

Friends of the Earth Australia submission to the Senate Inquiry on the Proposed Comprehensive and Progressive Agreement for Trans-Pacific Partnership

Friends of the Earth Australia is an environmental organization with over 100,000 supporters across the country and 2 million members world wide advocating for a just and sustainable future.

We are concerned about the recent signing of the Comprehensive and Progressive Trans Pacific Partnership (TPP-11) and the impact this trade and investment deal will have on the environment and the Australian government's right to regulate.

Numerous organisations and community groups have called repeatedly for scrutiny of the TPP-11 by asking for Independent economic, social and environmental impact assessment. However the Government has consistently refused to allow such an independent review to take place. It is irresponsible and careless to sign our country up to a deal for what we do not know the full impact. Therefore, whilst we intend to put forward a strong argument that the TPP-11 is not in the National Interest, we maintain that such a judgement cannot be fully detailed under current state of affairs.

While some harmful measures have been removed from the original TPP deal, much legally binding rules contained in the some 6000 page deal continue to benefit global corporations and restrain future governments from regulating in the public interest. We are particularly concerned with the following provisions and impacts related to senate inquiry terms of reference areas; d) The effect of Investor-State Dispute Settlement provisions and e) Australia's health, environmental, social and cultural policies, including regulation of essential services.

d) The effect of Investor-State Dispute Settlement provisions

This mechanism enables foreign corporations to sue the government for almost any measure or environmental regulation that would harm their expected profits. We produced a briefing paper on the issue, which is also attached for your reading. Some of the key finding of the briefing are:

- ISDS undermines governments right to regulate and is a risk to tax payer money with over \$570 billion dollars claimed by transnational corporations and investors from states to date
- ISDS is a secret, undemocratic and unaccountable process
- Canada, which has faced 26 know ISDS cases with claims of over \$9.2 billion and should act as warning to Australia of the dangers of this mechanism to developed legal systems
- The tide is turning against ISDS: the European Court of Justice recently ruled it illegal and the Netherlands, US and Indonesia are reviewing their Bilateral Investment Treaties
- The Comprehensive Progressive Trans Pacific Partnership will increases Australia's exposure to ISDS and lock us into this dangerous corporate court system

This provision is a ticking time-bomb for climate policy, because many government policies needed to address global warming are subject to suits brought before international investment tribunals. For example, in 2009 Vattenfall, the Swedish energy giant, launched a USD 1.9 billion ISDS case against Germany for its decision to delay a coal fired power station and impose stricter environmental standards. To avoid the potentially massive fine looming under ISDS, the government reached a settlement that involved removing additional environmental requirements, enabling the coal plant to begin operating in 2014. With the highest carbon content among fossil fuels, coal is a profound threat to the climate.

e). Australia's health, environmental, social and cultural policies, including regulation of essential services

Climate change missing in action

The some 6000 pages of CPTPP trade deal does not mention the words 'climate change', nor does it mention the global treaty under the United Nations. Yet the CPTPP chapters like the one covering trade in goods can be the basis for state-to-state suits challenging climate policies. Big fossil fuel companies strongly support the CPTPP because it would encourage a massive expansion of trade in oil, coal and liquefied natural gas across the Pacific.ⁱ Specifically, the CPTPP would reinforce industry claim that controls on energy exports are illegal under international trade and investment law.

The CPTPP would with no doubt accelerate the already alarming surge in the number of international trade disputes related to renewable energy and climate policiesⁱⁱ, such as the WTO Appellate Body ruling in the Ontario "feed-in tariff" case.ⁱⁱⁱ In that case Ontario's comprehensive program to promote renewable energy was successfully challenged under the WTO agreement related to allegedly discriminatory government purchasing policies.

Weak Environment and labour chapters

The Comprehensive and Progressive Trans-Pacific Partnership will have detrimental effects on the ability of Australia to effectively protect its environment. A comprehensive analysis of the Environment chapter by New Zealand academic Jane Kelsey deemed the chapter inadequate with little obligations by countries to adhere to environmental protocols that were 'weak and compliance with them unenforceable'.

The environment chapter neglects to ensure a standard of commitment from the countries involved, allowing each nation to 'establish its own level of domestic environmental protection'; however, this is in juxtaposition to the fact that enforcement of those laws is dependent on breaches affecting trade and investment. Of the four multilateral environmental agreements (MEAs) included in the text only one is enforceable, Trade in Endangered Species (Article 20.17 .2), with MEAs such as the International Convention on the Regulation of Whaling omitted because of their inconvenience to member countries such as Japan. From the lack of enforceable commitments to its vague wording it is

clear why the chapter has been deemed by some as ‘more window dressing than substance’

Similarly much of Labour chapter is aspirational rather than legally binding and the enforcement process for those few provisions which are legally binding is more qualified, lengthy and convoluted than in other chapters of the agreement. These processes have not proven effective in other agreements (International Trade Union Confederation 2015). Furthermore Vietnam has exchanged legally binding side letters with all other TPP-11 that effectively postpones the application of the chapter to Vietnam for 3 years (DFAT 2018d).

A threat to Sustainable food and Food and farming

The record of past trade agreements strongly suggests that the TPP-11 is likely to increase the volatility of agricultural markets, putting sustainable family farms at risk and increasing corporate control of markets and production practices.^{iv} Under TPP-11 rules, corporate confined animal feeding operations (CAFOs) can be expected to flourish all around the Pacific Rim, at the expense of rural communities whose air and water would be polluted.^v

Chapter 8 of the TPP-11 commits governments to most of the World Trade Organisation (WTO) rules on Technical Barriers to Trade (TBT). According to the World Trade Organization, these so-called barriers to trade include environment regulation of dangerous chemicals or involve significant costs for producers and exporters. The TPP-11 has additional commitments to consult with other TPP-11 parties and to encourage mutual recognition of conformity assessment procedures for labelling and other forms of quality assessment of products (Articles 8.7, 8.8, 8.9, and 8.10). The TPP-11 also establishes a committee to oversee this process and to review the implementation of the chapter annexes and consider new annexes after five years (Articles 8.11 and 8.12.3).

