MEMORANDUM TO INFORM CABINET ON MANDATE FOR IPEF

18 February 2023

Ngā Toki Whakarururanga is pleased to provide a more detailed memorandum to supplement our short input to the Indo-Pacific Economic Framework (IPEF) round in December 2022. That earlier memorandum set out clearly the kaupapa that Ngā Toki Whakarururanga brings to this negotiation, which is sourced in the guarantee in te Tiriti o Waitangi me He Whakaputanga o te Rangatiratanga o Nu Tireni of continued self-determination over our people, resources and way of life. The following comments reflect that understanding. It is being provided in the spirit of the Mediation Agreement with the Crown in the expectation that it will have genuine influence over the Cabinet's decision on the mandate for the IPEF negotiations.

This is very much an interim position based on information to hand, including a bundle of texts the US tabled in the negotiations, and is without prejudice to future refinements or changes. The comments are high-level. Discussion on details of texts comes after the decisions on mandates. Due to time constraints and confidentiality restrictions, it has only been possible to consult on the general content with Ngā Kaihautū, the rōpū that provides direction to Ngā Toki Whakarururanga. Fuller input will require a relaxation of those restrictions to allow us to perform our responsibility to discuss these issues with the affected Māori communities. Some, such as labour, have not yet been engaged with at all.

This interim memorandum has nine topics and proposes that Cabinet adopts these positions. Explanations to support each position are outlined in more detail below.

1. Secrecy

- *We ask Ministers to instruct officials to read the restrictions placed on access to the IPEF documents in a manner that enables those who access the documents to share sufficient information in ways that ensure informed inputs from affected Māori communities and, therefore, to have a genuine influence on these negotiations.*

2. Treaty of Waitangi Exception

- *The Cabinet must require a Treaty of Waitangi Exception in IPEF that is modelled on the proposal for the Indigenous Peoples exception that New Zealand recently tabled at the WTO in the Joint Statement Initiative negotiations on e-commerce and that largely addresses the deficiencies identified in the Wai 2522 inquiry. Cabinet should note that the US has already adopted a broader exception on Indigenous Peoples in the USMCA than the previous 2001 Treaty of Waitangi exception.*

3. An economy of mana

- *Cabinet's mandate needs to initiate a step change in the economic model of past FTAs, which are recognised to have failed, to achieve a new 21st century approach throughout IPEF that builds an economy of mana in which decisions regarding investment, production, consumption and wealth distribution are influenced by the interplay of mana-enhancing interactions between people and the environment so as to support Māori aspirations and wellbeing, while addressing barriers that confront Māori in business, workers and their communities as they seek to achieve that vision.*

4. Te Waka Kai Ora

- *In addition to a comprehensive Tiriti o Waitangi carveout from IPEF, Cabinet's IPEF mandate must ensure that IPEF does not open the door to new rules on biotech and GM; even proposals for a review on IPEF's terms would pre-empt a domestic Tiriti-based process. Cabinet must also ensure that IPEF protects the policy space to address the failures in the current Organics Bill, which may not contain the protections that Labour recommended at the Select Committee.*

5. Rongoā Māori

- *We urge Cabinet to ensure that there is no closure of policy space to guarantee effective protection of their rights, interests, duties and responsibilities, and compliance with the Crown's Tiriti obligations, in relation to rongoā Māori, and direct MFAT to engage with rongoā practitioners to assess the implications of IPEF for them*

6. Māori data sovereignty and digital governance

- *Cabinet must recognise that it has failed to redress the breach of its Tiriti obligations on data and the digital domain in the CPTPP and to do so again in IPEF would show utmost bad faith as a Tiriti partner. In addition to a comprehensive Treaty Exception, the Cabinet needs to mandate a kaupapa Māori-based process to develop a Tiriti-compliant approach to data and the digital domain in all its FTAs as a matter of urgency.*

7. Te Taiao and the climate emergency

- *Cabinet must reject the cynical attempt by the US to promote its domestic corporate, social and political interests in the name of a "clean economy" when Aotearoa and the rest of the world face a catastrophic climate crisis that impact most severely on the most vulnerable, especially Indigenous Peoples. If the Crown engages with these discussions in IPEF, it needs to advocate a holistic response to the climate crisis that builds on Indigenous values, strategies and leadership to implement real solutions.*

