



TPPA

It's (Not) Our Future

Contents

3	Introduction
4	What Is The TPPA Really About?
5	10 Ways The US Dominates The TPPA
7	Timeline
8	Existing Agreements Between TPP Countries <i>Why Do They Want More Of These Toxic Deals?</i>
11	The Corporations <i>NZ Ambassador To The US Dines With Philip Morris!</i> <i>Call To Censure Mike Moore For Co-hosting TPP Lobbying Bash for Big Oil, Tobacco and PhRMA in Washington DC</i>
14	Beyond The Veil <i>Secrecy Challenged: Aotearoa/NZ Organisations Call For Transparency</i> <i>No Discussion Allowed: National MPs Shut Down Health Debate</i>
18	Hands Off Our Health System! <i>US Attack On PHARMAC Through TPP</i> <i>PHARMAC Under Attack By Pharmaceutical Industry (NZNO)</i> <i>HIV/AIDS:</i> <i>New Risks To Vulnerable HIV Sufferers</i> <i>UNDP, Global Commission On HIV And The Law, 2012</i> <i>Malaysian AIDS Council Concerns</i>
26	A Bill Of Rights For TNCs <i>Jurists Speak Out</i>
31	Our Tiriti, Not Their Treaty <i>Mike Smith, Hone Harawira, Annette Sykes</i> <i>Defending Tino Rangatiratanga From The TPPA</i> <i>The Violence Of US FTAs In Indigenous America</i>
35	How The TPPA Attacks Workers <i>Labour Declaration On The Negotiation Of The Trans-Pacific Partnership Trade Agreement</i> <i>NZCTU Resolutions</i>
39	No GMOs <i>Let's Insist On Labels For GM Foods</i>
42	Defending Culture And The Knowledge Commons <i>Key's Hollywood Romance Was All About The TPPA</i> <i>So What Do The Experts Think?</i>
48	TPPA - A Bankers Charter <i>Financial Crises, Finance Company Collapses And The TPPA</i> <i>How TPPA Could Fuel Another Financial Crisis</i>
52	Tobacco And Alcohol <i>Tobacco Case Shows Why We Should Oppose Investor Rights To Sue Governments In The TPPA</i>
55	Our Environment <i>TPPA - Mining Our Futures</i>
58	What Do Political Parties Think?
61	What Can We Do?



For More Information go
to: Facebook page **ItsOur-
FutureNZ** and website
www.itsourfuture.org.nz



Thank you to F1RST
Union for sponsoring
this publication.

www.firstunion.org.nz

Introduction

The New Zealand government is negotiating an international agreement that could have a huge effect on the lives of ordinary kiwis.

It's called the Trans-Pacific Partnership Agreement (TPPA), and it involves eleven Asian and Pacific-rim countries, including the United States.

Those who promote this agreement say it will set the 'gold standard' for the 21st Century. But their 21st century is designed by and for the 1%.

The TPPA would give binding and enforceable rights to other states and foreign investors - while governments can still ignore their Treaty of Waitangi obligations to Maori - and it would tie the hands of governments for the indefinite future.

If the TPPA goes ahead, we risk surrendering the ability to shape our own future to foreign countries and companies.

Because the negotiations are being conducted in secret, what we know about the TPPA comes from leaked documents and detective work.



But we do know it will have serious impacts if it is concluded, including on our livelihoods and jobs, an innovative economy, our pristine environment, our health, the creative commons in a digital age.

There have been lots of fight-back across the TPPA countries

- **Unions** predict job losses and weak labour laws
- **Public health** specialists have said 'hands of our medicines'
- **Smokefree** campaigners condemn the 'licence to sue' governments for tighter tobacco control laws
- **HIV/AIDS** groups say the TPPA will literally kill them.
- **Anti-mining** groups say companies will bully governments to stop stronger laws or paying to clean up their toxic dumping
- **Indigenous** nations reject another threat to sovereignty

Petitions against secrecy that represents millions of people have been delivered and ignored.

We live in a democracy, which means we have a right to know what is done in our name and to have a say.

'No TPPA'

What Is The TPPA Really About?

This is no simple 'free trade' deal. The negotiations are taking place (we think) in 29 working groups or subject headings, although the parties won't actually confirm what these are.

You can see from the list that very few of these headings involve what we understand by 'trade'. When the cheerleaders say the TPPA would go further 'behind the border' than any previous agreement they mean it would impose unprecedented constraints on the domestic policy and lawmaking choices of sovereign governments.

The cumulative effect will require rules that work in the interests of big business and give foreign corporations more leverage over a government's decisions than local businesses or ordinary citizens. The agreement would give corporations the right to participate in domestic policy processes, access information, demand explanations, appeal decisions, and in many cases threaten or actually bring investment disputes if they don't like the outcome. That is why US activists say

TPP = the corporate power tool of the 1%
(see <http://www.youtube.com/watch?v=gSOokUdKYcM>)

Then they expect lots of other really powerful countries, including Japan, South Korea, Indonesia, India and China, to sign on to rules that the US has basically designed so it can reassert its flagging influence in the Asia Pacific region. It seems very far-fetched, but also very scary.

1. Market Access for Goods
2. textiles and apparel chapter
3. Customs
4. trade facilitation
5. Sanitary and phytosanitary (quarantine)
6. Technical Barriers to trade (labelling and standards)
7. Trade Remedies
8. Subsidies
9. Government Procurement
10. Investment
11. Cross Border Services
12. Financial Services
13. Telecommunications
14. E-commerce
15. temporary movement of natural persons
16. Intellectual Property
17. Labour
18. Environment
19. Development
20. Trade Capacity Building
21. Competition
22. State owned enterprises
23. Supply chains
24. Transparency
25. Regulatory Coherence
26. Initial Provisions
27. Dispute Settlement
28. Exceptions
29. Final Provisions



10 Ways The USA Dominates the TPPA

In theory trade negotiations among equal participants could result in a fair outcome for all. The reality of the TPPA negotiations is the opposite. The United States of America – with an agenda set by the 600 corporation representatives that are official US trade advisors - dominates the terms of the negotiating process and is making extreme and unprecedented demands.

- 1 **The US is the only giant in the ring, with no other country of similar economic size involved in TPPA to counter U.S. bullying.** The US economy is 95 times the size of New Zealand's economy and *three times larger than the economies of all the other 10 TPPA negotiating partners combined*. Thus, the US can hardly be considered – nor does it consider itself - an “equal participant” in the talks.
- 2 **The U.S. imposes a secrecy double standard to empower its corporate interests.** While the TPPA negotiating texts are off-limits to the public, press, and even most legislators in most countries, the U.S. government has a system where 600 cleared private “advisors” (nearly all of them representing U.S. corporate interests) have access to the text and provide direct input.
- 3 **The US controls the agenda and pace for TPPA talks.** When President Obama first came into office in 2009, the TPPA talks were suspended for a year until the US decided how it wanted to proceed. In 2012, the U.S. decided it wanted to speed up talks, so it hosted three out of five rounds of negotiations. This allowed US. officials to set the terms of the negotiating agenda and engagement with stakeholders, chair the 29 sub-committees and much more. The high cost associated with holding the talks discourages other TPPA countries from hosting them as often.
- 4 **The US alone sends teams of officials to capitals of other TPPA countries to pressure domestic governments between TPPA negotiating rounds.** US officials regularly travel to other countries' capitals to try to set the agenda for domestic politics as well. This meddling by the US focuses on issues where it is not getting its way and targets countries that are standing up to US proposals in defence of the public interest.
- 5 **The US sets the template for negotiations; it does not ‘negotiate’ based on other countries’ proposals or agreements.** The US has a standard trade agreement template built from the framework of NAFTA, the North American Free Trade Agreement. That is the text that has become the basis of TPPA negotiations. Even in novel areas of the TPPA where it is making new demands on behalf of its corporations, it is drafting and tabling the texts that other countries then have to respond to.

6

The US is setting the TPPA agenda in favour of new powers for its large pharmaceutical corporations to raise medicine prices in every TPPA country. The US has the highest medicine prices of any TPPA country and its public considers the lack of affordable health care a priority problem. US TPPA negotiators are trying to export that failed model by demanding extended monopoly patents for medicines and new rights for Big Pharma to attack medicine pricing decisions. U.S. state legislators now implementing the major health cost reform package Obama won in his first term warn that the US TPPA proposals would undermine Obamacare's drug price savings.

7

The US alone wants the TPPA to BAN countries from using key financial stability policies. Ignoring lessons from the global financial crisis, Wall Street institutions want to extend their influence and limit countries' ability to regulate their behaviour. US officials are insisting that the TPPA forbid countries from using capital controls or financial transaction taxes, even as the rest of the world recognizes they are key tools to stop speculative floods of hot money that crash economies.

8

The US insists that all TPPA countries submit to secretive offshore tribunals with powers to award unlimited taxpayer-funded compensation to foreign investors if government actions undermine their expected future profits. US multinationals want all TPPA governments to submit themselves to investor-state dispute settlement that allows foreign firms the right to bypass domestic courts and demand taxpayer compensation at unaccountable foreign tribunals if they believe a country's laws (such as environmental, public health, consumer protection regulations) impact negatively on their "expected future profits". The investor-state dispute mechanism is highly unpopular even among U.S. legal experts and sub-federal policy-makers across the political spectrum.

9

The US Congress has an effective veto if it doesn't like the deal. The US Constitution gives exclusive authority over setting trade policy to Congress but exclusive authority to negotiate to the President (executive branch). So what US negotiators agree to at the table is not actually the final word. Legislators that wish to protect sensitive sectors, such as dairy, sugar or textiles, can withhold approval of a deal. In the past, the US has demanded that trade agreements be renegotiated *after* they were signed to eliminate some concessions US negotiators had agreed to so as to make the deals acceptable to Congress.

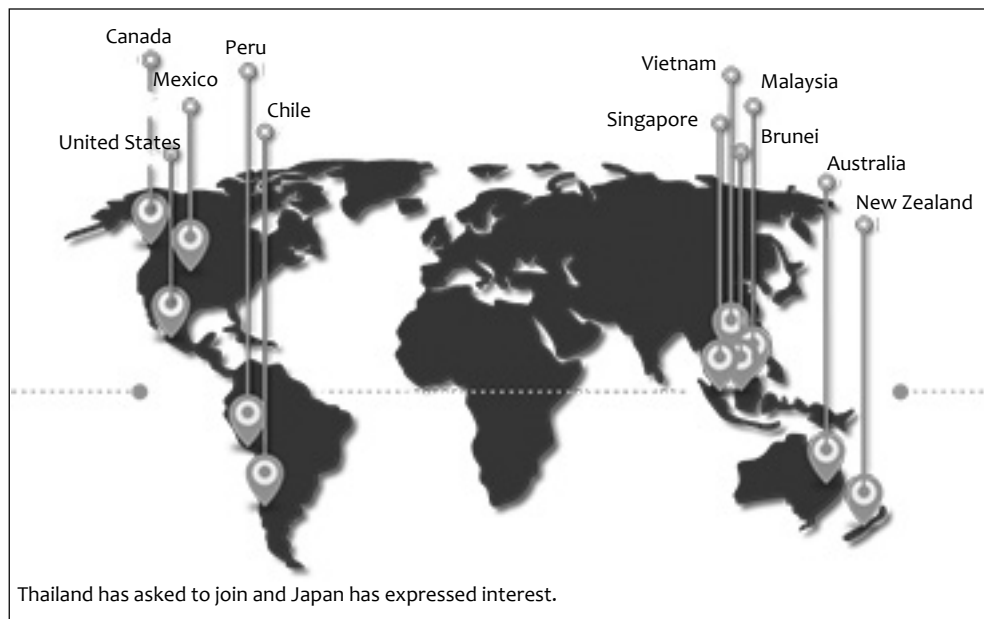
10

By refusing to implement trade agreements even after Congress approves them, the US often extracts additional concessions even after a trade pact has been approved by all parties. Even after Congress approves a deal, the US does not transmit the formal notification that the US has completed its legal requirements to implement a free trade agreement unless and until the U.S. President certifies that the other countries have altered their domestic laws and policies to satisfy U.S. expectations of compliance. Until the US send this notification, an agreement cannot go into effect. So other TPPA countries will likely have to give up even more to the US to satisfy the list of the changes to other countries policies that the US deems necessary -- even after all countries have approved a final signed agreement.

Timeline

2005	Agreement between Brunei, Chile, Singapore and New Zealand called the Trans-Pacific Strategic Economic Partnership Agreement or P4.
March 2008	George W Bush announced the US would join talks to complete the P4's unfinished business in financial services and investment.
September 2008	US announced it would join talks on an expanded P4
	Lehman brothers collapsed
November 2008	Australia, Peru and Vietnam joined negotiations
	Delay while new President Obama decided whether to continue with TPPA
November 2009	Obama said US would continue to participate
March 2010	1st round in Melbourne
	First leaks of draft chapters on regulatory coherence and technical barriers to trade in medical devices and pharmaceuticals
June 2010	2nd round, San Francisco, USA
October 2010	3rd round in Brunei
	Malaysia joined the talks
December 2010	4th round in Auckland
February 2011	Leaked paper from Chile and draft text from New Zealand on intellectual property
March 2011	Draft US texts on intellectual property were leaked
May 2011	6th round of negotiations in Singapore
	US proposal on 'transparency' for healthcare technologies was leaked
July 2011	7th round of negotiations in Ho Chi Minh City, Vietnam
September 2011	8th round of negotiations in Chicago, USA
	Sections of the US draft intellectual property chapter were leaked.
November 2011	9th round of negotiations in Lima, Peru
November 2011	On the margins of APEC in Honolulu, TPP countries released vague outlines of the agreement
December 2011	'Mini-round' of negotiations in Kuala Lumpur, Malaysia
March 2012	11th round of negotiations in Melbourne Australia
May 2012	12th round of negotiations in Dallas, USA
	Investment chapter draft text was leaked
July 2012	13th round of negotiations in San Diego, USA
August 2012	More of the intellectual property draft text leaked
September 2012	14th round of negotiations in Leesburg, USA
	Participation of Canada and Mexico approved
November 2012	Thailand asked to join. Japan prevaricates
December 2012	15th round of negotiations at Sky City Convention Centre, Auckland

TPP 'Partners'



'Why do they want more of these toxic deals?'

Rationale 1:

Somehow the US is going to have a change of heart and throw open its doors to Fonterra's dairy exports. But:

- Fonterra doesn't have a problem finding export markets
- NZ can't sustainability cope with continual intensification of dairy farming to produce more exports
- Fonterra's interests are not New Zealand's 'national interest' because (a) Fonterra is increasingly dominated by corporate farmers; (b) foreign interests are about to own large parts of its revenue streams; and (c) we need a much more diversified economy
- The US Congress has to approve any final deal and its dairy farmers are a powerful political lobby.

"One can't think that New Zealand would ever get anything that it cares about. When New Zealand's agriculture interests were opposed to those the American agricultural lobby, "you'll lose".

Joseph Stiglitz, Sunday Star Times, March 2008

Even NZ's negotiators don't believe there will be significant economic gains and talked about 'managing expectations' –

"There is a public perception a US free-trade agreement would be an 'Eldorado' for New Zealand's commercial sector, but 'the reality is different' and New Zealand must 'manage expectations' about the benefits of such an agreement" – a quote from former chief negotiator, Mark Sinclair, Wikileaks, quoted in Sunday Star Times, December 2010

Rationale 2: To lay the foundations for a Free Trade Area of the Asia Pacific that binds all countries of the region to 'gold standard' (US based) rules

'Gold standard', 'next generation, transformative agreement' that other countries will join (but not be allowed to renegotiate)

"...I would like to highlight is the trend away from purely bilateral to plurilateral or multi-economy negotiations. In many cases, this step towards complex multi-party negotiations is politically possible only because sufficient progress in liberalising trade with bilateral FTAs has already been made. Think of it visually, as a stone cast in the water, leading to wider and wider concentric rings of trade and investment integration.

TPP is of course centred on this strategic approach. TPP should, at least in principle, become the most important of these new broader FTA agreements. It is obvious why - it is because the world's number one economy, the United States, is involved. And of course, the current scenario would not stop with the current nine TPP economies. This is what we mean by a 'building block' approach...

Some sixty years on, we know the theatre where the main gain is going to take place - the Asia Pacific broadly defined, and the definition will have to be expanded to include India. But in this theatre there are more players on the stage. The ability of the United States to lead the TPP initiative to its full potential will answer at least some of the important strategic questions before us about leadership in the first quarter of the 21st Century". (Speech by NZ Trade Minister Tim Groser, Trans-Pacific Partnership, 21st February 2011.)

But.....

Asian members of APEC have rejected repeated earlier moves towards an Anglo-American style free trade area across the 23 APEC countries. Why would they adopt a binding, enforceable straitjacket that they had no role in negotiating? Chinese officials in 2011 criticised US goals as "too ambitious" and called for a balance between the TPPA and "other paths to achieve multilateral and regional trade liberalisation".

Talks are due to begin in December for a competing mega-arrangement called the Regional Comprehensive Partnership or ASEAN-plus 6 that is also being dubbed "the world's biggest free trade deal". It would bring together the ten ASEAN countries, including Brunei, Malaysia, Singapore and Vietnam that are involved in the TPP, with Japan, China, South Korea, India, Australia and New Zealand – but not the US. This will pose many of the same problems as the TPP. If they came off, agreements that impose competing demands would leave NZ as piggy in the middle with the biggest elephants in the global room. (horrible mixed metaphor!)

Rationale 3. The economic limb of the US economic and military strategy for "America's Pacific [sic] Century" to counter China's influence in Asia-Pacific

US Secretary of State Hilary Clinton and US officials said at the APEC meeting in Honolulu in November 2011: Security and economic challenges that currently confront the Asia Pacific "demand America's leadership". On the military side there was: "a substantial pivot in our foreign policy, as we responsibly draw down our commitments in Afghanistan and Iraq and focus more consequentially on our efforts in the Asia Pacific region." The economic limb of

“American statecraft” over the next decades sought to “lock in a substantially increased investment – economic, strategic and otherwise” in the Asia Pacific region through “a more mature security and economic architecture that will promote security, prosperity, and universal [sic] values”.

