



**HUMANE SOCIETY
INTERNATIONAL**



13 February 2012

Submitted electronically

The Honorable Craig Emerson MP
Trade Minister
Department of Foreign Affairs and Trade
Australian Government
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221

By email to: tpp@dfat.gov.au

Re: Participation of Japan in the Trans-Pacific Partnership Trade Negotiations

Dear Mr. Emerson,

Humane Society International¹ and the International Fund for Animal Welfare (IFAW)² respectfully submit these comments in response to the invitation for stakeholder input from the Department of Foreign Affairs and Trade (DFAT). The undersigned appreciate the opportunity to provide our views on this important topic, which has implications for environmental and animal protection.

HSI and IFAW have been involved in the TPP process, seeking to ensure that the environmental provisions of the agreement are legally binding (rather than voluntary) and that specific conservation issues such as illegal wildlife trade, illegal logging, marine conservation and fisheries subsidies are addressed in the negotiations. Our organisations have previously provided input to the U.S. Trade Representative's Office and Australian Government, and HSI

¹ Humane Society International (HSI) is the world's largest conservation and animal welfare organisation with over 11 million supporters worldwide and 40,000 Australian supporters. HSI works to promote the protection of all animals around the world by participating in programmatic activities in developing countries, advocating for the effective enforcement of international environmental treaties, and furthering humane and sustainable international trade policy.

² The International Fund for Animal Welfare (IFAW) works to save animals in crisis around the world. IFAW is an international animal welfare and conservation organisation with representation in 16 countries and carrying out work in more than 40. IFAW focuses its campaigns on improving the welfare of wild and domestic animals by reducing the commercial exploitation of animals, protecting wildlife habitats and assisting animals in distress. IFAW works both on the ground and in the halls of government to safeguard wild and domestic animals and seeks to motivate the public to prevent cruelty to animals and to promote animal welfare and conservation policies that advance the well-being of both animals and people.

has attended nearly every negotiating round to date to meet with country delegations and participate in stakeholder forums. Given that both of our organisations also have offices based in Australia, we want to take this opportunity to provide DFAT with our views on the potential for Japan, Canada and Mexico to join the TPP negotiations.

Specific issues and recommendations are outlined below.

I. Careful Consideration Should be Paid to Inclusion of New Countries in the TPP While Negotiations are Still Ongoing

The inclusion of new countries in the TPP negotiations at this point in time may impede the goal of reaching a final agreement in the foreseeable future. HSI and IFAW understand that the TPP is intended to be a broad-based regional trade agreement, with flexibility for additional countries to join over time. However, including new countries in the negotiations, versus welcoming new countries to join the final agreement, has the potential to result in indefinite delays.

The TPP countries have gone through nine rounds of negotiations since March 2010 (with Malaysia joining in October 2010). Countries have had numerous occasions to discuss environmental issues during the negotiations and also in their home countries with relevant ministries and agencies. While disagreements remain, the countries are working towards a final agreement. The inclusion of new countries, be it Japan, Canada, Mexico, or others, will introduce new issues, new negotiating dynamics, and potentially new obstacles.

HSI and IFAW are supportive of a final environmental chapter that contains strong provisions on conservation issues such as illegal wildlife and illegal logging. As we understand it, the environmental proposal that is being discussed among the TPP countries includes these topics and others, such as shark conservation.³ HSI and IFAW would not like to put the progress made on these issues so far at risk. Thus, our organisations recommend that to the extent new countries are permitted to join during the negotiations phase, the TPP countries should seek explicit assurances from any potential new entrants that these countries are committed to strong environmental provisions.

II. Environmental and Conservation Considerations Specific to Japan

Before Japan joins the TPP, either now or at some point in the future, there are several environmental/conservation issues that should be evaluated regarding: (1) Japan's role in the illegal wildlife trade; (2) Japan's practices involving marine mammals such as whales; and (3) Japan's role in the international trade in shark fins. Should Japan pledge its commitment to a strong environmental/conservation framework for the TPP, as discussed above, the TPP could represent an opportunity to address these issues.

³ See *USTR Green Paper on Conservation and the TPP*, available at: <http://www.ustr.gov/about-us/press-office/fact-sheets/2011/ustr-green-paper-conservation-and-trans-pacific-partnership>.

A. Japan's Role in the Illegal Wildlife Trade

Based on information from Interpol, illegal wildlife crime could be worth as much as \$20 billion per year, second only to arms and narcotics trafficking. Other estimates are even higher; finding that up to \$30 billion per year of black market money is exchanged for endangered wildlife and parts in South East Asia alone.⁴ The illegal wildlife trade has far-reaching ramifications, including species extinction, spread of disease, and security threats, as there is a proven link between the black market trade in animals and animal parts and organized crime.

