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OSIA slams DFAT's brazen denial of TPP secrecy

Open Source Industry Australia Ltd
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DFAT's CPTPP "Myth Busters" document¹ attracted further scrutiny today when OSIA criticised the document's brazen denial—despite a widely publicised history to the contrary—of the secrecy employed throughout the TPP (and subsequently CPTPP) negotiations. This follows hot on the heels of OSIA's criticism of the document's comments on economic modelling² and ISDS³ as biased and misleading.

The DFAT document described as a myth that "The Government negotiated the deal in secret". This belies a long and well documented history of the process's near complete lack of public transparency. Indeed DFAT themselves have said the exact opposite about TPP negotiations before: in 2013 DFAT Acting First Assistant Secretary Ms Elizabeth Bowes, stated in Senate Estimates "...in fact the process whereby the negotiating texts remain confidential is consistent with standard international treaty negotiating practice so that applies across the board."⁴

The Attorney-General's Department's response to an FOI request during TPP negotiations stated: "At the start of the TPP process it was agreed that ... all participants would maintain the confidentiality of ... *the negotiating texts, proposals of each government, accompanying explanatory material, emails related to the substance of the negotiations* ... Australia has signed a letter to this effect"⁵.

Such comments directly contradict DFAT's current claim that the negotiations did not take place in secret and only strengthen the common understanding this was a secret deal, the details of which were agreed without input or review from the Australian public.

"DFAT and the government understand how deeply unpopular secret trade deals are, particularly ones containing as many questionable elements as CPTPP, but are no longer willing to admit that this is exactly how they agreed to undertake these proceedings", said OSIA Director Josh Stewart, "The

¹ <http://dfat.gov.au/trade/agreements/tpp/outcomes-documents/Documents/tpp-11-myth-busters.pdf>

² http://osia.com.au/f/osia_cptpp_pr2a.pdf

³ http://osia.com.au/f/osia_cptpp_pr2b.pdf

⁴ <http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2F5978688-d9d0-4d41-8457-a1e7edec2726%2F0002;query=Id%3A%22committees%2Festimate%2F5978688-d9d0-4d41-8457-a1e7edec2726%2F0001%22>

⁵ <https://www.righttoknow.org.au/request/107/response/666/attach/13/Decision%20letter.pdf>

Australian public should not be locked out of the room for negotiations such as these, only permitted to see and contribute to the results after the terms are final.”

None of the five bullet points given by DFAT under this “myth” disprove it. Instead they merely assert that versions of the TPP text were released at various points. Whilst true, in each case that did not happen until after the negotiations had concluded.

During negotiations, the only industry consultation in Australia was an infrequent series of very general briefings. Without any access to draft text, such “consultation” is little more than a sham; it does not counteract the secrecy. OSIA has warned of the dangers of secret negotiation previously^{6, 7, 8}.

“We understand the original TPP secrecy was forced upon the other eleven Parties by the USTR,” said OSIA Company Secretary Jack Burton, “What we find doubly egregious is that once the US withdrawal from TPP had removed the source of that constraint, DFAT failed to insist upon genuine transparency in negotiating the new CPTPP. Negotiating these sorts of treaties in secret is outright anti-democratic.”

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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⁶ http://osia.com.au/f/osia_trans_pacific_partnership_submission_0.pdf

⁷ http://osia.com.au/f/osia_sub_201603_jscot.pdf

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http://parlinfo.aph.gov.au/parlInfo/download/committees/commjnt/a6fa4bc7-9c2e-4788-9378-e676fc0a3f53/toc_pdf/Joint%20Standing%20Committee%20on%20Treaties_2016_10_07_4491_Official.pdf;fileType=application%2Fpdf