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OSIA calls for genuine free trade instead of ‘Byzantine’ CPTPP *CPTPP barely mentions free trade but pushes a huge range of restrictions*

Open Source Industry Australia Ltd
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In its latest submission¹ to the JSCOT TPP-11 inquiry, OSIA has once again called on the government to scrap the controversial treaty and to open fresh negotiations for a genuine free trade agreement between former TPP parties, this time without so much of the cloak-and-dagger approach.

“The Australian open source software industry tend to be great supporters of free trade, since freedom as a principle is after all the basis on which our industry was built”, said OSIA Company Secretary Jack Burton, “but CPTPP is overwhelmingly *not* about free trade. Of its 30 chapters, only Chapter 2 (National Treatment & Market Access) speaks to free trade. The other 97% mostly seeks to proliferate *restrictions* on trade and restrictions in a wide range on non-trade areas.”

But the absence of any substantial emphasis on free trade is far from OSIA’s only beef with CPTPP. The submission was scathing of the treaty (which it described as a “Byzantine monstrosity”², “almost five times the length of Tolstoy’s *War and Peace*”³) on multiple other fronts too, including the suspension provisions which form the centrepiece of the new CPTPP.

“The manner in which certain TPP provisions were suspended (rather than removed properly) by CPTPP gives rise to great uncertainty in industry about whether and when they might be reanimated. The associated risk is likely to *discourage* further investment in Australia’s FOSS sector,” said OSIA Chairman Mark Phillips,

OSIA’s latest submission echoed its earlier⁴ calls for the government to commission independent economic modelling of the treaty’s likely impact: calls that, amongst those of many others, fell only

¹Burton, J. & Phillips, M., *Submission to JSCOT re CPTPP*, OSIA, 20 April 2018. Available at http://osia.com.au/f/osia_sub_201804_jscot.pdf and at <https://www.aph.gov.au/DocumentStore.ashx?id=19af91f2-b876-4dd9-8683-17e0a1b23d47&subId=565185>

²*ibid.*, s. 2.2, p. 4.

³*ibid.*, s. 5.2, p. 10.

⁴Burton, J. & Foxworthy, P., *Submission to JSCOT on TPP*, OSIA, 11 March 2016. Available at http://osia.com.au/f/osia_sub_201603_jscot.pdf ; C’th, *Official Committee Hansard*, Joint Standing Committee on Treaties, Trans-Pacific Partnership (public), 2016, p. 30. Available at 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 ; Burton, J. & Foxworthy, P., *Submission to the Senate SC FADT re TPP*, OSIA, 29 Oct 2016. Available at http://osia.com.au/f/osia_sub_201610_sscfadt.pdf

on deaf ears. The industry body went further this time, criticising DFAT's blatant propaganda and condemning once more the treaty's lack of economic benefit.

"We are appalled that the government is still pushing ahead with this treaty without having referred it to the Productivity Commission for independent analysis & modelling," said Phillips, "but given the earlier overseas modelling of TPP showed no economic benefit at all for Australia and that was while the USA was still involved, we strongly suspect that with that one large, attractive export market removed from the equation, CPTPP will yield *negative* economic benefit for Australia."

Many other aspects of CPTPP were criticised in the submission too, but perhaps the most striking is OSIA's continued outrage at the investor-state dispute settlement (ISDS) provisions in CPTPP. The provisions grant aggrieved foreign investors a new right of action against the Commonwealth, but deny that right of action to domestic investors in the exact same circumstances.

"The ISDS provisions make Australian companies second class citizens in our own market," Burton continued, "We welcome competition, but when we see a deals like this put Australian companies on a *lower* footing than their overseas competitors—that's the exact *opposite* of free trade. Giving overseas companies rights denied to Australian companies cannot ever be in Australia's best interest."

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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