



# The Trans Pacific Partnership Agreement





“Leaders of TPP member states” by Gobierno de Chile – 14 November 2010 Gira a Asia. Licensed under CC BY 2.0 via Wikimedia Commons – [http://commons.wikimedia.org/wiki/File:Leaders\\_of\\_TPP\\_member\\_states.jpg#/media/File:Leaders\\_of\\_TPP\\_member\\_states.jpg](http://commons.wikimedia.org/wiki/File:Leaders_of_TPP_member_states.jpg#/media/File:Leaders_of_TPP_member_states.jpg)

# Introducing *The Lens*

By Public Health Association CEO Warren Lindberg



PHA CEO Warren Lindberg

**W**elcome to the Public Health Association of New Zealand’s first edition of *The Lens*.

*The Lens* will be published three times a year, with each issue focusing on a current public health topic. Our purpose is to inform members and the wider public health sector; to provide a resource for members and friends of the PHA to use in their work; and to influence the thinking of the general public with regards to the chosen topic.

For this issue we have selected the TPP as the subject of focus. It’s an important topic, and also timely as the next TPP ministers’ meeting is expected to be held in Hawaii this

month.

Some of the pieces we have written ourselves. We have also invited contributions from a range of New Zealanders – most well known for their concerns about the TPP.

These contributors provide an interesting range of perspectives. They may not all agree on everything and they don’t necessarily represent the views of the PHA.

But on one thing we all agree. The health of New Zealand’s people and climate must come before the business interests of multi-national corporations!

We hope this resource will help you gather, share and learn!

# Introduction to the TPP

By Dr Pat Neuwelt



*Dr Pat Neuwelt is a PHA member and Senior Lecturer, Health Systems at the University of Auckland's School of Population Health.*

**T**he Trans Pacific Partnership (TPP) Agreement is a wide-ranging trade and investment agreement currently being negotiated between 12 Pacific Rim nations, including New Zealand, Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore, the United States (US) and Vietnam – affecting more than 700 million people. More countries may join in future.

The first official round of TPP negotiations began in March 2010 in Melbourne. The New Zealand Government aims to gain an expansion of dairy and other agricultural markets, via this agreement; however, estimates suggest that the gain could actually be minimal over the next 10-15 years.

International trade agreements can be very beneficial to the parties involved, but the key point about the TPP is that it is not an ordinary 'free trade agreement', where nations are negotiating about border tariffs for export/import products. It is much more about the US driving an agenda to achieve economic dominance in the Pacific region, by influencing what countries do in the privacy of their own nation-states.

While governments argue that the TPP will create economic gain for all nations involved, it is actually much more about removing barriers to trade for transnational corporations in order to maximise their profits. The US has been aggressive in its demands because many of these large companies are based there. They are major global players in the tobacco, pharmaceutical, alcohol, food, and health care industries – the very in-

dustries relevant to our public health efforts.

US trade negotiators have pressed for more investment and intellectual property rights for these corporations than in any prior trade agreement. For example, the TPP includes something known as the investor state dispute settlement (ISDS) process.

This process, which sits outside the law of any nation or international body, gives corporations the right to sue a government for any policy or regulation that limits their profits. In other words, the New Zealand Government could face huge fines for instigating tobacco plain packaging, health warnings on alcohol and food, or limiting pharmaceutical company or other transnational investors' profits.

*"I began to realise the health implications of this major agreement – which is not receiving the health impact assessment it deserves."*

Despite the fact that this is a wide-ranging economic and political agreement, the TPP has been shrouded in secrecy, so what we currently know has been gleaned from leaked sections of negotiating documents, such as those released on WikiLeaks. Outside of ministers, other elected members of the New Zealand Parliament have not seen the huge set of documents, and our Government has refused to share even high-level details of the negotiations with the public.

Further, despite repeated Government assurances that it is normal and necessary for trade agreements to go on 'behind closed doors', details of

*“The negotiations are not about the way most of us think of trade – you and me buying and selling things. Instead they [the TPP negotiators] are protecting the massive investment profits of multinational companies that are bigger than the whole New Zealand economy.”*

Dr Pat Neuwelt, University of Auckland media release, 13 February 2015

a similar trade agreements between the European Union and the USA (the TTIP) have been released after such action was ordered by the EU Ombudsman. The European Commission deemed this type of agreement to have such broad ranging implications that public discussion and debate was seen as essential.

