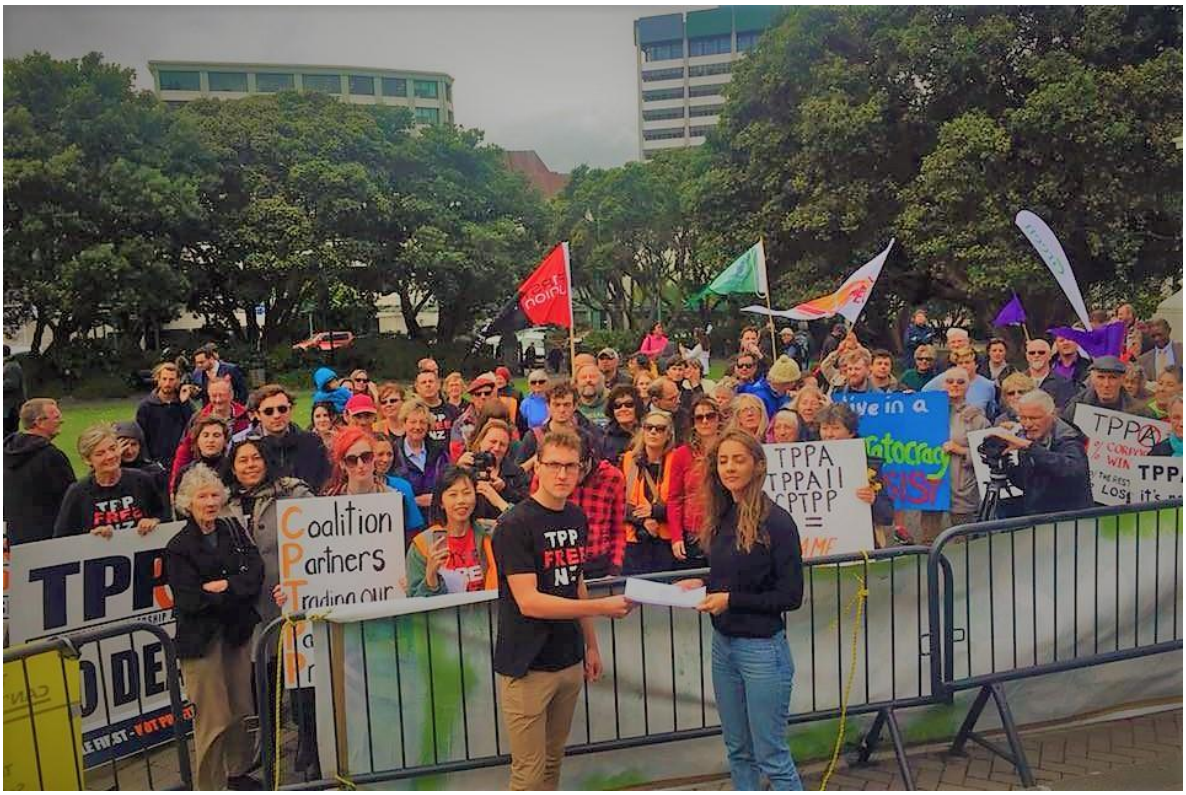
Reject the TPPA and review the treaty-making process

Submission to the Foreign Affairs, Defence and Trade Committee in support of the *TPPA-11: Don't Do It!* petition delivered to Golriz Ghahraman MP on Thursday 8 March 2018 on behalf of It's Our Future and 5,098 signatories.



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27 April 2018

IT'S **OUR** FUTURE

KIWIS AGAINST TPPA

Introduction

1. On 8 March 2018, protestors gathered outside Parliament in opposition to the signing of the Trans-Pacific Partnership Agreement (**TPPA**) in Santiago, Chile. The event included speakers representing a range of groups including It's Our Future (**IOF**), ActionStation, Unions Wellington, Generation Zero, the New Zealand Nurses Organisation, the Tertiary Education Union, the Green Party of Aotearoa/New Zealand, TPP Free Wellington and tangata whenua.
2. We called on the Labour-led Government not to sign the TPPA until there had been the independent analyses called for when the governing parties were in Opposition, and a parliamentary petition was handed by Oliver Hailes to Golriz Ghahraman MP calling for a democratic overhaul of the process for negotiating, signing and ratifying international agreements dealing with trade, investment and economic integration.
3. Do not let us be misunderstood. As an isolated cluster of South Pacific islands, New Zealand must embrace trade and global cooperation to tackle issues that transcend territorial borders and to shore up sustainable prosperity.
4. Indeed, the place of trade in New Zealand's past, present and future is underscored by its importance in He Whakaputanga, the Declaration of Independence signed by 52 Māori chiefs between 1835 and 1839, which included commitments:[1]

