

# TPPA FACTS

## Fact Sheet #5: Democracy

The TPPA is a 'trade' deal that has been negotiated in secret by New Zealand, the US and ten other countries for the past 5 years. During that time the Ministry of Foreign Affairs and Trade (MFAT) have been the lead negotiators on behalf of all New Zealanders. This factsheet looks at the processes behind New Zealand signing up to the TPPA and ask whether that process has been democratic.

### THE TPPA WAS NEGOTIATED BEHIND CLOSED DOORS

At beginning of TPPA negotiations in 2010 the parties agreed to a pact to keep the information secret. A negotiating record (important for interpreting the text) has not been made available. Without a single authentic record, each country will rely on its own version- creating more uncertainty and confusion.

### ONCE SIGNED, DECISIONS CAN BE MADE FOR US WITHOUT US

The TPP commission is the body that supervises compliance to the TPPA. The commission can extend the initial TPPA obligations to ensure that the TPPA is a "living agreement". Decisions are made by consensus, and if a country is absent, they are bound by the decisions made by the working group, even if they would have objected. There is no provision for proxies.

### FOUR WAYS THE TPPA HAS NOT BEEN A DEMOCRATIC DEAL



### IN ORDER TO BE INCLUDED IN TPPA, WE ARE BEHOLDEN TO THE UNITED STATES:

The US will withhold New Zealand's certificate of compliance with the TPPA until the US is satisfied that all changes it requires to New Zealand's domestic laws, policies and practices have been made.

What this means in practice is that a new US administration (e.g. a Trump presidency) can renegotiate the agreement or add new terms and conditions using side-letters (a process with no public oversight). The US can withhold certification until further changes are made.

If a country signs the TPPA but does not immediately ratify (i.e. make the TPPA part of domestic law) then that country may be required to make further concessions before certification. These concessions can be provisions not even mentioned in the trade agreement text.

It was negotiated in secret and all supporting negotiating documents are still secret

There is no Parliamentary debate required to ratify the TPPA into law. Only Cabinet is needed to pass it.

The only formal analysis of the pros and cons of the deal is conducted by the lead negotiators and approved by the National government.

Public submissions to Select Committee will only be accepted after the deal has been signed..

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## THERE IS NO INDEPENDENT OVERSIGHT, WITHOUT VESTED INTERESTS IN THE TPPA

The Ministry of Foreign Affairs and Trade (MFAT) are the government body responsible for improving export opportunities, they are specialists at that, which is a worthy endeavour. But if you read the headings of the chapters in the TPPA, it becomes clear this deal impacts much more than just trade.

Headings like: State-Owned Enterprises, Government Procurement, Intellectual Property and Telecommunications indicate this deal is far-reaching and will impact all aspects of our society.

MFAT are also the organisation tasked with conducting the 'National Interest Analysis' (NIA) which considers the advantages and disadvantages of New Zealand entering into the TPPA. No other official government body or ministry conducts any official oversight or analysis of the agreement. Their lens is purely about economic advantage, and doesn't look at important issues for New Zealanders like maintaining a healthy democracy or protecting our nation's access to affordable medicines - both of which are compromised by the deal. The NIA is then approved by the National government.

The NIA is not an independent review, despite being the only formal analysis process we have.

## THERE IS NO ROOM FOR DEBATE OR PUBLIC INPUT

A Foreign Affairs, Defence and Trade (FADT) committee then analyses the TPPA and the NIA and considers whether there is anything that should be drawn to the attention of the house.

In past FADT committees it has been observed that there is little time to see and read the entire text of a treaty, and MFAT officials presenting the treaty push it very strongly. Trade advantages are emphasised whilst ignoring any oppressive provisions.

Ministry officials help draft the final report from Select Committee to the House and those reports may make little mention of public submissions. The government response to this must be presented to Parliament within 90 days of the report.

Parliament does not need to debate the TPPA as part of the ratification of the deal. The Select Committee report does not even have to be debated. It is more likely that a debate will take place about narrower implementing legislation for the TPPA instead. Not the TPPA itself.

## WITHDRAWING FROM THE TPPA IS AN IMPOSSIBILITY

Any country can withdraw from TPPA by taking written notice. Withdrawal takes effect after 6 months but you cannot withdraw from just one chapter or rule, as that is an amendment that requires consent of all the other parties.

That said, complete withdrawal comes with diplomatic and reputational ramifications that make it a social, political and economic impossibility. It will lead to a lack of confidence from other countries to enter into future treaties with New Zealand. We will see threatened or actual investor flight and our strike and credit ratings will downgrade.