



HUMANE SOCIETY INTERNATIONAL

Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

Dear Committee

Senate Inquiry Submission

Proposed Agreement for the Trans Pacific Partnership

Humane Society International (HSI) is the world's largest animal protection organisation with over 10 million supporters. We are leaders in the movements to save wildlife and their habitats and to prevent cruelty experienced by animals in trade and other industries.

The Australian office of Humane Society International submits to the Australian Senate Inquiry in relation to terms of reference sub paragraph (e) 'Australia's health, environmental, social and cultural policies, including regulation of essential services' and specifically in relation to the environment chapter of the agreement and (d) the effect of Investor-State Dispute Settlement provisions.

Environment Chapter

The Humane Society International office in Washington played a significant advisory role to the US Government in the development of the Environment Chapter of the TPP before it withdrew from the agreement. We consider the chapter to be progressive with regard to wildlife in general and the protection of the marine environment in particular to the extent that we consider it to be well worth replicating and building upon in any other subsequent free trade agreements that are negotiated. We particularly commend Australia for the role it played in negotiating the clauses relating to the removal of fisheries subsidies.

We do regret the loss of one important clause from the TPP Environment Chapter which the former US administration had insisted on including, which has been removed in negotiations

subsequent to the US leaving the agreement. The deleted clause when referring to compliance with environment legislation when wild flora and fauna referred to 'or another applicable laws' and was sometimes referred to as the Lacey Act clause named after the US legislation with the same intent. It was intended to require importing countries to ensure wildlife products complied with the laws of the source or exporting country. This is a significant clause which would have placed more serious obligations on countries to avoid the import of illegally sourced wildlife products. HSI would have liked to have seen Australia insist on retention of this clause in the TPP and to insist on it in future trade negotiations.

Chapter 20 (Environment) Article 20.17 (Conservation and Trade) – paragraph 5: *In a further effort to address the illegal take of, and illegal trade in, wild fauna and flora, including parts and products thereof, each Party shall take measures to combat, and cooperate to prevent, the trade of wild fauna and flora that, based on credible evidence²⁵, were taken or traded in violation of that Party's law or another applicable law, the primary purpose of which is to conserve, protect, or manage wild fauna or flora. Such measures shall include sanctions, penalties, or other effective measures, including administrative measures, that can act as a deterrent to such trade. In addition, each Party shall endeavour to take measures to combat the trade of wild fauna and flora transhipped through its territory that, based on credible evidence, were illegally taken or traded.*

In the event that the TPP is ratified by Australia, HSI supports the full and comprehensive implementation of Chapter 20 (Environment) in national environmental laws. While a number of the enforceable obligations contained in Chapter 20 are already provided for in existing Commonwealth environmental laws, there are significant improvements to be made through additional obligations which the Government should implement.

HSI is of the view that certain Articles contained in Chapter 20 justify amendments to Commonwealth environmental laws, particularly with respect to Multilateral Environmental Agreements (MEAs), procedural matters, opportunities for public participation, trade and biodiversity, marine capture fisheries, and conservation and trade. In the attached advice from the Environmental Defenders Office NSW (EDO NSW) we provide detailed suggestions on how this might be achieved.

HSI also strongly supports the establishment of a national advisory committee by the Commonwealth pursuant to Article 20.8 of the TPP. In recognition of HSI's long-term involvement in environmental protection both in Australia and internationally, we request to be considered for full membership in order to assist the government with the implementation of the Chapter.

Investor State Dispute Settlement

HSI is very concerned about limitations arising out of the Investor State Dispute Settlement (ISDS) provisions contained in Chapter 9 of the TPP. These provisions enable a private entity to seek remedies against a Party to the TPP for alleged breaches of Chapter 9. Our concern derives from the recent use of similar ISDS provisions contained in the Transatlantic Trade and Investment Partnership (TTIP) to invalidate government policy measures aimed at

improving environmental standards and protections.¹ Adoption of these ISDS provisions has the potential to significantly degrade Australia's environmental health.

Furthermore, it would be incredibly detrimental to the operation of Australian environmental laws if foreign investors were given the capacity to put significant financial pressure on the Australian Government in response to environmental decisions which adversely affect their business operations. HSI notes that the TPP contains a suite of mechanisms that, together, safeguard a State's ability to engage in legitimate public policy regulation and these include an explicit recognition that States have the inherent right to regulate and to safeguard public welfare, including in the areas of health and the environment. Nevertheless, HSI overall disapproves of the ISDS provisions contained in Chapter 9.

Conclusion

Ultimately, HSI urges the Australian Government to introduce the enforceable obligations contained in Chapter 20 into domestic law irrespective of whether the TPP is ratified, as these provisions stand to strengthen Australia's environmental policy.

Attachment:

EDO NSW advice to Humane Society International: [Implementation of Chapter 20 of Transpacific Partnership \(TPP\) in national environmental laws](#)

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¹ See, eg, *Vattenfall I v Germany* (2009) where €1.4 billion compensation claims forced the City of Hamburg to lower environmental standards significantly for a foreign owned coal-fired power plant on the Elbe River; *Bilcon v Canada* (2015) US company Bilcon successfully sued the Canadian government for not allowing it to build a quarry and marine terminal in an ecologically sensitive coastal area in eastern Canada.