"ki te wakarite ture"

"to make laws"

"te he kia tika te hokohoko"

"to make sure trade is fair"

5. A similar aspiration for legislative autonomy and fair trade informs the ongoing opposition to the TPPA and the demands in the parliamentary petition supported by this submission (reproduced in full as **Appendix 1**). But the particular forms of international law-making and trade liberalisation that have been advanced over the last thirty years have created a global economy that serves only the interests of a tiny sliver of society, which is demonstrated by the rise of distributional unfairness, environmental degradation, and a legitimacy crisis in trade policy.
6. Present and future New Zealand governments are bound to face mounting pressure to tackle social inequalities and runaway climate change. Any serious attempt to address these issues will require ambitious policies that protect the health of people and the planet rather than the wealth of foreign investors and multinational corporations. In the light of these challenges, this submission calls for review of executive treaty-making powers and the processes for parliamentary scrutiny.

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[1] New Zealand History "He Whakaputanga - Declaration of Independence, 1835". Available online: https://nzhistory.govt.nz/media/interactive/the-declaration-of-independence

Background

7. This submission is written by Oliver Hailes of Wellington, based on consultations and conversations with stakeholders and experts.[2] I am the spokesperson for IOF, New Zealand's network of opposition the TPPA and other anti-democratic economic treaties. I wish to appear before the Committee to speak to this submission. I can be contacted at 027 491 6197 or oliverhailes@hotmail.com.
8. As this submission arises from a parliamentary petition that is distinct from the Committee's examination of the TPPA, I ask for an opportunity to speak to this submission after the Committee completes oral hearings for that process but before it finalises its report. This petition engages broader issues that ought not to be conflated with opposition to the TPPA.
9. Nonetheless, this submission should be read alongside the submissions in support of and against the TPPA, in particular those of persons involved with IOF including but not limited to myself, Barry Coates, Professor Jane Kelsey, Laila Harré, the New Zealand Council of Trade Unions (CTU), and the Building and Wood Workers' International (BWI).
10. The attached petition sets out a detailed model for how the democratic deficit in international economic law might be addressed by, for example, "requir[ing] a two-third majority support for the adoption of any free trade, investment or economic integration agreement that constrains the sovereignty of future parliaments that is binding and enforceable through external dispute settlement processes". The Committee should read Appendix 1 closely; I will be happy to answer any operational queries in an oral hearing.
11. This written submission provides a more detailed backdrop to why the present treaty-making process is inadequate, especially in the light of international economic treaties such as the TPPA.
12. The Government seems alive to these concerns, having recently announced its Trade for All Agenda: "A forward-looking and wide-ranging conversation about the role of trade in New Zealand."[3] I commend the Government for this initiative, but it is important to realise that this effort will be wholly undercut if the TPPA is ratified prior to the completion of consultation. There have been official remarks since the Prime Minister's recent tour of Europe that the TPPA could serve as a template for future economic treaties with other Commonwealth countries and the European Union. Moreover, President Donald Trump continues to hint that the United States will be looking to join the TPPA in the near future, with additional expressions of interest from Thailand, South Korea and the United Kingdom.
13. As IOF has said many times, the TPPA will set the rules that govern the global economy for the twenty-first century, so it is imperative that we get things right from the outset.
14. I have attached two lists to this submission setting out what a truly progressive trade policy might look like, one prepared by IOF (**Appendix 3**) and the other by

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[2] Special thanks to Max Harris for his assistance with [39]–[44].

[3] Ministry of Foreign Affairs and Trade "Trade for All Agenda". Available online: https://www.mfat.govt.nz/en/trade/nz-trade-policy/trade-for-all-agenda

Global Justice Now, a democratic social justice organisation based in the United Kingdom (**Appendix 4**).

15. But the main body of this submission makes the case for why the institutional framework for treaty-making ought to be reformed along the lines set out in Appendix 1. This would mean moving beyond the policy consultation of the Government's Trade for All Agenda and into a high-level review as to the place of Parliament in foreign policy.
16. This could involve an update by the Law Commission of its 1997 inquiry into these questions (see [21] below) and would ultimately require legislation transferring power from the executive branch to the legislature akin to Keith Locke MP's International Treaties Bill 2000 (67-1) — which was supported by both the Green Party and the ACT Party, but was otherwise voted down at its second reading — and more recently Fletcher Tabuteau MP's International Transparent Treaties Bill 2017 (255-1).
17. These past initiatives take on ever greater weight in the light of the TPPA, as Associate Professor Amokura Kāwharu has noted, suggesting a full review of the treaty-making process in more urgent than ever:[4]

> [T]he weakened bipartisanship and the expansion of New Zealand's [free trade agreement] commitments suggest that the process for concluding international treaties needs to change. The rubber-stamping of New Zealand's most important [free trade agreement] to date, the TPP, also adds weight to the calls for a further review of New Zealand's constitutional arrangements for examining and adopting international agreements.