In 2012 I became concerned about the TPP after attending a seminar at the University of Auckland run by Dr Deborah Gleeson (Melbourne academic, expert on international trade and health) and Prof Jane Kelsey (University of Auckland expert on international trade law). I began to realise the health implications of this major agreement – which is not receiving the health impact assessment it deserves. I signed up as a ‘stakeholder’ on the Ministry of Foreign Affairs and Trade website and attended a day of stakeholder meetings at the December, 2012 negotiations held in Auckland.

In the ballroom at the Sky City Convention Centre, with the chief negotiator from each of the TPP nations seated on stage, I learned that – despite the Government rhetoric about huge gains for our dairy exports – the Canadian and US dairy (and beef) industry representatives had no intention of sharing North American markets with New Zealand farmers!

As a public health physician and researcher, I’ve been particularly concerned about the fact that this agreement appears to place the rights of corporations over human rights, health equity, and the public good. An important concern for us

in New Zealand is the protection of Pharmac, the agency that manages pharmaceutical purchasing to keep medicines affordable for consumers and for the health sector.

*“But the key question is ‘Will New Zealand continue to reject these US demands?’”*

Pharmac is internationally renowned for its ability to contain costs by enabling generic (off-patent) medicines to enter the New Zealand market. Big Pharma has been using its power and huge resources to try to challenge Pharmac’s decision-making processes. Why? Not because it has lost significant profits in tiny New Zealand, but because other nations are looking to emulate the Pharmac model.

Many large and powerful pharmaceutical companies are based in the US. The US has, therefore, made wide-ranging demands on behalf of the patent-holding pharmaceutical industry, such as lengthening patent monopolies beyond the 20 years afforded to companies by the World Trade Organization.

Leaked negotiating documents suggest that New Zealand, together with some of the other smaller TPP countries, put forward an entirely different vision for intellectual property and medicines – arguing for a better balance between intellectual property privileges and public health objectives that would keep drugs affordable for New Zealanders. But the key question is, ‘Will New Zealand continue to reject these US demands?’

The TPP negotiations are no longer in the hands of negotiators, but of

trade ministers. The US is pressing for a deal to be signed before the final months of Obama’s current US presidency.

This period is a risky one, as political trade-offs often happen late in the piece. The next TPP ministers’ meeting is expected to be held in Hawaii in mid-April. I am no expert in international trade, but it does not take a trade expert to know that our sovereignty as a nation is at stake. The TPP is about corporate colonisation – and, in my view, that is of very serious concern to public health.



*Dr Pat Neuwelt at a march protesting the TPP in Auckland on 29 March 2015. The Auckland event was one of 15 organised around the country on that day.*

# What might we gain and what might we lose?

By The Public Health Association of New Zealand

**I**n a 17 February opinion piece published in the *New Zealand Herald*, ExportNZ Executive Director Catherine Beard outlined the benefits of free trade and argued that there is no country that stands to benefit more from free trade deals than New Zealand. Trade with China and Taiwan had grown spectacularly through such deals, she said.

She also pointed out that the collective worth of the 12 Asia Pacific economies in the TPP is more than NZ\$36 trillion in GDP and said the biggest tariffs and barriers to trade around the world are in agriculture – just our line of work.

“If free trade deals can give us competitive access to markets where we have previously been blocked due to high tariffs or quotas, the rewards can be large and tend to come quickly,” she said.

“Sure, our negotiators have to hold

firm to ensure the best outcomes for our economy overall in areas like intellectual property, investor state disputes mechanisms, environment and health and safety. But they have proven competent at getting good results in the past, and can do so for the TPP as well...

“If and when disputes arise with our trading partners, they will need to be managed. All our free trade agreements include mechanisms for managing any disputes should they arise. This is what businesses around the world do every day...”

However, Sustainability Council Executive Director Simon Terry begged to differ.

In a reply published in the *New Zealand Herald* on 24 February he suggested ExportNZ had failed to come to grips with the issues that matter – such as the right for foreign investors to sue our Government in overseas

tribunals (with no right of appeal) if their profits are cut by legitimate Government actions.

*“While firms need protection, so also do the rights of governments to pursue reasonable policies.”*

*The Economist*

He said there was a ‘global backlash’ against these secret tribunals that included ‘the most orthodox of voices’. The Australian Productivity Commission says there is no evidence that such rights promote foreign investment and recommends against them. Even the *Economist* magazine rejects such rights, saying that while firms need protection, so also do the rights of governments to pursue reasonable policies.

In September, Germany flatly declared that it would not sign any further trade agreements with these provisions.

“If a country such as Germany cannot see a way to live with these investor rights, New Zealand can hardly hope to do better. Such rights open the door wide for foreign corporates to bully governments away from protecting the public interest,” Terry said.

