



Methodist Church Te Haahi Weteriana - Methodist Public Issues

SUBMISSION ON NEW ZEALAND-TRANS-PACIFIC PARTNERSHIP AGREEMENT MARCH 2016

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Foreign Affairs and Trade Select Committee

Tena Koutou - Greetings

This is a brief submission on the TPP Agreement with specific reference to the Investor states disputes Settlement provisions.

We are part of a wide membership of the Public Issues Network of the Methodist Church which has been following matters relating to Free Trade Agreements, and the Trans Pacific Partnership Agreement.

We wish to be clear that we are not taking a position of opposition to Free Trade per se. Rather our interest is in being attentive to Public Good interests alongside the economic imperatives of trade. Public good interests arise from priorities of stewardship, environmental safeguards and climate responsibility, which the church often refers to as the mission of Care for Creation.

While there are clearly benefits of trade, the increasing priorities of commercial interest that over-ride stewardship and public good interests are the focus of our interest. Hence our reference to the Investor States Disputes Settlements provisions and our submission that New Zealand should exclude these provisions from all Trade Agreements, including the TPPA.

In particular we note the extremely inadequate of the TPP negotiators to engage with the New Zealand public. While aspects of negotiations may be sensitive to negotiation procedures, there needed to be a much more accountable process for a Trade Agreement with such far reaching implications.

Key Points:

- a) Refuse to allow any measure that will allow foreign interests including corporations to sue or otherwise block New Zealand's responsibility to legislate, regulate or otherwise protect the environment;
- b) Negotiate specific provisions for the TPPA chapter on Investor – state disputes procedures, so that New Zealand businesses and our economic sectors, and current and future environmental protections are not exposed to ISD procedures.
- c) Refuse any measures including investor-state dispute resolution in trade, investment or economic agreements that will reduce New Zealanders' access to health care, pharmaceuticals, or medical aids, either directly or via influence on prices of such, or that will reduce the protections and safety of workers.

Specific Matters re Investor States Disputes Settlements

A concern is with the Investor States Disputes Settlements procedures between a Party (State), and an Investor of another Party

The details of the arbitration procedures, we understand are generic to all FTA's, and include provisions for removing information from public scrutiny. Although tribunal hearings are to be open to the public, if a disputing party deems information to be 'protected' the tribunal may designate it as such and protect the information from disclosure. This allows for information to be removed from public scrutiny at the behest of the disputing party.

The TPPA allows for the resolution of disputes through the appointment of a tribunal of three arbitrators, one representing the claimant, one the respondent and the third as independent. Such a Tribunal will be arbitrated by an international panel of corporate lawyers representing the corporations. This procedure removes disputes from public courts. Without independent judges, the

ruling of the tribunal then cannot be challenged in public courts. We do not support the likely engagement of corporate lawyers, rather than independent judges in public courts.

Implications for Local Government and other organizations

We also have concerns about the compatibility the TPPA, with local government powers, responsibilities and regulations.

Our investigations show that some Councils have taken precautionary resolutions regarding the TPPA. In essence these are about ensuring the TPP agreement is beneficial to the region, for example in the Nelson and Auckland resolutions, and the resolutions include ensuring that Council can exercise procurement policies for locally produced goods, and maintains trade relationships with trading partners not included in the TPP, such as China.

Under far as current information allows, the TPPA text includes that obligations automatically apply to all levels of government, including regional and local government. That means local government decisions, such as zoning laws and resource approvals, or Public Private Partnership contracts, or local government bonds, would automatically be subject to this chapter.

However, local governments can continue using existing laws and policies without breaching some of the rules, especially those that give better treatment to locals, but they can't tighten those rules.

Any non-government entity that is carrying out a delegated function of the government, such as professional bodies, is also required to comply with the rules of the chapter.

General Matters

We understand that there is a template for investment chapters of Trade agreements in order to standardize and the agreements and ensure harmonization with regards to corporate and legal implementation. This follows the standard US model. Previously, Australia excluded the ISDS provisions from their TPPA negotiations, and were brought under pressure, as we understand it, by the Republic of Korea as they would not agree to a deal without an investment chapter with the right of Korean investors to sue the Australian government.

Our analysis is that the ISDS provisions would tip the balance towards multinational corporate interests and undermine state capacity to regulate for public interests in their own countries. The Investor States Disputes provisions signal a shift in balance towards corporate interests, which have commercial and economic priorities and no requirements to uphold democratic principles or public good interests

An example of the possible undermining of New Zealand regulations for Public Good New Zealand's precautionary GM policies. There is wide concern about the impacts that the TPP would have on our ability to regulate GM – especially considering the aggressive corporate interests in introducing this technology worldwide. While the Ministry of Foreign Affairs has given assurance that New Zealand's GM regulations will not be compromised by the TPP. However it is known that US trade negotiators want us to remove our GM labeling laws.

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, representing GM companies like Monsanto and Cargill, have stated that they want GM labelling restricted under the TPP. While current standards may remain, we must be cognizant of the pressure to entice New Zealand away from our stance. Furthermore, and tightening or extension of our regulations on GMO's would expose us to ISDS action.

Examples of ISD suits:

- Germany is being sued for US\$6 billion by Swedish energy giant Vattenfall for its [decision to phase-out nuclear energy](#).
- Australia and Uruguay have both been subjected to billion-dollar law suits as a result of their [tobacco control laws while Last year we saw the largest ever award in history – US\\$50 billion – being made against Russia, 10% of their annual budget](#).

Corporate suits linked to New Zealand

- Veolia, the company that operates Auckland’s train system, recently sued Egypt for US\$80 million for raising its minimum wage
- Newmont, the gold-mining company that operates in Waihi, recently launched a [billion dollar claim](#) against Indonesia for regulation requiring domestic processing of raw materials, which resulted in Indonesia accepting a regulatory concession

Trade and Climate

The harmonization being achieved for Trade is a valuable model for harmonization in climate commitments. We ask the New Zealand Government to consider including requirements for multinational corporations to make provisions for climate mitigation, which are subject to accountability procedures and to fines for failure to comply. 36 percent of the global emissions from energy production, 24 percent of emission from forestry and agriculture, and 14 percent from transport could be converted to low carbon technology. We submit that it is time for Trade Agreements to build in this requirement.

Conclusion

We do not support the exposure New Zealand would have through Investor Stated Disputes procedures. Many trade agreements have investor states disputes provisions but these were rarely invoked until recently. In 2012, there were 58 such cases. Many of these relate to health and regulations for environmental protections. We urge the New Zealand Government to refuse ISDS provisions in Trade agreements.

With respect

Betsan Martin

Methodist Church, Te Hāhi Weteriana o Aotearoa