



Submission of Civic Trust Auckland

Trans-Pacific Partnership Agreement (TPPA)

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Introduction

Civic Trust Auckland (CTA) is a non-profit public interest group, incorporated in 1968, with activities and interests throughout the greater Auckland region.

The aims of the Trust include:

- To promote the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, lakes and rivers (including their margins), associated flora and fauna, and protection of this natural character from inappropriate subdivision, use and development
- To promote the maintenance and enhancement of public access to and along the coastal marine area, lakes and rivers
- To promote the maintenance and enhancement of amenity values and the quality of the environment.

CTA recognises that signatories to the TPPA account for nearly 40 percent of the global economy and therefore its impact would be significant.

Our submission is focussed on Chapter 20 of the TPPA. This does not mean that we endorse other chapters of the agreement. We note that some of our concerns with regard to the environment also relate to other aspects of the agreement.

Our concerns include:

- The New Zealand government's right and ability to regulate to protect the New Zealand environment
- The investor-state dispute settlement mechanism
- Climate change
- Particular threats to New Zealand's current environmental provisions.

1. CTA is concerned that the TPPA would restrict the right of the New Zealand government to regulate for environmental protection. We note that it is not easy to predict what regulations will be necessary in the future, as we move into a world where populations are increasing, resources are diminishing, and natural and technological disasters are causing much damage. New Zealand should be able to exercise its democratic right to formulate its own policies and laws that are precautionary and appropriate for the interests of the country.

2. Under the TPPA, a foreign corporation (or foreign government) would be able to challenge decisions of the NZ Government and NZ courts through investor-state dispute settlement (ISDS) if it believed its reasonable investment expectations were breached as a result of actions by our government. Under this mechanism there is little transparency, there is no prevention of conflicts of interest, disputes can take years to resolve and involve huge costs. Furthermore, if an investor's case is upheld, an ISDS tribunal can force a government to pay compensation to the foreign corporation, including for future lost profits, and there is no appeal process.

3. CTA is of the view that there should be protection in the TPPA for governments against being sued for regulating in the interests of their own country. Otherwise there is likely to be unwillingness on the part of governments to put in place any environmental protections.

4. We consider that potential ISDS cases put regulations in NZ at risk regarding:

- The Emissions Trading Scheme
- Water quality
- Water use for agricultural purposes
- Electricity
- Restrictions on mining for fossil fuels
- Deep-sea drilling in NZ's Exclusive Economic Zone
- Hazardous substances
- Fracking
- Labelling of genetically modified food.

5. The exception clauses in Chapter 9 of the TPPA to protect environmental regulation are limited and unpredictable, and, judging by the number of cases that have already been brought, they do not seem to be a disincentive to investors.

6. Climate Change is afforded only two paragraphs in the agreement (Article 20.15). An earlier draft of the agreement contained the following, which CTA feels should have remained in the agreement:

"The Parties acknowledge climate change as a global concern that requires collective action and recognize the importance of implementation of their respective commitments under the United Nations Framework Convention on Climate Change (UNFCCC) and its related legal instruments".

7. Climate change is an urgent issue, as was acknowledged by governments at the Paris Summit in December 2015. The TPPA fails to address climate change, in fact, it undermines efforts to do so.

8. Sustainable development should be included in Chapter 20 as an objective in its own right. Otherwise, unsustainable development could be seen to be permitted. A useful change to the wording of the first objective (which follows) would be to

substitute the word “ensure” for the word “promote” as regard supportive environmental policies:

“The objectives of this Chapter are to promote mutually supportive trade and environmental policies; promote high levels of environmental protection and effective enforcement of environmental laws; and enhance the capacities of the Parties to address trade-related environmental issues, including through cooperation.”

9. Chapter 20 sets almost no new environmental standards, leaving each signatory country to make its own laws, and the enforcement of those laws is dependent on breaches affecting trade or investment.

10. The United Nations Framework Convention on Climate Change and the Convention on Biodiversity should be included in Chapter 20.

11. The UN Convention on International Trade in Endangered Species, which signatories to the TPPA are required to implement, does not include legally enforceable prohibitions on trade in illegally sourced timber, wildlife, and marine resources. Chapter 20 merely states that parties must “combat the illegal take of, and illegal trade in, wild fauna and flora”. Instead, this provision should require countries to adopt, maintain, and implement policies to identify contraband and to penalize those that fail to identify contraband in a way that would serve as a strong disincentive to engage in illegal trade.

12. For all of the environmental treaties included in the TPPA, signatories should be required to ensure implementation of them.

13. Enforcement for all prohibitions is required, such as those related to overfishing.

14. Prohibition should be included regarding trade in products that breach marine conservation laws.

15. Article 20.16.4, that each signatory “shall...promote the long-term conservation of sharks ... and marine mammals”, should include binding requirements for TPP countries to prohibit shark finning and commercial whaling.

16. Chapter 20 does not address illegal timber laundering. Instead, ISDS provisions allow foreign investors to sue governments if they believe their future earnings are exposed by a new government action.

17. The TPPA makes it more difficult for countries to independently regulate GM foods. Information requirements, ISDS procedures and new working groups, create a significant new level of pressure on TPPA signatories to accept GM foods under the “mutual recognition” standards set by the exporter.

18. For the reasons stated above, Civic Trust Auckland requests that the New Zealand Government does not ratify the TPPA in its current form.

Date of submission: 11 March 2016



A handwritten signature in black ink, which appears to read "Audrey van Ryn".

Audrey van Ryn
Secretary, Civic Trust Auckland