Inadequacy of the present process

18. Writing in 2011, a former member of this Committee observed:[5]

> Perhaps no issue confronts human society — governments, analysts, media and citizenry — more in the twenty-first century than the relationship between major international treaties and national constitutional processes.

19. While New Zealand's constitutional culture has always been receptive and open to outside influences, it is important to ask whether we have struck the right balance in the influence we allow international law to exert on our domestic law-making; in particular whether the current parliamentary scrutiny of executive treaty actions is sufficient to overcome concerns about the democratic deficit.[6]

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4 Amokura Kāwharu "Process, Politics and the Politics of Process: The Trans-Pacific Partnership in New Zealand" (2016) 17(2) Melbourne Journal of International Law 286 at 311.

5 Kennedy Graham "Global Treaties and the New Zealand Constitution" in Caroline Morris, Jonathan Boston and Petra Butler (eds) *Reconstituting the Constitution* (Springer-Verlag, Berlin, 2011) 291 at 291.

6 Treasa Dunworth "The Influence of International Law in New Zealand: Some Reflections" in Morris, Boston and Butler (eds), above n 5, 319 at 319–320.

20. Until 1998, the negotiation and conclusion of international treaties was a matter for the executive alone: there was no obligation, legal or political, to consult Parliament or the public before binding New Zealand at international law:[7]

> The role of Parliament was confined to enacting legislation to implement the international treaty obligation into domestic law where this was appropriate or necessary. This arrangement reflected the doctrine of the separation of powers, whereby the executive has exclusive power to enter into treaties and the Parliament has the exclusive power to alter the domestic law. The arrangement also reflected the classical understanding of international law as a system of law dealing with inter-state relations.

21. In December 1997, the Law Commission published its report *The Treaty Making Process: Reform and the Role of Parliament* in which it made the following recommendations in order to bolster the legitimacy of international law:[8]
    a. Recommendation 1: *The Law Commission's first recommendation is that the value of notification and consultation with Parliament and affected or interested groups at the negotiating stage should be recognised, with the purpose of developing and formalising such practices.*
    b. Recommendation 1A: *The Law Commission recommends that consideration be given to the establishment of a Treaty Committee of Parliament.*
    c. Recommendation 2: *The Law Commission recommends that consideration be given to the introduction of a practice of timely tabling of treaties so that members of the House can determine whether they wish to consider the government's proposed action.*
    d. Recommendation 2A: *The Law Commission recommends that consideration be given to the preparation of a treaty impact statement for all treaties to which New Zealand proposes to become a party.*
22. These recommendations informed a trial examination process whereby Parliament was given a short period in which to review a proposed treaty action, but it had no right of approval or any power to stop ratification it did not approve.[9] That trial led to the present process governed by Standing Orders 397 to 400 (see **Appendix 2**).[10]
23. But there remain concerns about the adequacy of the treaty-making process. The notorious lack of transparency during negotiations prevents proper public consultation, which is compounded by the chicanery of the Minister of Trade and the Ministry of Foreign Affairs and Trade (**MFAT**) in "circumvent[ing] their duties" under the Official Information Act 1982.[11]

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7 At 320.

8 Law Commission *The Treaty Making Process: Reform and the Role of Parliament* (R45, December 1997) at [142]–[211].

9 Dunworth, above n 6, at 320–321.

10 See generally Mary Harris and David Wilson (eds) *McGee Parliamentary Practice in New Zealand* (Oratia Books, Auckland, 2017), ch 42. Available online: https://www.parliament.nz/en/visit-and-learn/how-parliament-works/parliamentary-practice-in-new-zealand/chapter-42-international-relations/

11 See *Kelsey v Minister of Trade* [2015] NZHC 2497, [2016] 2 NZLR 218 at [109].

24. Moreover, by dint of Standing Order 397, this Committee is presented with a treaty for scrutiny and consultation only *after* negotiation and signing in anticipation of rapid implementation and ratification.[12] This eleventh-hour involvement of the legislature is inadequate given the long negotiation process of multilateral agreements. The fact that MFAT prepares the National Interest Analysis (**NIA**) means that this Committee is advised by an institution that lacks the proper distance from the negotiating process that would be desirable to address the democratic deficit and lack of transparency.[13]
25. Indeed, as Associate Professor Treasa Dunworth notes:[14]