8. Regulatory disciplines

- *Cabinet's mandate needs to recognise that the current regulatory management regime fails to provide effective recognition and protection for Māori rights and interests under Te Tiriti and UNDRIP, and reject moves to lock in that regime through IPEF. Cabinet also needs to reject moves to guarantee foreign corporations (and states) the right to intervene and proactively seek reviews of policy and laws, and have a chilling effect on Tiriti-compliance policies, especially when Māori do not have equivalent rights in their own country.*

EXPLANATORY NOTES

The following explanations for each of these positions are preliminary in the matters covered and in the comments provided. We have tried to keep these entries brief, but we are also aware that many officials may not have particular background on these matters.

1. Secrecy

- ***We ask Ministers to instruct officials to read the restrictions placed on access to the IPEF documents in a manner that enables those who access the documents to share sufficient information in ways that ensure informed inputs from affected Māori communities and, therefore, to have a genuine influence on these negotiations.***

Explanation: Secrecy was one of two issues that was subject to mediation in the Wai 2522 claim on the Trans-Pacific Partnership Agreement (TPPA). We anticipated that the Crown's commitments in the Mediation Agreement would result in more information being made available to empower Māori and provide informed inputs to influence these negotiations. MFAT clearly has long-standing generic protocols that are not designed to address the unique nature of the Tiriti relationship between rangatiratanga and kāwanatanga.

IPEF is the first negotiation where it should have been possible to establish a more open approach from the start. However, we learned that the Crown agreed to US demands to keep the negotiating documentation secret for five years after any agreement comes into force (one year longer than the unacceptable secrecy in the TPPA that was challenged in Wai 2522). We understand that the US set this as a pre-condition to accessing its documentation, i.e. participating in IPEF.

This seriously fetters the ability of Ngā Toki Whakarururanga to advance and protect Māori rights, interests, duties and responsibilities under Te Tiriti, consistent with the Mediation Agreement. The expansive scope of IPEF potentially includes binding (and enforceable?) rules on critical Wai 262 matters (e.g. GMOs, organics and rongoā), Te Taiao and the climate crisis, Māori data sovereignty and digital governance, jobs and social procurement, wāhine Māori, as well as agriculture, fisheries, supply chains, and small businesses.

The Crown has repeatedly shown it is inappropriate and incompetent to make such decisions without non-Crown Māori at the table to lead on decisions that are fundamental to their rangatiratanga. The Wai 2522 digital inquiry, where MFAT did not consider Māori to have relevant interests in the digital domain, shows that bad decisions are made under conditions of secrecy.

At present, only four Pūkenga (technical experts) working with Ngā Toki Whakarururanga have access to the relevant negotiating documents, having signed confidentiality agreements. But they cannot share that information with others. This means they cannot discuss their analysis and seek further information from Kaihautū and other Pūkenga, let alone affected Māori communities, and get approval of their recommended responses to the Crown from those Māori experts.

Preparing this memorandum illustrates this problem. The co-convenors and Pukenga have been unable to share this full memorandum with our Kaihautū, or consult with them and others effectively, because we are making reference to text provided under confidentiality and have had to redact those parts that refer to the text. That makes it impossible to exercise rangatiratanga and participate effectively in decision-making that impacts our resources and taonga. We believe this breaches the Crown's fundamental obligation under Te Tiriti and its commitment in the Mediation Agreement to recognise the claimants' rangatiratanga and to ensure Ngā Toki Whakarururanga can exercise effective influence over negotiations.

As we remarked in the December note, IPEF lacks any credibility when it claims to support stakeholder engagement, dialogue and "inclusiveness", including indigenous peoples, to shape the implementation of these various strategues only after they have been decided in a secret negotiation from which those non-corporate communities are excluded.