He also doubts that the benefits of joining the TPP club are ‘too good to miss’ and said many of the TPP’s long list of constraints on New Zealand freedoms have nothing to do with trade, such as extensions to intellectual property rights that will mean higher costs for consumers, particularly in medicines.

What are the trade benefits in return, he asked? Not much.



TPP Negotiators in the ballroom at the Sky City Convention Centre, December 2012. Dr Pat Neuvelts says that it became very clear at this meeting that the Canadian and US dairy (and beef) industry representatives had no intention of sharing North American markets with New Zealand.

*“A Sustainability Council study of the TPP’s claimed economic gains concluded that, on the information available, it was doubtful there was a net benefit for New Zealanders... and the real potential gains were a fraction of those claimed.”*

Terry argues that it has become apparent that the TPP will not do much to improve access for our agricultural exports. He says the US agriculture negotiator put things starkly, saying it will be up to Japan to decide if it wants to extend the same concessions it has offered the US to other TPP agricultural exporting countries like New Zealand and Australia.

“It has been plain for months that New Zealand has largely been abandoned to find its own way on agriculture. Australia ended up negotiating a separate deal with Japan, and got very little.”

A Sustainability Council study of the TPP’s claimed economic gains concluded that, on the information

available, it was doubtful there was a net benefit for New Zealanders. The study said the economic projections relied on by the Government used implausible assumptions and the real potential gains were a fraction of those claimed.

“Export income is critical to our economy and to attaining strong environmental standards. But the benefits of joining the TPP club are looking more remote all the time, while the costs are all too apparent and would cut deep into New Zealand’s sovereignty.”

The Sustainability Council’s critique, *Economic Gains and Costs from the TPP*, is available at: [www.sustainabilitynz.org](http://www.sustainabilitynz.org).

# A TPP FAQ

By The Public Health Association of New Zealand

## What is the TPP?

The TPP is a trade agreement in negotiation between New Zealand and 11 other Pacific Rim countries: Australia, the US, Brunei, Canada, Chile, Japan, Malaysia, Mexico, Peru, Singapore and Vietnam

It is a new type of trade agreement because it goes beyond the usual focus areas, like removing import taxes and enabling foreign companies to provide services in signatory countries, to also provide new protections for investors and intellectual property. The TPP is aimed at changing policy-making within countries and harmonising domestic policy requirements affecting trade and investment in the countries involved.

## What economic benefits could there be for New Zealand in the TPP?

New Zealand hopes the TPP will boost its economy by providing its main industries, such as meat and dairy) with better access to overseas markets such as Japan, Canada and

the US. However, there are no guarantees because New Zealand would still have to negotiate these deals – and many analysts are skeptical about how much increased economic benefit would result.

## How could the TPP affect New Zealand public health law and policy?

Under the TPP’s investor state dispute settlement (ISDS) provisions foreign investors would be able to sue the Government if changes to health policy affect an investment, for example, significantly reducing expected profits from plain packaging laws that would reduce tobacco sales.

## How do the ISDS provisions in the TPP work?

ISDS provisions would allow transnational corporations to seek compensation from the New Zealand Government should the value of their investment or their anticipated profits be threatened by actions taken to improve the health of New Zealanders. The very existence of ISDS provi-

sions can have a significant ‘chilling effect’ on how law and policy is developed in that governments might be reluctant to bring in public health legislation for fear of being sued.

## Have trade agreements affected public health legislation and policy in other countries?

Yes. In Canada, all new health laws must first be screened to make sure they won’t interfere with trade agreements. Philip Morris Asia is currently exercising ISDS provisions under an existing treaty to seek compensation from the Australian Government in response to tobacco plain packaging laws. This has resulted in similar plain packaging laws in New Zealand being delayed while our Government waits to see the outcome in Australia (the chilling effect). Philip Morris has also pursued ISDS claims against tobacco control policies in Uruguay and Norway.

Continued on page 15...

# The NZMA and concerns from the medical profession

By Dr Mark Peterson, Chair, New Zealand Medical Association



*Dr Mark Peterson previously held the roles of NZMA Deputy Chair and Chair of the NZMA General Practitioner Council. A graduate of Otago University, Dr Peterson has worked as a general practitioner in Hawke's Bay for 25 years where he is also Chief Medical Officer Primary Care with the local district health board. Dr Peterson is a past Chair of the General Practice Leaders Forum and Board member of the Royal New Zealand College of General Practitioners, and has served on a wide range of sector advisory groups.*

**T**he New Zealand Medical Association (NZMA) represents the collective interests of all doctors in New Zealand. Our members come from all disciplines within the medical profession, including specialists, general practitioners, doctors-in-training and medical students.

