INPUT FROM NGĀ TOKI WHAKARURURANGA TO THE ITAG REVIEW OF THE CPTPP

21 Pipiri 2023

Ngā Toki Whakarururanga has prepared this memorandum as input into New Zealand's three-year review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) as part of the Inclusive Trade Action Group (ITAG) that was established under the Joint Declaration for the Fostering of Inclusive and Progressive Trade between Aotearoa New Zealand, Canada and Chile (Joint Declaration).

We appreciate the willingness of the Ministry of Foreign Affairs and Trade (MFAT) to co-design the Indigenous Peoples' section of the ITAG review and to ensure that our voice is heard by attaching our memorandum to its report, consistent with our joint Memorandum of Understanding of 19 August 2022.[1] The substantive memorandum will also be available at www.ngatoki.nz.

Ngā Toki Whakarururanga has its origins in the Waitangi Tribunal claim (Wai 2522) lodged in 2015 that the Trans-Pacific Partnership Agreement (TPPA), and its successor the CPTPP, breached the obligations of the Crown (the New Zealand Government) under Te Tiriti o Waitangi.[2] A Mediation Agreement adopted in November 2020 between the claimants and the Crown provided for the establishment of Ngā Toki Whakarururanga, with a commitment to ensure it would exercise effective and genuine influence over all stages of trade policy and negotiations.[3]

The mandate of Ngā Toki Whakarururanga is to uphold the rangatiratanga o ngā hapū i te whenua Rangatira, as affirmed in He Whakaputanga o te Rangatiratanga o Nu Tireni and Te Tiriti o Waitangi, and hold the Crown to account when it fails to deliver on that commitment. To that end, Ngā Toki Whakarururanga is committed to set the bar for Te Tiriti o Waitangi-consistent trade policy and agreements and bring a new leadership model to every stage of their development that reflects its Kaupapa:

> "Mana whakahaere in the global domain is informed by Rangatiratanga and Kāwanatanga working together in a mana-enhancing relationship of equals, consistent with Te Tiriti o Waitangi and He Whakaputanga o Te Rangatiratanga o Nu Tireni".

This memorandum addresses the three-year ITAG Review prepared by MFAT with reference to the implementation of the CPTPP through that Tiriti lens, under the following headings:

A. Rangatiratanga and Indigenous Self-determination

B. Compliance with Te Tiriti o Waitangi Obligations to Māori in the TPPA/CPTPP

   i) Article 29.6 Treaty of Waitangi Exception

   ii) Taonga species: Chapter 18 (Intellectual Property) Article 18.7.2 & Annex 18-A

   iii) Digital: Chapter 9 (Investment), Chapter 10 (Cross-border services), Chapter 11 (Financial Services) & Chapter 14 (Electronic Commerce)

   iv) The Climate Crisis: Chapter 9 (Investment) & Chapter 20 (Environment)

   v) Natural resources, Chapter 9 (Investment) Section B: Investor-State Dispute Settlement, Chapter 10 (Cross-border services)

   vi) Mātauranga Māori and Kaitiakitanga (except digital): Chapter 10 (Cross-border services), Chapter 18 (Intellectual Property), Chapter 20 (Environment)

   vii) Hua Parakore and Genetic Modification: Chapter 2 Section C (Agriculture)

   viii) Waipiro/Alcohol: Chapter 8 (Technical Barriers to Trade), Chapter 9 (Investment), Chapter 10 (Cross-border Services), Chapter 26 (Transparency)

   ix) Rongōa: Chapter 8 (Technical Barriers to Trade), Chapter 18 (Intellectual Property)

C. Assessing Economic Impacts of the CPTPP for Māori

For the reasons set out in this memorandum, among others, we believe that the TPPA/CPTPP fails to provide the necessary protections for Māori rights, interests, duties and responsibilities under Te Tiriti and He Whakaputanga.

As we have noted in previous kōrero and submissions to MFAT over the past few years, Ngā Toki Whakarururanga perceives real and present risks to Māori and Indigenous Peoples generally, from the current approach to the negotiation of free trade agreements, including the TPPA/CPTPP, that is almost exclusively commercially driven even though their scope is much broader. That is why it is important for Māori and Indigenous Peoples to have a seat and a voice around the negotiating tables. Our worldview and perspectives on these matters are crucial to bring a much needed and unique balance to these discussions and negotiations. This is what Te Tiriti promised Māori – tino rangatiratanga me o rātou taonga katoa.

However, we are also realistic enough to appreciate that this required change will not happen 'overnight'. Faced with that reality, and recognising the limitations of the current review, we recommend as interim steps towards Tiriti-compliance that we urge the Crown to take, and ITAG to support in a revised Joint Declaration and Work Programme, and in the forthcoming review of the CPTPP itself.

