



## HUMANE SOCIETY INTERNATIONAL

January 25, 2010

### *Electronic Submission*

The Honorable Ronald Kirk  
United States Trade Representative  
Office of the United States Trade Representative  
600 17<sup>th</sup> Street, N.W.  
Washington, DC 20508

### **Re: United States – Trans Pacific Partnership Agreement, Docket #: USTR-2009-0041**

Dear Ambassador Kirk:

On behalf of Humane Society International (HSI), we hereby submit these comments on the proposed Trans-Pacific Partnership Free Trade Agreement (TPP) with Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore and Vietnam pursuant to 74 Fed. Reg. 66270 (December 16, 2009). Our organization appreciates the opportunity to provide our views on this very important topic, which has far-reaching implications for the environment and its animals.

HSI is the international arm of The Humane Society of the United States (HSUS). Together, HSUS and HSI represent one of the largest animal protection organizations in the world with a constituency of over 11 million people and a significant global presence. HSI actively participates in discussions of international trade policy at the World Trade Organization (WTO) addressing such issues as equitable development, humane and sustainable agriculture, environmental conservation, and wildlife and habitat protection. In addition, as a member of the Trade and Environment Policy Advisory Committee (TEPAC) in the United States, HSI advises the United States Trade Representative (USTR) and the United States Environmental Protection Agency (EPA) on trade and environment issues. HSI also implements a number of trade capacity building and technical assistance programs in developing WTO Member countries to support sustainable economic development, including humane agricultural practices and habitat and wildlife protection policies.

The following comments are primarily focused on environmental challenges facing the TPP countries, and ways to address such challenges through a trade agreement.

## **BACKGROUND AND SUMMARY**

There are many threats to our world's natural resources. Illegal wildlife trade is a booming multi-billion dollar industry, forests and natural habitats are disappearing, ocean stocks are plummeting, and climate change poses grave risks to humans and animals alike. HSI believes that while the TPP may encourage trade and development among a number of key U.S. trading partners, such pursuits must not fail to simultaneously combat widespread environmental abuses and strengthen environmental and animal protection.

The May 2007 Bipartisan Trade Deal (BTD) reflected bold ideas favorable to the environment and its animals, such as a commitment to implement and effectively enforce laws and regulations under a number of multilateral environmental agreements (MEAs). The U.S.-Peru Trade Promotion Agreement (TPA) built upon the BTD, and included unprecedented provisions on biodiversity conservation and the link between illegal logging and illegal wildlife trade. HSI applauds the U.S. Congress, USTR and other agencies on these achievements.

There is now potential to build from this momentum and craft a new agreement that takes into account both existing and emerging environmental issues. While such a diverse group of countries may present some challenges, this is also a historic opportunity to strengthen environmental protection across numerous regions. From HSI's perspective, *a key issue in the negotiation of environmental provisions will be wildlife protection, and enforcement and implementation of wildlife laws.* Wildlife issues are common to each of the TPP countries. Each country has a vested interest in conserving endangered and threatened species that are under siege from hunting and poaching, illegal wildlife trade, climate change, and other factors. Each country also has an interest in combating illegal wildlife trade, an illicit practice commonly linked to narcotics and arms trafficking, violence, and in some cases, human health concerns.

Our recommendations follow.

## **HSI'S RECOMMENDATIONS**

### ***1. Starting Point for Negotiations***

We believe it is imperative that the BTD environmental provisions be a minimum starting point for negotiations on environmental issues. We understand that there is an Environmental Cooperation Agreement (ECA) that is already part of the existing TPP. While the ECA can be used as a building block, we strongly urge the U.S. to use this opportunity to press for strengthened environmental provisions. This negotiating position will be complementary to provisions in existing U.S. trade agreements and will facilitate greater uniformity of environmental protection policies across existing and future TPP Members.

