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CPTPP is a ticking time bomb

Controversial “suspended” provisions could return at any time

Open Source Industry Australia Ltd
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The much touted “suspension” of a range of controversial provisions in the Trans Pacific Partnership (TPP) by the “Comprehensive & Progressive Agreement for Trans Pacific Partnership” (CPTPP) appears to be little more than a ruse: Article 2 in the CPTPP text (released on Wednesday¹) provides that the suspensions only apply “until the Parties agree to end suspension of one or more of these provisions”. In other words, nothing has really been removed from TPP at all.

Although agreement of the Parties to end suspension may happen at any time, that point is most likely to be reached if and when the United States accedes to the treaty. To the interested observer, Article 2 appears to be designed as a “carrot”, with which both to lure the US back to the table and to lull industry in the 11 remaining Parties into a false sense of security.

Whilst the CPTPP suspensions provide a temporary stay of execution on 8 of the 24 grave concerns about TPP that OSIA raised with the Joint Standing Committee on Treaties (JSCOT) in 2016², it does nothing at all in relation to the other 16 issues.

“CPTPP is a ticking time bomb”, said OSIA Company Secretary Jack Burton, “Nobody has any idea if & when those suspended provisions may be reinstated. If they are ever reinstated, we will have a situation just as bad as if the original TPP had come into force. In the meantime, we have something even worse: two thirds of the original anti-trade, anti-innovation restrictions proposed in TPP, plus complete uncertainty about if & when the other third might be resurrected.”

In industry, arbitrary uncertainty of that scale tends to *discourage* long-term trade & investment deals, an outcome which seems the antithesis of what any genuine free trade agreement should seek.

“One must ask why the offensive provisions were merely suspended”, Burton continued, “if the remaining 11 Parties genuinely believed that those provisions were unsuitable, why not remove them completely and irrevocably?”

¹ <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/tpp-11-treaty-text.pdf>

²Burton, J. & Foxworthy, P., *Submission to the Joint Standing Committee on Treaties regarding the Trans Pacific Partnership*, Open Source Industry Australia, 11 March 2016. Available at http://www.osia.com.au/drupal7/sites/default/files/default/osia_sub_201603_jscot.pdf

Many of OSIA's members took great solace when the United States pulled out of TPP in early 2017. It is perfectly natural that a treaty negotiated almost completely in secret, with only a small cadre of entrenched interests from industry in the USA³ represented at the negotiating table, that the text would show a strong bias in favour of those select US interests & against their Australian competitors.

OSIA had previously called upon the Commonwealth Government to show strong leadership in the Pacific region by opening fresh and completely transparent negotiations—with any and all former TPP Parties who may be interested in doing so—for a true free trade agreement (one whose sole purpose is to eliminate tariffs and quotas across the board).⁴ The US withdrawal from TPP presented just such an opportunity, which sadly the Commonwealth failed to seize.

OSIA Chairman Mark Phillips said, “Given that it is widely understood that the secrecy surrounding the TPP negotiations was largely at the insistence of the USTR, we find it astounding that negotiations on CPTPP were not conducted openly & transparently, once the US had walked away from the deal.”

About Open Source Industry Australia Ltd

Open Source Industry Australia Ltd (OSIA) represents & promotes the Australian open source software industry by:

- Ensuring that the Australian business, government and education sectors derive sustainable financial and competitive advantage through the adoption of open source and open standards;
- Helping Australian Governments to achieve world leadership in providing a policy framework supportive of open standards and of the growth and success of the Australian open source industry; and
- Ensuring Australia's global standing as the preferred location from which to procure open source services & products.

OSIA's members are organisations in Australia who invest in or build their future on the unique advantages of open source software.

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³in the form of the committees of the United States Trade Representative (USTR)

⁴Burton, J. & Foxworthy, P., *op. cit.*, Rec. 2, p. 3.