As strong advocates for both the profession and for our patients, the NZMA has some concerns about the possible impact on our health system of trade agreements such as the proposed Trans Pacific Partnership (TPP) Agreement.

This is why we supported the call last year by a number of other health sector organisations for an independent assessment of the impact of the TPP, particularly on our ability to achieve legitimate public policy objectives, such as the protection of public health, safety and the environment.

In 2011, the NZMA released a Health Equity position statement. This is a guiding document reflecting the Association's concerns about health inequities. As the statement says, the NZMA believes that economic growth should not be viewed as the sole measure of a country's success – the fair distribution of health, wellbeing and environmental and social sustainability are equally important goals.

Much of the discussion around the TPP has been on its economic value for the country. While we accept there might be financial benefits for the country the NZMA believes there are wider issues that also need to be considered, including affordable access to medicines, and public health

policies especially around tobacco and alcohol control.

*"We need to have a clear understanding of the possible effects of the TPP on current and future policy settings and directions – before we are committed to such a deal."*

Recent articles in *The Lancet* and in the *New Zealand Medical Journal* highlight concerns about the lack of transparency relating to the negotiations, particularly around the possible expansion of intellectual property rights on pharmaceuticals, and the investor state dispute settlement provisions that could allow corporations to sue governments if policy changes were likely to affect the 'value' of their investment.

Legal action brought by major tobacco corporate Phillip Morris International against Switzerland, Norway, Australia and possible action against the UK Government's efforts to bring in plain packaging for tobacco products exemplify the type of constraints such a trade agreement could apply to public health policies here in New Zealand.

As professionals with ethical concerns about the possible effects of such legislation, we need to have a clear understanding of the possible effects of the TPP on current and future policy settings and directions – before we are committed to such a deal.

# Why does everything have to be so secret?

By The Public Health Association of New Zealand



*"The potential of the TPPA to affect the health of New Zealanders for generations to come is as important as the potential economic benefits: both must be subject to public scrutiny."*

NZ Nurses Organisation Policy Analyst  
Marilyn Head, media release,  
28 February 2015

**T**PP negotiations are being conducted in secret with no opportunity for scrutiny by the public or public health experts to determine their implications for health in New Zealand.

This is particularly concerning because leaked drafts of some of the United States' proposals reveal the inclusion of dangerous provisions that would dismantle public health safeguards and restrict access to affordable generic medicines for millions of people in New Zealand and for developing Pacific nations.

In short, New Zealand's sovereignty is threatened by these provisions because, if we agreed to them, they would give international business the right to sue our Government if it enacted laws or policy that threatened their profits. It would also put the interests of Big Pharma ahead of Pharmac. You can read more about the investor state dispute resolutions, drug patent provisions and more elsewhere in this booklet.

A further (and disturbing) indication that corporate interests could trump local sovereignty is that, while public health experts are barred, the United States has allowed more than 600 corporate representatives to have access as 'cleared advisors' to ensure agreed deals favour business.

Proposed 'business' gains for New Zealand include better access to international markets through reduced tariffs on our goods. But because the details of the TPP negotiations are not public, it is unclear exactly how much economic benefit might be achieved.

The Government has issued some

very unspecific assurances (a *Dominion Post* editorial called them "airy") that it will only sign the TPP deal if there are real benefits for New Zealand. It also insisted Pharmac would not be shut down. However, our concern is not that Pharmac will cease to be; it's more that Pharmac will be robbed of its effectiveness.

*"And the obvious question is that if Europe can make its secret negotiations public so that proper debate can occur, why can't we?"*

There have been many strident calls from the health and medical sectors (and others) about this lack of transparency in the light of potential threats to health in New Zealand.

Over the last two years these have included 425 independent medical professionals writing to the Prime Minister; 60 public health academics and practitioners writing to the Minister of Health; 270 senior doctors, professors, and other health professionals writing to the Prime Minister; the New Zealand Medical Association supporting the call for an independent assessment of the TPPA's health impacts; and the Association of Salaried Medical Specialists voting overwhelmingly in favour of independent health assessment prior to the TPP being signed.

More recently, in the February 2015 issue of *The Lancet*, New Zealand health advocates were among 27 international experts calling for public release of the TPP and discussion about its consequences on access to health care.

In its 2014 policy statement on the TPP, The New Zealand College of



Public Health Medicine also issued a call for openness and transparency in debating the potential health and environmental impacts of any free trade agreements, including the TPP.

The New Zealand Government's response to these calls has been that TPP opponents are misinformed and that New Zealanders have "no cause for concern whatsoever". Negotiating in secret is par for the course because you can't negotiate in plain daylight, it says.