> Although there has been some measure of increased transparency and public participation as a result of changes to the treaty-making process, overall, the executive did not relinquish any real power to Parliament. Whether the executive should retain its historical control over treaty-making is an important constitutional question. However, even within the existing constitutional balance a number of incremental changes could be considered to make the process more effective. In particular, greater effort could be made to ensure the National Interest Analyses properly meet the criteria in the Standing Orders. It would also be helpful if shadow reports were received, indeed they could be actively encouraged. This would go some way to mitigate the existing executive dominance of the process. Finally, broader and more transparent consultations would make the process more meaningful.

26. The inadequacies of the treaty-making process are fully exposed when one grapples with the contemporary breadth of international economic treaties such as the TPPA.

The significance of international economic treaties

27. Executive dominance of foreign policy and treaty-making powers is a relic of a time when international agreements governed minor matters between states. Now, however, international economic treaties go behind the border to create the conditions for a business-friendly global economic order that is largely beyond national political control and the vicissitudes of democratic politics. Thus the recommendations of the Law Commission and the content of the current Standing Orders are two decades out of date and need to be reviewed and upgraded.
28. I use the term "international economic treaties" to refer to agreements both bilateral and multilateral that deal with issues such as trade in goods and services,

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12 Ben Thirkell-White "International Economic Law and the New Zealand Constitution: Towards an End to Executive Dominance?" in Morris, Boston and Butler (eds), above n 5, 337 at 360.

13 That is why the petition recommends "a requirement for the government to commission and release in advance of signing an agreement independent analyses of the net costs and benefits of any proposed agreement for the economy, including jobs and distribution, and of the impact on health, other human rights, the environment and the ability to take climate action": see Appendix 1.

14 Dunworth, above n 6, at 326.

investment, economic integration, taxation and capital mobility, regulatory coherence, financial regulation, international development, electronic commerce and data, labour and environmental standards, intellectual property, and sovereign debt and restructuring.

29. The fundamental purpose of such treaties in their current form is to secure the formal separation of politics and economics by limiting the policy space available to democratic governments and progressive social forces. These treaties serve disproportionately the interests of foreign investors and multinational corporations over those of voters, workers, consumers, local businesses, indigenous peoples, taxpayers, patients and their environment.
30. Opponents of the TPPA and similar agreements are often portrayed as being absolute opponents of trade and globalisation. However, it is a very particular form of trade and globalisation that is opposed: namely, a model in which benefits are enjoyed privately and asymmetrically by footloose investors who are aloof from the real social and environmental costs. Dominant commercial interests have hijacked the popular discourse of free trade and expanded the scope of economic treaties to include legal obligations that make it very difficult for future governments to regulate in the public interest.
31. International economic treaties therefore concern the latter two of the three waves of legal globalisation identified by Associate Professor Ben Thirkell-White:[15]
    a. The domestic choice to liberalise economic regulation (trade, finance, investment) in ways that allow or promote cross-border economic integration.
    b. "Locking in" those choices through international legal commitments to maintain such policies in ways that make a future change of policy course politically difficult.
    c. Making international commitments to alter a range of (arguably) ancillary domestic regulations to promote international harmonisation (product safety, corporate governance, government procurement, competition law, environmental issues, labour rights).
32. Thirkell-White believes that "a significant part of the anxiety around the globalisation of international economic law-making can helpfully be understood in terms of executive dominance", which is a potential problem for three reasons:[16]
    a. International economic law is harder to reverse because doing so has consequences for international relations.
    b. It is particularly difficult to keep track of executive views and motivations in international negotiations because negotiations lack transparency and take place at some geographical and cognitive distance from domestic publics.
    c. The functionally fragmented nature of international policy-making combined with weak electoral incentives may encourage members of the executive to engage in "enclave deliberation" — that is, without challenge from outsiders with different perspectives — that undermines their awareness of more holistic considerations that might ideally be characteristic of legislative deliberation.

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15 Thirkell-White, above n 12, at 340.

