

## KEY FACTS: TPPA and the Democratic process

- The 30 chapter Trans-Pacific Partnership Agreement (TPPA) constrains domestic law and policy at central government level, and in places by local government and SOEs, in diverse areas beyond traditional aspects of international trade.
- New Zealand's treaty making process is controlled by the Executive, which will decide whether and when to sign and ratify the TPPA.
- Parliament's effective input is limited to any amending legislation, which can be passed, if necessary, in a confidence vote.
- The National Interest Analysis tabled with the TPPA text is prepared by the Ministry of Foreign Affairs and Trade (MFAT) and is not an independent assessment of the costs and benefits of the TPPA.
- The select committee examination of the TPPA by the Foreign Affairs, Defence and Trade Committee will not provide an independent review that can alter the agreement.
- Aside from the final text no other negotiating documents have been, or are proposed to be, released to enable proper analysis, democratic participation and government accountability.
- The US Congressional process is governed by domestic political factors, with a significant chance there will be no vote before a new administration takes office in 2017.
- The US will withhold certification of compliance by New Zealand until the US is satisfied that all changes it requires to New Zealand's domestic laws, policies and practices have been made.
- A new US administration may seek to renegotiate the agreement, add new side-letters or withhold certification until further changes are made.
- The TPPA can only come into force following completion of domestic processes by the US, Japan and several other larger parties.
- Countries that sign the TPPA but do not ratify immediately may be required to make additional concessions, as will other countries seeking to accede to the TPPA.
- A TPP Commission of the parties will govern the agreement, including accessions and amendments.
- Withdrawal is a technical possibility but a political, diplomatic and economic unreality.
- Where there is inconsistency between provisions of the TPPA and existing agreements between some parties, the terms that are more favourable to commercial interests will prevail.
- The TPP provides cumulative opportunities for foreign states and corporations to influence domestic decisions which may be burdensome and intrusive.
- The TPP Commission's powers, chapter-specific committees and inbuilt renegotiations will supervise compliance and could extend the initial TPPA obligations.
- The TPPA will be enforced through extra-territorial tribunals, backed by sanctions that will, in practice, reflect the asymmetries of power between the various parties.
- Provision for investor-state dispute settlement lacks the characteristics of a credible and independent legal process and effectively displaces national judicial processes for a privileged class of foreign investors.

*Drawn from the expert, peer-reviewed research paper by Jane Kelsey at*  
<https://tpplegal.files.wordpress.com/2015/12/tpp-treaty-process.pdf>