But is that necessarily so?

European Ombudsman Emily O'Reilly has called for secret negotiations between the European Union and the US over the proposed Transatlantic Trade and Investment

Partnership (TIPP) – another enormous "free trade" deal – to be made public. She wanted more disclosure both during the negotiations and full disclosure of the concluding deal before it is signed.

This way, she argues, the public would have some knowledge of and input into a deal that would significantly affect them. More openness would also increase public confidence in any deal.

And the European Commission has agreed!

As the *Dominion Post* editorial stated, "Her arguments are valid and also hold in this country." And the obvious question is that if Europe can make its secret negotiations public

so that proper debate can occur, why can't we?

John Key told *3News* that the TPP would go ahead with the support of New Zealand's silent majority. But are the majority silent only because they are not fully aware of the full implications of what is being debated behind closed doors?

As Dr Josh Freeman warned (*New Zealand Herald*, 31 October 2014), if calls for transparency continue to be dismissed and the TPP proceeds unchecked, New Zealanders might eventually be asking themselves, "How did we get to the point where the systems designed to protect our own health lie beyond our control?"

*"General reassurances are not enough. That's why health organisations are calling for an independent, systematic and broad scope health impact assessment, and for this and the text of the agreement to be released before any deal is signed"*

Dr Josh Freeman, *New Zealand Herald*, 31 October 2014

# The TPP and climate change: a personal story

By Dr Josh Freeman



*Dr Josh Freeman is a TPP spokesman for OraTaiao, The New Zealand Climate and Health Council.*

**I'm a 43 year old father of three** children under 12. I work as a consultant clinical microbiologist. Most of my day involves either looking after kids or diagnosing and managing infectious diseases, but over the last few years I've also become increasingly interested in climate change. It began with reading in my spare time – a kind of hobby – motivated partly by curiosity, but also by a growing sense of unease.

As a father, I felt increasingly concerned about the sort of world we might be leaving for our kids, and in particular, I felt troubled by lack of political action on climate change. It puzzled me that despite repeated warnings from scientists about the dire consequences of increasing carbon emissions, climate change policy seemed low on the political agenda.

I found it shocking to discover there were plans to expand fossil fuel extraction in New Zealand through offshore drilling and fracking, despite the fact that to keep global warming within the 2 degree “safety limit”, 80 percent of known fossil fuel reserves must remain in the ground. These plans, along with similar stories internationally, confirmed to me that something was fundamentally wrong with the direction of policy on this issue.

It was at this point I began to discover more about the responses of powerful industries when their core commercial interests are threatened. I learnt about the history of the tobacco and fossil fuel industries funding systematic campaigns of misinformation. I learnt that the fossil fuel industry had repeatedly co-

opted politicians and eminent scientists in order to undermine scientific evidence in the minds of the public. And I learnt about how these industries routinely invest huge sums of money in legal battles to defend and expand their profitability, regardless of the public interest.

It was at this point the penny dropped. It became clear to me that the fossil fuel industry had effectively earmarked all remaining fossil fuel reserves as future profit – including the 80 percent of reserves that must stay in the ground – and I realised that any policy obstructing this agenda would be viewed as a threat to their core commercial interests.

*“After all I had learnt about climate change and fossil fuel industry behaviour this seemed an absolutely crazy direction to be heading in.”*

It was against the background of these troubling realisations that I started to learn more about the Trans Pacific Partnership (TPP) and what I found was alarming. I learnt that if this agreement went ahead, foreign corporations would be awarded powers to sue governments in off-shore tribunals in response to new regulations, laws or court rulings deemed to interfere with “anticipated future profits”. For me, learning about this was the final straw. After all I had learnt about climate change and fossil fuel industry behaviour this seemed an absolutely crazy direction to be heading in. It may be a cliché, but I felt like the child who could see the emperor had no clothes.

And like the child in the story I had to speak up. It wasn't enough any-

*“Kiwis should be worried. There’s almost no to very weak enforcement measures to protect the environment, but when it comes to corporate interests and diverse things like copyright to mining there’s very strong enforcement, so the environment’s coming out second best in this chapter.”*

Greens’ MP Gareth Hughes, *Radio New Zealand News*, 16 January 2015

more just to better understand the world, I had to do something. For the past year I had been a member of OraTaiao, The New Zealand Climate and Health Council, but hadn’t been very active. So I started by writing to the OraTaiao executive proposing an open letter to the Prime Minister on this issue, and from then on things gathered momentum very quickly: within a week, more than 270 health professionals had signed the letter and over \$7000 was raised to cover publication in the *Dominion Post*.

