

KEY FACTS: The Environment

- The environment is a significant casualty under the TPPA.
- Adopting the lens of the foreign investor when making broad governance changes through the TPPA has sidelined the opportunity to properly integrate management of the economy with management of other domains – such as the environment. The overall result for environmental governance is window dressing on the upside, and serious threats on the downside.
- In marked contrast to TPPA chapters that involve core commercial areas such as intellectual property, the environment chapter sets almost no new standards, with each partner country essentially left to set its own.
- A failed US proposal to have seven UN multilateral environmental agreements made enforceable by the TPPA would have created new problems, especially by opening the way to ‘forum shopping’.
- Parties are required to implement provisions in the Convention on International Trade in Endangered Species, but this UN treaty does not provide a legally enforceable prohibition on trade in illegally sourced timber, wildlife, and marine resources and the TPPA does not fix this.
- Two forms of fishing subsidy that contribute to overcapacity and overfishing are eliminated under the TPPA, but no similar progress has been made on the overarching issue of illegal, unreported and unregulated fishing.
- The TPPA’s enforcement provisions are very similar to those first developed for the US/Peru FTA, and it is continued violations of Peru’s obligations under that agreement have become the case study in how enforcement of such environmental protections has failed.
- When challenged on the need for ISDS provisions, ministers promoting the TPPA repeatedly stated that there would be no restraint on a government’s ability to regulate in the public interest. What the TPPA has delivered are provisions that completely fail to protect governments from being sued when taking such action.
- The risk that a government could be successfully sued means the ISDS provisions would have a ‘chilling effect’ on a government’s willingness to undertake progressive environmental reform. This favours retaining low standards when these need to rise markedly.
- There is a gross asymmetry in the rights and means accorded organisations that would seek to protect the commons for the public good, and rights and means accorded foreign investors to protect private wealth.
- The section on climate change contains two impotent paragraphs that do not mention the words “climate change” nor the relevant global treaty, the UNFCCC. The aspirations contained in the newly minted Paris agreement (made under the UNFCCC) are entirely disconnected from what the parties are willing to sign for in a treaty that carries trade sanctions as a penalty for non-performance.
- The TPPA provides assistance to GMO exporting countries by making it harder for other countries to independently regulate GM foods. A combination of information

requirements, the TPPA's dispute procedures, and new working groups, together amount to a significant new level of pressure on TPPA governments to accept GM foods under 'mutual recognition' standards – those of the exporter.

Drawn from the expert, peer-reviewed research paper by Simon Terry at <https://tpplegal.files.wordpress.com/2015/12/tpp-environment.pdf>