16 At 353.

33. Parliament, he argues, may be better placed to deal with the range of issues raised by international economic treaties:[17]
    a. It is the place in which the domestic public sphere is most able to influence the political process through media commentary, lobbying, professional contacts and public submissions to select committees and the like. Electoral incentives help to balance out the importance of these different voices via the mechanism of elected politicians who have incentives to listen and to evaluate the extent to which different points of view reflect the interests of different sections of the electorate.
    b. It is where the various fragmented technical discourses and ways of thinking about particular policy issues should be integrated into a more holistic perspective, again because elected politicians have incentives to adopt this kind of holistic perspective and because they have not been socialised into particular expert framings of debates to the same extent as the relevant civil servants.
34. Yet ironically the historical priority of Parliament in New Zealand's constitutional arrangements is steadily eroded by international economic treaties that privilege and protect the interests of transnational capital. As I have argued with Professor Andrew Geddis, international investment treaties (and investment chapters in broader agreements such as the TPPA) ought to be recognised as instruments of constitutional significance with the capacity to bring about important changes to how public power is (and is not) exercised in New Zealand:[18]
    a. Under the TPPA New Zealand is poised to expand a parallel legal channel through which investors can discipline public power beyond the purview of domestic courts.
    b. The executive's granting of protection against indirect expropriation will effectively import a takings doctrine into New Zealand's unwritten constitution, thereby imposing the kind of limits on governmental treatment of private property that New Zealand historically has rejected
    c. There is likely to be concomitant imposition of effective constraints on the future legislative freedom of New Zealand's (ostensibly) sovereign Parliament.
35. In the light of such significant changes, Dr Kennedy Graham MP had this to say the last time the TPPA implementation legislation went before the House:[19]

> It defies logic, even constitutional logic, to suggest that 10 hours should be devoted to the technicalities of draft law, judged by worldly but inexpert members of Parliament, but nothing to the general policy of the national interest on whether or not to negotiate, sign, and ratify a major international agreement that imposes unprecedented new obligations on New Zealand.

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17 At 353–354.

18 See generally Oliver Hailes and Andrew Geddis "The Trans-Pacific Partnership in New Zealand's Constitution" (2016) 27(2) New Zealand Universities Law Review 226.

19 (11 May 2016) 713 NZPD 10982.

Reforming the treaty-making process

36. International economic treaties expose the inadequacy of the present allocation of treaty-making powers, which continue to be dominated by the executive in the interests of foreign investors and multinational corporations while Parliament and the public are kept in the dark.
37. I ask this Committee to consider whether New Zealand's institutional arrangements are fit for purpose and I recommend that a high-level review of the treaty-making process is undertaken by Parliament over and above the Government's Trade for All Agenda prior to the ratification of the TPPA. That is the necessary course of action in order to "ensure that our trade policy delivers for all New Zealanders and contributes to addressing global and regional issues of concern, through genuine consultation" and "respond to the concerns and interests of New Zealanders in an ever-more complex global trading environment".[20]
38. As mentioned above, the review of the treaty-making process may involve the Law Commission but must involve thorough public consultation and ultimately legislation.
39. This legislation – let us call it the "International Agreements Act" – could set out a proper process for the entering into of all international legal agreements, involving roles for the executive, Parliament, the courts, and others.
40. Currently treaty-making is governed by the royal prerogative, a source of legal authority that was described by a leading English judge *in the 1960s* as "a relic of a past age".[21] The royal prerogative has shaky legal foundations, is not constrained by written text or democratic oversight, and is accordingly liable to abuse. There is a need to move beyond prerogative to more modern forms of constitutional accountability.
41. The International Agreements Act might include:
    a. different processes depending on whether an international legal agreement is a treaty with broad social and economic implications like the TPPA, a bilateral treaty, or a declaration or some other form of 'soft law'; or
    b. staged oversight by a parliamentary committee; or
    c. a requirement of a parliamentary vote for full sign-off on international treaties prior to signature.
42. Full consultation, including with legal experts and affected parties (especially mana whenua), would be optimal to ensure that the International Agreements Act honours our past, respects the views of key constituent groups, and is fit for the future. Some members of the IOF network have called for the TPPA to be put to a popular referendum that would be binding on the executive, which could be considered as a possible option where a proposed treaty's anticipated impacts have such a significant influence over the future policy options of Parliament that it ought to be recognised as an instrument of constitutional effect.
43. In a recent speech, Minister of Justice Hon Andrew Little said, "The Attorney-General David Parker and I resolved some time ago that we are

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20 Ministry of Foreign Affairs and Trade, above n 2.