Obama in the debate on 22 believe China but we’re also clear signal Pacific power; ing to have a In a coded ref- he said “we’re relations with than China so feeling more meeting ba- standards. That’s the kind of leadership we’ve shown in the region. That’s the kind of leadership that we’ll continue to show.”

Frameworks of economic partnership agreements



3rd presidential October 2012: “we can be a partner, sending a very that America is a that we are go- presence there.” erence to the TPP organizing trade countries other that China starts pressure about sic international

Republican contender Mitt Romney in September 2012 criticised Obama for not being tough enough with China and said “The Trans-Pacific Partnership ... remains critically important. Such an agreement would open U.S. access to the rapidly expanding Malaysian and Vietnamese markets, provide a dramatic geopolitical and economic bulwark against China, and serve as both a foundation from which to promote the opening of markets throughout Asia and a template for future multilateral agreements. If the Obama administration stalls the TPP in the run-up to the 2012 election, a Romney administration will move to complete negotiations at the earliest possible date.

NZ Trade Minister Tim Groser told Radio NZ on 12 Feb 2012 NZ would walk away if the TPPA became an exercise in China bashing: “the moment we New Zealand smelt or sensed that this was an anti-China thing we’d leave TPP” ... and “ ... at heart there is no ambiguity around this, TPP is not an anti-China strategy whatsoever, and if it changed in its nature [New Zealand] would actually not be a part of it”.



The Corporations



In February 2011 members of the US Business Coalition for TPP wrote to the assistant to the President for Economic Policy to highlight the high priority they placed on “achieving a high standard, commercially meaningful agreement through the Trans-Pacific Partnership”. The letter stated that it was “vital to create new opportunities for our industries...in the decades to come in the fast growing Asia Pacific Region”.



They went on to say “US leadership at the highest levels is needed now to resist calls for the US to agree to lower standards, less market access or loopholes that our countries can use to deny access to US goods and services”. ...”The rules that the TPP sets now will set the template for the US-Asia Pacific trading relationship for decades to come”.



The letter demanded that market access should be comprehensive, covering all sectors and sub-sectors and including all forms of trade, both traditional and digital. Any agreement should also have ...”the highest Intellectual Property protection in order to produce effective and transparent enforcement of IP rights in the TPP countries”.

The corporates also wanted ...”strong investment protections, market-access provisions and investor-state and state-to-state dispute settlement to create the type of secure, predictable and non-discriminatory legal environments for US investment abroad...”.



And, as if that wasn’t enough, the letter requested ...”timely, efficient, secure and safe movement of goods and services across production and supply chains”. And a TPP that would take on ...”regulatory barriers that intentionally or inadvertently act as barriers to trade through the adoption of commitments to maintain regulatory systems that are transparent, effective, science-and risk-based, enforceable and mutually coherent”. They also want to ensure that ...”state owned industries compete on a level playing field with private and foreign companies”.



Finally the US Business Council for the TPP requests that “the United States must seek high standards, strong protections and maximum market access for all key sectors of the US economy through the TPP negotiations”.

This letter was signed by over 100 of the United States largest and most powerful corporations, organisations and associations.



Call to Censure Mike Moore for Co-hosting TPP Lobbying Bash for Big Oil, Tobacco & PhRMA in Washington DC

26 February 2012

New Zealand's Ambassador to the United States, Mike Moore, went ahead and co-hosted a \$1500 a head lobbying bash at the plush Willard InterContinental Hotel in Washington DC on Friday night, despite calls for him to follow the lead of Australian Ambassador Kim Beazley and decline to attend. The "exclusive reception" was sponsored jointly by Philip Morris, PhRMA, Chevron Oil and Target, and was promoted as "a unique gathering designed to establish and strengthen the critical person connections at the highest level of state government with embassy and industry representatives".

Moore was an official co-host representing the ambassadors from the nine countries involved in the Trans-Pacific Partnership agreement negotiations. Reportedly only five of the nine actually attended. The event has outraged tobacco control advocates, public health campaigners, environmentalists and labour organisations who are campaigning against the TPPA.

Washington-based activists slipped past tight security at the Willard and handed spoof TPP menus to arriving guests with offerings that included

Offshoring Edamame a la GE, drizzled with Chevron Amazonian oil spills,

Teenage smoking salmon toast points a la Philip Morris, served with lawsuits against plain packaging laws, and

Pfizer Filet Mignon, with sauce of attacks on cost-savings medicine formularies.

University of Auckland Professor Jane Kelsey, who has been strongly critical of the TPPA negotiations, described it as "outrageous that the New Zealand ambassador was acting as host to corporate lobbyists who were buying access to TPP ambassadors, among others, to press their cause".

In a last-minute letter to New Zealand's ministers of foreign affairs and trade on Friday, New Zealand, time, she urged them to instruct Moore to pull out of the event, as Beazley had done. Kelsey pointed to the government's assurances it would defend Pharmac against concerted attacks from big PhRMA attack in the TPPA negotiations, and its obligations under the Framework Convention on Tobacco Control to protect tobacco control policies from influence by the tobacco industry – at a time when Philip Morris is suing the Australian government over its plain packaging laws.

"If the government wants us to take seriously their assurances that they are looking after New Zealand's interests they need to censure Moore and ensure this conflict of interest never happens again".



Cartoon by Ashley Smith

NZ Ambassador to the US Dines With Philip Morris!

Governors and Ambassadors World Trade Reception

24th February 2012

“This exclusive reception is a unique gathering of Governors and other top state officials, select US trade officials, Ambassadors and key embassy personnel from large US trading partners, and businesses reliant on the expansion of international trade. This reception is designed to establish and strengthen the critical personal connections at the highest levels of state government with embassy and industry representatives to lay the foundations for growth in tw-way trade, foreign direct investment, and strengthened economic ties”.

Invitation

Host: **Governor Steve Beshear** (Kentucky)

Host: **Governor Terry Branstad** (Iowa)

Host: **Governor Gary Herbert** (Utah)

Host Ambassador: **Michael Moore**
of New Zealand
(on behalf of the eight TPP
Host Ambassadors)

Speech by: United States
Trade Representative, **Ron Kirk**

with Master of Ceremonies:
Business Roundtable CEO, **John Engler**

Guests will include host Ambassadors from the 8 TPP nations: Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, Vietnam. Also Ambassadors and delegates from over 60 other nations.

Thank you to our World Trade Reception sponsors:

Amgen
Business Roundtable
Dow Chemical Company
GE
Intuit
Microsoft
Pfizer
TIA
Walmart
US Chamber of Commerce
Chevron
PhRMA
Philip Morris International
Target

TPP Menu

Hors d'œuvres

🍰 **Endless Monopolies Patent Pâté**,
with denial to life saving medicines and
seeds and crème de PhRMA and Amgen

🍰 **Offshoring Edamame a la GE**
drizzled with Chevron Amazonian oil spills

🍰 **GMO Tomato Caprese Salad Skewers**
sourced in China and assembled by Wal-
mart low-wage, non-unionized workers

🍰 **Teenage smoking salmon toast
points a la Phillip Morris**
served with lawsuits against plain
packaging laws

Main Course

🍰 **Intuit SOPA Gazpacho**,
with a reduced internet freedom garnish

🍰 **Pfizer Filet Mignon**
with sauce of attacks on cost-savings
medicine formularies

🍰 **Braised Bye-Buy American Turkey**
with bans on domestic procurement pref-
erences

🍰 **Sans Sovereignty Vegetable Medley**
with Chevron and PMI private extrajudicial
enforcement of extreme investor rights

Dessert

🍰 **Target tangelo tarts infused with the
sweat of child laborers**

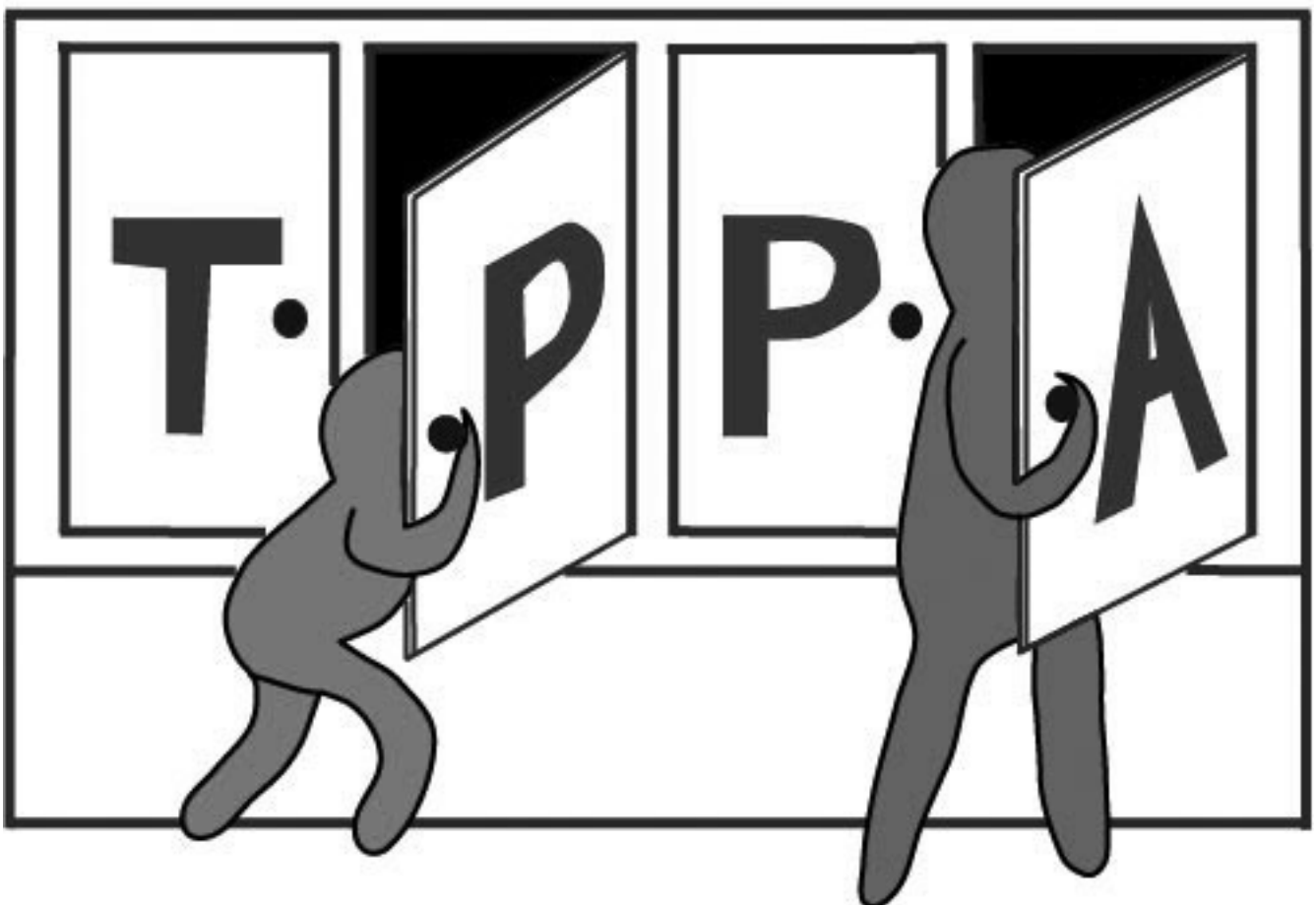
🍰 **L'Agent Orange Mousse with Dow
Chemical compote**

Opponents Suggest A Menu For The Event..

Beyond The Veil

All countries currently negotiating the TPP hide behind a veil of secrecy when it comes to allowing anyone access to the negotiating texts. In February 2011 the international “release the text” campaign presented negotiators with letters from campaigns in Australia, Chile, Malaysia, the USA and New Zealand asking that the negotiating documents be released. The answer was a resounding no! Well actually they hid behind the idea of consensus, saying the texts could only be released if all the countries in the TPP agreed, knowing full well this would never happen. Even the US Congress can’t get a look: 8 Democratic Party members of the US Congress asked for observer status to the 14th round of negotiations - they were denied.

BEHIND CLOSED DOORS



Secrecy Challenged

14 October 2011

To Rt. Hon John Key
Prime Minister of New Zealand

Hon Tim Groser
Minister of Trade

Transparency in the Trans-Pacific Partnership Agreement (TPPA) Negotiations and Release of Memorandum of Understanding

On 10 February this year twenty-four organisations that represent hundreds of thousands of New Zealanders, along with more than 500 individuals, wrote to you demanding:

at a minimum, that the New Zealand government commits itself to publish simultaneously on its website all documents that it tables at the TPPA negotiations and proposes to all the other the TPPA negotiating parties at the forthcoming negotiations in Chile in February 2011 that they agree collectively to:

1. Create and maintain a public website which governments and civil society can post information and participate as equals in a dialogue and debate;
2. Post the draft text of each chapter as it is completed to open them to expert and public scrutiny. Given the global financial crisis, the perfect starting point is the texts on investment and financial services, completed in the December 2010 Auckland round;
3. Post countries' position papers on specific subjects that are tabled during negotiations;
4. Guarantee that all civil society has equal access to information and engagement with the process, regardless of whether they are supportive or critical of the proposed agreement, ending the privileged treatment that pro-TPPA corporate lobby groups have enjoyed to date.

Similar open letters were addressed to the leaders of the governments of Australia, Chile, Malaysia and the United States of America by trade unions, environmentalists, faith and social justice organisations. Copies of those letters were hand-delivered to the lead negotiators of all delegations during the Trans-Pacific Partnership Agreement round in Santiago in February 2011.

Your government and all the other parties have rejected demands for greater transparency. Worse, you and they have insisted on a level of secrecy that reverses recent initiatives to facilitate more informed, open and democratic debate by releasing draft negotiating texts of free trade and investment agreements. We cite, in particular, the precedents of the Free Trade Area of the Americas, the Multilateral Agreement on Investment, the Anti-Counterfeiting Trade Agreement and the Doha round negotiations at the WTO.

Your government has also blocked the hearing of submissions by the Foreign Affairs, Defence and Trade select committee on the implications for New Zealand of the proposed TPPA, which was requested by a number of prominent national organisations through a parliamentary petition in May 2011.

Aotearoa/New Zealand Organisations want transparency

We now understand that the parties negotiating the TPPA signed a Memorandum of Understanding dated 4 March 2010 that set out the terms of the negotiation process, including disclosure of documents. It is apparent from the cover page of the leaked draft Intellectual Property chapter tabled by the United States government that the Memorandum includes rules on classification that *inter alia* restrict the declassification of documents for 'Four years from entry into force of the TPP agreement or, if no agreement enters into force, four years from the close of the negotiations.'

While we reiterate our earlier demands for comprehensive disclosure, we consider it utterly unacceptable for a document on the terms of the negotiation to remain secret.

At the stakeholder briefing in Chicago on 11 September 2011, the Chair for the Chicago round, Assistant USTR Barbara Weisel, said the parties would have to consider the request for the release of the Memorandum of Understanding. We have since learned that New Zealand is the repository of all the TPPA documents and that the lead negotiator is currently consulting with other governments regarding the request for release of the Memorandum.

We therefore demand that New Zealand supports the immediate release of the Memorandum of Understanding and actively encourages the other parties to agree to do this before or at the forthcoming round in Lima, Peru. The release of that document would provide a better understanding of the rationale for the extreme level of secrecy surrounding the TPPA negotiations, the rules that the parties have agreed should govern the negotiations, and the nature and duration of the restrictions on disclosure and classification.

Yours sincerely,

Helen Kelly, President, New Zealand Council of Trade Unions
Russel Norman, Co-leader of the Green Party of Aotearoa
Hone Harawira, Leader of the Mana Movement
Barry Coates, Executive Director, Oxfam NZ
John Roberts, President Elect, Methodist Church of New Zealand
New Zealand Council of Civil Liberties
InternetNZ
Tech Liberty
New Zealand Society of Authors
Ben Youden, Director, ASH New Zealand
Prof Doug Sellman, Alcohol Action New Zealand
Pax Christi
First Union (formerly National Distribution Union and FinSec)
Tertiary Education Union
UNITE Union
Our Water Our Vote
Campaign Against Foreign Control of Aotearoa
NZ Not For Sale
Tauwi Solutions

No Discussion Allowed

Press Release: New Zealand Labour Party
Wednesday, 12 September 2012, 4:46 pm

Maryan Street
Health Spokesperson

National Party members on the Health Select Committee have now twice refused to allow experts to brief the committee about possible effects of the Trans Pacific Partnership on New Zealand's ability to determine its own health policies, Labour's Health spokesperson Maryan Street says.

"We have been approached on two separate occasions by people or organisations with concerns about the implications of the TPP on our smoke-free policies.

"On both occasions, National MPs have refused to support a call to hear from these experts.

"The first was on 22 August, when they voted against a motion to invite Prof Jane Kelsey to brief the committee on the implications of the Australian experience of Philip Morris's legal action against them, and any other issues to be aware of with respect to the TPP and possible impacts on smoke free policies.

"Then on 29 August, they voted against a motion moved in response to the New Zealand Nurses' Organisation who asked if it could bring Dr Deborah Gleeson to brief committee members on possible impacts of the TPP on public health policies more generally.

"This deliberate and persistent refusal to be informed by people who know more about these issues than we do, smacks of a cover up and is not the kind of behaviour MPs should be engaging in.

"We need to be informed of all views if we are to do our jobs properly. We may not agree with evidence before us, but how will we know if we don't hear it?

