians worry about the TPP?

Some might say that we in Australia have nothing to fear from the TPP. [An article written last year](#) stated that “the Australian Labor Government has made it clear that it does not support the inclusion of ISDS clauses despite immense pressure from corporations and the U.S. government.” As recently as 15 July this year, [it was announced](#) that the “new Trade Minister Richard Marles has confirmed Australia will not sign the agreement if it includes a so-called Investor State Disputes Settlement clause.” Without the ISDS clauses, it would seem there is no possibility that foreign corporations could appeal to investor-state tribunals to challenge our laws and policies. Still, there are two reasons why it is still necessary to raise the alarm now about the TPP negotiations:

1. The Liberals/Nationals would “consider” the inclusion of ISDS tribunals

Though the minority Labor government looks likely to reject the ISDS clauses, the Opposition who may win the next election, is ambivalent. The shadow Minister of Foreign Affairs and Trade, Julie Bishop, has stated they “would be prepared to consider” ISDS clauses in the TPP negotiations. The Liberal/National Coalition are generally hostile to regulation and in favour of big business and the so-called “free market”. They would likely be happy to empower these tribunals, as a means of permanently blocking government from making rules which might limit the profits of foreign and domestic corporations in the future. The TPP negotiations are already well advanced, and it would be easy for the Coalition, should they win the election, to quickly approve the TPP, including investor-state tribunals, before anyone realized what was happening.

2. The TPP represents part of an ongoing global push towards ever greater unaccountable corporate control

The TPP negotiations between Australia and the US must be seen in a global context. Not only are there many other South East Asian and Latin American countries involved, but there are similar moves in other parts of the world. The North American Free Trade Agreement (NAFTA) has already been in place for 20 years. The Transatlantic Free Trade Area (TAFTA) between the US and the European Union (also known as the Transatlantic Trade and Investment Partnership) is currently under negotiation. [This is also being negotiated secretly](#). Negotiations are also [currently taking place](#) for an EU-India Free Trade Agreement along similar lines, where “democracy is being sidelined for the blind pursuit of an unaccountable corporate-driven agenda.”

Investor tribunals are the new method for extending corporate control

At the recent World Economic Forum, the EU pushed for measures to protect investors with international investment agreements involving investor-state tribunals, but several Latin American countries protested. They have had many [bad experiences with these tribunals](#) which are used to protect the profits of foreign corporations: “Latin American countries have been taken to international courts at least 153 times, 34% of the total number

of known cases.” There has also been a huge increase in such litigation. Until 1991 there were only 24 recorded cases of investor-state disputes, but in 2011 there were 450 known cases. In other words, investor-state tribunals are becoming the weapon of choice for corporations to avoid regulation in the countries where they operate, and their use is increasing year by year.

Some examples from Latin America: “In 2009, the government of Uruguay, following recommendations from the World Health Organization, increased the size of health warnings on cigarettes packages. A year later, it was sued for US\$2 billion by tobacco giant Philip Morris which claimed Uruguay had expropriated its trademark. Back in 2000, when Argentina was in a deep economic crisis, the government eased people’s hardship by freezing electricity and water tariffs. It has since been battling over 40 lawsuits demanding multi-million dollar compensations. After an Ecuadorian court ordered Chevron to pay US\$18 billion in damages and clean up for oil-drilling-related contamination in the Amazonian rainforest, Chevron counter-sued Ecuador arguing that the government breached its investment treaty with the US by allowing the legal case to continue.”

Will Australia stand up and say no?

Since there is a worldwide push for investor-state tribunals to protect the profits of foreign corporations, it is difficult to imagine politicians in Australia standing in the way of such powerful pressure from overseas investors. As we can see in foreign and domestic policy, the current leaders in Australia believe our future lies with the US, the EU, and their policies. It is here, as in other areas, that the WikiLeaks Party can make a real difference. The WikiLeaks Party will break open the secrecy surrounding these negotiations, and will not be afraid to stand up for Australian self-determination. By doing so, the WikiLeaks Party will defend the interests of Australian small business, which is everywhere being squeezed by the leviathans of international big business.

[1] The twelve nations currently negotiating the TPP are the US, Japan, Australia, Peru, Malaysia, Vietnam, New Zealand, Chile, Singapore, Canada, Mexico, and Brunei Darussalam. It also looks like Japan will join the negotiations as well.