One year later, a lot more has happened. There have been public statements from the NZMA and more than nine different New Zealand

based health NGOs calling for an independent health impact assessment of the TPP prior to signing. A call for release of the TPP draft text has also been published in *The Lancet*, signed by health leaders from seven TPP countries, as well as The Chair of The World Medical Association and The Chair of the World Federation of Public Health Associations.

Multiple opinion editorials have been published in our newspapers and our work has been referenced by Reuters, the *Sydney Morning Herald* and the *Melbourne Age*. There have also been multiple TV and radio interviews along with the formation of Doctors for Healthy Trade, which now has

more than 150 members.

All this has been achieved without funding or formal organisation. It has been achieved through the power of an organic network of committed individuals mobilising around a common cause, where members contribute their skills, talents and resources for the common good. It has been achieved through building a collaborative network with a strong sense of community, teamwork and mutual support. More than anything, being involved in these efforts has made me realise that despite the powers we are up against, collectively we have far more power than we think.

*“Under the TPPA, the New Zealand government could find itself hamstrung in efforts to reduce climate damaging emissions and to promote health. Overseas governments are being sued for millions of dollars as a result of similar provisions in other trade agreements.”*

OraTaiao co-convenor Dr Rhys Jones, OraTaiao media release, 12 February 2015

*Dr Josh Freeman says it’s become clear that the fossil fuel industry has earmarked all remaining fossil fuel reserves as future profit – including the 80 percent of reserves that must stay in the ground. He says any policy obstructing this agenda would be viewed as a threat.*



# The Public Health Association view on the TPP

By PHA Chief Executive Officer Warren Lindberg



PHA CEO Warren Lindberg

**P**ublic health activists have become increasingly concerned about international trade agreements for at least the last decade with the shift from trade in goods to the trade in services – services having been defined by Jane Kelsey as ‘anything you can buy and sell but can’t drop on your foot’.

It is extremely difficult to know what services our Government might agree to open up as tradable commodities, since trade negotiations have traditionally been held in secret.

We have only become aware of the potential harms to the health system through leaked negotiating documents.

We are very fortunate that a few individuals with extraordinary commitment have persevered to drip-feed whatever they can get their hands on to keep us informed. Relying on the leaked intellectual property and investment texts, there are now many published academic papers on the public health and fiscal implications for affordable medicines, tobacco control and other health impacts, notably the ability of Government to regulate a wide range of goods and services in the best interests of the health of New Zealanders.

The Public Health Association of New Zealand (PHA) initially declared its position on the TPP in 2011 when then National Executive Officer Dr Gay Keating was one of 16 signatories of a petition to Parliament calling for a Select Committee inquiry and for negotiating documents to be made “freely available to all civil society”.

Since then the PHA has formally written to the Prime Minister and the Minister of Health and has also corresponded with the Minister of Trade regarding its concerns.

Our letter to the Prime Minister urged him to insist on strong protections for public health in all 29 chapters of the Agreement, so that New Zealand’s public health legislation and policy can be informed by scientific evidence rather than commercial interests; and the need for scrupulous analysis of all chapters by independent local experts and civil society in the interests of public health as well as of foreign policy and trade.

*“The Australian Government is to be admired for standing up to Philip Morris, but would we want our Government to spend that kind of money defending every regulation of a dangerous substance?”*

Trade Minister Tim Groser has assured us that “all of New Zealand’s existing trade and investment agreements include provisions that protect the Government’s right to regulate in the interests of public health” and that “New Zealand will not accept a TPP outcome that prevents Government from regulating in the public interest for public purposes”.

Unconvinced, we wrote again to the Minister to record our concern that such general exceptions can be interpreted as constituting a very high threshold. In terms of Article 20(b) of the General Agreement on Tariffs and Trade, a proposed health measure must be ‘*necessary to protect human... life or health*’ (emphasis added). Further, the measure must

*"It's something we will have a big debate on at the time, but this is not the right time yet. I'm extremely confident that the Government will be able to convey to New Zealanders that there is no cause for concern here whatsoever."*

Trade Minister Hon Tim Groser, assuring New Zealanders that the TPP will be disclosed and debated, but only once it has been agreed and can't be changed, *New Zealand Herald*, 9 November 2014

not be applied in a manner that would be a means of 'arbitrary or unjustifiable discrimination'.

Such general exceptions provide a field-day for lawyers, especially from well-heeled corporations. Enter the case against Australia over plain packaging of cigarettes. As most people now know, Philip Morris is challenging Australia's plain packaging law under the investor-state dispute settlement (ISDS) provisions in an existing treaty between Australia and Hong Kong. Win or lose, this is a lengthy and extremely costly exercise.