2. Treaty of Waitangi Exception

- ***The Cabinet must require a Treaty of Waitangi Exception in IPEF that is modelled on the proposal for the Indigenous Peoples exception that New Zealand recently tabled at the WTO in the Joint Statement Initiative negotiations on e-commerce and that largely addresses the deficiencies identified in the Wai 2522 inquiry. Cabinet should note that the US has already adopted a broader exception on Indigenous Peoples in the USMCA than the previous 2001 Treaty of Waitangi exception.***

Explanation: The urgency hearing of the Wai 2522 claim initially concluded that the 2001 Treaty of Waitangi Exception was not perfect but would be "likely to operate substantially as intended and therefore can be said to offer a reasonable degree of protection to Māori interests. We have come to this view even though the clause as drafted only applies to measures that the Crown deems necessary to accord more favourable treatment to Māori. This raises a question about the scope of the clause." The Tribunal expressed reservations about the Crown's sweeping claim that nothing in the TPPA would prevent the Crown from meeting its obligations to Māori (p.49). Despite that, MFAT has continued to make that assertion in memoranda to ministers and in public documents.

After a fuller investigation in the specific context of the CPTPP e-commerce chapter (Issue 4) the Tribunal concluded that the Treaty Exception, even when coupled with numerous other flexibilities, did not provide effective protection for mātauranga Māori.

The Waitangi Tribunal, the Trade for All report and the Mediation Agreement all expected the Crown to enter dialogue with Māori over more effective protection. MFAT has not done so. Until recently it has not accepted revisions proposed by Ngā Toki Whakarururanga that would resolve the problem. Instead, it has sought to plug gaps as they arose in new negotiations, sometimes with relative success and sometimes not, thereby compounding earlier breaches. MFAT's consistent explanation has been that the 2001 wording is all it can get other countries to accept and that changes would endanger any exception.

That is not tenable in IPEF for two reasons. First, in November 2022 New Zealand tabled a proposed text in the "Joint Statement Initiative" on electronic commerce that is being

negotiated by some members of the WTO (INF/ECOM/71). It would be counter-productive for NZ to propose something less than that in IPEF.

The proposed JSI exception reads:

> **Article [x] Indigenous Peoples**
>
> 1. Nothing in this Agreement shall preclude a Party/member from adopting or maintaining measures it deems necessary to protect or promote rights, interests, duties, and responsibilities of indigenous peoples in its territory, including in fulfilment of its obligations under its legal, constitutional or Treaty arrangements with those indigenous peoples.
>
> 2. The Parties/Members agree that the interpretation of a Party's/Member's legal, constitutional or Treaty arrangements with indigenous peoples in its territory, including as to the nature of its rights and obligations under it, shall not be subject to the dispute settlement provisions in this agreement.

Second, the US, which is driving IPEF, has already accepted a variant in Article 32.5 of the USMCA that omits the problematic restriction of the exception to providing "more favourable treatment" to Indigenous Peoples (although it does retain the "chapeau" language that still makes it contestable and less than NZ has proposed in the JSI). New Zealand should seek to push the boundaries further on this and propose similar language without the "chapeau" language. This would avoid the need to try and identify every aspect of the IPEF that may negatively impact on Māori, especially given the lack of information available to do so, and to seek to insert ad hoc protections on each.

3. An economy of mana

- ***Cabinet's mandate needs to initiate a step change in the economic model of past FTAs, which are recognised to have failed, to achieve a new 21st century approach throughout IPEF that builds an economy of mana in which decisions regarding investment, production, consumption and wealth distribution are influenced by the interplay of mana-enhancing interactions between people and the environment so as to support Māori aspirations and wellbeing, while addressing barriers that confront Māori in business, workers and their communities as they seek to achieve that vision.***

An "economy of mana" has been described as "an economic system in which decisions regarding investment, production, consumption and wealth distribution are influenced by the interplay of mana-enhancing interactions between people and the environment" so as to support Māori aspirations and wellbeing.[1] Potential business activities that reflect an economy of mana range from food producers, creative artists, digi-preneurs, health practitioners, small fishers, social procurement initiatives, building and infrastructure services, social support, among many others.

[1] https://www.journal.mai.ac.nz/sites/default/files/MAIJrnl_7_1_Dell_02.pdf

We note that the Productivity Commission report on *Reaching for the Frontier* emphasised the "multiple bottom lines" that form part of a Māori business ecosystem.[2] "Māori values such as kaitiakitanga, kōtahitanga and whanaungatanga help differentiate Māori goods and services and provide added brand value overseas". The government needs to address the barriers and constraints that Māori face to realise this potential and help the Crown better meet its Tiriti obligations.

