

SUBMISSION TO THE PARLIAMENTARY SELECT COMMITTEE

ON THE

International treaty examination of the Trans-Pacific Partnership Agreement (TPPA)

Dear Chairperson,

This submission is personal.

I wish to make three points about the TPPA:

1. That our government should not pass this Agreement into law, as it deleterious effects outweigh its perceived benefits.
2. That the Agreement takes away New Zealand citizens’ sovereign rights, and should be rejected on that basis alone, as anti-democratic as well as lacking judicial independence.
3. That from an environmental perspective, the whole Agreement is not in the public interest, and should be rejected.

I have followed the path of the TPPA for a number of years. As a qualified barrister and solicitor, I have had questions in my mind and now wish to address some of those simply and directly.

THE SECRET PROCESS; LENGTH OF DOCUMENT

1. The process that was used to reach the stage of a signed agreement is in my judgment anti-democratic. The paranoid secrecy that surrounded its production is contrary to the way in which our Westminster system of government operates. A fear of open discussion and debated decision has produced in the end a document that for this reason alone is flawed. In this it seems to follow a business model rather than our tried and tested democratic process.
2. The length of the document and its technicality does not allow the general public to ‘excavate’ its meaning in depth and the nuance that lies hidden within. This form of proceeding too is flawed, as it requires expertise and time to delve into. The ordinary person has neither the money to pay for that, nor the energy to follow it in the way the final document demands.

THE INVESTOR-STATE DISPUTE SETTLEMENT (ISDS) PROVISIONS

1. The use of ISDS processes to settle legal disputes bypasses the normal procedures by which our judicial system has till recently functioned. To take cases by transnational companies to a tribunal which is beyond the scrutiny of New Zealand law is something to which I object.
2. Some say that free trade agreements should seek “a one size fits all” system of legal protection to cover particular situations where a country’s system of law does not function or gives less that full legal protection. This argument is false where a system, like ours, is working perfectly, but now will be passed over. We are thereby strictly disadvantaged.
3. That complaints to a proposed TPPA tribunal are based on a claimed loss of future profits without scrutiny by our courts beggars belief. The ruggedness of our commercial court system here is bypassed, and opens our government to become a fertile basket for unlimited compensation: a form of “cash cow” for companies which should themselves bear the brunt of their commercial enterprise in open competition. If their product does not gain for them the profits they seek, that is not the fault of government but of the interplay of the free market forces upon which they themselves closely rely in every other circumstance.
4. I understand that this mechanism has already been included in other free trade agreements to which New Zealand is a party. This is for me not an argument that holds weight, as the Free Trade Agreement process limits our government’s right to legislate for legitimate public policy purposes. I cite the example of Philip Morris attempt to stop the Australian government from using provisions in law to limit cigarette packaging ([www.ag.gov.au/tobaccoplainpackaging](http://www.ag.gov.au/tobaccoplainpackaging)) and the enormous sums of money expended by the Australian Federal Government to stop this claim.
5. Further I understand that these foreign tribunal claims will be heard in secret, by panels of judges whose claim to judicial independence does not stand up to open scrutiny. This is contrary to the rights of natural justice and should not be upheld.
6. This process is not a development of New Zealand law that we should

contemplate or continue, as it removes the sovereign rights of the people of New Zealand and lacks the standard of judicial independence which is our right in New Zealand law.

POWER OF PHARMACEUTICAL COMPANIES AND MONOPOLY RIGHTS

1. I understand that the agreement contains provisions which limit our right to negotiate the price of pharmaceuticals because of monopoly provisions given to certain companies. This limits again our rights to bargain in free competition and feathers the nests of larger and more powerful pharmaceutical companies.

LABOUR RIGHTS ENSHRINED IN UN DECLARATIONS

1. Until legislation introduced in the early 1990’s, New Zealand had strong legal rights for members of trade unions. Since then, the labour rights of our citizens are being steadily whittled away.

This TPPA document continues this process, putting workers’ rights further at risk.

ENVIRONMENTAL PROVISIONS

1. With the United Nation Framework on Climate Change agreement agreed to by our government in Paris on 12 December 2015, we are committed to precise ways of dealing with the deleterious effects of climate change. This UNFCC agreement is in my judgment the most important international agreement of the twenty-first century. Yet, its provisions (set out in some 32 pages) are namby-pamby in comparison with this tightly worded 6000 page TPPA document.

12. This comparison highlights the difference between the two processes –

both long and hard fought. The TPPA ties down with an iron fist the ways

in which environmental provisions will be looked at; while the UNFCC Paris agreement awaits any legally binding provisions to deal with future life of the planet within a time-frame that will save it for our children and grandchildren.

Philosophically, the TPPA flows from an absolute following of neo-liberal economics and trade policy that is closed to further development; while the UNFCC Paris agreement is based on principles of negotiation and compromise that are open to further development. These two ways of working seem completely exclusive the one of the other. I choose the latter.

Not dealing with TPPA environmental provisions in a way that will enhance the life of the planet would be something we do at our peril. The TPPA provisions dealing with the environment must be seen in this light and dealt with accordingly.

CONCLUSION

I ask that the New Zealand Government not pass the TPPA into law, as its deleterious effects outweigh its perceived benefits.

This agreement threatens our sovereign rights, and is anti-democratic as well as lacking judicial independence.

From an environmental point of view, the TPPA is not in the public interest, and should be rejected.

Sincerely,

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