"What are they afraid of? People are asking us questions about these issues. If we can't be informed about how trade agreements might or might not impact on future health policies, then what are we doing on the Health Select Committee?" asked Maryan Street.

--

The minutes of these meetings show the voting records as:

22 Aug (minutes amended and approved on 12 Sept) - motion to invite Prof Jane Kelsey -

Ayes - Street (Lab), Lees-Galloway (Lab), Little (Lab), Hague (Green), Stewart (NZ-First)

Noes - Hutchison (Nat), Ardern (Nat), Blue (Nat), Calder (Nat), Yang (Nat).

The votes being tied, the motion was not agreed to.

National MPs Shut Down Health Debate

Hands Off Our Health System!

One of many causes for concern around the TPPA is its potential effect on access to medicines.

Subsidised medicines

The Pharmaceutical Management Agency (PHARMAC) decides what medicines the New Zealand government buys and subsidises for use by the public. Because PHARMAC purchases in bulk and makes its decisions in the interests of New Zealanders, we pay far less for medicines than we otherwise would.

A leaked negotiating text shows what the US is demanding on behalf of its big drug companies (known as “Big Pharma”) and how the benefits New Zealanders enjoy under PHARMAC are threatened by the TPPA. Although PHARMAC itself will not be dismantled, under the leaked text PHARMAC would:

- not be able to negotiate a bulk discount for medicines
- have to give detailed reasons to the drug companies about every purchasing decision
- give pharmaceutical companies the right to appeal PHARMAC’s decisions
- publish the identities of all decision-makers around the purchasing of medicines.

If adopted, this text would strengthen Big Pharma’s leverage over PHARMAC. The drug companies’ would gain new rights and opportunities to lobby PHARMAC decision makers and challenge their credentials, demand reasons if PHARMAC rejects their ‘expert’ reports and data, and pressure its decisions by constant threats of appeal. The goal of the big pharmaceutical companies is to influence PHARMAC’s criteria and decisions in their favour at the expense of affordability for the public. If the leaked text is adopted then government would have to massively increase the health budget, reduce the availability of subsidised drugs, or increase the price paid by ordinary New Zealanders.

Affordability of medical devices

Medical devices like heart valves, replacement hip joints and lenses for cataract operations are all now being brought under PHARMAC, so the same problems will apply as with medicines.

Generic pharmaceuticals

One reason why life-saving drugs are affordable for ordinary people — in New Zealand and overseas — is the availability of “generic” alternatives to branded pharmaceuticals. Generics are identical to their branded equivalents, but cost only a fraction of the price. Their availability helps PHARMAC keep the price it pays for medicines down.

Generics can only be sold in New Zealand where no local patent has been granted, where that patent has expired, or a licence has been issued. Another leaked negotiating text from February 2011 threatens kiwis’ ability to access generic medicines:

- Patents on medications could in effect be extended, as pharmaceutical companies would be able to claim additional patents on medications where they discover an alternative use for them, or make



a minor modification. This would apply even if the modification were clinically insignificant. It would effectively mean the original product would be withheld from the generic market even though its patent had expired.

- The life-time of patents could be extended to take into account the time taken for a new medicine to be approved as safe.
- Medsafe — the government body responsible checking whether new pharmaceuticals are safe for New Zealanders would be forced to investigate whether the drugs they are approving have patents on them or not. This is called “patent linkage”, and it would delay the approval of generics even though drug patenting has nothing to do with drug safety.
- Big pharmaceutical companies would be able to prevent generic manufacturers from using original safety testing data for longer, meaning that the registration of generic medicines is postponed.

Every delay in the availability of generic medicines means more money for big pharmaceutical companies, and higher prices for kiwis.

Patenting of medical techniques

The leaked February 2011 text would require the New Zealand government to allow companies to secure patents on “diagnostic, therapeutic, and surgical methods for the treatment of humans or animals.” The idea is deeply unethical as it would mean either higher costs for medical treatment or that many New Zealanders were denied access to life-saving medical techniques.



US Attack on PHARMAC Through TPP

New Zealanders should be wary of accepting bland assurances that PHARMAC will come through the TPP negotiations intact.

During the latest round of negotiations for the Trans Pacific Partnership in early September, the United States tabled a revised version of text proposing restrictions on the operation of PHARMAC and similar schemes for subsidizing medicines and medical devices.

As with all draft negotiating texts for the TPP, the latest text of the euphemistically titled ‘transparency’ chapter is not publicly available. Some commentators speculate that the US may have wound back its demands after resistance from other TPP countries to its earlier drafts. This seems highly unlikely.

PHARMAC, New Zealand’s Pharmaceutical Management Agency, has been very successful in ensuring that New Zealanders have access to essential medicines at affordable prices. PHARMAC does this through a number of highly effective mechanisms that allow it to source prescription medicines at lower prices than most other OECD countries.

So it is hardly surprising that the US pharmaceutical industry has long complained about the effects on its profits, and has targeted PHARMAC’s effective processes.

In recent years, the US Government (on behalf of its pharmaceutical industry) has attempted to impose controls over the operations of drug subsidy schemes of other countries through free trade agreements – firstly through the Australia-US Free Trade Agreement (AUSFTA) and later through its agreement with South Korea (KORUS). The TPP represents the latest – and most aggressive – attempt. And the US seems to be particularly targeting PHARMAC this time.

The lessons from previous free trade agreements are salutary. Australia successfully preserved its Pharmaceutical Benefits Scheme’s processes for making decisions about which medicines to subsidize (and how much to pay for them) during the AUSFTA negotiations in 2004. But the US learned from this experience, and was subsequently much more aggressive (and more successful) in imposing constraints on South Korea’s scheme through KORUS.

An earlier version of the US proposal, leaked in 2011, show that its demands for the TPP have been even more extreme than KORUS. The proposals included clauses that would directly interfere with PHARMAC’s processes for obtaining value for money and ensuring equitable access to medicines.

PHARMAC’s success depends on being able to employ a range of mechanisms to ensure the greatest bang for the kiwi buck. Many of these rely on confidential processes for negotiating prices. But in the name of “transparency”, the US has sought to introduce onerous requirements for disclosing information to the pharmaceutical industry.

PHARMAC also relies on being able to apply flexible, multidimensional criteria in making decisions about whether to subsidize new drugs – criteria that include the health needs of the whole population, and the particular needs of Māori and Pacific peoples. This flexibility in decision-making could be severely constrained by a requirement to

specify in detail its rules for making decisions.

It is also important that PHARMAC can continue to ensure that prices of new drugs reflect their clinical benefits. The 2011 proposals contained wording that would mean that newly patented drugs would command much higher prices than medicines already available, even if they offered little or no additional clinical benefit.

Under other provisions, pharmaceutical companies could appeal PHARMAC's decisions on which drugs to subsidize and how much to pay, and would have more influence at key points in PHARMAC's processes. Such changes would only benefit the industry – not consumers.

The New Zealand government is adamant that the “fundamentals” of PHARMAC are not up for negotiation. But exactly what does this mean? The US does not aim to dismantle PHARMAC itself, but to impose restrictions that would affect many aspects of PHARMAC's operation. Any intrusion into domestic decision-making about medicines – even seemingly reasonable requirements for greater “transparency” – could have profoundly negative consequences for PHARMAC's ability to manage expenditure and ensure value for money.

Despite the modest size of the New Zealand market, the stakes are high. It seems highly unlikely that any new US proposal will be more moderate than its predecessors, although it is possible that provisions in the ‘main’ text may be diluted while more onerous provisions appear in separate ‘side letters’ for each country. There is a risk that New Zealand will be pressured to accept such provisions in exchange for potential access to US markets (phased in over a long time) for its agricultural products.

New Zealand would be wise to pay close attention to the experience of Australia and South Korea, and to the long run implications for PHARMAC of each provision of the TPP text. But this is not easy. The text not available for public scrutiny, and the Health Select Committee has refused to hear from academics about the public health risks, or to allow health practitioners to hear public submissions.

New Zealanders should be wary of accepting bland assurances that PHARMAC will come through the TPP negotiations intact. In all likelihood the endgame will be very risky indeed.

Dr Deborah Gleeson is a public health academic from La Trobe University, Australia. Originally published in New Zealand Herald, 24 September 2012



“Health starts, long before illness, in our homes, schools and jobs. Laws - such as food quality, smokefree laws, alcohol control - are our decisions on how to keep our neighbourhoods and homes safer. We should not be told what to do by other countries in a TPPA, just as we should not be letting smaller Pacific states be bullied into bad laws that make bad health, either”.

Gay Keating, Public Health Practitioner

Kevin Sheehy Medicines NZ

“The Prime Minister and the Minister of Trade have said repeatedly that New Zealand will not sign up to a free trade agreement that is not in the country’s best interests. There has been no suggestion that Pharmac will not retain the right to decide what medicines to purchase and when.

The central issue for the medicines industry within the TPP is simply: What can we do better?

Asking for improvements to how Pharmac operates is not about threatening its existence, but it is about putting health first. We believe that New Zealanders could have access to better medicines if the system was streamlined.”

*Quote from Kevin Sheehy
general manager of Medicines New Zealand, NZ Herald, 27 September 2012 in response to Deb Gleeson.*

Pharmac Under Attack by Pharmaceutical Industry

New Zealand Nurses Organisation

Media Release

The New Zealand Nurses Organisation (NZNO) rejects the pharmaceutical industry’s contention that Pharmac will not be affected by the Trans Pacific Partnership Agreement (TPPA) currently being negotiated between eleven Asian and Pacific-rim countries including the United States and New Zealand.

Kevin Sheehy, general manager of Medicines New Zealand, dismissed analysis by public health and trade expert Dr Deborah Gleeson that showed there is much in the TPPA that undermines the effectiveness of Pharmac.

Geoff Annals, NZNO chief executive commented on Sheehy’s claim saying; “It is not surprising to see the pharmaceutical industry rejecting concerns the TPPA will reduce the effectiveness of Pharmac, because Pharmac is very successful in doing what it was set up to do: making medicines more affordable.

Pharmac is the national medicines purchasing agency that has achieved the greatest success anywhere in the world in balancing the health interests of people and communities against the business interests of big medicines companies.

Pharmac is under attack by the pharmaceutical industry because it is successful and because the ‘Pharmac model’ is being adopted by other countries that need a better balance between business and health interests.”

Responding to the claim that Pharmac will be improved by being forced to operate more transparently under the TPPA, Annals asked “If Pharmac needs more transparency why attempt to force this through secret trade negotiations? Whose interests are being served? NZNO is concerned that US pharmaceutical interests are attempting to use the TPPA as a tool to undermine the effectiveness of Pharmac at serving the interests of New Zealanders.”

“Pharmac purchases medicines for New Zealanders at prices around half those achieved by Australia’s medicines purchasing agency and around a third the price demanded in the US. Yes, this is painful to the medicines industry, but it enables New Zealand to afford better health services than otherwise. Analysis by Dr Gleeson and other experts of leaked drafts of the TPPA expose provisions designed to force up the price New Zealanders pay for medicines by attacking the mechanisms that make Pharmac effective.”

Annals concluded by commenting that; “Assurances that Pharmac will be preserved under the TPPA are empty when it is apparent the Pharmac envisaged is a Pharmac redesigned by US

HIV/AIDS

New Risks To Vulnerable HIV Sufferers

Nov 18, 2011

The Trans Pacific Partnership Agreement (TPPA) has been hailed for its potential to remove barriers to free trade. However, in free trade, someone (else) often ends up paying. Significant pressure from the US pharmaceutical industry lobby means that the price paid by low- and middle-income countries could be the loss of access to affordable life-saving HIV medications.

The Australian government has a long tradition of strong policy and programs to support the fight against HIV and care for people with HIV in south-east Asia and the Pacific. APEC partners and TPPA signatories such as Vietnam and Malaysia need Australia to join them in rejecting text in the TPPA that restricts access to generic HIV medications.

US government negotiators for the TPPA have pushed strongly for the inclusion of language in the TPPA to limit the production and sale of generic medications in developing countries.

Yet in June this year Foreign Minister Kevin Rudd told the United Nations General Assembly that “treatment for HIV should be available for all those who need it, regardless of where they live”.

And just last week Hillary Clinton said we could see a generation without AIDS in the near future and that access to affordable treatments was one of the key ways this will happen.



US government negotiators for the TPPA have pushed strongly for the inclusion of language in the TPPA to limit the production and sale of generic medications in developing countries.

The Global Fund to eliminate HIV, malaria and tuberculosis meets next week in the face of a crisis in contributions from governments, with no contributions this year from Spain or Greece—for obvious reasons. The financial crisis could lead to a halt to the distribution of funds or major cuts. A rise in the price paid for HIV drugs could make this an even bigger crisis. Many of our low- and middle-income country neighbours rely on the Global Fund to supply most of their HIV medications.

On World AIDS Day 2010, the Prime Minister said “Let us keep the light of hope burning in our hearts, until we can stand together, and say the journey is over and the job is done,” stressing the need for universal access to treatment.

In June, all members of the UN unanimously agreed to the target of getting 50% of people living with HIV on treatments by 2015. Currently, only 30% receive treatments and given the global economic uncertainty, that may not change for some time.

President Obama and the Prime Minister should ensure the TPPA secures continuing access to affordable generic medicines for all parties.

That is the leadership we need to see.

Rob Lake is the executive director of the Australian Federation of AIDS Organisations; Shiba Phurailatpam is the regional co-ordinator, Asia Pacific Network of people living with HIV/AIDS

UNDP, Global Commission on HIV and the Law 2012

Risks, Rights and Health

“Free trade agreements (FTAs) and economic partnership agreements (EPAs) containing TRIPSplus standards also threaten access to medicines. A case in point is the United States–promoted Transpacific Partnership Agreement (TPPA). Among other terms friendly to the United States pharmaceutical industry, the proposed patenting standards would allow patenting of new forms, new uses and new formulation of existing medicine; extend patent terms; and restrict the use of price control mechanisms.” (p.83)

Recommendations

6.2.1

All countries must immediately adopt and observe a global moratorium on the inclusion of any intellectual property provisions in any international treaty that would limit the ability of countries to retain policy options to reduce the cost of HIV-related treatment.

6.3.4

Countries must proactively use other areas of law and policy such as competition law, price control policy and procurement law which can help increase access to pharmaceutical products.

Malaysian AIDS Council Concerns

Malaysian efforts against the TPPA: Access to Affordable Medicines

Fifa Rahman
Senior Policy Executive
Malaysian AIDS Council

Malaysian efforts against the Trans-Pacific Partnership Agreement (TPPA) have been driven by concerns about access to generic medicines. While tobacco groups are equally concerned, strong pro-tobacco lobbying by the tobacco industry has meant that getting tobacco control concerns through have not been as effective as the medicines lobby. Malaysia is a middle-income country of 29 million inhabitants, with a mean household income of MYR 4,025 (US\$1313) per month. A large majority of Malaysian government hospital medicines are generics, and a survey of 157 pharmacies¹ shows that pharmacists recommended generic substitution for 84.7% of the brand name medicine requests.

Malaysians who do not work in the civil service, however, often have to pay for medicines and treatment out of their own pockets where they do not have private insurance schemes. There are around 1000 second-line HIV patients who must fork out about \$300 per month for the second-line medicine Kaletra. This price is often out of the reach of HIV patients, who already find it significantly harder to get a job. Breast cancer patients also face significant difficulties in paying for their medicines, with one type of cancer medicine having an average price of \$3000 per month. As a result of fears of American demands to widen patent monopolies and delay entry of generic medicines, Malaysian NGOs decided to join forces and campaign against these demands.

In May 2012, we sent out letters and emails to numerous influential patient groups and medical organisations, describing specific provisions contained in the leaked texts of the TPPA, and asked them to join us in a Joint Statement against the TPPA.² These organisations included the National Cancer Society of Malaysia, the Breast Cancer Welfare Association, and the palliative care organisation and treatment centre Hospis Malaysia. This Joint Statement was faxed to the Prime Minister, the Minister of Health, and the Minister and Deputy Minister of International Trade and Industry. Public Citizen, the Washington-DC based consumer advocacy organisation, assisted us greatly in distributing the Joint Statement at the San Diego round of TPPA negotiations.

After the San Diego round, momentum began to build. We began to get increased requests for information and interviews from the media.³ In July 2012 we began planning for a public forum to be held at the Bar Council. We sent out letters of invitation to all partner organisations and their subsidiaries, members of the press, and advertised on social media, using Twitter mainly to disseminate information. Some 200 people attended the public forum on 4 August 2012. For an issue as technical and complex as the TPPA, this was a great start. We were very encouraged by questions from the audience. Two days later, the Minister of Health Liow Tiong Lai stated that he was 'against the patent extension' and investor-state dispute settlement, which would enable companies to sue to Malaysian government in breach of special rights conferred to them under the TPPA.⁴

We are moving ahead with the production of an advocacy video and now have 20 patient group organisations supporting our efforts.

(Endnotes)

1 Chong, Chee Ping at el, "Generic Medicine Substitution Practices among Community Pharmacists: a Nationwide Study from Malaysia." *Journal of Public Health* 19(1) (2011): 81-90.

2 <http://infojustice.org/wp-content/uploads/2012/08/Malaysian-Civil-Society-Statement.pdf>.

3 The podcast of one interview can be found at <http://www.bfm.my/current-affairs-010812-fifa-rahman-mac-tpa-medicine-malaysia.html>.

4 FTA Malaysia, CAP Lauds Health Minister Liow Tiong Lai for Statement on TPPA. Accessed October 8, 2012. <http://www.ftamalaysia.org/article.php?aid=296>

A Bill Of Rights For TNCs

The leaked investment chapter from the TPPA negotiations showed why the parties are so desperate to keep it secret. The reassurances that trip off the tongues of Trade Minister Groser and Prime Minister Key are much less convincing when they can be checked against the text.