According to the USTR Green Paper describing some of the components of the environmental proposal, “[t]he TPP countries are source, transit or destination countries for this illegal [wildlife] trade, and the region includes primary trading routes for illegal trade ranging from rhino horn, live tiger cubs and tiger parts for medicinal purposes, to tortoises, snakes, iguanas, exotic pets and much more.”⁵ The Paper goes on to say that “it is critical that the TPP directly address the problem of trade in these resources [wildlife] through obligations that complement implementation of measures under CITES [Convention on International Trade in Endangered Species of Wild Fauna and Flora] – to which all TPP countries are parties – including through full implementation of species-specific CITES resolutions and other measures to protect these species.”⁶

The possible addition of Japan to the TPP further supports the need to address this black market trade among TPP member countries. For example, although CITES banned commercial elephant ivory trade in 1989, it has been reported that the trade is rekindling, owing to a surging demand for ivory jewelry or other symbols of wealth in countries like Japan and China.⁷ Japan is a major market for CITES-listed species, particularly exotic pets and luxury goods. Yet, Japan's penalties for violating CITES are not strong enough, and do not provide an adequate deterrent to the illegal trade in wildlife – particularly with respect to elephant ivory products, the price of which has reportedly skyrocketed in recent years.⁸ Studies conducted by the United Nations have also found that Japanese organized crime syndicates are heavily involved in the illegal wildlife trade.⁹

⁴ See *Smugglers and Poachers Generate RM90 Billion a Year*, The Star (October 7, 2010) available at: <http://thestar.com.my/news/story.asp?file=/2010/10/7/nation/7174224&sec=nation>.

⁵ See USTR Green Paper.

⁶ See USTR Green Paper.

⁷ See Congressional Research Service (CRS) Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-9.

⁸ See Congressional Research Service (CRS) Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-9 (stating that in the late 1990s, the price of elephant ivory was about \$100/kg whereas in 2008, it was \$900/kg).

⁹ See Congressional Research Service (CRS) Report, *International Illegal Trade in Wildlife: Threats and U.S. Policy* at CRS-17.

Another issue that arises under CITES is Japan's trade in whale products. Under CITES, contracting Parties may be granted exceptions to the terms of the Convention, which are called 'reservations.' If a country has a reservation, it can avoid the prohibition on commercial trade in CITES Appendix I species, and continue to trade with other countries that have the same reservation, or with countries that are not Parties to CITES. Japan has made a number of reservations to the listing of species under CITES Appendix I, the majority of which involve marine mammals, such as whales. All great whales are currently on Appendix I. As a result of these reservations, Japan has continued killing whales on the high seas and engaged in international trade with other CITES Parties, such as Norway and Iceland, who have similar reservations.

If Japan were to join the TPP, the TPP could provide an opportunity for Japan to strengthen its implementation and enforcement of CITES, and increase cooperation and information sharing among the other TPP countries in order to address the illegal wildlife trade in the region.

The TPP would also provide a forum to address Japan's continued trade in whale products. Although such trade is permissible under the CITES reservations, it undermines the very conservation goals that the TPP should be seeking to protect. A commitment from Japan to address this issue in the context of the TPP should be a precondition for Japan joining the negotiations.

B. Japan's Whaling Practices

The International Whaling Commission (IWC) implemented a moratorium on commercial whaling in 1986. As a result of the moratorium, CITES listed all great whales on Appendix I and prohibited trade in those species/products of those species. As mentioned, Japan has taken a reservation under CITES to continue the commercial trade in whale products. Similarly, although the IWC prohibits commercial killing of whales, Japan has continued killing whales under an exception for scientific research (Article VIII of the IWC Convention).¹⁰

Japan's scientific whaling program has drawn opposition from the IWC. For example, in 2005, the IWC Resolution stated that Members were "concerned that more than 6,800 Antarctic minke whales (*Balaenoptera bonaerensis*) have been killed in Antarctic waters under the 18 year of JARPA [Japan's scientific research program], compared with a total of 840 whales killed globally by Japan for scientific research in the 31 year period prior to the moratorium;..."¹¹ In 2009, Japan's scientific whaling program drew criticism following reports that nearly one third of the minke whales killed were pregnant.¹²

Australia has a longstanding opposition to Japan's scientific whaling program. In 2008, an Australian Federal Court issued a judgment declaring that Japanese whaling in the Australian Whale Sanctuary in Antarctica is a breach of Australian law and issued an injunction ordering

¹⁰ <http://iwcoffice.org/conservation/permits.htm>.

¹¹ Resolution 2205-1, <http://iwcoffice.org/meetings/resolutions/resolution2005.htm>.

¹² HSI International Whaling Commission Timeline, http://www.hsi.org/issues/whaling/timelines/iwc_timeline.html.

the hunt to be stopped, as a result of the HSI court case.¹³ In 2010, the Australian Government launched a case against Japan at the International Court of Justice (ICJ), arguing that:

Japan's continued pursuit of a large scale programme of whaling under the Second Phase of its Japanese Whale Research Programme under Special Permit in the Antarctic ("JARPA II") [is] in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ("ICRW"), as well as its other international obligations for the preservation of marine mammals and marine environment.¹⁴

Australia's complaint at the ICJ further alleges that "Japan has also breached and is continuing to breach, *inter alia*, its obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora and under the Convention on Biological Diversity."¹⁵

Other TPP countries, such as the U.S., Chile, Peru, and New Zealand, also support whale conservation, and in some instances, have even condemned or sought formal action against Japan's whaling practices.¹⁶