The Australian Government is to be admired for standing up to Philip Morris, but would we want our Government to spend that kind of money defending every regulation of a dangerous substance? And would we want our ability to determine the rights and wrongs of democratically determined regulation to be over-ridden by the commercial interests of a foreign corporation? The chilling factor arising from the cost of such litigation is likely to deter not only our Government but also others with meagre resources from standing up to immensely wealthy multinational corporations.

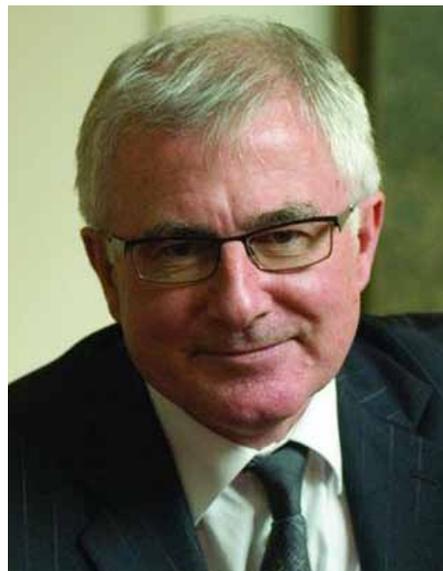
It is important to recognise that our position is precautionary. We do not have access to the negotiating texts, so we are driven by speculation. Our fears are compounded by the fact that we will have no opportunity to change the agreement once it is signed by our representatives. It will be tabled in Parliament and may be referred to a Select Committee for debate but cannot be changed.

Where are we now? The health sector

has certainly rallied, and the general public seems to have engaged strongly as doubts about TPP's potential impacts become more widely known. On 12 March the PHA joined the Council of Trade Unions and Oxfam as parties to the 2011 petition for a brief hearing by the Foreign Affairs, Defence and Trade Select Committee.

In support of our petition to release the negotiation documents, Oxfam tabled the European Commission's decision, in response to a determination by the EU Ombudsman, to release the texts of the TTIP, that is, the EU's current negotiation with the US similar to the TPP.

Two days later leading international



*Trade Minister Tim Groser has assured us that "New Zealand will not accept a TPP outcome that prevents Government from regulating in the public interest".*

*Unconvinced, we wrote again to the Minister to record our concern...*

medical journal *The Lancet*, published a letter signed by 27 health leaders in Australia, Canada, Chile, Malaysia, New Zealand, USA, and Vietnam, including leaders of the World Medical Association and World Federation of Public Health Associations.

In short, the letter says the TPP threatens governmental ability to deliver affordable health care and legislate to protect public health and reduce health inequities. "And all the while, the text is shrouded in secrecy."

In response, Minister Groser reaffirmed the Government's stance of not releasing the TPP negotiating documents.



*PHA members (and also members of Drs for Healthy Trade) Alison Blaiklock and Rhys Jones*

# A brief report on the Wellington march

By Dr Prudence Stone



*Prudence Stone has a PhD in Philosophy, specialising in political economy of information and cultural politics. She is a member of the Public Health Association, Executive Director of the Smokefree Coalition, and the mother of two children.*

**A** diverse group of people, for a variety of reasons, demonstrated against the Trans Pacific Partnership (TPP) Agreement in Wellington on 7 March 2015. The diversity was evident from the array of signs they held! It is sad the way New Zealanders' diverse concerns about the TPP are misrepresented by the media as one simplified, unified, opposition. It is not.

It is true that many of the outspoken organisers and their stakeholder organisations are not simply opposed to signing the TPP, they are against foreign trade agreements per se.

There were unions, for instance, renowned for opposing such agreements because they say they come at a cost to workers' wages, conditions and job-security. Dr Sandra Grey, National President of the Tertiary Education Union, spoke passionately about these risks to the labour market. Big businesses are encouraged by these agreements to treat their fixed capital in production – including labour – just like their end-products, she said, buying for the least in one place, selling in another for the most, driven wholly by profit.

But for some, particularly the children who had come with their parents, the issue was not as high-brow as foreign trade at all: it was about trusting the Government, and trying to understand why some Government decisions – that affect us all – are made in secret.

I was delighted to see Dr Gay Keating, former National Executive Officer of the Public Health Association, speak on behalf of Drs for

Healthy Trade. This is an international community of doctors who have grouped together specifically to raise awareness of the risks to public health implicit in leaked texts of the TPP. Dr Keating was adamant that our consciousness be raised as global citizens, for public health around the world and not just for New Zealand citizens.