The simplest way to describe it is a charter of rights for investors across the nine countries. Other investors will try to take advantage of the rules through the backdoor. Those rules will lock in the current foreign investment regime, so New Zealand can't become more discriminating about what foreign investment we have, why and on what terms. They also allow overseas investors to seek compensation if government regulation substantially affects the value or profitability of an investment. Local investors won't have that power.

An investment can be anything from shares and real estate to mining or casino licenses and contracts for public-private-partnership schools.

Recent discussion the government's has centred on to-because Philip Mor-Australia's plain under another in-(trademarks are in-has hinted at simi-

But a raft of oth-also prompt inves-Imposing a capital ing Sky City's pokie cially if National in a Convention More stringent a ban on fracking, drilling in wahi regulation of min-

the government has invited to tender. Capping electricity price increases. Tighter alcohol retail laws. Reversing ACC privatisation, as Labour did before. Stronger finance sector regulation, such as capping a bank's market share or banning crossover retail, investment and insurance activity.

Especially scary, given the Eurozone meltdown, the National government has apparently agreed to US demands that it signs away the right ever to use capital controls to stop hot money flows that play havoc with the currency and exports.

The leak confirmed that all countries except Australia have endorsed the power of foreign investors to sue our governments directly in secretive offshore investment tribunals for breaching these far-reaching guarantees and protections. Instead of applauding and join with Australia, Prime Minister Key said all TPPA parties should adopt the same rules – by implication the others should gang up on Australia and force it to back down.

If the US gets its way, investors it may not even have to allege a breach of the TPPA rules. They could use



of constraints on right to regulate bacco controls, ris is challenging packaging laws vestment treaty vestments) and lar action here.

er policies could tor complaints. gains tax. Slash-numbers, espe-guarantees more Centre contract. mine safety laws, iwi approval for tapu, or tighter ing by companies

the ad hoc offshore tribunals, which do not operate under the same legal disciplines as domestic courts, to enforce contracts with the government on mining, electricity supply and other natural resources.

Whether foreign investors have a strong legal case is usually beside the point. They can tie government up for years in hugely expensive legal battles. Just that threat can ‘chill’ the regulatory decisions.

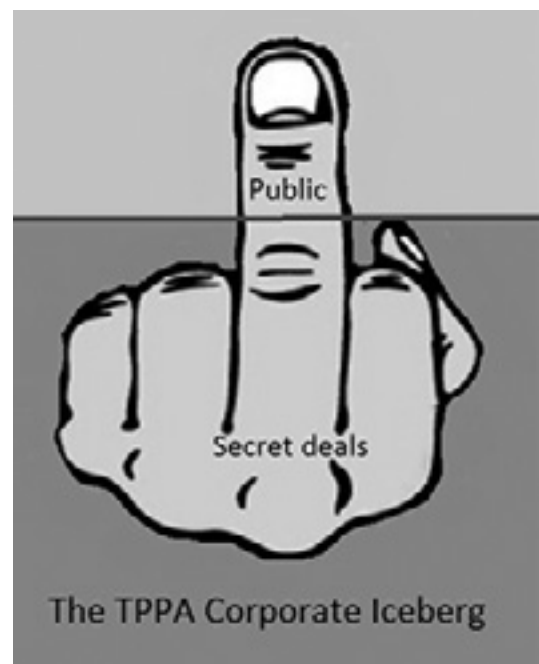
Trade Minister Groser delivered the familiar platitude that the “Government will not sign any agreement which stops us now, or in the future, from regulating public health and other legitimate policy purposes”. But he knows there is a mountain of case law in the World Trade Organization disputing that right to regulate - and that governments often lose.

Ultimately, the ability to regulate is useless if overseas investors can sue the pants off us for loss of profits. Recent moves to tighten up the wording of rules on ‘expropriation’ and ‘fair and equitable treatment’ in free trade deals aim to restrict the creative interpretations of the investment tribunals, but they are far from watertight and recent rulings have basically cast them aside. New Zealand is apparently not supporting the most robust version of these restrictions in the TPPA.

In any case, a far-reaching ‘most-favoured-nation’ clause could let investors shop around for better rules in New Zealand’s other agreements, mixing and matching provisions to build super-TPPA obligations.

Dr Bill Rosenberg, NZ Council of Trade Unions

Tim Groser in the NZ Herald,
7 July 2012,
“We’ll lose under trade deal”, says
Groser... (headline later changed to add
‘but we’ll win too’)
Trade Negotiations Minister Tim Groser
admits that the Trans-Pacific Partner-
ship trade deal involves some loss of
sovereignty for New Zealand - but says
that is normal for trade agreements.
“Of course trade agreements involve
concessions over the sovereign rights
of countries to do things. ... That’s the
point of international law.”
New Zealand’s problem had been the
“excess sovereignty” other countries
had exerted over it ...



Jurists Speak Out

AN OPEN LETTER FROM LAWYERS TO THE NEGOTIATORS OF THE TRANS-PACIFIC PARTNERSHIP URGING THE REJECTION OF INVESTOR-STATE DISPUTE SETTLEMENT

8 May 2012

“it is an essential element of any democracy that litigants have access to a competent non-corrupt court system to resolve disputes. It is fundamental to any understanding of the rule of law. New Zealand has such a court system so why give away the right to access it? There is no need to submit to the Investor-State dispute settlement procedure, so why should we carelessly give away our autonomy in this instance. This is an instance in which we should follow Australia and take a stand for the right to make the decisions that affect us.”

*Former Speaker
of the Parliament
Professor
Margaret Wilson*

As lawyers from the academy, bench and bar, legislature, public service, business and other legal communities in Asia and the Pacific Rim, we are writing to raise concerns about the Investment and Investor-State dispute arbitration provisions being considered in the on-going negotiations for a Trans-Pacific Partnership (TPP) agreement.

We have diverse views about the TPP generally. However, we are united in our view that the foreign investor protections included in some recent Free Trade Agreements (FTA) and Bilateral Investment Treaties (BIT) and their enforcement through Investor-State arbitration should not be replicated in the TPP. We base this conclusion on concerns about how the expansion of this regime threatens to undermine the justice systems in our various countries and fundamentally shift the balance of power between investors, states and other affected parties in a manner that undermines fair resolution of legal disputes.

We are encouraged to note that the Government of Australia has said it is unwilling to submit to Investor-State dispute settlement powers under a TPP and other future trade agreements, and urge the TPP negotiators to exclude the Investor-State system for all countries, not just Australia.

As lawyers, we believe that all investors, regardless of nationality, should have access to an open and independent judicial system for the resolution of disputes, including disputes with government. We are strong supporters of the rule of law. It is in this context that we raise our concerns.

The ostensible purpose for investor protections in international agreements and their Investor-State enforcement was to ensure that foreign investors in countries without well-functioning domestic court systems would have a means to obtain compensation if their real property, plant or equipment was expropriated by a government. However, the definition of “covered investments” extends well beyond real property to include speculative financial instruments, government permits, government procurement, intangible contract rights, intellectual property and market share, whether or not investments have been shown to contribute to the host economy.

Simultaneously, the substantive rights granted by FTA investment chapters and BITs have also expanded significantly and awards issued by international arbitrators against states have often incorporated overly expansive interpretations of the new language in investment treaties. Some of these interpretations have prioritized the protection of the property and economic interests of transnational corporations over the right of states to regulate and the sovereign right of nations to govern their own affairs.

Increasingly decisions issued under this system see foreign investors being granted greater rights than are provided to domestic firms and investors under the Constitutions, laws and court systems of host countries. In several instances, arbitral tribunals have gone beyond awards of cash damages and issued injunctive relief that

“The TPPA seems likely to give foreign investors greater legal rights against our government than any New Zealand investor will enjoy. Those rights could even allow a foreign investor to argue before a specially constituted international tribunal that a future New Zealand government, elected with a mandate to change the law, should pay massive compensation for doing so. The government might even be ordered to stop our courts from enforcing their own decisions. In other words, it would mean a significant loss of the power of democratic self-government.”
 Professor Bryan Gould.

creates severe conflicts of law. For instance, a recent order by a tribunal in the case brought by Chevron against Ecuador under a U.S.-Ecuador BIT ordered the executive branch of that country to violate its constitutional separation of powers and somehow halt the enforcement of an appellate court ruling.

This is not a unique case. The scope of government actions that arbitral tribunals have previously considered they may subject to review for possible violations of investor rights includes a ruling on jurisdiction in the *Loewen v. United States* case under the North American Free Trade Agreement (NAFTA) in January 5, 2001 that ‘measures’ include the function of a domestic court and the standing rules of civil procedure. The arbitral tribunal concluded that a jury decision in private contract litigation constituted a government measure that was subject to NAFTA’s investor rules.

Investors are also seeking to avoid the deliberate decision of governments to require investors to pursue remedies in the domestic courts of the host nation, at least initially, by invoking the most-favoured-nation rule. Subsidiaries of Philip Morris International are seeking to circumvent a requirement in the Uruguay-Switzerland BIT that they must attempt to litigate their objections to Uruguay’s new tobacco labelling laws through the domestic courts for eighteen months before pursuing international arbitration by invoking a provision from a BIT between Uruguay and a third country that does not have that requirement.

Moreover, the design of the Investor-State system tribunals allows lawyers to rotate between roles as arbitrators and advocates for investors in a manner that would be unethical for judges. The system also excludes the right for non-investor litigants and other affected parties to participate and fails to meet the basic principles of transparency, consistency and due process common to our legal systems. Investment arbitration as currently constituted is not a fair, independent, and balanced method for the resolution of disputes between sovereign nations and private investors.

It is of particular concern that, rather than being an option of last resort, the use of this regime is increasing exponentially. BITs with Investor-State enforcement have existed since the 1950s, but between 1972 and 2000 only about 50 disputes were resolved. Since 2000, under the World Bank’s international arbitration arm, the International Convention on the Settlement of Investment Disputes (ICSID), alone 173 cases have been resolved and an additional 128 filed.

To put this in perspective, as recently as 1999 only 69 ICSID cases had been launched. Today, there are 370-plus such cases underway, an increase of 436% - and that is only the number of Investor-State cases at ICSID. Over \$675 million has been paid out under U.S. FTAs and BITs alone, 70% percent of which pertained to challenges to governments’ natural resource and environmental policies, not to traditional expropriations. Tobacco companies have also used Investor-State dispute settlement to challenge government tobacco control policies enacted to implement obligations under the World Health Organization Framework Convention on Tobacco Control.

The current regime’s expansive definition of covered investments and government actions, the grant of expansive substantive investor rights that extend beyond domestic law, the increasing use of this mechanism to skirt domestic court systems and the structural problems inherent in the arbitral regime is corrosive of the rule of law and fairness.

WE THEREFORE CALL UPON

all governments engaged in the TPP negotiations to follow Australia’s example by rejecting the Investor-State dispute mechanism and reasserting the integrity of our domestic legal processes.

Principal Signatories

Retired Justice Elizabeth A Evatt, AC, LLB, LLD

Former Chief Justice of the Family Court of Australia & Former President of the Australian Law Reform Commission
AUSTRALIA

Rt Hon Sir Edmund Thomas KNZM, QC, LLB(NZ), LLD(VUW)

Retired Judge of the New Zealand Court of Appeal & Former Acting Judge of the Supreme Court
NEW ZEALAND

Professor Margaret Wilson M Jur

Te Piringa Faculty of Law, Waikato University
Former Speaker of the NZ House of Representatives & Former Attorney General
NEW ZEALAND

Bruce Fein JD

Bruce Fein & Associates
Former Associate Deputy Attorney General & General Counsel to the Federal Communications Commission, Reagan Administration
USA

Jovino Guillermo Cabanillas Zaldivar,

Ex Superior de la Corte Superior de Justicia de Lima
PERU

Professor Bryan Gould CNZM, BCL(Hons)(Oxon), PhD

Former Member of Parliament, Britain & Vice-Chancellor, University of Waikato
NEW ZEALAND

Hon Laila Harré BA, LLB

Former Member of Parliament, NZ & Cabinet Minister
NEW ZEALAND

Professor Jerome Levinson JD

Washington College of Law, American University
Former General Counsel, Inter-American Development Bank
USA

Sir Bruce Slane KNZM, CBE, LLB

Former President NZ Law Society and Auckland District Law Society, Former Chairman NZ Broadcasting Tribunal and Privacy Commissioner
NEW ZEALAND

Professor Margaret Bedggood QSO, LLB, MA (NZ), MA(Lond)

Honorary Professor of Law, Waikato University, Visiting Fellow, Kellogg College Oxford, and Former Chief NZ Human Rights Commissioner
NEW ZEALAND

Nadja Tollemache OBE, LLM (Oxon)

Admitted to the Bar (Middle Temple) 1960, Former NZ Parliamentary Ombudsman & Former Banking Ombudsman
NEW ZEALAND

Peter Hosking LLB, Dip CM

Senior United Nations Consultant
Former (NZ) Human Rights Commissioner
NEW ZEALAND

Ross Wilson BA, LLB, AAMINZ

Former President New Zealand Council of Trade Unions and Chairman Accident Compensation Corporation
NEW ZEALAND

Ralph Nader JD

Public Advocate
USA

Professor Harry Arthurs

Former Dean, Osgoode Hall Law School & Former President, York University
CANADA

Professor Muthucumaraswamy Sornarajah

CJ Koh Professor of Law
Faculty of Law
National University of Singapore
SINGAPORE

Professor Gurdial Singh Nijar LLM

Faculty of Law, University of Malaya
Director, Centre of Excellence for Biodiversity Law
MALAYSIA

Aníbal Sierralta Ríos

Profesor y consultor de Comercio Internacional
PERU

Elíana Ames Vega

Catedrática de la Facultad de Derecho de la UNIFE
PERU

Mercedes Lu De Lama

Asesora Técnica
Alianza Mundial de Derecho Ambiental –ELAW
PERU

Honorary jurists:**Professor Jagdish Bhagwati**

Economics & Law, Columbia University
Economic Policy Adviser to Director General of GATT (1991-93) and External Adviser to WTO, Member of Kofi Annan's Advisory Committee on the NEPAD Process in Africa
USA

Jose de Echave

Director of CooperAcción
Former Vice-Minister of the Environment
PERU

Current Legislators**Rt Hon Winston Peters**

Member of Parliament, Leader of New Zealand First Party, Former Deputy Prime Minister, Foreign Minister & Treasurer
NEW ZEALAND

Metiria Turei LLB

Member of Parliament and Co-Leader of the Green Party
NEW ZEALAND

Andrew Little LLB, BA

Member of Parliament, Labour Party & Former National Secretary, Engineering, Printing and Manufacturing Union
NEW ZEALAND

Eugenie Sage LLB BA

Member of Parliament, Green Party
NEW ZEALAND

Sharon Anglin Treat JD

Maine State Legislator
Hallowell, Maine
USA

Our Tiriti, Not Their Treaty



**Mike Smith,
Maori rights activist**

This government's relentless privatisation agenda continues eroding the status of Maori as tangata whenua of Aotearoa. The planned removal of Section 9 of the SOE Act to facilitate the selling of state assets is the latest in a long series of policies to extinguish the government's responsibilities to Maori to protect our interests. The Trans Pacific Partnership Agreement is by far the most significant attack on not only Maori rights but also the economic sovereignty of all citizens. The combination of climate change, fossil fuel shortages and an increasingly unstable world economy point to a very uncertain future for humanity. Rather than surrender the control of our resources to the perpetrators of these catastrophic events, we must exert all efforts to overturn this agreement in favour of maintaining the democratic control of our country's economy by its own citizens if we are to have any chance of building the sustainable alternatives required to adjust to a radically changing world.



**Hone Harawira, MP,
Mana Movement
Leader**

New Zealand governments fall over themselves to sign free trade agreements where foreign multibillion dollar corporations come first and indigenous peoples and the Treaty of Waitangi come last. We all remember the savage impact of trade liberalisation on workers, particularly Maori in manufacturing jobs; now a TPPA threatens open season on assets, plunder of intellectual and cultural heritage, and health care only the rich can afford. Is this the Aotearoa we want?



**Annette Sykes,
President of the MANA
Movement**

The Tiriti provision of the SOE Act is a shield to stop Crown actions that breach Treaty principles. John Key says he doesn't want to keep this protection for the privatisations because foreign investors need certainty. Worse, he plans to sign us up to free trade deals that give foreign investors enforceable rights to protect their property, something that tangata whenua have never had. They put a Treaty protection in these agreements, but they only operate if the Crown wants them to - which Key has made clear that it doesn't! The Trans Pacific Partnership will take this hypocrisy to a whole new level and dilute our sovereignty and deny the tino rangatiratanga of Maori in favour of foreign investors. To honour the Treaty we must oppose the TPPA. We must fight for the freedoms that Te Tiriti guarantees, our MANA as a Nation to be prioritised in all we do.

Defending Tino Rangatiratanga From The TPPA

He karanga tenei ki nga hau e wha. Hei tautoko i te iwi Maori no Aotearoa. Na te mahi whakaware o te Kawanatanga me nga Kaporeihana e whai putea ana e whai rapatu ana, kei te noho whakawhuia nga tangata whenua he pouri tenei ahuatanga me kaati ra. Ko te tohenga ma ratou te iwi Maori ki te whai i ou ratou ake tino rangatiratanga kia hapaitia e ratou te mana motuhake kia kaha ake kia whawhai tonu. na reira Tautoko atu a wairua, a hinengaro, a tinana hoki Kaati noa ra, ko tenei te wa ki te tu rangatira, tu kotahi i te kawau maro, o tenei kaupapa”

Dedicated to the Urewera 4: Emily Bailey, Te Rangikaiwhiria Kemara , Wairere Tame Iti and Urs Signer

Indigenous peoples in the Pacific have found the great ocean of Kiwa, a spiritual and-cultural home for thousands upon thousands of years. We lived in harmony with our environment and each other; we were self-sufficient and had 100% of our lands, & 100% of our culture, custom and language.

White supremacist, capitalist imperialism shattered that world for many Indigenous peoples in the Pacific last century.