HSI is cognizant of the fact that TPP countries are at varying levels of economic development and that each have unique environmental issues and concerns. A one-size-fits-all approach will not be viable, and it is likely that the approach taken to deal with environmental protection issues in a bilateral agreement will need to be modified to take these circumstances into account. HSI believes, however, that certain threshold issues can apply across the board (with the possibility of phase-in periods where appropriate), such as the requirement that all countries bring their national laws into compliance with

listed MEAs, and make commitments to biodiversity conservation. Country or issue-specific objectives could thereafter be identified by TPP members and implemented through environmental cooperation programs or set forth in annexes to the agreement. Adequate funding and resources for trade capacity building and technical assistance, as addressed below, will be critical to helping developing TPP countries satisfy their environmental obligations.

## ***2. Inclusion of an Environment Chapter***

A threshold negotiating objective should be inclusion of an environment chapter in the agreement itself that requires parties to effectively enforce their environmental laws, with failure to do so subject to dispute settlement.

## ***3. Compliance with MEAs***

There must be a requirement that parties implement and effectively enforce their obligations under relevant MEAs, such as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which is in force in all eight countries. For this requirement to have meaning however, it is absolutely critical that parties be required to bring their laws into conformity with the listed MEAs prior to entry into force of the TPP. This cannot be a criterion that is taken lightly and must be fully satisfied.

HSI recommends that the seven listed MEAs in the BTDA be a starting point, but others should be investigated for possible inclusion in the agreement due to the diverse geographic areas and issues represented. For example, the United States is a party to the UN Fish Stocks Agreement, which is focused on conservation and management of fish stocks.<sup>1</sup> The broad reach of this agreement and its framework for cooperation among its members could complement a future TPP.

Not all TPP countries are parties to all MEAs.<sup>2</sup> We recognize that the TPP cannot force countries into signing MEAs, however, we do believe there could be a good faith consideration requirement whereby countries that are not parties to listed MEAs have to seriously consider joining prior to ratification of the TPP. If after serious consideration they still do not want to join, the parties to the TPP should be required, where appropriate, to address the issues covered in the relevant MEA in enforceable side letters to the TPP or through national laws/regulations.

## ***4. Wildlife Protection***

Illegal wildlife trade is a grave threat to species all over the world. Demand for illegal wildlife is driven by numerous factors depending on geographic region, such as human consumption, wealth status, use in traditional medicines, luxury fashion, and exotic pets.<sup>3</sup> According to Interpol, illegal

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<sup>1</sup> See [http://www.un.org/Depts/los/convention\\_agreements/convention\\_overview\\_fish\\_stocks.htm](http://www.un.org/Depts/los/convention_agreements/convention_overview_fish_stocks.htm). All potential TPP countries have ratified the agreement except for Peru.

<sup>2</sup> The eight proposed TPP countries are all parties/signatories to CITES, the Montreal Protocol and the Protocol Relating to the International Convention for the Prevention of Pollution from Ships (MARPOL). Only the U.S. and Peru are signatories to the Inter American Tropical Tuna Commission (IATTC). Singapore and Brunei are not parties to the Ramsar Convention, and Singapore, Brunei and Vietnam are not parties to the International Whaling Convention (IWC) or Convention on Conservation of Antarctic Marine Living Resources (CCAMLR).

<sup>3</sup> See CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-3 (March 3, 2008) (Order Code: RL34395).

wildlife crime could be as much as \$20 billion per year, second only to arms and narcotics trafficking.<sup>4</sup> A recent CRS Report on illegal wildlife trade explained the importance of wildlife smuggling to Congress:

International wildlife smuggling may be of interest to Congress as it presents several potential environmental and national security threats to the United States. Threats to the environment include the potential loss of biodiversity, introduction of invasive species into U.S. ecosystems, and transmission of disease through illegal wildlife trade, including through illegal bushmeat trade. National security threats include links between wildlife trafficking and organized crime and drug trafficking. Some terrorist groups may also be seeking to finance their activities through illegal wildlife trade, according to some experts. Wildlife source and transit countries may be especially prone to exploitation if known to have weak state capacity, poor law enforcement, corrupt governments, and porous borders.<sup>5</sup>