21 See *Burmah Oil Co Ltd v Lord Advocate* [1965] AC 75 (HL) at 101 per Lord Reid.

determined that ours will be a government that respects the rule of law, and will not over-reach." He added that there were "big challenges ahead", including "for the preservation of basic precepts of the rule of law and the protection of the citizen".[22]

44. This is a test of the depth of that commitment. This is also a test of how forward-looking this government can be in setting in place good processes to guarantee the rule of law in the actions of future governments.
45. Indeed, a comprehensive review of treaty-making powers would complement the Trade for All Agenda as well as the Government's broader constitutional work, such as its intention to amend the New Zealand Bill of Rights Act 1990 to affirm the High Court's jurisdiction to grant declarations of inconsistency, the plan to legislate long-term targets for the reduction of greenhouse-gas emissions in line with the Paris Agreement, and its move toward civilian oversight of the defence force through the formal inquiry into allegations that a New Zealand-led raid in Afghanistan led to civilian deaths.
46. As Professor Joanna Harrington observes:[23]

> While the introduction of a process of [legislative] scrutiny or approval is no panacea for all the ills ascribed to globalization, it does provide the opportunity for dedicated parliamentarians to contribute to the treaty-making process through an interactive route of review and consultation, and in the final analysis, may serve to foster greater respect for treaty law by removing any doubt about a treaty's democratic credentials.

47. If this Committee is to take seriously its inquiry into the legitimacy of New Zealand's trade policy and constitutional arrangements, business interests must not be allowed to dominate the consultation and debate (see **Appendix 5**).

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22 Hon Andrew Little "Speech to Law Foundation Awards Dinner" (8 December 2017). Available online: https://www.beehive.govt.nz/speech/speech-law-foundation-awards-dinner

23 Joanna Harrington "Scrutiny and Approval: The Role for Westminster-Style Parliaments in Treaty-Making" (2006) 55 International and Comparative Law Quarterly 121 at 159.

Appendix 1

TPPA-11: Don't Do It! petition (8 March 2018)

We request the House of Representatives to urge the Government to reject the revised Trans-Pacific Partnership Agreement, now known as the Comprehensive and Progressive Agreement on Trans-Pacific Partnership, and that the House revise the Standing Orders of the Parliament to ensure the process for negotiating and signing trade and investment agreements is more democratic, independently informed, and regularly feeds information back to the Parliament and the people.

We, the undersigned, express our grave concern that:

a) The Labour Party, New Zealand First and the Green Party all said in the Select Committee report on the Trans-Pacific Partnership Agreement (TPPA) that they would not support its ratification;
b) The text agreed by eleven countries after the US pulled out, the TPPA-11, remains the same as the original TPPA, with a small number of items in the original text being suspended, not removed;
c) The government has promised a new inclusive and progressive approach to trade and investment agreements, but there is nothing new and progressive to justify the renaming of the TPPA-11 as the Comprehensive and Progressive Agreement on Trans-Pacific Partnership;
d) There are many provisions in the TPPA-11 that restrict the regulatory sovereignty of the current and future Parliaments;
e) The Government has instructed officials not to include investor-state dispute settlement (ISDS) in future agreements, yet the TPPA-11 still contains the core investor protection rules that can be enforced through ISDS;
f) The secrecy that the governing parties criticised in the original negotiations continues and that the text will apparently not be released until after the agreement is signed;
g) There has been no analysis of the economic costs and benefits of the TPPA-11, including the impact on employment and income distribution, as the governing parties called for in the select committee report;
h) There has been no health impact assessment of the revised agreement as called for by the current Government in the select committee report, nor any assessment of environmental impact or constraints on climate action;
i) The Crown has not discussed ways to improve the Treaty of Waitangi exception and strengthen protections for Māori as the Waitangi Tribunal advised;
j) Despite these facts, the Government has announced its intention to sign the TPPA-11 on 8 March 2018;

and urge the House to call upon the Government:

k) not to sign the TPPA or the Comprehensive and Progressive Agreement on Trans-Pacific Partnership;
l) to conduct a principles-based review of New Zealand's approach to free trade, investment and economic integration agreements that involves broad-based consultation;
m) to engage with Māori to reach agreement on effective protection of their rights and interests consistent with te Tiriti o Waitangi and suspend negotiations for similar agreements until that review is concluded;

and further, urge the House to pass new legislation that

n) establishes the principles and protections identified through the principles-based review under paragraph (l) as the standing general mandate for New Zealand's future negotiations, including;
    i. excluding ISDS from all agreements New Zealand enters into, and renegotiating existing agreements with ISDS;
    ii. a requirement for the government to commission and release in advance of signing an agreement independent analyses of the net costs and benefits of any proposed agreement for the economy, including jobs and distribution, and of the impact on health, other human rights, the environment and the ability to take climate action;
    iii. a legislative requirement to refer the agreement to the Waitangi Tribunal for review prior to any decision to sign the treaty; and
o) makes the signing of any agreement conditional on a majority vote of the Parliament following the tabling in the House of the reports referred to in paragraph (n) (ii) and (iii);