Like New Zealand, Canada, and the USA, Australia is a colonial settler state, based on invasion, dispossession and colonisation. The past 30 years of free market fundamentalism must be understood in the context of an ongoing colonial occupation of Indigenous lands and resources on which the NZ nation-state is based. As we faced last century, today Indigenous peoples of the Pacific are facing the onslaught of globalisation, trans national corporations and the neo colonialism of the TPPA.

The TPPA is a direct denial of the rights of Maori as stated in the 1835 Declaration of Independence and as reaffirmed in the Treaty of Waitangi [and] the Declaration of the Rights of Indigenous Peoples. It's a continuation of the 'New' Right policies of individualised colonisation.

The governments of Australia, New Zealand and the United States worry that recognition of collective Indigenous rights could impinge on corporate exploitation of Indigenous resources. Interestingly, these are precisely the three nation-states where intentional genocidal policies were pursued, policies that sought to exterminate all the indigenous peoples living in the lands seized by settlers from the British Isles. The populations of those states should be ashamed, not only of their horrific pasts, but also of the present refusal of their representative governments to make amends with the descendants of those indigenous peoples who survived these genocidal policies.

The TPPA is more neoliberalism , this is “characterised by the privatisation of public assets; deregulation of trade, finance, investment, education and healthcare by nation-states in favour of trade management through a global rules-based system; the growth of multinational financial institutions (such as the IMF and World Bank); the rise of foreign direct investment; the development of intellectual property as a commodity, and a focus on individualism and societal atomisation”.

As Wahine Maori, our long and deeply-held traditional values and understandings of collectivity, of manaakitanga, of kaitiakitanga (Caring for Earth Mother), for Tangaroa (god of the sea) and for their children, is in direct opposition to what is being proposed in the TPPA The TPPA represents a significant and disruptive challenge to Maori.

The Trans-Pacific Partnership Agreement (TPPA) is for the overwhelming majority of Maori is just more neoliberal economic restructuring. Maori and Pacific Island communities have already borne the brunt of such policies from the 1980s and 1990s. The TPPA will intensify and increase these negative economic impacts in our communities. Such programmes around the world have successfully extinguished Indigenous rights to lands and resources.

The selling off of the whenua and moana of our mokopuna and their future must stop.

A Pacific alternative to the negative effects of the TPPA is founded on indigenous values as opposed to economic globalisation, which is erected on the value of material goods. We want to live lives of dignity that are sustainable, peaceful and all embracing, where as TPPA globalisation is unsustainable, damaging, conflict-ridden, and excluding.

These concepts are not merely a dream. It is founded in reality and has been our normal life all through out the Pacific. The institutions and values embedded in our culture & custom may not create wealth on a massive scale but they will never be responsible for creating second class citizens, destroying the environment at will, causing poverty, the debasement of humanity and denial of human dignity, as economic globalisation is doing.

The struggle for the power to freely exercise the right of self-determination now takes on a new dimension—indigenous peoples themselves will now come to believe we not only have the right, but we have the duty to freely choose our own social, economic, political and cultural future. The Pacific will face increasingly determined peoples seeking to be free of Colonialism and its twin, Capitalism.

The struggle begins! . With a Kaupapa Maori orientation and practice we can potentially contribute to a world that will overthrow the economy of control and the class who benefits from it. Those who seek dignity and freedom in the Pacific should settle for nothing less.

Aotearoa is Not for Sale !!!!

na Sina Brown-Davis (Maori, Samoan, Tongan) Te Uri o Hau, Te Roroa, Ngati Whatua te Iwi

for [tewhareporahou](http://tewhareporahou.wordpress.com/)

Te Wharepora Hou is a collective of wahine who are mainly Tamaki-makau-rau based, but we have strong participation from wahine based elsewhere in Aotearoa and the world. We have come together to ensure a stronger voice for wahine and are concerned primarily with the wellbeing of whanau, hapu, iwi and all that pertains to protecting Papakuanuku and the sustenance of our people and our planet.

<http://tewhareporahou.wordpress.com/>

The Violence of US FTAs in Indigenous America

Indigenous communities in Chile and Peru have already been dispossessed and criminalised as a result of their existing free trade agreements with the US.

In northern Chile, Diaguita communities have resisted the FTA-related expansion of mining operations that are located on their traditional lands, take ancestral waters and threaten the environment. Further South, the Mapuche have faced expansion of pine forestry, hydro dams, fishing and salmon farms along the rivers and foreshores, without proper consultation or participation in benefits. Their protests have been criminalised by the Chilean state using police brutality involving torture, and cruel, inhuman and degrading treatment affecting community members. The state has prosecuted hundreds of Mapuche activists, accusing them of ordinary or terrorist offences listed in the Anti-terrorist Law; 50 are in prison charged with terrorist crimes.

In Peru, the government issued a mass of laws that threatened indigenous peoples' lands and resources as part of implementing the US–Peru FTA. The laws aimed to break up indigenous communities so foreign investors could set up huge private estates on Amazonian forest lands and produce biofuels. In 2008 the Amazonian indigenous peoples in the Interethnic Association of the Peruvian Amazon (AIDESEP) mobilised against these decrees. Some were overturned, but there were new protests when the government broke its promises about overturning others. After several days of road blockade, the government ordered the police to clear the roads. Clashes ended with 34 identified deaths, including 24 police officers and 10 people from the indigenous communities; a hundred civilians were injured by firearms.

(extract from José Aylwin, 'The TPPA and Indigenous Peoples: Lessons from Latin America' in Jane Kelsey ed. *No Ordinary Deal: Unmasking the Trans-Pacific Partnership Agreement*, Bridget Williams Books)



How TPPA Attacks Workers

We are told that increased trade will create jobs, but trade is only a small part of the TPPA. Most of the countries involved already have trade agreements between them and already have low tariff levels. For New Zealand, the farm lobby in the US is very powerful and in Australia's "free trade agreement" with the US it got very little new access to the US market, and that over a period of decades. To the extent it is about goods trade, it is about helping the large multinational companies make use of supply chains and outsourcing – designing a product in one place, manufacturing it in several others, and selling it somewhere else again.



"First they came for the car plants, then they came for the clothing and textile sector jobs but the country was silent. Now they are coming for our affordable medicines, our land, our environment, our work rights, the rest of our economy, our sovereignty. We can remain silent no longer".

Robert Reid, General Secretary, FIRST Union

It is now widely accepted – including by conservative organisations such as the International Monetary Fund – that such developments have contributed to rising income inequalities, the gap between rich and poor. Yet the negotiations are also trying to tie the way governments can legislate and regulate to counter these inequitable social trends. The US wants to give extraordinary powers to investors to sue governments before closed private international panels if they change laws or make decisions that reduce the investors' profits. In previous decisions such panels have awarded hundreds of millions of dollars to companies against countries taking actions to protect the environment, or their people after financial crises. Human rights, including labour rights, could also be threatened.

But the Global Financial Crisis made clearer than ever that markets left to themselves can be socially destructive; more regulation of markets rather than less is needed to ensure powerful corporations do not control markets for their own benefit rather than the wider needs of workers and society in general. Instead the negotiations are discussing reducing governments' powers to regulate finance, increase the reach of US insurance companies (some of which had to be bailed out because of their bad behaviour contributing to the financial crisis) against publicly owned and cooperative insurers such as ACC and EQC, and help US companies to compete against national postal services.

A key demand for the US is to intensify intellectual property rights for their corporations. This threatens to raise the cost of medicines, impose draconian rules on the use of the internet, make it harder for some of our most innovative technology companies to survive, and undermine privacy.

It is also likely to tie down government procurement so it cannot be used to support local goods and services or good labour practices. Privatisation could be encouraged or made difficult to reverse.

A labour chapter will be part of any agreement, and it would be a small protection if it provided enforcement procedures against the breach of fundamental labour rights to gain advantage in trade or investment, but many countries are opposing this, and experience from other such agreements is that such rules are very difficult for unions and workers to use.

In any case there is much more in the TPPA that could hurt workers than even a strong labour chapter begins to address.

Dr Bill Rosenberg, Policy Director, NZ Council of Trade Unions

Labour Declaration On The Negotiation of The Trans-Pacific Partnership Trade Agreement

March 15, 2010

On March 15, 2010, the governments of Australia, Brunei Darussalam, Chile, New Zealand, Peru, Singapore, the United States of America and Vietnam will commence negotiations for a proposed Trans-Pacific Partnership Trade Agreement (TPPTA). The undersigned unions are not opposed in principle to trade agreements. As always, however, the agreement will not have our support unless it is well balanced, foment the creation of good jobs, protects the rights and interests of working people, leads to longterm, balanced economic development and promotes a healthy environment. We set out below what that means in practice. Throughout the negotiations, we urge negotiators to adopt a jobs lens, which asks how decisions at the negotiating table contribute to a coordinated strategy for the promotion of high-quality jobs and sustainable economic development among TPPTA member countries. It is time for a new trade framework that will make a positive difference in the lives of working people. We cannot afford another trade agreement that privileges substantial new opportunities for investors over good jobs for workers. Further, to work well, trade agreements must also be fairly and consistently enforced.

This declaration outlines the substantive and procedural principles for the negotiations, which if respected, will result in an agreement that may benefit us all.

PROCESS

1. A Single, High-Standard, Fair Trade Agreement

For many, the TPPTA represents the second or third potential trade agreement with another party to the negotiations – all of which failed to meet our aspirations. We believe that the only way to truly bring trade policy into the 21st century is for the TPPTA to supersede the existing agreements to the maximum extent possible, bringing them up to the highest standards. Of course, we realize that individual countries, especially developing countries,

may pose unique challenges that may call for some variation in the text from country to country. However, we believe the core principles should be common to all.

2. Transparency and Civil Society Participation:

In the past, civil society organizations have been excluded from any meaningful participation in trade agreement negotiations. This is unacceptable and must be remedied this time around. All the participating governments must conduct regular and meaningful consultations with their respective civil societies throughout the negotiations – both during and between negotiating rounds. Further, draft texts, proposals and requests should be made available for public review and comment. Without access to such information, informed participation in the negotiating process is impossible. Finally, the 2 respective legislatures must have an opportunity to conduct full and open hearings and to amend the agreement.

SUBSTANCE

1. Worker Rights

Labor rights are an essential component of trade. Workers who are able to exercise their fundamental labor rights are empowered to bargain collectively for better wages and working conditions, ensuring that the benefits of trade accrue not only to capital but also to labor. Unfortunately, most of the agreements among the proposed TPPTA parties contain either no labor provisions or very weak ones. The TPPTA must at a minimum require that each party adopt and maintain laws and regulations consistent with the International Labor Organization (ILO) core labor rights and effectively enforce those rights, as well as all domestic laws with regard to wages, hours of work and safety and health. Further, parties must commit not to derogate from these laws. A violation of these and other labor obligations should be subject to effective dispute resolution procedures with strong remedies up to and including trade sanctions should more cooperative efforts fail. The monitor-

ing of these provisions should include workers' and employers' representatives, and the agencies responsible for enforcement must be adequately resourced. Further, as labor laws of each of the potential TPPTA parties fall short, to varying degrees, of the core labor rights, we urge governments to initiate immediately a process, together with workers and employers representatives, to identify ways in which to bring labor laws into compliance with those international minimum standards. Those efforts should be concluded in tandem with completion of any TPPTA.

2. Investment

Most current trade agreements contain investment provisions that allow foreign investors to claim substantive and procedural rights above and beyond those that domestic investors enjoy. Further, flawed investor-to-state dispute resolution mechanisms contain none of the controls, such as an exhaustion of remedies requirement or a standing appellate mechanism that could limit abuse of this private right of action. Under certain existing investment chapters, investors have used the rules on expropriations and the minimum standard of treatment to challenge environmental laws and public health and safety protections, among others. Together, these and other investment provisions may provide foreign investors greater rights than the rights available to domestic investors in their own legal systems. The TPPTA should not include an investor-to-state dispute resolution mechanism, nor should the rules allow for challenges to legitimate public interest regulations. Foreign investors simply must not be given any greater rights than those enjoyed by domestic investors.

3. Services

Except for the very limited situation in which no private providers compete with a government provided service, any public service can be subject to the rules of a trade agreement. This allows parties to challenge domestic policies that protect governmental services if they believe these policies put private providers at a competitive disadvantage - even where government involvement is necessary to guarantee access to essential services in areas such as health care, education, and utilities. Services rules also penalize governments that reverse privatizations, even if such privatiza-

tions have lowered service quality or have led to less public accountability and access. The TPPTA must include a broad, explicit carve-out for essential public services, including education, employment services, health care, post, sanitation, social services, transport and utilities. Public services should be excluded regardless of whether or not the public provider competes with private providers. In addition, governments must retain their ability to regulate foreign service providers in order to enact and enforce certification and licensing standards, consumer protections, and other public interest laws. We also urge that the negotiations proceed on a positive list approach. Further, we are concerned that existing trade agreements contain ambiguous language that may constrain the ability of governments to adopt prudential financial regulations, including structural separation between commercial and proprietary trading banking institutions. We urge negotiators to make absolutely clear that efforts by a country to prudentially regulate its financial sector will not run afoul of financial services rules.

4. Environment

Protection of the environment is a critical trade policy objective. Trade rules should require full compliance with an agreed-upon set of multilateral environmental agreements, with effective sanctions for non-compliance. At the same time, the agreement must ensure that other rules, such as investment rules on expropriation, do not jeopardize efforts to enact and enforce environmental laws and regulations.

5. Procurement

Often, governments use procurement policy in furtherance of important public policy aims such as local economic development and job creation. Governments have also conditioned procurement to promote environmental and social goals. Governments should ensure that the procurement chapter does not constrain the ability of central, regional or local governments and authorities to carry out these objectives.

6. Intellectual Property and Health

Intellectual property rules and other provisions in trade agreements have been used to weaken the ability of governments to supply medicines to their citizens at an affordable

cost. We oppose any government efforts in the context of the TPPTA to negotiate language that would reduce access to affordable medicines.

7. Consumer Protection

Our domestic consumer safety and trade policies must be crafted to prevent tainted or defective products from reaching our shores and, subsequently, our shelves. Such goods present a serious threat to the general public. Thus, the agreement should include language that would further facilitate cross-border food and consumer and industrial product safety inspections by, for example, giving safety inspectors of a TPPTA member enhanced rights to inspect the facilities of another member. The TPPTA should also include language requiring country of origin labeling, which would clearly identify the origin of food and consumer goods, as well as labeling of GMO-containing goods.

8. Market Access

In many previous trade agreements, tariff reductions have not resulted in new access. We urge negotiators to pay particular attention, and give particular emphasis, to ensuring that any market access expected from the agreement is actually achieved. Effective market access depends on addressing both tariff and non-tariff measures, though we recognize that non-tariff measures to protect health, public safety and the environment serve an important purpose if fairly applied. Further, while taking into account the complexity of the global supply chain, the rules of origin should be negotiated such that the signatories are the primary beneficiaries of any new market access.

9. Trade Remedies

The TPPTA should not in any way weaken trade remedy and safeguard mechanisms.

10. Competition Policy

We are greatly concerned that the current competition chapter of the P-4 agreement could compromise the right of governments to provide services on a privileged or monopoly basis, and to support economic development. We oppose any move to make the P-4 language with regard to public services enforceable in the TPPTA and urge greater protection for public services and economic development.

11. Temporary Movement of People

We do not believe that a trade agreement is the proper instrument to make commitments on the temporary movement of people.

12. Beneficiaries

Negotiators should ensure that countries not party to the agreement cannot gain its benefits.

The unions that are signatory to this Labor Declaration have a broad range of interests not limited to those mentioned above. We reserve the right to raise other issues jointly or individually, and expect to be consulted on developments in the negotiations as they arise.

Signed,
Sharan Burrow, President Australian Council of Trade Unions (ACTU)
Helen Kelly, President New Zealand Council of Trade Unions (NZCTU)
John De Payva, President National Trade Union Congress (NTUC)-Singapore
Richard L. Trumka, President American Federation of Labor & Congress of Industrial Organizations (AFL-CIO)

NZCTU Resolutions

NAC Meeting

25 November 2010

Moved Robert Reid/Andrew Cassidy

That this CTU NAC notes its concerns at the proposed Trans-Pacific Partnership Agreement including: Financial Services, Investor rights, PHARMAC purchasing, Public Services, Protection of Culture, Labour Standards, Environment.

NAC Meeting

24 February 2011

Moved Paul Tolich/Robert Reid

That CTU opposes the TPP unless it is shown to be in the National Interest.

No GMOs

New Zealanders are wary about genetic modification. In 2001 The Royal Commission on Genetic Modification asked what we thought about GM, and we came back against it — we didn't want to risk our health or our amazing natural world, we wanted to respect tangata whenua beliefs, and we didn't trust big business to look out for our interests. Being GM-free has become part of who we are, the same as being nuclear free. It's not just kiwis who see ourselves that way — our 100% pure, clean-green image is how we are seen by the world, and is a big advantage to our economy.

The TPPA negotiations are putting our anti-GM stance at risk. Away from the public eye, the United States and its big business lobbyists are looking to lock in a new set of rules to open our fields and our supermarket shelves to genetically modified organisms.

Labelling of genetically modified products

At the moment, any food with more than 1% GM content has to be labelled. This way, we get to choose whether or not we bring GMO into our homes. Because supermarkets know we don't like GM, they generally don't bother stocking GM products.

It's no secret that the United States trade negotiators want us to get rid of our GM labelling rules. The annual US report on New Zealand's 'trade barriers' confirmed that they will "continue to raise trade-related concerns with mandatory biotechnology labelling regimes". The Biotech Industry Organisation — who represent the world's giant GMO companies like Monsanto and Cargill — have also stated that they want GM labelling restricted under the TPPA.