I marched to protest the level of tobacco industry interference in the negotiations, as “stakeholders” capable of influencing US negotiators. How can it be justified that in New Zealand, not even an independent public health law specialist is invited to scrutinise the text of the TPP in the common future interest, while rogue transnational companies in the US can? Such unchecked lobbying corrupts the entire negotiation process. Given current World Trade Organization arbitrations by Philip Morris, it concerns me greatly that we continue to negotiate the TPP under these conditions.

Unlike some at the protest, I am not opposed to foreign trade agreements per se. I fully understand why some democratic processes justify confidential decision-making.

Nevertheless, I know from the several leaked chapters of the TPP drafted to date, rogue transnational corporations will be served far better by this agreement than our public interest. That is why I join Dr Keating and colleagues, and why I support Fletcher Tabiteau's (New Zealand First) Bill to remove the Investor-State Dispute Settlements Clause from all future foreign trade agreements in New Zealand.



Former PHA National Executive Officer Gay Keating spoke on behalf of Drs for Healthy Trade.



More photos from the 7 March 2015 protest in Wellington

# A TPP FAQ

Continued from page 6.

## What sorts of public health law and policy in New Zealand might be hindered by clauses in the TPP which protect overseas companies?

There are a number of areas in which the TPP could restrict Government action. Obvious examples include: the marketing of sugary foods to children; the sale and marketing of alcohol; the climate-related health effects of fossil fuel mining; and the direct-to-consumer marketing of drugs which could encourage over-use of antibiotics.

The TPP could also make tackling chronic non-communicable diseases such as diabetes and heart disease more difficult by reducing the options available to the Government for regulating products associated with

non-communicable disease prevention, namely tobacco, alcohol and food. For example, proposed rules in the TPP would enshrine the right of industry (both local and international) to contribute to national nutrition policy-making. This works against public health efforts to reduce the influence of vested interests on policy design and implementation.

## How might the TPP affect the cost of medicine in New Zealand?

Currently, Pharmac keeps the cost of medicine down for New Zealanders by purchasing cheaper generic drugs – which are the same or just as effective as ‘patented’ drugs. However, clauses in the TPP designed to protect the intellectual property rights of the pharmaceutical industry

could force New Zealand to instead purchase more expensive ‘patented’ drugs from pharmaceutical companies in the countries of our trading partners.

TPP clauses would also allow corporations to extend the patent period for their branded medications and this would delay the entry of cheaper generic alternatives on to the market

## Are there examples of the pharmaceutical industry using trade agreements to sue governments?

Yes. pharmaceutical company Eli Lilly and Company is currently using an investor state dispute settlement mechanism to sue the Canadian Government for invalidating patents for two drugs that were found not to deliver the promised benefits.

“General reassurances are not enough. That’s why health organisations are calling for an independent, systematic and broad scope health impact assessment, and for this and the text of the agreement to be released before any deal is signed.”

Dr Freeman, *New Zealand Herald*, 31 October 2014

“If you think about the fuss that there’s been about SkyCity... the TPP is sort of SkyCity on super steroids.”

Professor Jane Kelsey, *Otago Daily Times*, 3 March 2015

“This fits the pattern of this Government’s attitude, however. It has no time for critics and says: ‘Trust us: we know what we’re doing.’ This would be more convincing if it came from a Government with a better record in negotiating deals.”

Editorial, *Dominion Post*, 16 February 2015

“The picture you’re seeing is nothing unusual for a trade agreement. It’s almost always the case that the hard issues are left till last, and then everyone has to compromise somewhat to get a result, because the overall benefits of this trade agreement would be very significant not just for New Zealand but for the whole Asia Pacific region.”

Finance Minister Hon Bill English, *Radio New Zealand News*, 16 January 2015

“Proposed rules on transparency and regulatory coherence in the TPP would enshrine the right of industry (both local and international) to contribute to national nutrition policy making. This works against public health efforts to reduce the influence of vested interests on policy design and implementation.”

Anne Marie Thow, Deborah H Gleeson and Sharon Friel, *Medical Journal of Australia*, 2 March 2015

“Those who raise doubts over the net benefits of free trade agreements in New Zealand tend to take a Chicken Little view of the world, and think of all the potential worst case scenarios.”

Catherine Beard, Executive Director, ExportNZ, *New Zealand Herald*, 17 February 2015

“Export income is critical to our economy and to attaining strong environmental standards. But the benefits of joining the TPP club are looking more remote all the time, while the costs are all too apparent and would cut deep into New Zealand’s sovereignty.”

Simon Terry, Executive Director, Sustainability Council, *New Zealand Herald*, 24 February 2015