Those barriers include free trade agreements whose economic models exclude or override the economy of mana and empower corporations that engage in exploitive forms of capitalist economic and trade relations. For example, the Commission pointed to Mātauranga Māori and Māori brand distinctiveness as significant assets that require adequate legal protections and processes, and said the Government should prioritise and accelerate action to protect Mātauranga Māori and intellectual property. Secondly, government procurement processes offer potential to stimulate Māori business growth. The new 5% target for public service contracts awarded to Māori businesses was a good start but needs to be supplemented with capacity building and improved processes.

Achieving an economy of mana requires a step-change in trade agreements. Ngā Toki Whakarururanga has consistently stressed the need for trade and investment agreements to build trading relationships that are based on core Indigenous values of manaakitanga and whanaungatanga, respect and protection for the whenua, te taiao, mātauranga and other tāonga, and the exercise of rangatiratanga and kaitiaki responsibilities. These formed a key part of our input into the IPETCA and the Māori trade chapters of the UK and EU FTAs.

While IPEF uses the language of sustainability, the texts we have examined on agriculture, supply chains, green economy, good regulatory practices and services domestic regulation propose rules that reflect the same corporate driven agenda. It is not enough for these values to be recognised in an "inclusivity" chapter that is effectively overridden by more substantive chapters. There is a high risk that the experiences with CPTPP and ITAG will be repeated with IPEF. Promises that Māori businesses and workers will benefit from the CPTPP have proven empty and the ITAG has failed to deliver any meaningful activities or outcomes for Māori.

In pursuing this step change, the Crown needs to facilitate effective participation and co-design by those diverse Māori communities that are the foundations for this economy of mana. As we have found in producing this memorandum that cannot be achieved under current conditions of secrecy.

4. Te Waka Kai Ora

- ***In addition to a comprehensive Tiriti o Waitangi carveout from IPEF, Cabinet's IPEF mandate must ensure that IPEF does not open the door to new rules on biotech and GM; even proposals for a review on IPEF's terms would pre-empt a domestic Tiriti-based process. Cabinet must also ensure that IPEF protects the policy space to address the failures in the current Organics Bill, which may not contain the protections that Labour recommended at the Select Committee.***

[2] Productivity Commission, *New Zealand firms. Reaching for the frontier,* p.56

Explanation: The US's draft text on agriculture focuses heavily on biotech, in other words **genetic modification (GM) and GM organisms (GMOs).** These are long-standing issues and we assume the Crown and MFAT are aware of the danger to Māori control over organic food production through tikanga based practices and that full protection of mātauranga and tikanga, and kaitiaki responsibilities, are fundamental Tiriti obligations. The evidence presented by Te Waka Kaiora to the Waitangi Tribunal Inquiry into the Wai 262 claim shows why accepting US proposals in IPEF would violate Māori rights, interests, duties and responsibilities and breach the Crown's obligations under Te Tiriti o Waitangi.[3]

Jessica Hutchings, a co-founded of Te Waka Kaiora (the Māori organics network) and a kaihautū of Ngā Toki Whakarururanga, has highlighted attempts by corporate interests to dress up GM as a social or environmental virtue. The attempt in IPEF to frame similar proposals as a means to address the climate crisis is equally disingenuous.

We note that the Productivity Commission and the Climate Change Commission have both proposed reviews of the current regulatory regime on GM. The Government's response last year was to "proceed with caution"[4]. Minister Parker reportedly proposed an extremely limited review relating to biomedical research and laboratory research.[5] IPEF could circumvent that domestic process, especially if there is a change of government. Were this to occur, the limitation of "more favourable treatment" under 2001 Treaty of Waitangi Exception would not provide effective protection, and measures adopted could be challenged under the "chapeau".

The Agriculture chapter of IPEF, and potential rules on product standards, will also impact on **Hua Parakore and organics**, which was another aspect of the Wai 262 inquiry. Hua Parakore, developed by Te Waka Kai Ora, is an Indigenous validation and verification system that is based on tikanga and is drawn from the wisdom of tupuna that is contained within mātauranga and te reo Māori. It is understood as Kai Atua, or a pure product, whose elements are all traceable with no exposure to any contaminant (including GMOs).

