

# The State of Play with TPPA-11

# IT'S OUR FUTURE

The original Trans-Pacific Partnership Agreement was signed by the 12 negotiating parties in Auckland on 4 February 2016, in the face of a massive protest led by tāngata whenua.

Only Japan and NZ completed their domestic processes to ratify (adopt) the original agreement during 2016.

President Obama was unable to get it through the US Congress in 2016. In January 2017 US President Trump withdrew the US's participation from the TPPA.

The 11 remaining countries set about rescuing the TPPA minus the US. They decided to suspend some items, but not to remove them so it would be easier for the US to return and reactivate the old TPPA.

Each country tabled a list of provisions that it wanted removed or suspended. Apparently, NZ's National government did not ask for anything to be suspended.

The newly elected Labour-NZ First government, supported by Greens, only had input into these negotiations at the very end. Labour asked other TPPA countries to suspend the right of foreign investors to sue the NZ government in offshore tribunals over new laws and policies (investor-state dispute settlement/ISDS), but it failed. Labour did not seek to make other changes or suspend other provisions, including those of concern to Māori.

Australia and NZ already had a side letter saying they would not use ISDS against each other. Four other countries later agreed to sign side-letters, but all except Peru can still sue NZ using ISDS under other agreements!

**The rebranded Comprehensive and Progressive Agreement on Trans-Pacific Partnership (CPTPP or TPPA-11) was signed in Chile on 8 March 2018.**

The new agreement is only 9 pages and is wrapped around the old TPPA text. It lists 22 items from the 1000+ provisions of the original TPPA that have been suspended.

All parties need to agree to reactivate them. Labour says NZ could permanently veto some items.

It's unrealistic to think they will block US demands to reactivate them. President Trump recently said he would consider re-entering the TPPA, but the terms would have to be much more favourable to the US!

The TPPA-11 comes into force when 6 of the 11 parties ratify it by completing their domestic processes.

The government immediately tabled the new agreement in Parliament to start the NZ process.

Predictably, the National Interest Analysis, which is written by the trade officials who negotiated the agreement, says the TPPA-11 is all good news.

The Foreign Affairs, Defence and Trade Committee initially allowed only 2 weeks for submissions. That was extended to 18 April, using [www.parliament.govt.nz/en/pb/sc/scl/foreign-affairs-defence-and-trade/](http://www.parliament.govt.nz/en/pb/sc/scl/foreign-affairs-defence-and-trade/).

Submissions are a place to register a protest. See some suggestions at [www.itsourfuture.org.nz/](http://www.itsourfuture.org.nz/).

The committee will hear submissions, but all its members except the Greens support the TPPA-11. National has 4 of the 8 members, including the chair and deputy chair, Labour has 3 and the Greens 1. NZ First does not sit on the committee.

After the committee reports, new legislation to implement the TPPA-11 will be introduced to Parliament. National has said it will join Labour and NZ First to pass the law.

The implementing law would come into force when the TPPA-11 does. They are aiming for the first half of 2019.

If the 11 parties later agree that a provision is no longer suspended, the government would have to notify Parliament. Depending on the issue they might also have to amend the legislation.

There are three opportunities for future review of the TPPA-11:

1. A review of 'the economic relationship and partnership' must take place after 3 years, then every 5 years.

2. Any party can ask for a review to consider changes if the original TPPA is about to enter into force (ie the US has re-engaged) or is unlikely ever to enter into force (how can you tell that?). In theory, a suspended provision could be permanently removed. But they would all have to agree. It's more likely a review would remove items from the suspended list or reactivate the entire TPPA-11.

3. Canada, NZ and Chile made a declaration that promises to 'examine the effectiveness of the Agreement with respect to sustainable development, gender, indigenous peoples, domestic regional economic development, SMEs, labour rights, the environment and climate change' within 3 years. But this is not binding on them, and they have no power to change the TPPA-11 anyway.