

25 August 2017

Dear TPP11 Ministers,

Subject: Concerns from the internet freedom and public interest advocates regarding proposed next steps in the TPP11

Since US President Trump indicated his intent not to ratify the Trans-Pacific Partnership Agreement (TPP)¹ and it cannot therefore come into force as signed,² we understand that the remaining TPP countries (TPP11)³ have been assessing the options to bring the TPP into force among themselves.⁴

According to news reports, the options you have been discussing seem to be:

1. Only changing the entry into force provisions so that the remaining 11 countries can bring it into force without the US.⁵
2. Freezing controversial provisions pending the US re-joining the TPP, in addition to amending the entry into force provisions.⁶
3. Re-writing certain TPP provisions in light of the US' absence, in addition to amending the entry into force provisions.⁷

Whichever of the three current options you choose for the way forward with a TPP11 will have serious consequences for access to knowledge, the dissemination of news and cultural exchange in our countries. It is imperative that you make the options public and that before deciding on them you consult stakeholders regarding both the options and the choices within each of them, such as which provisions to freeze or renegotiate.

Given that most of the TPP's provisions that will impact negatively on access to knowledge, cultural sharing and innovation were imposed by the USA and the USA is no longer in the TPP, it makes no sense for you to keep those provisions, particularly without the projected gains from access to US markets. This is especially the case since many TPP provisions do not suit the TPP11. For example, all of your countries,⁸ aside from Japan, are net intellectual property (IP) importers, so stronger intellectual property protection does not benefit you – but it would benefit the US in return for no concessions by the USA.

Therefore, if you decide that a free trade agreement (FTA) between the TPP11 countries should occur, we call on you to renegotiate it from first principles with provisions that suit the TPP11 countries.

If you intend to proceed with what appear to be the three current options, it is clear that Option 1 makes no sense.

If Option 2 is chosen, expert analyses of the text from an access to knowledge perspective show that *at a minimum* the implementation of the following TPP provisions should be frozen:

- Intellectual property (IP) provisions that go beyond rules established by the World Trade Organization (WTO) Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) which would threaten access to information, the dissemination of news and cultural exchange. These TPP provisions include but are not limited to: copyright term extensions, provisions on internet service provider liability, technological protection measures, rights management information, broadcasting and making available provisions as well as criminal enforcement measures;
- The investment chapter provisions including but not limited to fair and equitable treatment, expropriation and investor-to-state dispute settlement;

If Option 3 is chosen, *at a minimum* the above provisions should be renegotiated as well as the general exceptions provision and its application across the whole TPP.

However, as noted above, the only truly acceptable approach to balanced copyright provisions and to ensure access to knowledge and innovation in all TPP11 countries is to renegotiate the whole TPP. We the undersigned internet freedom and public interest advocatess from the TPP11 countries urge you to do so.

Yours sincerely,

| Organisation | Country |
|--|----------------|
| Asia Pacific Forum on Women, Law & Development (APWLD) | Regional |
| Asian-Pacific Resource and Research Centre for Women | Regional |
| Australian School Library Association | Australia |
| Civil Liberties Australia | Australia |
| Creative Commons | Global |
| Derechos Digitales | Regional |
| Electronic Frontiers Australia | Australia |
| Hiperderecho | Peru |
| It's Our Future | New Zealand |
| Malaysian AIDS Council | Malaysia |
| Malaysian Council for Tobacco Control (MCTC) | Malaysia |
| Moana Nui | Regional |
| OpenMedia | Global |
| Pacific Asia Resource Center(PARC) | Japan |
| People Over Profit | Global |
| People's Coalition on Food Sovereignty | Global |
| Persatuan Kesedaran Komuniti Selangor | Malaysia |
| Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic (CIPPIC) | Canada |
| Sinar Project | Malaysia |
| Third World Network | Global |

¹ http://www.rieti.go.jp/en/columns/a01_0468.html

² Since Article 30.5 <https://www.tpp.mfat.govt.nz/text> requires ratification by countries accounting for at least 85% of the GDP of the original signatories which requires the USA to ratify it.

³ Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Viet Nam

⁴ <https://www.tpp.mfat.govt.nz/>

⁵ Bloomberg, 'Australia Meeting Could Test Support for Pacific-Trade Pact', also in Spanish at <http://gestion.pe/economia/tpp-reunion-australia-pondra-prueba-apoyo-al-pacto-comercial-2197512>.

⁶ Bloomberg, 'Australia Meeting Could Test Support for Pacific-Trade Pact', also in Spanish at <http://gestion.pe/economia/tpp-reunion-australia-pondra-prueba-apoyo-al-pacto-comercial-2197512>.

⁷ <https://www.ictsd.org/bridges-news/bridges/news/tpp-11-negotiators-examine-options-for-advancing-deal-without-us>

⁸ Brunei and Vietnam did not have sufficient data, from <http://data.worldbank.org/indicator/BM.GSR.ROYL.CD/> and <http://data.worldbank.org/indicator/BX.GSR.ROYL.CD>