and for the House to amend its Standing Orders to

p) establish a specialist parliamentary select committee on treaties with membership that has the necessary expertise to scrutinise free trade, investment and economic integration agreements;
q) require the tabling of the government's full mandate for any negotiation prior to the commencement of negotiations, and any amendment to that mandate, as well as periodic reports to the standing committee on treaties on compliance with that mandate;
r) require the tabling of any final text of any free trade, investment and economic integration agreement at least 90 days prior to it being signed;
s) require the standing committee on treaties call for and hear submissions on the mandate, the periodic reports, and pre-signing version of the text and the final text and report on those hearings to Parliament;
t) require a two-third majority support for the adoption of any free trade, investment or economic integration agreement that constrains the sovereignty of future Parliaments that is binding and enforceable through external dispute settlement processes.

Appendix 2

Standing Orders of the House of Representatives 2017, SO 397–400

397 Presentation and referral of treaties

(1) The Government will present the following international treaties to the House:
   (a) any treaty that is to be subject to ratification, accession, acceptance, or approval by New Zealand:
   (b) any treaty that has been subject to ratification, accession, acceptance, or approval on an urgent basis in the national interest:
   (c) any treaty that has been subject to ratification, accession, acceptance, or approval and that is to be subject to withdrawal or denunciation by New Zealand:
   (d) any major bilateral treaty of particular significance, not otherwise covered by subparagraph (a), that the Minister of Foreign Affairs and Trade decides to present to the House.

(2) A national interest analysis for the treaty, which addresses all the matters set out in Standing Order 398, will be presented at the same time as the treaty.

(3) Both the treaty and the national interest analysis stand referred to the Foreign Affairs, Defence and Trade Committee.

398 National interest analysis

(1) A national interest analysis must address the following matters:
   (a) the reasons for New Zealand becoming party to the treaty:
   (b) the advantages and disadvantages to New Zealand of the treaty entering into force for New Zealand:
   (c) the obligations which would be imposed on New Zealand by the treaty, and the position in respect of reservations to the treaty:
   (d) the economic, social, cultural, and environmental effects of the treaty entering into force for New Zealand, and of the treaty not entering into force for New Zealand:
   (e) the costs to New Zealand of compliance with the treaty:
   (f) the possibility of any subsequent protocols (or other amendments) to the treaty, and of their likely effects:
   (g) the measures which could or should be adopted to implement the treaty, and the intentions of the Government in relation to such measures, including legislation:
   (h) a statement setting out the consultations which have been undertaken or are proposed with the community and interested parties in respect of the treaty:
   (i) whether the treaty provides for withdrawal or denunciation.

(2) In relation to paragraph (1)(g), a national interest analysis must indicate whether or not the Government intends for the treaty to be implemented through a bill.

(3) In the case of a treaty that has been subject to ratification, accession, acceptance, or approval on an urgent basis in the national interest, the national interest analysis must also explain the reasons for the urgent action taken.

(4) In the case of a treaty that has been subject to ratification, accession, acceptance, or approval and that is to be subject to withdrawal or denunciation by New Zealand, the national interest analysis must address the matters set out in paragraph (1) to the full extent applicable to that proposed action.

399 Select committee consideration of treaties

(1) The Foreign Affairs, Defence and Trade Committee considers the subject area of the treaty and,—

(a) if that subject area is primarily within the committee's own terms of reference, retains the treaty for examination, or

(b) if that subject area is primarily within the terms of reference of another select committee, refers the treaty to that committee for examination.

(2) If the Foreign Affairs, Defence and Trade Committee is not due to meet within seven days of the presentation of a treaty, and the subject area of the treaty is clearly within the terms of reference of another select committee, the chairperson may refer the treaty to that committee for examination.

400 Reports by select committees on treaties

(1) A select committee must report to the House on any treaty that has been referred to it.

(2) In examining a treaty and the accompanying national interest analysis, the committee considers whether the treaty ought to be drawn to the attention of the House—

(a) on any of the grounds covered by the national interest analysis, or

(b) for any other reason.

(3) The committee must include the national interest analysis as an appendix to its report.

(4) If the Government intends for the treaty to be implemented through a bill, the committee must draw this to the House's attention.

Appendix 3

Trade Policy for the People: 10 bottom lines for New Zealand's future trade policy (It's Our Future, 10 August 2017)

1. **An end to secrecy**

   Negotiations must take place under conditions of openness, including the regular release of draft negotiation texts to the public.

2. **Democratic oversight**

   Negotiation mandates must be voted on by Parliament — with the aid of public submissions — before the start of future trade and investment negotiations.

   Future trade and investment agreements must also be presented to Parliament for approval before the conclusion of negotiations, and following independent economic, health, human rights and environmental impact assessments.

