

Trade Commitments Branch
Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221

5th September 2012

Re: Submission regarding the inclusion of a Public Participation obligation within the TPP

Dear Sir/Madam:

The Trans Pacific Partnership Agreement has been described as being of the 21st century. In line with such commitment, this submission argues for the inclusion of a public participation obligation within this agreement.

There is a clear choice in terms of the governance of the TPP: either include a participation obligation within the Agreement and have the guarantee of an open and participatory trade agreement; or fail to include a participation obligation and leave civil society at the mercy of governmental decision regarding our participation within the agreement.

Participation should be guaranteed as a value *within* the trade agreement, so that there is both the promise and the imagery of a *commitment* to people being included.

The submission argues for an open, 21st century trade agreement, committed to the values of participation. It draws on previous practice under trade agreements; and shows practically how this could be included in the Trans Pacific Partnership Agreement.

The following are specific arguments for the inclusion of public participation.

1. The importance of including public participation within the TPP

We often consider that the key point for civil society engagement is at the point of negotiation of the treaty text. Of course this is significant, and the TPP negotiations have been open to stakeholder access (an important development, and one to be encouraged).

However, it is once the Agreement is concluded that legal obligations are evolved and put into practice. That is why the TPP and other trade agreements have working groups and committees – an acknowledgment that there is work to be done in making an agreement functional, as it evolves in meaning and practice.

It is because of this inherent evolution in meaning and practice that there is a role for the public within the ongoing operation of the TPP – that public participation is not simply at the point of negotiation but embedded as a right across the operation of the agreement; and the public can participate over time.

The alternative is to have a trade treaty which will have a great effect on the region with no guaranteed right of public input.

2. A US precedent exists for including public participation within existing commitments

This internal role has already been acknowledged by the United States, which has included the right within its FTAs.

For example, Article 21.1.6 of the AUSFTA, which promises that States will draw on “the views of the public”.

This commitment has been undertaken seriously by State parties. It creates a foundational idea that there is ongoing access to the governance of the Agreement, not simply as a discretion of the parties but as guaranteed under the AUSFTA itself. Both the US and Australia are on record as confirming that this obligation means the State Parties are open to input about the Agreement.

There is, therefore, already an actual precedent between two members of the TPP.

So there is no reason in principle why this same undertaking could not be included and strengthened in the TPP.

3. How it would operate: presentation of working groups

For public participation to be meaningful there is a need for information creation informing the public of how the TPP is operating: this could be done through presenting the findings of working groups or committees formed under the TPP.

It is self-evident that without information on an ongoing basis, real participation cannot take place. However, under the AUSFTA information flowing from working groups has been sparse, or has not been revealed because the output is deemed ‘technical’ or ‘expert’; which means that there is no ability for the public to view the operation of the Agreement – indeed, the joint committee under the AUSFTA has not met since October 2009. Therefore an important aspect of public participation would be that this be remedied in the context of the TPP.

In the light of these practices under the AUSFTA, it is submitted that a meaningful public participation undertaking requires two changes in current practice:

1. The TPP working groups will meet regularly and will create information which is made available to the public; and
2. The TPP governing body will meet regularly and there will be information available to the public as to the outcome of these meetings.

If these two practices are not undertaken, the TPP will be a closed governance model in conflict with an open participatory agreement.

4. The mutual benefit of those administrating and the public

Public participation sometimes has the image of ‘them and us’ – administrators of trade and the public struggling to have a voice. I want to reject this image, as not being how public participation within the TPP would operate. Indeed, in my access as a member of the public

exploring the meaning of participation, the information flow from high-level administrators was open, accountable and supportive.

Arguing for public participation is not only that the public should have access to information and governance, but also that those administering trade agreement should have the resources to create information under working groups.

Those administering the TPP would have a more significant experience of trade governance so as to truly know how the Agreement is working; and not simply from an economic perspective, but through well-funded, open working groups. This would ensure that the administrators could see the evolution of meaning and practice of the trade undertaking; and through this knowledge there is more potential to mould the trade agreement to creating meaningful contributions to society.

The right to public participation that I am proposing for the inclusion in the TPP is an image of participation that creates for both administrators and public the capacity to understand and evolve trade for the benefit of society.

5. An opportunity for the public practice of an open culture.

Should other societies join the TPP in the future – for example, China – they will have a clear image of how public participation works: the TPP creates an opportunity to practice an open culture of the trade governance with the public. Including a public participation obligation within it creates a precedent where trade agreements are sites for people to engage in and mould their futures.

Questions

In regard to the above submission I have four questions:

1. Could I please contact you after the negotiating rounds to establish how the internal right to public participation is progressing in the TPP?
2. Will working groups or committees established under the TPP will regularly meet, and will make information available to the public?
3. Will the TPP governing body meet regularly, and will there will be information available to the public as to the outcome of these meetings?
4. I would envisage placing any ongoing responses on the DFAT/TPP submissions website as further appendices to this submission, so that those interested can see how the issue is proceeding and observe an ongoing narrative – would that be acceptable?

Thank-you sincerely for the opportunity to make this submission, and for the openness which is essential to the creation of participatory opportunities.

Yours sincerely

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