Hua Parakore is not a western-style standard; it is a system that has values that combine mātauranga Māori, tikanga and key organic principles and acts as a korowai over existing organic standards. Certification is vested in the community that validates the kai's compliance with a three-stage process. The notion of "standards" in IPEF is likely to cut across that multi-dimensional essence, especially if it involves pressure to internationalise or harmonise. The chapter is premised on the Western science model. Parties would be obliged to ensure a least restrictive approach to such measures, are based on "relevant sicentific principles", and are mnot maintained if there is no longer a scientific base. Experience shows that "science" and "risk"-based approaches disrespect, and are likely to vehemently challenge as "unscientific", the validity of processes and standards sourced in a Māori worldview.

[3] The key arguments are set out in the Report of He Kai te Rongoā. He Rongoā te Kai, *Report of the evidence presented by Te Waka Kaiora to the Waitangi Tribunal Inquiry into the Wai 262 claim*, October 2022, at https://www.tewakakaiora.co.nz/site_files/24901/upload_files/Wai262Report_DIGITAL_SMALL(1)(1).pdf?dl=1
[4] https://www.rnz.co.nz/news/business/465051/call-for-review-of-genetically-modified-tech-regulation-in-nz
[5] https://www.newshub.co.nz/home/shows/2022/06/nz-s-outdated-gmo-regulations-hamstringing-battle-with-climate-crisis-scientists.html

A controversial Organic Products Bill is currently before the House. Māori evidence showed that officials who developed the Bill failed to understand the Crown's Tiriti obligations of rangatiratanga and kaitiakitanga, and the significance of Hua Parakore as separate but co-existing with the "organics" label. Officials also failed to engage with Māori while the policy and Bill were being developed. Their revised report to the Select Committee recognised that "Article II ensures that Māori have the right to make decisions over their resources and taonga" and that Hua Parakore is a taonga. Officials proposed an overriding reference to te Tiriti o Waitangi in the Bill and other protections threaded throughout. The Labour and Green party members of the committee agreed, but National and Act did not. The Bill is still before the House, with a Supplementary Order Paper proposing some weak references to the "principles of the Treaty". There is a risk that it may pass without even those references. There will be ongoing pressures to secure a genuinely Tiriti-based approach, especially as part of Te Pae Tawhiti as Māori seek the implementation of Wai 262.

IPEF commitments must not just keep open the door to ensure a Tiriti-based approach but must not close the door on future Tiriti compliance if the Bill is passed without those safeguards, along with many other aspects of Te Pae Tawhiti. There is a serious concern that MFAT and MPI officials negotiating IPEF may fail to understand these issues for Māori and/or prioritise other agricultural interests. Again, the 2001 Treaty Exception will not provide protection.

5. Rongoā Māori

- ***We urge Cabinet to ensure that there is no closure of policy space to guarantee effective protection of their rights, interests, duties and responsibilities, and compliance with the Crown's Tiriti obligations, in relation to rongoā Māori, and direct MFAT to engage with rongoā practitioners to assess the implications of IPEF for them.***

Explanation: Rongoā is another taonga over which Māori exercise rangatiratanga and kaitiakitanga and was also subject to the Wai 262 inquiry. The Waitangi Tribunal found the Crown has consistently failed in its obligation to protect that taonga, and it forms part of the ongoing Te Pae Tawhiti process.

Rongoā is the subject of the Therapeutic Products Bill currently before Parliament, at the time when Te Pae Tawhiti moves at a snail's pace. Similar to Hua Parakore and the Organics Bill, this Bill seeks to impose a Western worldview, standards, and decision-making procedures that cut directly across te Tiriti o Waitangi. There are even fewer protections than in the Organics Bill, ignoring the advice of the rongoā community, Te Akaia Whai Ora/Māori Health Authority and Te Puni Kokiri.