The black market trade in wildlife and wildlife products is global. Countries like the U.S. are considered significant destinations for illegal wildlife, while countries and regions rich in biodiversity like Southeast Asia are major suppliers.<sup>6</sup> The regions covered by the TPP include primary trading routes for illegal trade in wildlife, such as between the U.S. and Asia and among Chile and Peru. For example:

- Vietnam is a major international hub for legal and illegal wildlife trade, with the largest volume of illegal trade flowing across the Vietnam-China border.<sup>7</sup> Vietnam is a major consumer of illegal wildlife and wildlife products, with “live tiger cubs, tiger skeletons, raw materials and processed medicinal products ...brought {in} from Cambodia, Laos and as far as Malaysia to supply the Vietnamese market.”<sup>8</sup> Vietnam is also a significant supplier of illegal wildlife with species “sourced from Vietnam’s national parks and neighboring Laos and Cambodia, to be consumed in Vietnam, China, South Korea, Taiwan and Japan.”<sup>9</sup> Vietnam is also a transport link for illegal wildlife trade from Indonesia, Malaysia and Burma to China, the U.S. and Europe.<sup>10</sup>

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<sup>4</sup> See *Wildlife Trafficking is a Serious Problem, Lucrative Business* (June 16, 2008), available at <http://www.america.gov/st/env-english/2008/June/20080616142333mlenuhret0.8286859.html>.

<sup>5</sup> See CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at Summary-1, and CRS-11-15 (March 3, 2008) (Order Code: RL34395).

<sup>6</sup> CRS Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-2 – 5; USAID Asia, ASEAN Wildlife Enforcement Network Fact Sheet, available at [http://usaid.eco-asia.org/files/fact\\_sheets/ASEAN\\_WEN.pdf](http://usaid.eco-asia.org/files/fact_sheets/ASEAN_WEN.pdf).

<sup>7</sup> See AFP, *Vietnam Illegal Wildlife Trade Eats Away at Biodiversity* (August 3, 2008), available at <http://afp.google.com/article/ALeqM5iJ-ADoBrECuVvzEzXSr-vDbkb9IA>.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> See VOANews.Com, *Thailand Calls for Wildlife Trade Enforcement* (March 9, 2009), available at <http://www.voanews.com/english/2009-03-09-voa34.cfm>.

- Singapore is involved in a significant amount of legal wildlife trade; however, due to the fact that it is “strategically located in a region that is rich in biodiversity” it has recently been labeled a hub for illegal wildlife trade as well.<sup>11</sup> Star tortoises, turtle eggs, snakes, and iguanas are the most common wildlife and wildlife products that are seized by officials in raids.<sup>12</sup>
- Due to its relative wealth in the region, wildlife is smuggled into Chile for luxury markets, such as skins and exotic pets. For example, on January 13, 2009, the Chilean army captured a Peruvian vessel carrying over 400 exotic wildlife species, such as camans, turtles and toucans.<sup>13</sup> There is also evidence that Chilean abalones, which have been classified as an endangered species since 1998, are being smuggled into Peru.<sup>14</sup>

Ensuring that the laws on the books implementing CITES are strong and that human and financial resources are brought to bear to enforce CITES are some of the most pressing obstacles to cracking down on illegal wildlife trade. For example, while Vietnam has made strides to strengthen its national laws implementing CITES, it still has significant enforcement problems along its borders and a population that participates in wildlife trade both as middlemen and consumers.<sup>15</sup>

***Therefore, in the context of wildlife in particular, we recommend the TPP:***

- Require effective enforcement of laws implementing CITES;
- Explicitly require parties to combat illegal wildlife trade with failure to do so subject to dispute settlement; and
- Obligate each country to have their national laws classified as “Category I” under CITES prior to ratification.