83% of New Zealanders are in favour of GM labelling, so let's make sure our government doesn't scrap it behind our backs — if they do the only winners will be the giant US agri-businesses who want to sell us their GM products.

Genetically modified crops

New Zealand law is pretty tough about introducing GM crops, and public opinion suggests

that we want to keep it that way. Fortunately, all the major political parties seem to agree. However, our GMO rules are at risk — the US lead negotiator is on record stating that the US wants to use the TPP negotiations to promote agricultural biotechnology within the negotiating countries.

Food safety

GM aside, New Zealand has many other rules to make sure that plant and animal products are safe for New Zealanders and our environment — rules about how much pesticide residue can be present on our food, how food products are preserved and transported, and about testing to make sure imported products meet our standards. These rules (called "Sanitary and Phytosanitary Measures" and "Technical Barriers to Trade") are especially important to New Zealand because we need to protect our unique eco-system and our extensive agricultural and horticultural industries.

There are already international rules around how countries set their own measures. The US and its farmers lobby is pushing for all TPPA countries to adopt a more coordinated approach. Under the TPPA we risk losing the right to decide for ourselves how we protect our people and the environment, instead having to follow a set of rules secretly negotiated overseas.

Worse, if we brought in new rules to restrict dangerous additives or toxic residues, investors from those countries could sue the New Zealand government for compensation in a private international tribunal. This happened in Canada last year when the giant US chemical company DowAgroSciences sued Quebec for banning the use of a dangerous pesticide, using an agreement called NAFTA that does not go nearly as far as proposals for the TPPA. Just the threat of a long and expensive court case with a rich multinational company can be enough to get governments to back down on environmental protection measures. This isn't right — the environment should come before corporate profits.

Let's insist on labels for GM food

Will losing the right to choose GM-free food be a price of the next and biggest free trade deal?



It's our right to know what is in our food

"If the TPPA is signed we will lose the right to have labelling of GE food. Labelling of GE food is the best way to oppose the GE corporate takeover that brings serious environmental, health, and legal issues. How can we vote with our feet if we don't know what's in our food."

Lisa's Hummus was possibly the first in the world to label GM and preservative free. The business grew because of this. If New Zealand stays GE free in field and food, we have a huge business opportunity to supply the GE free market worldwide, so labelling is essential".

Lisa Er, Founder of Lisa's Hummus

The United States has made clear that a priority for the proposed Trans Pacific Partnership (TPP) is the abolition of laws that require genetically modified foods to be labelled. That puts New Zealand in its sights because of GM ingredients in food products must generally be labelled here.

Although there are exemptions such as highly refined oils and GM contamination below 1 per cent, New Zealand food companies and supermarkets have avoided ingredients in their products that would trigger the labelling and retailers essentially do not stock products tagged as GM. Without the labelling law, New Zealanders who want to avoid genetically modified food would have to rely on the willingness of producers to declare such content - or a patchwork of independent testing.

Loss of the right to know when a product contains GM ingredients could quickly slide into effective loss of the right to choose everyday foods that are not genetically modified. Instead of it being the norm for food companies to strive to keep GM out of their products, this could become the preserve of niche eco brands.

The reason Washington wants to stamp out all mandatory labelling is plain: the US is the world's largest producer of GM crops and its soy and corn are now almost all genetically modified.

As more countries adopt mandatory food labelling regimes, US exporters must either secure market acceptance for GM products - or remove requirements that make them visible and avoidable.

While labelling underpins the ability to choose, and that choice is regarded as a consumer right in countries such as New Zealand, the US decries labelling as a "trade barrier". Five countries in the free trade talks have mandatory labelling, and the US government and the biotech industry view the trade deal as an opportunity to bring Pacific Rim countries into line with US trade objectives. New Zealand's chief negotiator has identified its genetically modified organism regulations as one of "the top local impediments" to concluding a TPP agreement.

"It is well known", a diplomatic cable released by Wikileaks reports him saying, "that Monsanto does not like New Zealand's genetically modified organism regulations".

New Zealand's regulatory regime for genetically modified foods and organisms in the environment has been hard won. The use of GM in food has been the most controversial and widely debated new technology of the last two decades.

That the country continues to avoid growing any genetically modified organisms for commercial production reflects sustained concern about the long-term consequences of taking the GM path and risks to the nation's brand in key export markets.

Washington knows this: US embassy cables repeatedly report that New Zealanders "do not readily embrace the technology" and "have tended to avoid such foods". The country's GM-free food producer status is increasingly becoming part of New Zealand's identity, just as its nuclear-free stance defines it.

However, unlike the nuclear issue, which is no longer considered an obstacle to closer ties, there is no sign that the US is willing to overlook New Zealand's GM policies.

While US objectives are abundantly clear, New Zealand's response is not. National has stated it does not propose to weaken the law governing environmental release of GMOs while Labour and the Greens propose additional protections. The separate labelling law also appears to be broadly supported - so it is not that the US is pressing for something that is waiting to happen on either count. The question is whether the incoming government will stand up to pressure from the US to weaken our law as a trade off in TPP negotiations.

As the deal does not need to be brought before Parliament before the text is set, New Zealanders are entitled to know now whether GM food labelling will be protected as a bottom line. If New Zealanders are to be assured of a continued right to know about the presence of GMOs in their food, then a clear commitment is required from potential future governments that negotiators will have no mandate to "trade away" GM regulatory protections.

Without that commitment, the ability to have a food supply essentially free of GMOs is on the block.

Stephanie Howard and Simon Terry are researchers for the Sustainability Council of New Zealand, a public good NGO. Published in the New Zealand Herald 10th November 2011.



Defending Culture and the Knowledge Commons



“Intellectual property laws meant I couldn’t use my own name to sing in Germany!

Then I discovered that Ford, Sony and other US companies had exclusive rights over Maori language, cultural icons and other taonga that were guaranteed in our own Treaty. A TPPA will make that ten times worse. We need to protect our unique culture, environment and land for the next generational. It’s in all our interests to say Taihoa”.

Moana Maniapoto, Musician

Key’s Hollywood Romance was all about the TPPA

There is nothing Prime Minister John Key loves more than a photo-op with the rich and famous. His recent trip to Hollywood was meant to be another trophy for his mantelpiece, but the media weren’t very impressed. While they focused on links to Kim Dotcom, the movie industry’s main motives for wining, dining and flattering the Prime Minister were more about the TPP.

Their end-goal is to get Key’s government to drop its opposition to aggressive US demands in the Trans-Pacific Partnership Agreement (TPPA) negotiations. While Key was in Los Angeles, top US intellectual property negotiators were in Wellington lobbying for their latest proposals.

This is one area in which New Zealand’s negotiators are known to have led the way in resisting the US’ demands for radical extensions to intellectual property laws, which are designed largely by and for Hollywood. They fear the US proposals would have a serious impact on technology-driven innovation, open access to the Internet, privacy and the interests of ordinary consumers. So do New Zealand organisations ranging from the Libraries Association of New Zealand, Royal New Zealand Foundation for the Blind, Consumer NZ and the local IT industry, who have co-sponsored a website www.fairdeal.net.nz.

Hollywood is determined to succeed. The movie and music industries are the two most powerful copyright lobbies in America. Their dominance of the global entertainment industry is threatened by rapidly evolving technologies they cannot control and competing production centres in India, South Africa and Brazil.

To stem their decline, they have invested substantial financial and political capital in securing global rules that protect their power and profits into the 21st century.

The industry tried and failed to achieve this in hard fought negotiations for an international copyright agreement known as the Anti-Counterfeiting Trade Agreement or ACTA. After the secret text was leaked in 2009, massive protests broke out around the world, including in New Zealand.

Renewed protests this year saw the European Parliament overwhelmingly reject the agreement. It seems unlikely to be ratified by enough countries to come into force.

The TPPA is now the vehicle for their ‘gold standard’ global rules that will bind all the signatory governments through the next century and create rights that the industry can enforce directly against governments in secretive offshore tribunals. Even good ‘gold standards’ come and go. The Internet has proved that governments need flexibility to adapt to new technologies and changing times.



“We expect that the proposed TPPA has serious negative consequences for the expression of our culture, both in literature and more broadly, our intellectual property protections. That unique culture must not be sacrificed for illusory or minor economic advantages”.

*Tony Simpson, President,
Society of Authors.*

While TPPA negotiations are shrouded in secrecy in this country, the US operates a system of cleared advisers who see and comment on draft texts and informs the US position. The music industry sits on the committee that advises on intellectual property, while the Motion Picture Association of America sits on the committee dealing with services, such as audio-visual production, broadcasting and distribution.

Several leaked texts of the intellectual property chapter reveal the far-reaching effects that US proposals would have on New Zealand business, educational institutions and consumers.

One target is a ban on parallel importing of books and DVDs. The Warehouse has warned about the cost increases for shoppers, but it would also massively hike the costs for the cash-strapped university and public libraries.

People who buy DVDs from the US or Europe often find there are locks that prevent them being viewed here. Using devices to circumvent that coding, even where the DVD was bought legally, would become illegal. Many education institutions currently use these mechanisms to access material produced in other parts of the world.

The monopoly copyright term would be extended from the current life of the creator plus 50 years to over 100 years, further increasing costs.

Perhaps the most stifling proposal in terms of innovation targets the Internet, which operates as a giant copying machine. New rules would control temporary electronic copies that move information from point to point, effectively installing tollbooths along the electronic highway.

Internet Service Providers would be required to police the Internet, identifying and cutting off infringers and sending their names to the industry. Many current privacy safeguards would disappear. Under ‘notice and takedown’ rules they would have to enforce notices that are often invalid or open to legal challenge. Recent research shows some ISPs in the US have received around 30,000 notices, only two of which were valid.

This is too high a price for the jobs and publicity that subsidised mega-productions bring to New Zealand and would stifle the growing local industry. Hollywood even opposes a weakly worded cultural exception in New Zealand’s trade agreements that allows support for creative arts of national value, including film and creative on-line content.

Ironically, that was introduced when Helen Clark was told that local content quotas like those which support Australia’s film and music industries would breach a commitment National made secretly when the World Trade Organisation was formed in 1995. History is at risk of repeating itself, at serious cost to New Zealanders.

Jane Kelsey – originally appeared in the New Zealand Herald 9th October 2012

So What Do The Experts Think?

TPPA, ACTA, SOPA and Threats to Internet Freedom

Intellectual property owners are increasingly seeking new rights and greater protections that shift the balance toward right owners at the expense of consumers and the general public. Such expansion is highly controversial because of the harm to the public. The newest efforts to expand these rights have therefore been marked by extreme secrecy, moving outside the more open multilateral fora such as the World Trade Organization (WTO) or World Intellectual Property Organization (WIPO), and toward closed-door talks without public input.

One area of concern, among others, is that the creation of new intellectual property rights and shift of balance in favour of right-owners could severely hamper access to knowledge and internet freedom. United States right-holders have made several attempts at limiting fundamental human rights in the digital environment.

The Anti-Counterfeiting Trade Agreement, known as ACTA, was one such secret agreement. ACTA was designed to change the balance of the intellectual property system. It was intended to create new global norms for intellectual property standards, but to negotiate these norms in secretive, closed and captured institutions. The fact that ACTA sought to create new norms, while being discussed primarily among high-income countries—with Mexico and Morocco being the only two middle-income countries in the negotiations—heightened concerns that developing countries would be greatly affected without an opportunity to change and develop these norms.

Public outcry over the secrecy of the agreement was well-documented and led to leaks and eventually, publication of the text. It was only after the text came to light that some of the most egregious provisions were scaled back, including the United States' efforts to impose secondary liability for internet service providers (ISPs). Yet, other harmful provisions still remained that went well beyond minimum international standards, a particularly concerning outcome considering that the agreement was intended to set new global standards.

By the time the text was released public outrage—in part stemmed by the lack of transparency that de-legitimized the process—was extensive and resulted in numerous protests, primarily in Europe. On 11 February 2012, more than 200 European cities saw ACTA protests. All five parliamentary commissions recommended the rejection of ACTA and on 4 July 2012, the European Parliament voted to reject the agreement by a landslide (478 voted to reject the treaty, 39 voted in favor of the agreement, and 165 members abstained).

The United States, unable to export its controversial Digital Millennium Copyright Act (DMCA) through ACTA, has once again sought to create new global norms through the currently negotiated Trans-Pacific Partnership Agreement (TPPA), a large free trade agreement which currently includes eleven negotiating parties but is intended to eventually cover the entire Asia-Pacific region. The United States proposal for the TPPA goes farther than the final text of ACTA and poses serious risks for internet freedom. Although it is largely modeled off the DMCA, it fails to incorporate some of the same safeguards contained in the United States legislation.

If accepted, the proposal would mandate a system of notice-and-takedown, essentially imposing a regime of secondary liability on ISPs and requiring that service providers, upon notice from a rightholder, remove or block access to allegedly infringing content. If the ISP fails to expeditiously remove or block access, that provider is open to secondary liability for content that it neither created nor posted.

Notice-and-takedown, which essentially amounts to an extra-judicial injunction and thereby circumvents the legal process, has been controversial, even within the United States. Such procedures are ripe for abuse, impacting free speech with numerous well-documented, flawed takedowns for content that did not constitute copyright infringement or inappropriately targeted a competitor. In both the 2008 and 2012 presidential elections in the United States, for example, online campaign ads

were removed despite the fact that there was no copyright infringement; such notices served only to change election dynamics.

Additionally, a 2006 study found that more than half of notices sent to Google were sent by businesses targeting competitors. In addition to abusive requests, some large corporate right-owners conduct automated searches for infringing content based solely on the title of the allegedly infringing file and send notices to ISPs without verifying that the actual file is infringing. Numerous ISPs are hesitant to comb through the requests and make determinations regarding validity of a notice because an incorrect finding could open them up to legal liability and hefty damages. It is therefore easier for ISPs to simply remove content or disable URLs and comply with takedown requests even when such notices are completely invalid.

The number of takedown requests have skyrocketed and continue to rise. Google, for example, reported in May 2012 that the number of requests per week was up to more than 250,000—a figure higher than the total number of requests for the entire calendar year of 2009. In the first week of October 2012, Google reported it received approximately 1.7 million requests each week, a six-fold increase in just a four-month timespan. With such increases, it is clear that evaluating each takedown notice for abuse would be time-consuming and costly, leading to the likelihood that takedowns will occur as a matter of course even for non-copyright infringing material.

In addition to a flawed notice-and-takedown procedure, the United States proposal would require parties to implement policies that could completely cut users off from the Internet where there have been repeat allegations of infringement. Such a policy—also known as a “graduated response” or “three-strikes” law—has been highly controversial and, according to the UN Special Rapporteur on the right to freedom of opinion and expression represents a “disproportionate” response in violation of human rights.

Other threats exist with respect to internet freedom, including the highly expansive definition of a “service provider” proposed by the United States where even an individual could be considered an ISP and thus open to liability for the acts of others. An individual providing

Internet service to family members or visitors in their own home, for example, could potentially be at risk. In addition, the United States proposal would force ISPs to disclose identities of alleged infringers, without safeguards to protect the user, thereby creating a system ripe of abuse. These are just some of the impacts the United States proposal for the TPPA would have on internet freedom and the public interest.

Right-holders in the United States have attempted to push aggressive new laws in the context of the digital environment domestically, as well. Right-holders lobbied hard for legislation that would greatly increase enforcement in the digital environment, including the heavily criticized Stop Online Piracy Act (SOPA). In early 2012, once the legislation became public, outrage over the content of the bill led to well-coordinated and heavily publicized protests over the threats to free speech and innovation and included unprecedented “blackouts” of popular websites, including Wikipedia which asked users to “Imagine a world without free knowledge.”

ACTA, SOPA and the TPPA have all included provisions that ultimately favour the right-holders at the expense of the public interest. While WIPO is currently discussing the development agenda and states are negotiating international documents to promote the rights of persons who are visually impaired, the right to education, and access to knowledge, the United States continues to try to undermine these important initiatives by creating systems that go too far in protecting right-holders. It is clear that the United States proposal for the TPPA is heavily influenced by large corporate interests and ignores the lessons that could be learned from the failures of ACTA and SOPA.

The general public clearly cares about important freedoms, including freedom of opinion and expression and the right to information, and these rights must extend to content in the digital age. Balance in the intellectual property system is an important goal, but the TPPA proposal would greatly upset any existing balance at the expense of the general public.

Krista Cox, Knowledge Ecology International

Fair Deal coalition draws attention to copyright changes under the Trans-Pacific Partnership *(Press Release, 11 July 2012)*

Today, a coalition of New Zealand organisations concerned about changes to New Zealand's copyright law under the Trans Pacific Partnership (TPP) will gather to launch the Fair Deal cause. Fairdeal.net.nz is a place for New Zealanders to go to learn more about what's at stake for New Zealand copyright law under the TPP.

Under the TPP, the United States has proposed that New Zealand change its copyright law in several ways. Changes being considered include lengthening copyright monopolies by 20 to 70 years, making parallel imports illegal, placing onerous legal obligations on Internet Service Providers and increasing civil and criminal liability for copyright infringement. The common thread that draws Fair Deal coalition members together is opposition to these and other copyright changes.

Fair Deal members stand in strong support of the New Zealand copyright negotiators, who, according to a leaked negotiation document, have sought to work within existing legal frameworks in the TPP instead of creating overbearing new ones.

Fair Deal members include InternetNZ (Internet New Zealand Inc), NZRise, the Creative Freedom Foundation, Royal New Zealand Foundation of the Blind, TUANZ and Consumer. All organisations agree that a Fair Deal is one that opens up new trading opportunities for New Zealand without forcing the government to make copyright changes that could damage the economy, chill innovation, further restrict access to content and raise prices of copyright works in New Zealand. Each organisation has certain copyright issues that it is concerned about, highlighting the breadth of the impact that the TPP copyright provisions could have on many sectors across New Zealand.

