

## **To the Foreign Affairs, Defence, and Trade Committee**

### **Submission regarding the International Treaty Examination of the Comprehensive and Progressive Agreement for Trans Pacific Partnership**

This is a personal submission from Timothy Richard Musson of Woolston, Christchurch. I can be contacted on 022 695 0049 or at [trmusson@gmail.com](mailto:trmusson@gmail.com)

I would like to make an oral submission if that's possible here in Christchurch.

The Comprehensive and Progressive Agreement for Trans Pacific Partnership (CPTPP) is a major and far reaching agreement. I believe New Zealanders deserve a full and independent impact assessment, a thorough cost-benefit analysis, and a referendum.

Several thousand New Zealanders marched against the original Trans Pacific Partnership Agreement (TPPA), and many made submissions to the Select Committee voicing their concerns. As a result, both the Labour Party and New Zealand First made the TPPA a core issue of their election campaigns. Many people voted for the current government for that reason.

A Labour Party campaign graphic<sup>[22]</sup> authorised by then Labour Party leader Andrew Little stated: "We stand for democracy. That's why we can't support the TPPA. Agree? Share."

New Zealand First Trade Spokesperson Fletcher Tabuteau released a video stating: "I just wanted to speak to you just very briefly about the Trans Pacific Partnership Agreement. New Zealand First has opposed it, absolutely adamantly for the last five years, we've said 'no' to the secrecy, and now we're saying 'no' to a bad trade deal. We *can't* sign a document that has ISDS in it, where corporates can sue governments in secret tribunals, we can't have certification, and now the analysis tells us that it *will* increase income inequality and New Zealanders *will* lose jobs in this trade deal. So say 'no' to the TPPA. Thanks."<sup>[1]</sup> (Emphasis as spoken.)

At a campaign event on May 17<sup>th</sup> 2017, New Zealand First MP Clayton Mitchell stated: "We say '*no!*' This is *not* a good deal. But it gives me serious comfort to know that after the 23<sup>rd</sup> of September and New Zealand First being in government, there will be no such deal done. So don't panic, but get people to vote for New Zealand First." An audience member then asked: "So, so long as you're part of government, the TPP will not be in place?" To which Mitchell replied: "Correct."<sup>[2]</sup> (Emphasis as spoken.)

Following the election, the CPTPP was strongly promoted by the newly formed government as a new and significantly different agreement. But the differences between the CPTPP and the TPPA are miniscule. It is the self-same six-thousand-odd page document. The difference is an amendment suspending, not removing, twenty-two provisions (most, if not all, from the “Intellectual Property” chapter), plus the implementation of “side letters”.

Trade Minister David Parker along with Vangelis Vitalis made it clear at their public talk at AUT on December 5<sup>th</sup> 2017 that there is potential for those suspended provisions to be reactivated by negotiation, something particularly likely to happen if the US returns to the agreement in future.<sup>[3]</sup>

During that talk David Parker did express skepticism about a US return, although it is interesting to note that a November 9<sup>th</sup> 2017 CNBC article quotes him as saying: “One of the ambitions of some of the TPP countries is to leave open the possibility that the United States could join later if they wanted to and some of the terms are being constructed in a way that assists that rather than hinders that.”<sup>[4]</sup> So the return of the US to the agreement appears to be a specific hope and therefore goal for at least some CPTPP member countries; it is impossible to take that statement any other way. And since early 2018 there have been signs that the US is interested.<sup>[5][6]</sup>

The Investor-State Dispute Settlement (ISDS) clauses of the CPTPP are no longer an issue, we’re told, thanks to side-letters: agreements between member countries promising not to sue each other. But only five or six of the member countries have opted to make those promises. The risk therefore remains. And there is nothing preventing a determined company from a member country that’s agreed not to sue setting up shop in a member country that hasn’t, and doing it from there. Even if nobody sues: where there’s risk, chilling effects are certain.

Considering the campaign statements and promises by Labour and New Zealand First, plus the almost non-existent difference between the CPTPP and the TPPA, and the closeness of the 2017 New Zealand election result, I do not see how the current government can honestly claim it has a mandate to go ahead with the CPTPP without a full and independent impact assessment and thorough cost-benefit analysis, followed by a referendum. And it’s been a while since we’ve had a referendum about something so urgent.