Achieving these goals is particularly critical if the TPP is to expand to other countries, such as Malaysia, Indonesia or China, where illegal wildlife trade is a grave threat to hundreds of species. An article from March 10, 2009, for example, explains that if wildlife trafficking continues, “anywhere between 13% and 42% of Southeast Asia’s animal and plant species could be wiped out within this century.”<sup>16</sup>

Meeting these goals can be greatly enhanced, particularly for developing countries, through trade capacity building and environmental cooperation programs. A concerted, multi-country and multi-sector approach (encompassing government personnel, the private sector, and civil society) is the only

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<sup>11</sup> See Acres News, *S’pore labelled a hub for illegal wildlife trade: strategic position may be attracting organized crime* (January 28, 2005) available at [http://www.acres.org.sg/news/news\\_today-28jan05.htm](http://www.acres.org.sg/news/news_today-28jan05.htm).

<sup>12</sup> See Acres News, *S’pore labelled a hub for illegal wildlife trade: strategic position may be attracting organized crime* (January 28, 2005) available at [http://www.acres.org.sg/news/news\\_today-28jan05.htm](http://www.acres.org.sg/news/news_today-28jan05.htm).

<sup>13</sup> See El Comercio, *Attempt to smuggle wildlife into Chile by boat foiled* (January 13, 2009) available at <http://www.traffic.org/seizures/2009/1/13/attempt-to-smuggle-wildlife-into-chile-by-boat-foiled.html>.

<sup>14</sup> See El Mercurio, *Chacalluta launches operation to combat illegal abalone trafficking* (January 23, 2009), available at <http://www.emol.com/noticias/ingles/detalle/detallenoticias.asp?idnoticia=341448>.

<sup>15</sup> E.g., See *Illegal Logging and Wildlife Trafficking Prosecutions Up* (January 7, 2010), available at <http://www.phnompenhpost.com/index.php/2010010730683/National-news/illegal-logging-and-wildlife-trafficking-prosecutions-up.html>.

<sup>16</sup> See Bangkok Post, *Airport staff take on traffickers* (March 10, 2009), available at [www.bangkokpost.com/news/local/13066/airport-staff-take-on-traffickers](http://www.bangkokpost.com/news/local/13066/airport-staff-take-on-traffickers).

way to meaningfully address this widespread issue. HSI's experience in Central America and the Dominican Republic under the United States – Central America – Dominican Republic Free Trade Agreement (CAFTA-DR) is instructive. Working with government agencies, local NGOs, and the private sector, HSI has been involved in several programs aimed at strengthening wildlife protection and enforcement throughout the region. This work has made a significant impact, both for animals and for local communities. Specific program activities could include:

- conducting education campaigns about the importance of species conservation and the dangers associated with illegal wildlife trade (including both nationals and tourists as target audiences);
- sharing information among law enforcement agencies;
- increasing enforcement and penalties;
- training authorities to differentiate between legal and illegal products;
- training authorities to properly handle and confiscate seized animals;
- establishing and supporting temporary care facilities and wildlife rescue centers for confiscated animals; and
- supporting the creation of alternative income sources to poaching and illegal wildlife trade, such as ecotourism. This is particularly important since even though penalties can be strong, illegal wildlife trade is so lucrative it is often considered worth the risk. Legitimate, alternative income sources must be available in order to truly combat the illegal wildlife trade.

Additionally, TPP countries can collaborate with existing networks with shared aims such as the Coalition Against Wildlife Trafficking (CAWT) and Association of Southeast Asian Nations, Wildlife Enforcement Network (ASEAN-WEN). Brunei Darussalam, Vietnam, and Singapore already participate in ASEAN-WEN (with assistance from the U.S. Agency for International Development as well), and the U.S. and Australia are active in CAWT. These networks can be used to help TPP countries satisfy their obligations under the trade agreement. At the same time, work under the TPP can help complement work being done in these other fora.

### ***5. Link between Illegal Logging and Illegal Wildlife Trade***

There is also a strong link between illegal logging and illegal wildlife trade that must be addressed in the TPP. The global timber trade poses one of the greatest threats to the survival of the world's wildlife and the conservation of forest habitat. Throughout South America and in Peru in particular, for example, illegal logging of mahogany degrades rivers and streams that are home to the giant river otters and other species. In addition, unsustainable logging practices result in the creation of roads into the vast forests that are used by poachers to hunt monkeys and other wildlife that end up on the illegal black market for endangered species. Similar problems are prevalent wherever there is large-scale illegal logging. For this reason, it is imperative that illegal logging and illegal wildlife trade are jointly addressed through strict forest governance provisions and border controls/monitoring.

