



FROM THE PERMANENT REPRESENTATIVE

AUSTRALIAN PERMANENT MISSION
TO THE UN GENEVA

23 November 2011

Mr Anand Grover
United Nations Special Rapporteur on the Right to Health
Office of the United Nations High Commissioner for Human Rights
Palais de Nations
CH-12111 GENEVE 10

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Recipients :.....SPD.....
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Dear Mr Grover

Thank you for your letter dated 19 July 2011 regarding concerns raised about the Trans-Pacific Partnership (TPP) agreement negotiations, particularly in relation to intellectual property (IP) issues. The Australian Government's responses to the five questions you posed in your letter are set out below.

1. Are the facts alleged in the above summary accurate?

The summary and information on proposed intellectual property (IP) provisions included in the NGO letter are not an accurate reflection of the current nature or status of the IP negotiations, and do not reflect an agreed text committed to by all TPP parties. Discussions on the IP text are at a formative stage, so no commitments have been agreed. We are not able to comment on other countries' positions but, from Australia's perspective, the Government has made abundantly clear that Australia will not support provisions in trade agreements that constrain our ability to regulate legitimately on social, environmental or other important public policy matters, including healthcare.

2. Has the Government kept the TPP negotiations secret? If so, why?

The Australian Government has not kept the TPP negotiations secret. The Government has taken every opportunity to engage with stakeholders, regardless of whether they are private individuals, civil society or corporations. The Government has maintained a consistent process of consultation and welcomes further engagement from interested stakeholders. Following each round we have published updates on progress of the negotiations on the Department of Foreign Affairs and Trade website (www.dfat.gov.au/fta/tpp).

3. Please provide details of any actions taken to ensure that the public and other relevant stakeholders have had access to draft texts and other documents related to the TPP.

Like most public policy processes involving sensitive issues, trade negotiations have both a public and a private component. The Australian Minister for Trade Dr Craig Emerson has instructed Australian TPP negotiators to be as accessible and transparent as the negotiation process permits. Dr Emerson has instructed negotiators to provide candid and detailed information on negotiations

and draft texts, to ensure stakeholders are well placed and sufficiently informed to enable them to make submissions and representations on issues of concern to them, as the negotiations continue. As you would be aware, negotiating text often contains a range of ambit claims. It has no status until it is agreed by all parties. The Australian Government is not convinced that publicly releasing contested text would assist informed public debate on the issues. It is not normal international practice in free trade agreement negotiations to make texts publicly available until they are agreed.

4. Please provide details of any actions taken to ensure consultations with civil society and other relevant stakeholders with regard to the TPP.

Australia's decision to participate in the TPP was made in 2008, following extensive public consultation. Overall, there was widespread interest in and support for Australia's participation in the TPP negotiations.

As the negotiations have progressed, the Government has held regular meetings (advertised in national newspapers that cover regional areas, the department's website and Twitter) and teleconferences in state and territory capitals to provide updates on the progress of negotiations and to seek input from State and Territory Governments and other interested stakeholders. For example, public consultations were held in Canberra on 11 May 2011, Brisbane on 16 May 2011, Perth on 18 May 2011, Melbourne on 19 May 2011 and Sydney on 27 May 2011. Consultations focused on specific sectoral areas have also been held. For example a roundtable on public health issues was held in Canberra on 3 August 2011, attended by TPP negotiators and representatives from academia, non-government organisations, industry associations and other Government representatives.

As mentioned, regular updates on the TPP negotiations are also posted on the Department of Foreign Affairs and Trade website (www.dfat.gov.au/fta/tpp) after conclusion of every negotiating round. The Government will continue to take every available opportunity to consult with stakeholders and is always open to receiving written submissions and meeting with interested parties. Input received through this consultation process is used to inform the Government's priorities and objectives for Australia's involvement in the TPP.

This is consistent with the Government's Trade Policy Statement, released in April 2011, which highlights transparency as one of the five principles underpinning the Government's approach to trade policy.

5. Please provide details of any actions taken to ensure the enjoyment of the right to the highest attainable standard of health for people in Australia.

As stated above, the Government has made clear that Australia will not support provisions in trade agreements that constrain our ability to regulate legitimately on social, environmental or other important public policy matters, including healthcare. Retaining the ability to ensure access to quality, affordable medicines for Australian consumers is a priority, and the Government would not accept an outcome in the TPP that would negatively impact upon the integrity of Australia's public health system.

The right to health of all Australians is supported by Australia's Human Rights Framework, as well as Australia's universal health care platform and other health-related programs and legislation.

Australia's universal health care platform is based on three fundamental pillars: free public hospital care; affordable medical services subsidised through the Medicare Benefits Scheme; and affordable medicines subsidised through the Pharmaceutical Benefits Scheme. A wide spectrum of services are

delivered through these three pillars, ranging from preventive health and early intervention services, through to the treatment of illness, chronic disease management, and acute care.

The universal health care platform protects the right to health of all Australians and, in addition, also allows for the delivery of more intensive or tailored efforts to address particular needs of some groups, including Indigenous Australians and those vulnerable to disadvantage. The National Health Act 1953 and the Health Insurance Act 1973 provide for these arrangements. The Acts may be accessed at www.comlaw.gov.au.

I trust this information satisfies your concerns regarding the TPP. Please do not hesitate to contact me again should you require any further information.

Yours sincerely

A handwritten signature in black ink, consisting of a large, stylized 'P' followed by a horizontal line and a long, sweeping flourish that ends in a small hook.

Peter Woolcott