The TPP could provide a chance for interested countries to address this issue with Japan as a precondition to joining the TPP, especially since attempts to address Japan's whaling practices at the IWC have been largely frustrated by Japan's (and other nation's) tactics at the IWC, including alleged vote-buying by Japan, thus prompting action outside of the IWC, such as in Australia's court system and at the ICJ.¹⁷ Allowing Japan to benefit from the increased market access of a trade agreement, without having to address conservation issues like its scientific whaling program, will seriously undermine the conservation objectives of the TPP. *Prior to joining the TPP, Japan must commit to addressing concerns of other TPP members about its whaling program, and commit to the implementation of non-lethal methods of scientific research.*

¹³ *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* (Australian Federal Court), court documents available at: <http://www.hsi.org.au/?catID=85>.

¹⁴ See International Court of Justice, Press Release, *Australia institutes proceedings against Japan for alleged breach of international obligations concerning whaling* (June 2010), available at: <http://www.icj-cij.org/docket/files/148/15953.pdf>.

¹⁵ See International Court of Justice, Press Release, *Australia institutes proceedings against Japan for alleged breach of international obligations concerning whaling* (June 2010), available at: <http://www.icj-cij.org/docket/files/148/15953.pdf>.

¹⁶ The U.S. has been a vocal opponent of Japan's scientific whaling program. Indeed, under U.S. law (the Pelly Amendment), Japan has been certified as diminishing the effectiveness of the IWC on three separate occasions for engaging in lethal whaling for scientific research (1988, 2995, 2000). See, e.g., 2000 Letter from President William Clinton regarding Japan's Pelly Certification, <http://clinton6.nara.gov/2000/12/2000-12-29-letter-from-the-president-on-the-pelly-amendment.html> (emphasis added).

¹⁷ E.g., *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* (Australian Federal Court issued judgment declaring that Japanese whaling in the Australian Whale Sanctuary in Antarctica is a breach of Australian law and issued an injunction ordering the hunt to be stopped) available at: <http://www.hsi.org.au/?catID=85>.

C. Japan and Shark Conservation

Finally, the TPP environmental proposal includes provisions addressing shark conservation, such as “actions to deter ‘shark finning’ practices.”¹⁸ Since Japan is one of the top ten shark fishing nations in the world, and is involved in the shark fin trade, these provisions are particularly relevant.¹⁹

Every year tens of millions of sharks are killed for their fins to supply the demand for shark fin soup. The practice of “shark finning” involves the removal of the fin and the discarding of the shark carcass at sea to enable a higher kill-rate, and therefore a higher yield of shark fins that can be sold to satisfy the human appetite for shark fin soup. This demand has been a major contributor to the near-collapse of a number of shark populations worldwide. This is especially true since shark fins are not just consumed locally; they are frequently traded internationally to satisfy demand in countries around the world. The TPP involves countries that are engaged in shark fishing, and are consumers and exporters of shark fins.

Regional fisheries management organisations (RFMOs), such as the International Commission for the Conservation of Atlantic Tunas (ICCAT), have measures in place to address shark finning. However, such measures are based on a fin to carcass ratio, which can be vulnerable to circumvention. A better option is a fins-attached policy, such as that already in place in Australia, whereby every shark landed must have its fins naturally attached.²⁰ While Japan has supported the ratio methodology, it has opposed strengthening the requirement to include fins attached when it has come up at RFMOs like ICCAT.²¹

Japan is also involved in the processing of shark fins to help serve the demand for shark fins around the world. Although its main port was destroyed in the tsunami, it is beginning to resume business.²²

This background is important because it provides insight into how Japan might view TPP proposals aimed at shark conservation. Again, access to the benefits of TPP should not be permitted at the expense of conservation goals. *Japan must commit to addressing shark preservation within the TPP.*

¹⁸ See USTR Green Paper.

¹⁹ http://www.pewenvironment.org/uploadedImages/PEG/Publications/Report/shrk_trafficreport_large.jpg.

²⁰ The U.S. recently enacted the Shark Conservation Act of 2010 which makes it unlawful to land a shark in the U.S. without the fins naturally attached. See <http://thomas.loc.gov/cgi-bin/query/D?c111:5:./temp/~c111kUu861::>

²¹ See Washington Post, *International negotiators rule on shark protection measures* (November 19, 2011), http://www.washingtonpost.com/national/health-science/international-negotiators-rule-on-shark-protection-measures/2011/11/19/gIQAaznGcN_story.html.

²² See The Guardian, *Shark Fishing in Japan*, <http://www.guardian.co.uk/environment/2011/feb/11/shark-fishing-in-japan>; <http://www.japanprobe.com/2011/07/12/slow-recovery-for-kesennumas-shark-fin-industry/>.

III. Conclusion

HSI and IFAW welcome any questions you might have on these comments, and would be happy to discuss them in more detail if necessary. Please contact Matthew Collis, Campaigns Officer at IFAW on 02 9288 4900 or by email to mcollis@ifaw.org.

Thank you for the opportunity to provide our views.

Yours sincerely,



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