### ***6. Protection of Oceans and Marine Life***

Our world's oceans and marine life face many threats, including overfishing, pollution and climate change. As all of the TPP countries have coastlines, and several are significant fishing nations, the TPP represents a unique opportunity to address key ocean and marine life issues, particularly those that pose risks to endangered and threatened species such as sea turtles, and certain species of sharks and whales.

We recommend that the TPP include:

- explicit requirements that countries comply with their obligations under applicable MEAs and/or regional fisheries management programs, including but not limited to CITES, IWC, CCAMLR, and IATTC;<sup>17</sup>
- environmental cooperation activities focused on conserving and protecting marine life, such as through the creation of marine sanctuaries or the elimination of harmful fishing practices such as shark-finning;<sup>18</sup>
- education campaigns about the harmful effects of using/trading marine life for commercial purposes (such as using endangered sea turtle shells in tourist souvenirs); and
- provisions requiring countries to address fish subsidies, a major catalyst behind the depletion of fish stocks. This could be complementary to negotiations at the WTO.

## **7. Biodiversity Conservation**

Many of the countries that will be part of the TPP negotiations and ultimate agreement are rich in biodiversity. Peru, for example, is one of only a few megadiverse countries in the world, and is home to unique species such as alpacas, vicuñas and Amazon River dolphins as well as a number of endangered species including the yellow-tailed woolly monkey, yellow-eared parrot, Andean mountain cat, and the Andean tapir. In Vietnam, a type of leaf-eating langur is one of the most endangered primates in the world, yet is sought after by poachers for traditional medicine purposes. These examples underscore the importance of including a commitment in the TPP requiring all parties to protect and conserve biodiversity. Parties must commit to long-term financial backing of biodiversity conservation initiatives, including through environmental cooperation.

To the extent that the TPP also encourages sustainable use of biodiversity, as was the case in the U.S.-Peru TPA, HSI strongly urges USTR to similarly include the possibility of “non-consumptive use.” This is important because non-consumptive uses of biodiversity, such as ecotourism, can greatly assist with biodiversity conservation while simultaneously providing local communities with sustainable income opportunities instead of poaching and illegal wildlife trade.

## **8. Dispute Settlement**

HSI also strongly urges the U.S. to advocate that all environmental provisions be subject to dispute settlement, including a party’s failure to enforce their national laws implementing one or more of the

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<sup>17</sup> As mentioned earlier, we recommend that other MEAs be investigated to see if they should be included, such as the UN Fish Stocks Agreement, or the Western and Central Pacific Fisheries Commission (WCPFC). See <http://www.wcpfc.int/> (members include Australia, China, Canada, Cook Islands, European Community, Federated States of Micronesia, Fiji, France, Japan, Kiribati, Korea, Republic of Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Philippines, Samoa, Solomon Islands, Chinese Taipei, Tonga, Tuvalu, United States of America, Vanuatu.)

<sup>18</sup> Shark-finning involves removing the fin from the body of the shark and then throwing the carcass back into the water. Shark fins are primarily used in soup and/or medicinal purposes. U.S. law prohibits shark-finning, however, even stricter measures are being considered that would require that all sharks be landed with each fin naturally attached.

listed MEAs. Further, in the event it is determined that a party is failing to effectively enforce its environmental laws, HSI believes that the penalty should be a monetary assessment (without a cap) that is then used to correct the problem leading to the violation. In many cases in the developing world in particular, environmental violations are a direct result of lack of enforcement due to limited resources and/or political will to prioritize environmental objectives over other much-needed programs. It is precisely for this reason that sanctions or monetary penalties that do not channel money towards fixing the problem will likely only exacerbate environmental harm.