Te Waka Kaiora warned the Wai 262 Tribunal that the goal of minimising trade barriers meant opening up markets for rongoā products, incentivising non-Māori commercial interests to develop products that use mātauranga Māori for their own gain, knowing they are subject to almost no legal protections, and without seeking permission from or engaging with Māori.[6]

[6] He Kai te Rongoā. 53

In an urgency hearing on the Australia New Zealand Therapeutic Products Authority (ANZTPA) in 2003, the Waitangi Tribunal warned of these potential Tiriti breaches. The final Wai 262 Report in 2011 dedicated chapter 7 to rongoā Māori, which it recognised as central to Māori identity. Despite the abandonment of ANZTPA, the Tribunal warned that similar arrangements were still a risk under the CER Agreement and the Trans Tasman Mutual Recognition Arrangement 1998.[7]

A new Therapeutic Products Bill that includes rongoā, without any Tiriti protections, recognition of rangatiratanga over that taonga, or role in decision-making, is currently before the select committee and faces a groundswell of Māori resistance. Rongoā Māori practitioner Donna Kerridge, founder of Ora New Zealand and another kaihautū of Ngā Toki Whakarururanga, has expressed concerns that this new Bill aims to clear the way for free trade agreements. MFAT's advice on the Bill was totally redacted in a recent Official Information Act request, which merely fuels that suspicion.

IPEF may include rules, requirements, standards or harmonisation approaches that further constrain the exercise of rangatiratanga and kaitiakitanga over rongoā and the ability to adopt a Tiriti-based regime for rongoā, in similar ways to the Wai 2522 findings on data and digital. Externally imposed regulatory standards would effectively shut down the ability of rongoā practitioners and Māori traditional healers to develop their own kaupapa and tikanga-based standards in breach of the Tiriti obligation to protect both that mātauranga and their exercise of rangatiratanga, mana and kaitiakitanga. The secrecy of IPEF compounds the denial of rangatiratanga in relation to rongoā.

In addition to a comprehensive Tiriti carveout and effective safeguards, there needs to be direct, open and full engagement with rongoā practitioners regarding the potential impacts of IPEF on them.

6. Māori data sovereignty and digital governance

- ***Cabinet must recognise that it has failed to redress the breach of its Tiriti obligations on data and the digital domain in the CPTPP and to do so again in IPEF would show utmost bad faith as a Tiriti partner. In addition to a comprehensive Treaty Exception, the Cabinet needs to mandate a kaupapa Māori-based process to develop a Tiriti-compliant approach to data and the digital domain in all its FTAs as a matter of urgency.***

The US has yet to provide a text on digital for IPEF. We can assume it will largely reflect the USMCA, which imposes greater constraints on regulation to benefit US-dominated big tech companies than the TPPA/CPTPP. The Waitangi Tribunal found the CPTPP chapter breached the Crown's obligations of active protection of mātauranga Māori and threatened the adoption of a Tiriti-compliance regime that recognises Māori data sovereignty and Māori digital governance.

[7] *Ko Aotearoa Tenei* p.637-638

These issues have already been canvassed at length with the Crown since the Tribunal reported in October 2021. Ngā Toki Whakarururanga has proposed a kaupapa Māori-based process to develop a Tiriti-compliant approach to data and digital in trade agreements, which MFAT has rejected. The Crown has yet to provide a response to the report. We were given a memorandum from officials to ministers in which the proposed response and funding were almost totally redacted. Repeated requests for an unredacted version have not yet been addressed.

Meanwhile, the Crown has continued to negotiate on these rules in recent negotiations. Some subsequent agreements have repeated and compounded the earlier breach; others have mitigated but not removed the risks. In our view, the Crown remains in breach of its Tiriti obligations. To do so again in IPEF would show an utmost lack of good faith on the part of our Tiriti partner and would be viewed as an extreme provocation. To do that under conditions of secrecy where those most directly affected are unable to exercise effective influence, even through Ngā Toki Whakarururanga, would be unconscionable.

7. Te Taiao and the climate emergency

- ***Cabinet must reject the cynical attempt by the US to promote its domestic corporate, social and political interests in the name of a "clean economy" when Aotearoa and the rest of the world face a catastrophic climate crisis that impact most severely on the most vulnerable, especially Indigenous Peoples. If the Crown engages with these discussions in IPEF it needs to advocate a holistic response to the climate crisis that builds on Indigenous values, strategies and leadership to implement real solutions.***

Explanation: The recent floods and cyclone show that Aotearoa faces a serious climate emergency. Those who suffer most are the poor living in marginalised and vulnerable communities, and who are predominantly Māori. Real solutions are required. Rules must reflect biophysical realities, in respect of planetary boundaries including carbon, nitrogen, phosphorus, topsoil, water, and biodiversity and in doing so must respect the Atua and draw on values that have sustained Te Taiao for millennia.