Why so urgent?

A November 2017 scientific article signed by over 15,000 scientists (that’s more scientist cosigners and formal supporters than any other journal article ever published<sup>[7]</sup>) and titled “World Scientists’ Warning to Humanity: A Second Notice” tells us that we, globally, have no option but to drastically diminish our *per capita* consumption of fossil fuels, meat, and other resources to “prevent widespread misery and catastrophic biodiversity loss”. They write:

“[Humanity] has failed to make sufficient progress in generally solving these foreseen environmental challenges, and alarmingly, most of them are getting far worse. Especially troubling is the current trajectory of potentially catastrophic climate change due to rising GHGs from burning fossil fuels (Hansen et al. 2013), deforestation (Keenan et al. 2015), and agricultural production—particularly from farming ruminants for meat consumption (Ripple et al. 2014). Moreover, we have unleashed a mass extinction event, the sixth in roughly 540 million years, wherein many current life forms could be annihilated or at least committed to extinction by the end of this century.”<sup>[8]</sup>

This is urgent: this *is* our children’s future, the Prime Minister’s “nuclear moment”.

The industries promoted as the major beneficiaries of the CPTPP are beef, dairy, and horticulture. Beef and dairy are industries that simply cannot continue with business as usual whether we'd like them to or not. Horticulture in New Zealand has a tricky future too: more heat, changing moisture patterns, more frequent and violent storms. These industries are all in for massive change over the next decades and the CPTPP does not take any of this into account.

Putting the reality of climate change aside for the moment, the CPTPP would supposedly boost our economy by between 1.2 and 4 billion dollars annually by 2030. Based on Wikipedia figures, our GDP grew from 23 billion to 199 billion in the 36 years 1980 to 2015.<sup>[9]</sup> Even on the high end, 4 billion is still only a tiny fraction of that. CEO bank balances might increase, but regular New Zealanders are not going to notice a thing.

Back to the environment. According to a 2013 UN-sponsored report, none of the world’s top industrial sectors, including cattle farming, would be profitable if they took their environmental impact (‘externalities’) into account. They found that the majority of unpriced natural capital costs came “from greenhouse gas emissions (38%), followed by water use (25%), land use (24%), air pollution (7%), land and water pollution (5%), and waste (1%).”<sup>[10]</sup> So not only is the suggested boost to New Zealand’s economy just a tiny fraction of our GDP, we risk paying more, when the cost of environmental degradation is factored in, than we actually gain.

A thorough independent cost-benefit analysis taking these factors into account is necessary.

What about jobs? Before the election Labour criticised the National Party's support for the TPPA: it "is not sufficient for us to be confident benefits proposed in the National Interest Analysis will eventuate. ... Questions about whether the deal might secure just an additional nine jobs for the [dairy] industry went without compelling answer from Government officials."<sup>[11]</sup> How does the current government answer that question? And in light of what I've written above?

The original TPPA was opposed by leading economists, including Nobel Prize winning economist Paul Krugman<sup>[12]</sup> and Nobel Laureate economist Joseph Stiglitz<sup>[13]</sup>. It was opposed by thousands of organisations, including many well aligned with New Zealand's values and international image, for example: *Médecins Sans Frontières*, Amnesty International, and the American Civil Liberties Union.<sup>[14]</sup> The CPTPP is essentially the same agreement.

In my submission to the Select Committee on the original TPPA, I noted that the agreement had been heavily criticised by the UN Human Rights Council:

"The disturbing experience of the last thirty years of ISDS shows that there has been a serious asymmetry that must not be repeated in any future trade agreement. The options are not to sign the TPP as it stands, as civil society demands, or not to ratify it, which is the responsibility of democratically elected parliaments."  
— Alfred de Zayas, UN Human Rights Council<sup>[15]</sup>

As mentioned earlier, those ISDS concerns remain in the CPTPP.