"All we're asking for is a Fair Deal," says InternetNZ Policy Lead Susan Chalmers. "Because the TPP is negotiated in secret, and because trade agreements are not typically at the forefront of our minds, we have this problem of New Zealanders not seeing what is coming – not knowing what

changes the TPP will bring to their everyday lives.

"The content industries are at it again – asking more from New Zealand copyright law, wanting to segment this market as much as possible from the rest of the world, despite the fact that we're just a click away on the Internet. We don't think that what they're asking for is fair or reasonable, and we want the public to know about it and have a discussion about the proposed changes before the deal is done and it's too late to say anything," she says.

The Fair Deal launch, hosted by Russell Brown of Public Address, will take place on the margins of NetHui, a three-day conference on Internet-related issues. The one-hour event begins at 6.30pm at the Sky City Convention Centre, New Zealand Room 3. Those unable to attend can find a live stream by visiting <http://nethui.org.nz/videos>.

The launch will feature a brief panel discussion with Don Christie from NZRise, Neil Jarvis from Royal New Zealand Foundation of the Blind, and Susan Chalmers from InternetNZ. An audience discussion session will follow.

**Visit the Fair Deal Coalition website:
www.fairdeal.net.nz**

Consumer: Importance of Parallel Importing

By Consumer, 20 July 2012

Have you heard of the Trans-Pacific Partnership agreement or TPP? It's not surprising if you haven't because the TPP is a "behind closed doors" trade deal being negotiated by 11 countries from around the Pacific, including New Zealand. And like most trade negotiations, it's complicated and it will seriously affect you. While the original agreement in 2005 was less restrictive and included only four countries, the new agreement covers much more and is being renegotiated as part of the expansion to 11 countries.

The main effect the new agreement will have is on copyright. Currently on the table are the following:

- Extending copyright in New Zealand from 50 to 70 years. This would freeze our public domain, chilling the creation of new works and sending decades' worth of royalties offshore.
- Giving copyright owners the power to veto parallel imports. This would raise prices for consumers of copyrighted works, including libraries and schools.
- Prohibiting circumvention of technological protection measures, regardless of whether circumvention is done for non-infringing purposes, such as putting print into accessible formats for the visually-impaired, or making it illegal to get around region coding to watch a legally-purchased DVD.

These are incredibly harsh measures and will directly affect New Zealand consumers, we are strongly against them. Parallel importing is incredibly important to New Zealanders. As an isolated nation and a small consumer market, we are often at the expensive end of pricing. Parallel importing provides genuine price and product competition and companies like The Warehouse have made a business out of it. Exclusive importing deals would see prices rise in items from books to shoes. Perhaps of greatest concern is the impact the TPP may have on the drug-buying agency Pharmac. TPP pro-copyright lobbyists had been pushing for an end to Pharmac. But the medicines industry is now saying it accepts Pharmac is "here to stay", according to a report by Audrey Young in the NZ Herald.

While the government says it won't give up Pharmac, changes to the way the agency operates haven't been ruled out. The main concern of anti-TPP groups is that the negotiations may result in an increase in the cost of medicines. They argue industry groups are pushing for specific pharmaceutical price rules that would lead to higher prices being paid by public health agencies (such as Pharmac) for medicines.

Consumer believes that changing our copyright laws in the way suggested is not fair to New Zealanders. If you want to know more head to fairdeal.net.nz, the home of the Fair Deal campaign to educate the public on what is being debated in the TPP. Although we're a member of the Fair Deal coalition, we're not anti-trade nor even anti-TPP, but as an organisation we believe in fighting for what is best for New Zealand consumers and the proposed copyright restrictions are a step too far. In a world that being made increasingly smaller by electronic transactions, these regulations would create huge barriers that would see not only prices rise but certain products become almost impossible to get in New Zealand. No more cheap books, clothes and shoes from the US. That's not a fair deal.



Cartoon by Steven Day

TPPA - A Bankers Charter

One of many causes for concern around the TPPA is its potential effect on the stability of our financial system.

New Zealand's vulnerability to global financial shocks

The New Zealand dollar is one of the world's most traded currencies, mainly by currency speculators. Overseas investment makes up a significant part of our economy and the mainly foreign-owned banks operating in New Zealand have at times held massive levels of short-term foreign debt. This makes New Zealand extremely vulnerable to destabilising flows of capital in and out of the country. The proposed TPPA will seriously fetter New Zealand's ability to follow the lead of other countries and apply capital controls to protect our economy. What's more, foreign banks, insurance companies, money traders, and overseas property dealers from the other 10 countries would gain special powers to challenge laws and policies designed to shift the focus of investment away from speculation and grow our productive economy.

The TPPA would prevent Capital controls

New Zealand has already willingly eliminated many of the legal mechanisms that limit the exposure of our economy to global financial shocks. The TPPA would lock in our lax regulatory system and may even require New Zealand to weaken it further.

Under a leaked TPPA negotiating text the governments would have to permit the free flow of capital related to investments from the other countries (including investments in our currency), government bonds and other 'financial assets'. This effectively forbids the use of regulations to control or restrict the movement of capital, such as financial transaction taxes (a small tax on transactions that curbs volatility and discourages speculation) or minimum stay requirements that deter quick turnaround investments.

Changing Tide Accepts Capital Controls as Legitimate

Capital controls are especially important at times of financial crisis. In the 1997-98 Asian Financial Crisis rapidly growing Southeast Asian nations — who were funded by high levels of foreign debt — defaulted and foreign capital took flight. Countries like Thailand, Indonesia and the Philippines refused to impose capital controls and suffered heavy losses. Malaysia, however, chose to buck the 'orthodoxy' and insulate itself from attacks by currency speculators with emergency capital controls, successfully giving its economy the space to recover.

After the global financial crisis capital controls are increasingly seen as a legitimate way that countries can protect themselves against heavy losses in an era of globally-linked financial sectors which rapidly spread a financial crisis around the world. Even the traditionally conservative International Monetary Fund has endorsed their use in appropriate circumstances.

Capital controls are also useful for managing the level of the exchange rate – a big problem for New Zealand at present.

Prominent economists oppose TPPA provisions on capital controls

A series of letters to the Obama Administration from prominent economists detail how existing US trade and investment treaties have been used to prevent their signatories from using capital controls and ask for these provisions to be excluded from the TPPA. Top US Democrats Barney Frank (Chairman of the House Financial Services Committee) and Sander Levin (House Ways and Means Committee) have written an [open letter](#) in support of capital controls being allowed under US trade and investment agreements.

Investor-State Dispute Settlement

One of the major grounds for concern around the TPPA is that foreign investors could sue the New Zealand government for compensation in secretive international tribunals over new laws or policies which they claim would significantly hurt their investments. This would mean that foreign banks, insurance companies and money traders from the other 10 countries — especially the US — could challenge new financial regulations introduced to defend the New Zealand economy from speculation.

No Effective Exceptions

The past experience of some TPPA countries makes them very nervous about restrictions on capital controls and they have proposed limited exceptions and emergency powers allowing their use. The United States opposes these exceptions, even in a balance of payments emergency.

Despite deregulation, New Zealand still has some legal capacity to protect ourselves in a financial crisis, and we should not trade this away. Our government is elected by New Zealanders to look after our interests, and it should not have to answer to transnational corporations for introducing measures designed to protect and grow our economy.



Financial crises, finance company collapses and the TPPA

The collapse of banks in the US and Europe beginning in 2008 led first to the deepest recession since the 1930s. As a result millions of people have been thrown out of work and into poverty and public services have been cut in a self-destructive response to the huge debts governments have incurred in bailing out irresponsible financial institutions. Some insurance companies such as AIG shared the culpability, selling complex financial instruments which they did not have the resources to honour, multiplying the effects of the disaster. Billions of people are suffering as a result of the financial system's behaviour, but the power and income of those responsible are largely untouched.

It is clear to all that greater regulation of the financial system is essential. Banks should not be allowed to indulge in high risk trading that puts at risk the security of the deposits of ordinary customers. They should not be allowed to become so large that their failure threatens the financial system – or they need much closer public control. There must be regulation of high risk financial instruments.

In New Zealand, the banks, the biggest of which are Australian owned, did not crash like their US and European counterparts. But there is a widespread view among both Australia and New Zealand experts that it was more good luck than good management. The banks' high level of short-term foreign borrowing would have severely damaged New Zealand's financial system, and economy if the Reserve Bank had not provided them with credit when they could not renew their loans during the crisis. The government guaranteed both retail deposits and wholesale funding to help the banks get through the crisis, potentially putting billions of dollars of public funds at risk. In the even more lightly regulated non-bank financial sector, finance companies have crashed as a result of incompetence, unwise lending, related party lending and in some cases fraud. The public bailed out their depositors to the tune of \$2 billion of which perhaps half will be recovered.

Some reregulation has occurred. But there is more that should be done, and more that might be needed to reduce the risk of a financial crash here. On top of that, future governments may well want to improve their management of the financial system including international financial flows, through measures, such as international financial transaction taxes, to help them manage the exchange rate, reduce the likelihood of financial crises, and improve the quality of overseas investment in New Zealand. They may want to regulate dealing by banks' and insurance companies' in high risk financial instruments, limit their size, and ban commercial banks from high risk trading.

The TPPA will restrict government options in a number of ways, but especially through investment and financial services chapters. The intention is to reduce regulation of finance and overseas investment rather than increase it. While there are likely to be exceptions for "prudential" regulation (to protect the stability of financial institutions and system), new ways of regulating finance and investment for other purposes will almost certainly not be exempted. There will be wide room for argument by banks and other investors as to whether actions taken by elected governments are strictly for prudential purposes rather than other reasons. Regulation of previously unregulated financial products may be difficult or banned.

Regulation of the financial system – always difficult in the face of powerful financial interests – will become even more difficult. We will be left at greater risk of future crises than necessary, and without policies we need to build a stronger economy.

Dr Bill Rosenberg is the Policy Director for the New Zealand Council of Trade Unions

How TPPA Could Fuel Another Financial Crisis

15 February 2010

The post-2007 global financial crisis exposed the chronic instability of a highly liberalised, deregulated and globally integrated financial system. No one knows how or where the next crisis will unfold, according to Sanya Reid Smith from Malaysia-based Third World Network and Professor Jane Kelsey from the University of Auckland, authors of expert analysis that links the proposed TPPA to continued financial instability that they presented at a stakeholder presentation at the Santiago round of negotiations.

It is time to rethink the failed model of financial deregulation that has been repeatedly locked in and ratcheted up through previous free trade agreements. Far from recognising that need, the TPPA negotiations appear to be bolting the door closed on the options for governments to re-regulate the financial sector and impose controls on speculative capital flows in ways that meet the needs of their people. The draft negotiating text has not been released for independent analysis and informed debate.

The Asian Financial Crisis through to the latest global meltdown show that every single person has a stake in the rules to govern financial markets and the corporations that run them. Governments cannot negotiate agreements that set those rules in secret.

The paper assesses the risks in terms of contributors to financial instability, high-risk financial investment rules, constraints on capital controls and sovereign debt restructuring, and the inadequacies of the protection for prudential measures.

The authors identify several options that would help make an agreement fit for the 21st century, by not restricting a government's authority to regulate the financial sector and financial transactions, and use capital controls and restructure sovereign debt to prevent and mitigate financial crises.

However, they conclude that the only truly effective way to provide the necessary regulatory space to governments is to exclude coverage of financial services, financial investment and currency movements from a TPPA.

**TPP
Of the 1%
By the 1%
For the 1%**

Tobacco and Alcohol

Tobacco

Smoking kills around 5000 New Zealanders every year. However, the number of kiwis smoking is on the decline — in large part because of tobacco control measures undertaken by the government, such as banning smoking in workplaces, increasing the cost of tobacco, and banning the retail display of cigarettes. The government has committed itself to making New Zealand essentially smokefree by 2025.

If New Zealand signs up to the TPPA, we'll be putting our smokefree goal at risk.

This is because a leaked TPPA text shows that New Zealand's negotiators seem willing to give more rights to big overseas companies, including the right to sue the government for making decisions which significantly hurt their investment. This process is called Investor-State Dispute Settlement and it takes place in secretive offshore arbitration tribunals, bypassing New Zealand's courts. Anti-smoking measures taken by our government could be challenged by the tobacco companies if we sign the TPPA.

If New Zealand signs up to the TPPA, we'll be putting our smoke-free goal at risk.

If you think this sounds far-fetched, it's not — the Australian government is currently being sued by Philip Morris for its new plain packaging policy under an old international agreement between Australia and Hong Kong. Even though Australia's highest court has ruled in favour of plain packaging, the government still faces international arbitration away from the eyes of the public, and could end up paying hundreds of millions of dollars to big tobacco for trying to protect the health of its citizens. Like Australia, our smokefree law could be challenged under an existing agreement, but it would be difficult and involve back door menouvering. The TPP would let big tobacco stride through the front door.

It isn't just plain packaging laws that will face problems if the TPPA negotiations are completed. Other policies that could fall foul of the rules include:

- banning the use of terms like 'mild', 'smooth', 'fine';
- controlling the use of flavours that disguise the foul taste of tobacco;
- reducing the nicotine content of tobacco products; and
- capping the number of tobacco retail outlets.

Many different chapters of the TPPA would impact on the smokefree policies, for example:

- intellectual property laws could be strengthened in favour of big tobacco companies, making it easier for them to claim that tobacco control policies infringe their trademarks;
- big tobacco's factories, distribution chains and intellectual property rights would be 'protected investments' who could also sue;
- advertisers, duty free stores, retailers, and other parts of the tobacco supply chain would also have special rights, even if they were operating by Internet from offshore; and
- new "transparency" and "regulatory coherence" rules would give tobacco companies much more influence over government decisions on tobacco control. This would go against another agreement signed by New Zealand — the Framework Convention on Tobacco Control (FCTC) — requiring the government to take steps to prevent tobacco company interfering in policy-making!

All of this goes in the opposite direction to New Zealand's obligations under the FCTC.

Alcohol

Alcohol abuse is a big problem in New Zealand. Part of the solution is setting rules around the sale of alcohol — for example, a minimum price per unit of alcohol, lower limits on the alcohol content of RTDs, and banning advertising and sponsorship by alcohol companies.

As with tobacco, a TPPA will put the New Zealand government at risk of law suits from overseas companies for trying to reduce the damage caused by alcohol abuse. This could see the government paying millions of taxpayer dollars to overseas companies in compensation, or backing down from policies that protect New Zealanders.

The government will also face pressure to allow imports of products that meet the alcohol product standards in other TPP countries, even when they are inconsistent with our own.

That already happens: under another agreement (the CER) New Zealand is bound to recognise Australia's regulatory standards. The government had to back down this year on its intention to cap the alcohol content of RTDs popular with underage drinkers — it could not have stopped Australian RTDs, with a higher legal alcohol limit, from being sold in NZ unless it changed the CER rules. Under the TPPA we risk the same thing, but with all 10 negotiating countries. This would have the same effect as watering down our regulations to the country with the lowest standards.

As with tobacco, the government risks being bound to increased “transparency” obligations around its decision-making process for alcohol policy. In practice, this means giving alcohol companies more say in what the government does to protect New Zealanders from alcohol abuse.



Tobacco case shows why we should oppose investor rights to sue governments in the TPPA

The Australian High Court decided on August 15 2012 against the tobacco industry's challenge to the Government's tobacco plain packaging legislation, and supported the Government's right to regulate tobacco as an addictive substance that still kills 15,000 Australians per year. Big tobacco companies had argued that the legislation acquired their intellectual property rights in trademarks without just compensation, in violation of the Australian Constitution. The High Court found that the government's legislation did not violate Constitution.

The legislation, to be implemented from December 2012, is recommended by the World Health Organisation, and means that tobacco packaging must be a plain dark colour, and must contain graphic health warnings, with no trademarks except the business name.

Restrictions on tobacco advertising and other measures have been successful in reducing numbers of smokers to 18% of the Australian population. Research shows that most new smokers are young people, many under the age of 18, and that particular tobacco brands are the main advertising which attracts them.

The tobacco industry had already tried a \$20 million public advertising campaign against the legislation in 2011 which failed.

But the government still faces legal challenges from big tobacco, which is desperate to stop the Australian example from being followed by others.

The major legal challenge is through an investor-state dispute process (ISDS), which exists in some trade and investment agreements. This allows foreign investors to sue governments, on the grounds that a law or policy "harms" their investment.

The ISDS process takes place through international tribunals which lack the safeguards of national legal systems. There is no independent judiciary because judges can also be advocates, the processes are not open to public scrutiny, and there is no system of precedents in decision-making, leading to inconsistent decisions. The tribunals do not have the same obligation as national courts to consider the public interest. This means that international corporations have far more rights in these tribunals than in national courts systems

Companies have successfully sued governments for millions of dollars using ISDS under agreements like the North American Free Trade Agreement. Big tobacco and other global corporations are lobbying hard to include the right of foreign investors to sue governments in the Trans-Pacific Partnership Agreement (TPPA).

The current Australian Labor Government policy is to oppose these clauses in trade agreements, including in the TPPA. However, ISDS clauses do exist in some past agreements, and big tobacco is taking full advantage of this. The Philip Morris tobacco company is persisting with its case to sue the Australian government using an obscure 1993 Hong Kong-Australia investment agreement, which contains an investor-state dispute clause. Philip Morris is actually a US-based company, but could not sue under the 2005 US-Australia Free Trade Agreement, because public opposition kept this clause out of the agreement. Philip Morris rearranged its assets to become a Hong Kong investor in order to sue because they believe they can win in the international tribunal.

This example shows that ISDS can be used to sue government over democratic legislation even if it has been validated as constitutional in the highest court of the land. ISDS poses a threat to national public health and other public interest legislation, and should be rejected by all governments in the TPPA.