At the WTO these rules have succeeded in undermining important environmental and public health measures,^{vi} For example in 2015, the WTO ruled against the US' mandatory country-of-origin meat labelling, finding that such labelling discriminated against imported meat products.

It can be further expected that many family farmers will be reduced to working as contractors for global pork and poultry giants who own the animals while the farmer absorbs the production costs and risks.^{vii} With the CPTPP, family farmers will suffer; global agribusiness giants will prosper; and the rural environment will be despoiled.^{viii}

For the reasons stated above Friends of the Earth is deeply concerned that the TPP-11 will undermine Australia's path to a sustainable and just future and our commitments to 2030 United Nations Sustainable Development Goals.^{ix} We believe in order to remain true to our national interest and global commitments the committee should recommend an independent assessment of the TPP-11 deal and if that is not forthcoming blocking any enabling legislation.

Selected Endnotes

i

Bill Waren, Friends of the Earth, Control Fossil Fuel Exports, November 2012.
<http://www.foe.org/news/archives/2012-11-control-fossil-fuel-exports-part-1>.
<http://www.foe.org/news/archives/2012-11-control-fossil-fuel-exports-part-1#sthash.iP1pkVq4.dpuf>

ii

Trade tribunals that focus on theoretical free market efficiency are becoming the de facto forums for resolving international disputes over climate policy. Long delays and ambiguous results in trade litigation of this character can dry up both private and public investment in clean energy.

iii

World Trade Organization, Dispute DS 426, Canada – Measures Relating to Feed in Tariff Program, May 6, 2013, available at, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds426_e.htm.

iv

Big Meat Swallows the Trans-Pacific Partnership By Ben Lilliston Institute for Agriculture and Trade Policy November 2014, http://www.iatp.org/files/2014_11_05_TTPBigMeat_BL.pdf; Ben Lilliston and Karen Hansen-Kuhn. “From Dumping to Volatility: The Lessons of Trade Liberalization for Agriculture.” Trade and Environment Review 2013. UN Conference on Trade and Development. 2013. 276. http://www.iatp.org/files/2013UNCTAD_IATP_COMMENTARY.pdf; Karen Hansen-Kuhn. “NAFTA and U.S. Farmers 20 Years Later.” Institute for Agriculture and Trade Policy. November 22, 2013. http://www.iatp.org/blog/201311/nafta-and-us-farmers%E2%80%9420-years-later#_edn1.

v

Carol Hribar. Understanding Confined Animal Feeding Operations and Their Impacts on Communities. National Association of Local Boards of Health. 2010.
http://www.cdc.gov/nceh/ehs/docs/understanding_cafos_nalboh.pdf; Environmental Integrity Project. Hazardous Pollution from Factory Farms: An Analysis of EPA’s National Air Emissions Monitoring Study Data. March 2011. <http://www.environmentalintegrity.org/documents/HazardousPollutionfromFactoryFarms.pdf>; Steven Wing et. al. “Integrating epidemiology, education, and organizing for environmental justice: community health effects of industrial hog operations.” American Journal of Public Health 98 (August 2008): 1390. <http://www.ncbi.nlm.nih.gov/pubmed/18556620> 17. Maya Nadimpalli et. al. “Persistence of Livestock-Asso

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US-Tuna II, available at, [http://www.worldtradelaw.net/reports/wtoab/us-tunamexico\(ab\).pdf](http://www.worldtradelaw.net/reports/wtoab/us-tunamexico(ab).pdf)

vii

John Ikerd. Confronting CAFOs Through Local Control. 2007. <http://web.missouri.edu/ikerdj/papers/Idaho%20CAFOs%20--%20Local%20Control.htm> ; Farm and Ranch Freedom Alliance et. al. “Coalition Letter to Agriculture Committees on Livestock Competition Issues in the 2013 Farm Bill.” May 2, 2013. <http://farmandranchfreedom.org/2013-farm-bill-livestock-competition-issues/>

viii

Food and Water Watch. The Economic Costs of Food Monopolies. November 2, 2012.
<http://www.foodandwaterwatch.org/reports/the-economic-cost-of-food-monopolies/>

ix

“The Sustainable Development Goals, or SDGs, are made up of 17 general goals with 169 targets, including an end to extreme poverty and hunger, providing universal access to clean water and protecting the world’s oceans. The initiative is supported by 193 countries, the United Nations, the World Bank and countless non-profits, and establishes the international development agenda for the next 15 years. The SDGs replace the 2000-2015 Millennium Development Goals, which aimed to half extreme poverty globally. The SDGs set similarly

broad targets, with little policy prescription about how to get there. While this makes a consensus easier to reach, it fails to address some of the key drivers of poverty and climate change – corporate power, the fossil fuel industry and unjust trade agreements.” Sam Cossar-Gilbert, [Opinion: Secret Trade Negotiations Threaten Sustainable Development Goals](http://www.ipsnews.net/2015/09/opinion-secret-trade-negotiations-threaten-sustainable-development-goals/), *Inter Press Service*, Sep 25 2015, <http://www.ipsnews.net/2015/09/opinion-secret-trade-negotiations-threaten-sustainable-development-goals/>