There is a legal requirement to take human rights issues into account when making international trade agreements. Several CPTPP partner countries have major human rights problems. An "easy" response might be that New Zealand's government expects conditions in these countries to improve with our encouragement and relationship via the CPTPP. But as Tony Holman explains in a Gisborne Herald article, the CPTPP puts new hurdles in the way of democratic, economic, and social change. He writes:

"Democracy requires that our elected bodies (central and local) must be accountable to their constituencies. Citizens must be able to influence their various levels of government, and those governments must have the freedom and flexibility to be able to respond to the needs and demands of their people. However, it is clear from some existing international trade treaties (which have the ISDS or similar 'authorities' in place) that governments are more and more tightly bound by the strict rules and policies required by the treaties, and that the ability to respond to the needs or requirements of their people and local circumstances are to be greatly shrunk. Decision-making is being rapidly removed from our legislative and regulatory institutions and courts to an unelected body

based abroad, made up of corporate interests only, and our democracy demolished in the process.”<sup>[16]</sup>

The CPTPP is a threat to our sovereignty, and is incompatible with the Treaty of Waitangi. Genuine consultation with Maori and the Waitangi Tribunal is necessary. According to law professor Margaret Wilson, and many other eminent New Zealand jurists, the TPPA was intentionally being “used to override the jurisdiction of domestic legal systems.”<sup>[17]</sup> This has not changed with the CPTPP.

My submission to the Select Committee regarding the original TPPA outlined my concerns about the “Intellectual Property” chapter. As it is possible the suspended provisions could be reinstated in future, my concerns about those remain relevant and unchanged. Here are my main points from that submission:

In my 2007 submission to the Commerce Committee on the “Copyright (New Technologies and Performers' Rights) Amendment Bill” I noted that, according to the Bill's general policy statement, the “key principle that guides copyright reform in New Zealand is the enhancement of the public interest.” I opposed sections 226A through 226E of that Bill, as they contradicted this key principle.

The “Intellectual Property” chapter of the TPPA continues the trend away from the public interest, prioritising corporate rights-holders over the public benefits of creativity, competition, innovation, and progress.

New Zealand’s term of copyright is currently life plus 50 years. The TPPA extends it to life plus 70 years. According to the Electronic Frontier Foundation, “long copyright terms yield at best minimal increases in compensation for living authors and [...] there is little evidence to show that they significantly contribute to an author’s incentive to create. Creativity and innovation are only possible by building upon the prior work of others; excessive copyright terms prevent artists and creators from accessing, remixing, and recreating new works out of existing ones.”<sup>[18]</sup>

If the term of copyright is to be increased, there needs to be unbiased research showing how that is in the public interest.

The TPPA increases penalties for copyright infringement. Under the TPPA, even non-commercial copyright infringement is a criminal offense. People can be jailed, heavily fined, and have property seized even without a complaint from the copyright holder.<sup>[19][20]</sup>

TPPA provisions relating to Technical Protection Measures (TPMs) “make it a crime to tinker with, hack, resell, preserve, and otherwise control any number of digital files and devices that you own. The TPP will encourage ISPs to monitor and police their users, likely leading to more censorship measures such as the blockage and filtering of content online in the name of copyright enforcement.”<sup>[19]</sup>

TPMs are an artificially imposed barrier to interoperability and fair use. Laws protecting TPMs encourage intentionally incompatible technology (file formats, software, and devices), and customer lock-in.

Under the TPPA, companies with more user- or consumer-friendly approaches could risk lawsuits from other companies claiming loss of profit!<sup>[21]</sup>

Finally, the TPPA prohibits Open Source mandates. According to the Electronic Frontier Foundation, “the agreement would outlaw a country from adopting rules for the sale of software that include mandatory code review or the release of source code.” So how is the inability to audit computer code not a clear danger to privacy and security—including national security?<sup>[21]</sup>

I do not believe that the CPTPP is a progressive or forward-looking agreement, or that it can deliver the benefits we’ve been told to expect. Once again, I urge a full and independent impact assessment, a thorough cost-benefit analysis taking climate change into account, and a referendum. This is not “just” a trade deal.

Thank you very much for taking the time to consider what I’ve written. I appreciate it.