3. **Unrestricted right to protect the public interest and the environment**

   The New Zealand government must be free to protect and promote the wellbeing of its people and the natural environment in any way it sees fit.

   To achieve this, trade and investment agreements must contain strong and enforceable carve-outs to ensure that social and environmental regulation is not undermined.

4. **Regulation of overseas investment**

   The New Zealand government must be free to set its own rules on overseas investment, and to change these rules in accordance with national priorities.

5. **Protection of international law**

   Trade and investment agreements must not undermine states' obligations in other international agreements, including those protecting human rights, labour standards and the environment. These obligations are to take precedence in the event of any inconsistency with future trade and investment agreements.

6. **No Investor-State Dispute Settlement**

   Overseas investors must not have access to rights, remedies and dispute mechanisms other than those available to local investors.

7. **Honour the Treaty of Waitangi**
   Any future trade and investment agreements must contain a strong and comprehensive carve-out to protect the rights of Māori, consistent with te Tiriti o Waitangi and other recognised sources.

8. **Exclude local government**

   Elected local government bodies must be free to make, and be accountable for, their own decisions without being subject to the constraints of international trade and investment agreements.

9. Retain the role of the State

Trade and investment agreements must not undermine, directly or indirectly, the authority of the State to regulate the economy, hold assets, provide services to the public and enter into commercial arrangements.

10. Promote the free flow of knowledge and information

Trade and investment agreements must not confer new monopoly rights over the use and distribution of knowledge, or over the digital domain.

Appendix 4

Ten alternatives to a corporate trade agenda: what a democratic UK trade policy after Brexit would look like (Global Justice Now, June 2017)

1. Trade agreements should comply with human rights, labour standards, environmental standards and climate commitments, and if there is a conflict, trade rules should always be subordinate.
2. Trade agreements should focus on trade in goods and not be used to set rules for matters beyond trade. Things such as patents, government buying standards, domestic regulation, migration, investment or data privacy should be excluded from trade agreements and any international rules should be set in the various intergovernmental organisations specialising in these issues.
3. Public services should be protected in trade agreements with strong, broad exclusion clauses, modelled on existing exclusions for security concerns.
4. Trade agreements should not include 'corporate courts' (Investor State Dispute Settlement or ISDS) which give foreign companies special legal rights outside of the national legal system.
5. Trade agreements should include mechanisms for individuals, groups and communities to bring grievances over harm caused by the trade agreements.
6. Trade agreements should only be negotiated when there are adequate, plans for compensation and alternative decent work for those who lose out as a result of a trade deal. When agreements are between developed and developing countries, the developed countries should provide finance for this.
7. Trade agreements must recognise the legitimate need for space to make policy in the public interest through industrial, agricultural, welfare, technology and other developmental policies, and protect this space with strong, broad exclusion clauses modelled on existing exclusions for security concerns.
8. Trade agreements should ensure tariffs and trade preferences take social and environmental considerations into account, so that goods with less environmental impact and higher social welfare receive greater preference.
9. Trade agreements should commit countries to raising standards to the highest, not lowest, denominator, including meeting human rights, labour, environmental and climate obligations.
10. Trade policy and trade negotiations should be guided by parliament, with the ability to scrutinise, amend or stop trade negotiations, and should be based on meaningful public consultation. Trade agreements must be debated and voted on by parliament.

Appendix 5

Business must not dominate trade debate

Wednesday 11 April 2018, 9:52 am

Press Release: It's Our Future

"It's Our Future wants to amplify the voice of the people in the debate on trade policy," says Oliver Hailes, spokesperson for the national network of TPPA opponents, anticipating the Government's consultation to be launched in the coming weeks. "We're very worried that media and business are trying to predetermine the outcome before consultation even begins."

Monday's editorial in the Dominion Post opposed Minister Parker's plans because "the public may not deliver a well-reasoned response", and BusinessNZ chief executive Kirk Hope said "it would be concerning if there was a fundamental view that we actually needed to take a different direction".

Mr Hailes said this elitist attitude simply affirms the long-standing opposition of It's Our Future to the way economic treaties are negotiated in secret.

"Corporations are hardwired to focus on their private profits, so of course they're not concerned that these treaties make it very difficult to regulate in the public interest.

"When the Government faces mounting pressure to tackle social inequalities and runaway climate change, business must not be allowed to dominate the trade debate.

"Any serious attempt to address these issues will require a trade policy that prioritises the health of people and the planet rather than the wealth of foreign investors and multinational corporations.

"No wonder the people of Aotearoa are itching to have their say."