It looks like Choice have serious concerns with the TPP too. See their article below:

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CHOICE calls for fair trade



Are you concerned about increasing cost of medicines? Would you worry if Australians could be jailed for illegally downloading an episode of *Game of Thrones*? Do you want to know if your muesli bar contains [palm oil](#)?

Then you really should care about the [Trans-Pacific Partnership](#) (TPP), a trade agreement being negotiated in secret between Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. In this report you will find information on:

- The [secrecy](#) surrounding the TPP and details of how the media is being locked out of briefings
- How the Australian government could become more vulnerable to [lawsuits from multinational corporations](#)
- Why [food labelling](#) in Australia is in danger
- How draconian [copyright provisions](#) could significantly curb our freedom online
- How new [patent provisions](#) could make medication costs skyrocket
- CHOICE's [campaign](#) on the TPP

CHOICE is calling for the TPP text to be released before a final agreement is signed.

CHOICE investigates the Trans-Pacific Partnership (TPP) and the impact it will have on your consumer rights and privacy. Why all the secrecy?

What CHOICE wants

The TPP negotiations are drawing to a close, and are likely to be finalised by November. However, it is not too late to release the drafts of the TPP so that they can be debated in civil society and so the TPP can be made fairer for consumers.

CHOICE is currently campaigning against the secrecy surrounding the TPP. We have now lodged our [petition](#), signed by over 14,000 Australians, calling on the government to release the contents of the TPP. We believe such an important and binding trade agreement must be open for public scrutiny and oversight. The signed petition has been presented to the government to send the message that Australian consumers deserve to have a say on the TPP.

And our campaign doesn't stop there. To find out how you can get further involved with our TPP campaign, check out our #ReleaseTheText [campaigners information kit](#).

Why haven't you heard more about it?

The TPP has been shrouded in secrecy, with negotiations happening behind closed doors and non-disclosure agreements securing the negotiators' silence. And while CHOICE has met with several of those involved in drafting the agreement and even attended meetings with negotiators at a round of negotiations held in Malaysia in 2013 (we were permitted to have our say, but could only guess at the contents of the agreement in order to raise our objections), we still don't know what the final agreement will contain. Because of the secrecy, which began under the previous Labor government and has continued last year's election of the Coalition, any public knowledge about the TPP is based on [leaked](#) drafts and statements made by those involved.

The kicker? Hundreds of "[cleared advisors](#)" - a group comprising industry lobbyists from the US - have had access to the full drafts of the TPP, while public interest groups like CHOICE have been kept in the dark.

[WikiLeaks](#) recently published a draft of the [intellectual property chapter](#) of the agreement, which they say was distributed among the chief negotiators of the TPP in May 2014. While several rounds of talks have been held since the leaked chapter was authored, it appears that the chapter is largely settled. This leaked draft indicates that consumer rights could be significantly eroded if Australia signs and ratifies the TPP.

When speaking of a previous Wikileaks leak of the chapter, [Dr Matthew Rimmer](#), Associate Professor at the ANU College of Law, said: "Australian consumers have been betrayed. The intellectual property chapter of the Trans-Pacific Partnership is a monster. The proposals in respect of copyright law, trademark law, patent law, and data protection would hit Australian consumers hard.

"The Trans-Pacific Partnership undermines Australian efforts to take substantive policy action in respect of IT pricing. The agreement does nothing to further efforts to reform copyright exceptions in Australia. The agreement threatens consumer rights, privacy, and internet freedom."

DFAT to media: you're "ineligible" to attend TPP briefings

The Australian government seems like it isn't too keen on TPP negotiations hitting the headlines. In late October 2013, technology journalist [Josh Taylor](#) of [ZDNet told CHOICE](#) he was barred from attending a [Department of Foreign Affairs and Trade](#) (DFAT) briefing on the TPP negotiations, despite the fact that his RSVP had previously been confirmed.

According to the [invitation](#), the briefing was open to "members of the public, and business and civil society stakeholders"; no mention was made of journalists being excluded. But in revoking his invitation, Taylor says DFAT told him that TPP briefings are "off the record". In a backflip, DFAT later reportedly told the journalist he could attend in a private capacity, but couldn't record or attribute any of the briefing material.

Read more: <http://www.choice.com.au/reviews-and-tests/money/shopping-and-legal/legal/Trans-pacific-Partnership-secretly-trading-away-rights.aspx#ixzz3PiH7JQTY>