It is also important that the agreement explicitly provide for the selection of panelists with experience in environmental matters when forming dispute settlement panels.

### ***9. Public Participation***

It is critical that any future TPP include strong public participation provisions and an emphasis on transparency. All parties should make their environmental laws and regulations publicly available and should be required to provide opportunities for public comments on changes to such laws or regulations as well as on other issues related to implementation of the agreement. To complement these provisions, HSI also recommends that all parties be required to establish national consultative or advisory committees, comprised of persons with knowledge of environmental issues, to provide views on the implementation of the environment provisions of the agreement.

For public participation to be truly meaningful, there must be a mechanism by which private citizens can become involved in environmental issues, and alert governmental authorities to environmental harms. In prior FTAs, such as the North American Free Trade Agreement (NAFTA) and CAFTA-DR, one of the most important public participation mechanisms has been the establishment of an Independent Secretariat that receives and investigates submissions from private citizens and NGOs alleging that a party is failing to effectively enforce an environmental law. This independent mechanism empowers civil society, NGOs, and the private sector to have a voice in their country's environmental policies, programs, and enforcement regimes without fear of governmental intervention in the process. The citizen submission can be invaluable to identifying environmental harms and consequently having resources directed towards remedying the problem.

To ensure that this mechanism operates as intended, it is essential that the Secretariat receive adequate training to understand the objectives of the environment chapter and be guided by the chapter's working procedures, which should be reviewable and revisable on an annual basis. HSI also urges inclusion of provisions that set deadlines for deliberation of whether a factual record should proceed, and for preparation of the factual record itself. An unnecessarily long process can lead to irreversible environmental harm in some instances, particularly when the case involves threatened or endangered species.

HSI has experience with the public submission process under NAFTA and CAFTA-DR and welcomes the opportunity to work with USTR and Congress to ensure that in the context of the TPP, these and other public participation provisions are strong and reflect lessons learned.

### ***10. Sanitary and Phytosanitary (SPS) Issues***

SPS provisions aim to facilitate trade while simultaneously protecting human, animal, and plant life or health from risks arising from the entry/establishment/spread of pests and diseases, and from additives,

contaminants, toxins or disease-causing organisms in foods, beverages, or feedstuffs.<sup>19</sup> From HSI's perspective, animal welfare issues such as proper handling, transport, stunning and slaughter are SPS issues that should be addressed in the TPP. Strong animal welfare standards and practices directly correlate to animal health and to the mitigation of the spread of disease – issues that fall squarely within the scope of the SPS chapter. At a minimum, improvement of animal welfare standards and practices should be explicitly mentioned in the TPP as a priority area for further development and cooperation. This is especially the case since the agreement will likely increase trade among these countries, also increasing the risk of spreading disease to humans and animals due to poor animal welfare and health standards.

### ***11. Funding for Trade Capacity Building and Environmental Cooperation***

Lastly, it is incumbent upon the U.S. government and other TPP parties to devote appropriate levels of long-term funding to environmental cooperation and trade capacity building programs. Without the proper funding, environmental protection commitments will be meaningless. Implementing environmental cooperation projects, strengthening the ability of Ministries to enforce environmental laws (including CITES), and building the capacity of local organizations to participate effectively in the public submission process are just a few examples of the need for funding and technical assistance.

Previous FTAs have not included explicit language calling for long-term dedicated funding. If any funding was set aside for environmental initiatives, it has typically fallen short of what is needed to properly implement the environment chapter or has come only as a result of significant political pressure. The TPP must break free from this mold and include clear and explicit language and a commitment from all parties to fund environmental initiatives, which will hopefully aid in the U.S. budget and appropriations process. This is especially critical since the intention is to expand the TPP to even more countries in the region, with far-reaching implications for environmental and animal protection.

We look forward to working with USTR, Congress, and other agencies to consider some of these issues in more detail as negotiations proceed.

Sincerely,

/s/

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Sarah Stewart  
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*Humane Society International*

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<sup>19</sup> See WTO SPS Agreement at Annex A (1)(a)-(d).