Pretending that markets and technologies can provide these solutions, as IPEF seeks to do, is fundamentally unjust to Indigenous Peoples who bear the brunt of this delusion. Claims that the Pillar 3 text on the "clean economy" is concerned with addressing the climate crisis is as disingenous as the US's attempt to sell GM agriculture as a means to do so.

The text is all about promoting various "green" technologies to advantage US domestic commercial interests, production and jobs in declining US states and reduce China's dominance of these technologies and inputs. There is nothing in the text that adversely effects US interests in fossil fuels, extraction of rare earth minerals, or agriculture. It seeks to avoids the urgent need to collapse emissions by promoting the planting of trees and trading carbon credits to offset the failure to reduce emissions. Significantly for Aotearoa it also promotes nuclear energy options.

Similar to moves to remove tariffs on environmental goods and services in the Agreement on Climate Change, Trade and Sustainability (ACCTS), there are risks that NZ's commercial interests in liberalisation will prevail. Methane abatement deals with the energy sector, not agriculture.

"Sustainable agriculture" has no commitments to do anything that would result in real change. "Sustainable forestry management" focuses on data to identify sources of deforestation and degradation; that is not going to stop the reckless practices of foreign corporations that leave slash to block rivers and devastate Māori communities. Water and ocean based solutions are all about offshore energy technologies. These developments would have, at best, a marginal effect on the climate crisis over the next few decades.

But more importantly, where in this agenda are Papatūānuku, Tangaroa, Tāne Mahuta? How is this climate control strategy relevant to indigenous peoples who according to the preamble, are meant to actively participate in the shaping the clean economy? How is it to learn from Māori and other indigenous peoples when it seeks to perpetuate a model based on profit and exploitation? Throwing in a handful of references to indigenous peoples does not alter that.

There is nothing to stop Aotearoa from taking unilateral steps to step away from its current minimalist market model and embrace Māori values and strategies to restore Te Taiao. The US can do so as well. What Aotearoa cannot afford is to buy into the cynical IPEF illusion that markets and technologies can significantly mitigate the current climate crisis and avert a future catastrophe, which diverts attention from the need for a major reduction in emissions as a matter of urgency, even if it hurts countries' "trade" interests.

8. Regulatory disciplines

- ***Cabinet's mandate needs to recognise that the current regulatory management regime fails to provide effective recognition and protection for Māori rights and interests under Te Tiriti and UNDRIP, and reject moves to lock in that regime through IPEF. Cabinet also needs to reject moves to guarantee foreign corporations (and states) the right to intervene and proactively seek reviews of policy and laws, and have a chilling effect on Tiriti-compliance policies, especially when Māori do not have equivalent rights in their own country.***

The "good regulatory practice" text of IPEF, based on the USMCA, seeks to lock in the approach of light-handed, risk-based regulation that was adopted in Aotearoa and elsewhere in the 1990s. So does the Services Domestic Regulation text, which mirrors the Reference Paper that New Zealand seeks to adopt at the WTO and which is subject to challenge from other members.

This approach has manifestly failed Māori and Te Tiriti, even under the Crown's weak version of its Tiriti obligations. The therapeutic products and organics legislation discussed above are very recent examples. After belatedly revising their advice, officials advised the select committee on the Organics Products Bill: "MPI acknowledges the responsibilities the Crown has under Te Tiriti, and that it could have better engaged with Māori when developing the Bill given the taonga nature of kai production".

To some extent this is a matter of domestic design, failing to build Te Tiriti and rangatiratanga into the process and criteria. It also reflects the primacy given to economic efficiency and commercial and corporate interests in deregulation when designing policy and regulation, at the expense of Māori.

We are particularly concerned about the requirements in both the GRP and SDR texts for prior notification and comment to further skew the process in favour of commercial interests. The GRP text in particular provides for foreign corporations proactively to propose changes to measures they consider and unduly burdensome or based on outdated science. That is a license to lobby against legislation that Māori seek under Te Tiriti or the UNDRIP. As the Tribunal recognised in the Wai 2522 digital inquiry, the weakness of the Treaty Exception and other flexibilities opens the door for pressures from corporations and foreign states that can have a chilling effect on the adoption of Tiriti-compliant policy and law.