



Victoria Chapter of The Council of Canadians

September 1, 2016

Dear Mayor Helps and Council,

We will be making a presentation at the District of Victoria Municipal Council meeting on Thursday, September 8th, 2016. The subject of this presentation is the Trans Pacific Partnership (TPP) and the implications it will have on local governments within Canada. We would like to provide you with a little background before the presentation.

There are a number of serious problems with the TPP. Perhaps the most serious flaw is the Investment chapter and the Investor State Dispute Settlement (ISDS) provisions, which allow foreign corporations to seek damages through private, secretive tribunals for laws and policies that inhibit corporate profitability. ISDS cases have been growing exponentially around the world. Canada is the most sued country under the investment chapter of NAFTA and has paid \$170 million to foreign corporations including for the 'loss of potential' profit under that agreement.

There are a number of ongoing cases against Canada that could add much larger sums, running into hundreds of millions of dollars to the list of payments and there are currently several billion dollars in ISDS cases filed against Canada under NAFTA in these tribunals. That is taxpayers money paying foreign corporations not to do things they want to do.

Many experts have spoken against the TPP for many reasons but there is something in this agreement that should be of particular concern to municipalities. The TPP investment chapter contains the following clause:

Article 9.2: Scope 2. A Party's obligations under this Chapter shall apply to measures adopted or maintained by:

(a) the central, regional or local governments or authorities of that Party;

This clause does not exist under NAFTA and specifically implicates the decisions made by local levels of government in the ISDS process. This means that decisions made by local government that do not give foreign corporations from TPP countries the same rights as local companies, or that are said to be "unfair" or "inequitable" or amount to "indirect" expropriation -- vague and broad terms that have been

interpreted broadly by many ISDS tribunals, could trigger a suit with damages for the 'loss of potential profit' which would have to be paid by taxpayers to foreign corporations. Terms embedded in the agreement such as National Treatment, Most Favoured Nation Status, Minimum Standard of Treatment and Indirect Expropriation, because of the amount of financial liability they carry for governments will have the effect of binding the decisions of municipal governments and make it detrimental for taxpayers, if for example municipalities use local procurement measures to enhance local economic activity or pass bylaws restricting products manufactured by multinationals, among a number of other types of decisions which may protect the health of citizens or the local environment.

ISDS is also a tool used by corporations to put a chill on regulation. Just the threat of an ISDS claim against a country has stopped the enactment of good legislation that protects the public interest. An example of this is the ISDS suits launched by tobacco giant Philip Morris against countries such as Australia and Uruguay that had enacted plain packaging laws for cigarette packages (no glitzy packaging, only health warnings). Threats of similar suits have stopped other countries from enacting similar legislation even though plain packaging has proven to decrease the rate of new smokers taking up the habit.

In chapter 10, the chapter covering Cross Border Trade in Services there is a similar clause that states:

Article 10.1: Definitions

Measures adopted or maintained by a Party means measures adopted or maintained by: (a) central, regional, or local governments or authorities;

This will bind municipalities to open up bidding for services from foreign corporations in any TPP countries and our local companies will have to compete for service contracts with corporations in Vietnam, Brunei and Malaysia where labour standards are very low and unenforced.

There are 30 chapters and six thousand pages in the TPP agreement. These chapters are far reaching, only six of them deal directly with tariff barriers to trade, all of the remaining chapters deal with non-tariff barriers and constrain what governments and citizens can do while giving trans-national corporations more rights, privileges, and power.

The negotiation period for the TPP was extremely secretive and did not include Canadian parliamentarians or provincial and municipal governments but did include representation from some of the worlds largest multi-national corporations. Now that the negotiations are over we are told the final TPP agreement cannot be amended - legally, it can be amended, but we are told it's locked in politically and can't change even though the public and independent experts have only been able to see the text in the last few months.

The TPP is detrimental for the democratic authority and decision-making power of municipalities and should not be ratified as written.

Here is a sample resolution for your consideration:

WHEREAS:

- 1. The Trans-Pacific Partnership (TPP), signed by the former Canadian government during the recent federal election, is a free trade agreement purportedly aimed at reducing trade barriers and expanding the flow of goods, services and capital between 12 Pacific countries that represent approximately 40 percent of the world's Gross Domestic Product;**
- 2. Motions passed by many cities in the United States, including San Francisco and Seattle, opposed the fast-tracking and content of the TPP and some such as New York City and Berkeley established local "TPP-Free Zones";**
- 3. The TPP's investor-state dispute settlement provision allows transnational corporations to sue governments over legislation or policies made in the public interest, giving multinational corporations excessive power to undermine the authority of our city, province and country to create reasonable rules and regulations regarding environmental, health and labour safeguards, climate policy, food safety standards and protection of local jobs and businesses;**
- 4. Members of Parliament will have the opportunity to vote on whether or not to ratify the TPP agreement.**

THEREFORE BE IT RESOLVED THAT:

That the City of Victoria Mayor and Council pass a motion requesting that the Canadian government not ratify the Trans Pacific Trade Agreement

You can find the whole TPP agreement at this link <https://mfat.govt.nz/en/about-us/who-we-are/treaty-making-process/trans-pacific-partnership-tpp/text-of-the-trans-pacific-partnership>

Chapter 9 Investment

<https://mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Text/9.-Investment-Chapter.pdf>

Chapter 10 Cross Border Trade in Services

<https://mfat.govt.nz/assets/securedfiles/Trans-Pacific-Partnership/Text/10.-Cross-Border-Trade-in-Services-Chapter.pdf>

We look forward to your questions following the presentation.

Respectfully submitted by,

Ted Woynillowicz, Co-chair – Victoria Chapter of The Council of Canadians

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Neil Mussell, Board Member- Victoria Chapter of The Council of Canadians

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For more information please visit:

Senator Warren presentation:

<https://www.youtube.com/watch?v=YmLHwZkonwY>

www.cbc.ca/news/business/joseph-stiglitz-tpp-1.3515452

http://corporateeurope.org/sites/default/files/attachments/the_zombie_isds_0.pdf