17 April 2018

## References

1. “NZ First says no to the TPPA”  
<https://www.youtube.com/watch?v=3XF12GqohFY>
2. “Clayton Mitchell on TPP”  
<https://www.youtube.com/watch?v=4SaCAasi7MM>
3. “Ministry of Foreign Affairs and Trade - CPTTP Auckland - Dec 5, 2017”  
<https://vimeo.com/246220990>
4. “TPP trade deal talks reach critical point at Asia-Pacific summit”  
<https://www.cnbc.com/2017/11/09/reuters-america-update-3-tpp-trade-deal-talks-reach-critical-point-at-asia-pacific-summit.html>
5. “Mnuchin says Washington studying possible return to TPP through renegotiation”  
<https://www.bilaterals.org/?mnuchin-says-washington-studying>
6. “Trans-Pacific U-turn? Trump proposes rejoining trade agreement he left a year ago”  
<https://www.rt.com/usa/423974-trans-pacific--deal-trump/>
7. “World Scientists' Warning to Humanity”  
[https://en.wikipedia.org/wiki/World\\_Scientists%27\\_Warning\\_to\\_Humanity](https://en.wikipedia.org/wiki/World_Scientists%27_Warning_to_Humanity)
8. “World Scientists’ Warning to Humanity: A Second Notice”  
<https://academic.oup.com/bioscience/article/67/12/1026/4605229>
9. “Economy of New Zealand: Overview”  
[https://en.wikipedia.org/wiki/Economy\\_of\\_New\\_Zealand#Overview](https://en.wikipedia.org/wiki/Economy_of_New_Zealand#Overview)
10. “None of the world’s top industries would be profitable if they paid for the natural capital they use”  
<https://grist.org/business-technology/none-of-the-worlds-top-industries-would-be-profitable-if-they-paid-for-the-natural-capital-they-use/>
11. “Prof Jane Kelsey: Labour must address its own criticism that the TPPA lacks evidence of benefits to New Zealand”  
<https://eveningreport.nz/2017/10/22/prof-jane-kelsey-labour-must-address-its-own-criticism-that-the-tppa-lacks-evidence-of-benefits-to-new-zealand/>

12. **“TPP at the National Association of Business Economists”**  
<http://krugman.blogs.nytimes.com/2015/03/11/tpp-at-the-nabe/>
13. **“Nobel Laureate economist Joseph Stiglitz heaps scorn on TPP”**  
<https://citizenactionmonitor.wordpress.com/2015/12/16/nobel-laureate-economist-joseph-stiglitz-heaps-scorn-on-tpp-and-ttip/>
14. **“Over 2,000 Organizations Call on Congress to Oppose Fast Track Authority for TPP”**  
<http://www.citizenstrade.org/ctc/blog/2015/04/27/2009-organizations-call-on-congress-to-oppose-fast-track-authority-for-the-tpp/>
15. **“Statement by the Independent Expert on the promotion of a democratic and equitable international order, Alfred de Zayas, on the upcoming signing the Trans-Pacific Partnership”**  
<http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=17005&LangID=E>
16. **“The ‘new’ TPP and our shrinking democracy”**  
<http://gisborneherald.co.nz/opinion/3238551-135/the-new-tpp-and-our-shrinking>
17. **“Margaret Wilson: sovereignty and the TPPA”**  
<http://www.radionz.co.nz/national/programmes/saturday/audio/201788342/margaret-wilson-sovereignty-and-the-tppa>
18. **“Copyright Provisions in the TPP Would Stifle Innovation and Impede the Economy”**  
<https://www.eff.org/deeplinks/2013/05/copyright-provisions-tpp-would-stifle-innovation-and-impede-economy>
19. **“Go to Prison for File Sharing? That's What Hollywood Wants”**  
<https://www.eff.org/deeplinks/2015/02/go-prison-sharing-files-thats-what-hollywood-wants-secret-tpp-deal>
20. **“Sneaky Change to the TPP Drastically Extends Criminal Penalties”**  
<https://www.eff.org/deeplinks/2016/02/sneaky-change-tpp-drastically-extends-criminal-penalties>
21. **“TransPacific Partnership Agreement”**  
<https://www.eff.org/issues/tpp>

**We stand for**  
**democracy.**

**That's why we**  
**can't support**  
**the TPPA.**

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