Our Environment

One of the most significant causes for concern around the TPPA is that it would give foreign investors the right to sue the New Zealand government in private offshore tribunals for introducing laws or policies which they claim would significantly hurt their investments. This is called Investor-State Dispute Settlement (ISDS) and — if overseas examples are anything to go by — it would disproportionately affect moves to strengthen environmental protection. The United States has many existing trade and investment agreements that guarantee similar rights to foreign investors. Over US\$700 million have been paid out by governments to overseas investors in ISDS disputes brought under these agreements, and 70 percent of those cases have been challenges to natural resource and environmental policies. The process is conducted in private and can take years to resolve. The OECD says the legal costs of these disputes alone average at US\$8 million but can easily exceed US\$30 million.

The problems with ISDS are not only that governments risk paying out huge sums to foreign investors for taking steps designed to protect the environment, but that governments will be less willing to adopt new environmental protection policies because of the threat of a law suit. This is called “regulatory chill”, and could make it more difficult to strengthen New Zealand’s environmental regulations beyond their present levels. Foreign investors can threaten a dispute even if their legal arguments are very weak, just to have this chilling effect on government decisions.

The TPPA is often described by its backers as a trade agreement for the 21st century; in fact, it would discourage the New Zealand government from taking steps to face the environmental challenges the 21st century holds.

Some examples of environmental protection measures which could be affected by ISDS if New Zealand signs up to the TPPA are:

- Our Emissions Trading Scheme (ETS), which is designed to reduce New Zealand’s contribution to global climate change, and to meet our obligations under the Kyoto protocol. The government has proposed legislation that will extend the transition period for full implementation of the ETS indefinitely. If New Zealand were to sign-up to the TPPA with the ETS in such a weakened form, any future changes to the scheme to seriously address climate change would risk ISDS litigation from overseas companies invested in New Zealand farming or industrial operations.
- Water quality regulation. Water quality in New Zealand’s rivers is decreasing, in large part because of an intensification of dairy farming. Increased regulation of dairy run-off will be required in future years if New Zealand is to have waterways safe for swimming, and to retain our clean green image. A recent landmark decision of the Environment Court shows this process is already underway. Under the TPPA, any tightening of water quality regulation will open the door to ISDS law suits from investors linked to the other ten countries.
- Agricultural water use. Commercial, industrial, and domestic water-users in New Zealand increasingly have to pay for water they use, but farmers are able to use water sources flowing through their land for free. This arrangement has significant implications for downstream water users, and has been criticised by the OECD. If New Zealand were to adopt the OECD recommendation of pricing agricultural water usage, that decision could be challenged by investors from the TPPA countries.

- Dirty energy regulation. If New Zealand were to introduce measures in addition to the ETS to shift us away from fossil fuels, such as altering electricity regulation, it could face significant challenges under ISDS. These risks are highlighted by an ISDS case for Euro 1.4 billion brought by Swiss power company Vattenfall against Germany. In that case, a coal electricity plant owned by Vattenfall was made to comply with environmental regulations around climate change and water quality. The parties settled out of court on unknown terms.
- Regulation of deep-sea drilling in New Zealand's Exclusive Economic Zone (EEZ). The government has recently introduced a new management system for New Zealand's EEZ which, in the words of the Sustainability Council of New Zealand, has "the spine of a jelly-fish", and according to Greenpeace, is "declaring an open season for deep water drilling along our coastlines". If the TPPA is in place, changing this law (as Labour is suggesting it will) would risk major claims from the overseas corporations lining up to drill in our waters. New laws limiting fracking could face similar challenges.

Hazardous substances regulations:

If New Zealand brought in new rules to restrict the use of hazardous substances, overseas investors from TPPA countries could seek compensation under ISDS. This happened in Canada when the giant US chemical company DowAgroSciences sued Quebec for banning the use of a pesticide, using an agreement called NAFTA that introduced ISDS into free trade treaties. Although the Quebec government was ultimately successful, by bringing the case DowAgroSciences was able to continue to sell its product in Canada for three years while the case was resolved.

The examples above are not an exclusive list of environmental risks under the TPPA — any regulation which significantly reduced the value of overseas investments in New Zealand would be at risk of triggering ISDS claims, no matter how toxic their activity. The defenders of ISDS claim that exceptions protect environmental regulation, but those clauses are limited and unpredictable and the number of cases show they don't deter investors from bringing disputes.

Other threats to the environment under the TPPA

ISDS is not the only threat to the environment under the TPPA — it also risks abandonment of the compulsory labelling of genetically modified food and undermining existing international environmental agreements.

TPPA - Mining Our Futures

The truth is becoming clear – trade rules are being used to threaten policies that [protect wildlife](#), [preserve scarce natural resources](#), and [promote clean energy and green jobs](#). The most recent clash between free trade and our environment is in Quebec, where communities are fighting against the harmful effects of fracking, the hazardous process used to extract natural gas by blasting significant amounts of water, chemicals, and sand into rock formations deep underground.

On November 8th, Lone Pine Resources, a Delaware-incorporated oil and gas firm with operations in Canada, filed notice of its intent to sue Canada for \$250 million under the North American Free Trade Agreement (NAFTA) over Quebec's moratorium on fracking. The moratorium is set to stay in place as Quebec studies the environmental risks associated with fracking. Quebec also passed legislation in June banning drilling below the St. Lawrence River.

Placing a moratorium on fracking in order to study environmental risk is sound public policy. Who can argue that?

Answer: Lone Pine Resources. The company claims that the moratorium violates their rights as an investor under NAFTA and constitutes an expropriation of their drilling permit. They're taking advantage of NAFTA's controversial chapter on investment that gives corporations the right to sue a government over nearly any law or policy that the government argues is hurting its ability to profit. It's almost impossible to believe, but it's true.

By the end of 2011, corporations such as Chevron, Exxon Mobil, Dow Chemical, and Cargill have launched 450 investor-state cases against 89 governments, including the United States. Over \$700 million has been paid to corporations under U.S. free trade agreements and bilateral investment treaties, about 70 percent of which are from challenges to natural resource and environment policies. Corporations have launched attacks on a range of public interest and environmental regulations, including bans or phase-outs of toxic chemicals, timber regulations, permitting rules for mines, green jobs and renewable energy programs, and more. This case, however, is the first to directly threaten the obligation of governments to protect its people from the destructive effects of fracking.

Lone Pine Resources' claim might not make it to arbitration; the company says it wants to settle the case rather than see it through.

But what must the people of Canada forfeit in order to settle this case? Clean air? Clean water? Quebec must be able to **keep its fracking moratorium**, and this case should be dismissed if it goes to arbitration. Rules to protect the public and the environment must not be up for negotiation. And governments should not be afraid to protect their people.

Amazingly, instead of looking for ways to scale back and eliminate the rules in our trade agreements that threaten public interest policies in favor of corporate profits, eleven countries, including the United States and Canada, are currently in the middle of negotiations to [expand the NAFTA investment rules](#) in the [Trans-Pacific Partnership trade pact](#). Under the Trans-Pacific Partnership, our air and our water could be threatened by more cases like this one. Governments must stop writing and signing trade pacts that put the interests and profits of corporations above the well-being and rights of communities.

--Ilana Solomon, Sierra Club Trade Representative, and Deb Nardone, Director of the Beyond Natural Gas Campaign

What Do Political Parties Think Of The TPPA?

Joint Statement on Trans-Pacific Partnership Agreement (Green Party of Aotearoa New Zealand, Australian Greens, Green Party of Canada)

Sunday, 19 Aug 2012 | Press Release

***National** is a lost cause – remember Groser’s need to remove “excessive sovereignty”? Peter Dunne’s ‘Party of One’ has flicked off a barrage of challenges from his constituency. The Maori Party is silent, except on the threat from Big Tobacco. Other parties, who could form the next government, have taken a stand in defending the national interest against the threat of the TPP.*

As the Green parliamentary political parties of three nations whose governments are currently in the process of negotiating the Trans-Pacific Partnership Agreement (TPPA), we are issuing this joint statement to express our serious concern at the fundamentally undemocratic and non-transparent nature of the agreement.

Following the leaking of the draft investment chapter of the TPPA the Greens are extremely concerned that the TPPA agreement has the potential to undermine the ability of our governments to perform effectively. More than just another trade agreement, the TPPA provisions could hinder access to safe, affordable medicines, weaken local content rules for media, stifle high-tech innovation, and even restrict the ability of future governments to legislate for the good of public health and the environment.

We believe that the process should be transparent. This agreement has been negotiated behind closed doors with a level of secrecy that is completely unacceptable in a democratic society.

The Right To Set Our Own Laws

The governments of Australia, Canada and New Zealand traditionally have the right to set down their own laws for the good of public health, consumers, workers and the environment.

Leaked details of the TPPA reveal that, foreign investors and firms could sue Canada or New Zealand in a private international tribunal if their parliaments or local councils pass laws that reduce their profits or adversely affect their businesses. This could include laws such as:

- a requirement for large graphic warnings or plain packaging of cigarettes and other tobacco products (such as in Canada and Australia, and forthcoming in NZ);
- laws requiring labelling of genetically-modified food and drink (NZ); and
- retention of agricultural regulations such as Canada’s supply management system for dairy, which aims to preserve farmers’ livelihoods.

The current Australian government has indicated it will not agree to these clauses intended to protect multinational businesses from the impact of policy decisions, but New Zealand and Canada’s leaders refuse to do the same (even after Canada was on the receiving end of costly lawsuits under NAFTA).

The End of a Free Internet

We believe the TPPA is being used to sneak in measures to bind its member countries to extensive and harsh laws on Internet use that wouldn’t

Winston Peters
TPP Negotiations Must Be Stopped
Or It's Goodbye Sovereignty
Press release, 14 June 2012

New Zealand First is calling on the Government to put on hold the Trans-Pacific Partnership negotiations and ask New Zealanders what they think about handing over our sovereignty to foreign-owned companies.

Documents leaked today show that the National Government will agree to let foreign investors sue New Zealand for damages in private offshore tribunals if they feel new laws breach their rights.

Rt Hon Winston Peters says it would be catastrophic if National signs up to an agreement that gives litigious US firms power to sue New Zealand over domestic legislation, simply because they don't like it.

"National must withdraw from the next negotiation meeting on July 2 and launch a select committee inquiry so all New Zealanders can see the full proposal and comment on it.

"If National just blunders ahead and signs up to the agreement it will throw our whole law making process into turmoil.

"This – like the sale of our state owned assets – is yet another move by John Key to put our country into the hands of his big business chums from overseas," says Mr Peters.

be acceptable at the domestic level - including harsher criminal penalties for minor, non-commercial copyright infringements, a 'take-down and ask questions later' approach to pages and content alleged to breach copyright, and the possibility of Internet providers having to disclose personal information to authorities without safeguards for privacy. The European Parliament voted 478-39 against the international ACTA treaty, which was trying to create similar standards. Now, the same type of regulation is being attempted under the TPPA.

More IP rights for the big players

The Intellectual Property Rights chapter of the TPPA was leaked in draft form in February 2011. We anticipate that unless a more moderate and balanced version is adopted, NZ, Canada and Australia's shoppers, schools and libraries would end up paying more for their books and DVD's because it would let copyright holders veto parallel importing. Small and medium-sized software and IT businesses would have their innovative visions stifled by constraining patent laws. Finally, large pharmaceutical companies could use the legislation to deny state drug-buying agencies like those in Australia and NZ access to reliable, low cost medicines.

Behind Closed Doors

Almost everything we have learnt about the TPPA's contents comes from leaked documents that the negotiators didn't want the public to see. No agreement this important should be finalised without the informed input of the ordinary people it will affect.

Yet while representatives of AT&T, Verizon, Cisco, major pharmaceutical companies and the Motion Picture Association of America have access to the text, democratically elected members of parliament, advocacy organisations for healthcare and the environment and ordinary citizens are being left out in the cold. Governments, including the US, have opened up to the public in the past by releasing the draft text of agreements. In 2001, all nine chapters of the Free Trade Area of the Americas Agreement were released. At the time, this was called an 'important step' that would make the trade negotiation process 'more transparent and accessible'. If this was the standard for public accountability in 2001, it is disconcerting that similar standards are not in play in 2012.

Together, we Green Parties are declaring that we will only support a fair, genuinely progressive trade agreement that promotes sustainable development and the creation of new jobs alongside the protection of the environment and human rights (including freedom of association and the right to collective bargaining). We call on our current governments to remove the veil of secrecy surrounding this agreement and to open these negotiations to public input and comment.

The Labour Party conference in November 2012 voted overwhelmingly to support the following remit:

Remit 35: Trans Pacific Partnership Agreement

THAT in light of the Labour Party's strong commitment to both the benefits of international trade and New Zealand's national sovereignty, and recognising the far-reaching implications for domestic policy of the proposed Trans Pacific Partnership Agreement, in which trade is only a small part, Labour will support signing such an agreement which:

- a) Provides substantially increased access for our agriculture exports to the US market;
- b) Does not undermine PHARMAC, raise the cost of medical treatments and medicines or threaten public health measures such as tobacco control;
- c) Does not give overseas investors or suppliers any greater rights than domestic investors and suppliers, such as Investor-State Dispute Settlement, or reduce our ability to control overseas investment or finance;
- d) Does not expand intellectual property rights and enforcement in excess of current law;
- e) Does not weaken our public services, require privatisation, hinder reversal of privatisations, or increase the commercialisation of government organisations;
- f) Does not reduce our flexibility to support local economic and industry development and encourage good employment and environmental practices;
- g) Contains enforceable labour clauses requiring adherence to core International Labour Organisation conventions and preventing reduction of labour rights for trade or investment advantage;
- h) Contains enforceable environmental clauses preventing reduction of environmental standards for trade or investment advantage;
- i) Has general exceptions to protect human rights, the environment, the Treaty of Waitangi, and New Zealand's economic and financial stability;
- j) Had been negotiated with full public consultation including regular public releases of drafts of the text of the agreement, and ratification being conditional on a full social, environmental and economic impact assessment including public submissions.

Will the Parliamentary team implement them?

Mana Party Full disclosure on TPPA, 17 November 2011

MANA leader Hone Harawira is calling on the government to release all details of the Trans Pacific Partnership Agreement (TPPA) which US president Barack Obama announced there had been preliminary agreement on.

Mr Harawira says MANA has consistently op-

posed the US led agreement between nine countries including NZ being negotiated in secret.

He says there is no reason for Deputy PM Bill English and Trade Minister Tim Groser, who have been in Hawaii at the APEC summit where President Obama made the announcement, to keep NZers in the dark any longer. Mr Harawira says MANA is particularly concerned that the secret TPPA negotiations included measures which would:

- limit government's drug buying agency Pharmac's ability to negotiate lower prices with international drug companies
- determine which agencies, mechanisms and processes our government should use when deciding on domestic regulations
- further weaken our manufacturing base and lead to the closure of more NZ businesses
- lead to even greater pressure for wages to be lowered
- allow foreign investors to sue NZ in overseas courts if they disagreed with NZ government decisions
- contravene the principle of Maori sovereignty in the Treaty of Waitangi and the sovereignty of the NZ government itself

"I signalled my opposition in a strongly worded memo to my colleagues at the time, but the Maori Party supported it anyway" said Harawira. "It was just one of the many reasons I had to leave the Maori Party".

"Maori will never forget the devastating job losses caused by Rogernomics, and the TPPA will cause even more havoc in Maori communities already suffering massive unemployment rates".

"Do we really want to go through that again?

"Opposition to the TPPA is growing" said Harawira "and government would do well to heed the warning – walk away from the TPPA before it buries us all"

What Can We Do?

In Aotearoa, we are at the forefront of activism against the TPPA. The campaign involves a wide spectrum of groups with a wide range of concerns and positions. But the secrecy, its corporate driven agenda, the primacy of economics over all other priorities, and the threat to tino rangatiratanga and sovereignty have created a groundswell that says this agreement is not in the interests of our people. The Auckland round of the TPPA is a local opportunity to get a clear message to the cheerleaders of this toxic deal that we don't want it and we will make sure it is not deliverable. Actions are planned around the country - join us or plan your own actions (and share them with us so we can show the world New Zealanders are opposed to the TPPA).

Right now you can...

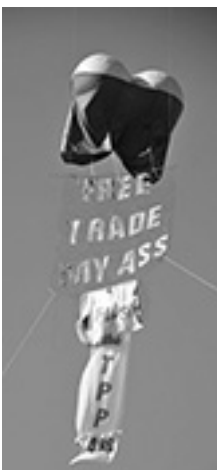
- Write to Prime Minister John Key and Trade Minister Tim Groser and tell them why the TPPA is not for New Zealand. You can do this at www.itsourfuture.org.nz/take-action/ (there is a form letter you can modify if you like).
- Sign the Avaaz petition at www.avaaz.org/en/stop_the_corporate_death_star/
- Write letters to the editor opposing the TPPA and demanding that the negotiations be made public.
- Attend rallies and protests against the TPPA around New Zealand this December. These are listed at www.itsourfuture.org.nz/events/
- Plan your own event and mobilise your community against the TPPA.

For inspiration check out some of the action that has been taken against the TPPA around the world.

- The Yes Men took over the podium at a TPP corporate event and presented the "Corporate Power Tool Award" to the US Trade Negotiator - www.yeslab.org/tpp
- The Occupy Movement has put on mic checks at official receptions and negotiating rooms

Other Activists have:

- ❏ Projected anti-TPPA images on the side of negotiating venues
- ❏ Put on puppet protests that gave lunching IP negotiators indigestion in Melbourne
- ❏ Blockaded the entrance to negotiating rounds by strapping themselves to tripods
- ❏ Japanese activists held weekly vigils outside the Japanese Prime Minister's office.
- ❏ Staged a mass mobilisation at the International AIDS Conference protesting the TPPA's affect on access to anti-retroviral medications
- ❏ Launched a creative hot air balloon telling negotiators exactly what they wanted done with the TPP



- ❏ Replaced toilet paper at a negotiating venue with subversive plays on the 'TPP'