We **recommend** that the Crown:

a) proposes to the other ITAG Parties the adoption of an institutional arrangement that ensures Indigenous Peoples have rights of representation and effective participation in decision-making in all ITAG activities, consistent with the UN Declaration and Te Tiriti o Waitangi;

b) *seeks the support of the other ITAG Parties, as an implementation issue, for a revision of the TPPA/CPTPP's institutional arrangements in the forthcoming CPTPP review to ensure the Agreement provides rights of representation and effective participation of Māori and other Indigenous Peoples in decision-making, consistent with the UN Declaration and Te Tiriti o Waitangi;*

c) *proposes to extend the scope of the Joint Declaration to include examining and addressing the negative as well as positive impacts of the TPPA/CPTPP on Māori and other Indigenous Peoples, to be included in the next ITAG Work Programme;*

d) *seeks agreement from other ITAG Parties, as part of their Work Programme, to co-design with Indigenous Peoples who live in the territories of those parties a broad and comprehensive Indigenous rights carveout to the CPTPP and to propose the adoption of that carveout during the forthcoming review of the CPTPP;*

e) *as part of the current ITAG review, informs the ITAG Parties that the ongoing Te Pae Tawhiti process is likely to have implications for the Intellectual Property chapter of the CPTPP that may require it to seek a review of that chapter, and specifically that the Crown may need to revisit the sui generis legislation developed pursuant to Annex 18-A on UPOV 1991 in light of the outcome of the Te Pae Tawhiti review, and seeks their support to take these necessary steps;*

f) *conveys the findings of the Wai 2522 Waitangi Tribunal on CPTPP Chapter 14 Electronic Commerce, and the Crown's obligations under Te Tiriti o Waitangi, to the other ITAG Parties and seeks their support for the adoption of a comprehensive Indigenous rights carveout in Chapter 14 in the forthcoming review of the CPTPP. Failing that, any lesser measures need to be more robust than those in the EU NZ FTA and co-designed with Māori and other Indigenous Peoples to the point of final drafting and adoption*;

g) *seeks the support of the other ITAG Parties to promote, as an implementation issue, the exclusion of ISDS from the CPTPP during the forthcoming review; for those Parties that have signed side-letters with New Zealand committing to the non-application of ISDS to extend them to cover all agreements between them; and for ITAG Parties that have not yet signed such side-letters to do so;*

h) *seeks the support of the other ITAG Parties to initiate, as part their Work Programme, a thorough review of how non-conforming measures in Investment and Cross-border Services chapters of CPTPP can provide better protection for measures that are based in whole, or in part, on meeting the Parties' obligations under Te Tiriti o Waitangi and/or the UN Declaration, and take action to implement those findings in the forthcoming CPTPP review;*

i) *seeks agreement from other ITAG Parties to conduct, as part of their Work Programme, an Indigenous-led investigation of the implications of CPTPP provisions relating to biotech and GMOs for the right of Māori and other Indigenous Peoples to exercise rights, interests, duties and responsibilities in relation to food, seeds, and the natural domain consistent with Te Tiriti o Waitangi and the UN Declaration, and to take action to ensure more effective protection for them during the review of the CPTPP itself;*

j) *works with experts in Kaupapa Māori methodology and the Productivity Commission in Aotearoa to develop an appropriate methodology that combines embodied data and narratives to allow a fully informed assessment of the implications of the TPPA/CPTPP for Māori, through the lens of Te Ao Māori; and*

k) *seeks the support of the ITAG Parties to incorporate a similar initiative to (j) into the ITAG Work Programme to develop a broadly common methodology based on Indigenous knowledge systems for future use in assessing the implementation and impacts of the TPPA/CPTPP on all affected Indigenous Peoples.*

A. RANGATIRATANGA AND INDIGENOUS SELF-DETERMINATION

In August 2022 Ngā Toki Whakarururanga and MFAT signed a Memorandum of Understanding (MoU) to work together to develop the Indigenous Peoples section of the ITAG report. The role of Ngā Toki Whakarururanga has been to provide expert input and strategic direction on Māori rights, interests, duties and responsibilities at each stage of preparation of the Indigenous section of the review, based on Kaupapa Māori and sourced in Te Tiriti o Waitangi. This input is being appended to MFAT's ITAG review. The MoU also commits the Crown to use its best endeavours to facilitate targeted opportunities for Ngā Toki Whakarururanga, in conjunction with other Māori entities, to present their views to the Parties to the Joint Declaration.

The MoU was a genuine attempt to give effect to the relationship of Māori rangatiratanga and Crown kāwanatanga under Te Tiriti o Waitangi and develop a methodology to co-design a report that authentically reflects the views of each. It was also consistent with Article 18 of the United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration):

> "Indigenous peoples have the right to participate in decision-making in matters which would affect their rights through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions."

This constructive relationship between the State and Indigenous Peoples provides an important precedent that should inform the work of ITAG and the subsequent reviews of the Joint Declaration and CPTPP. Unfortunately, that relationship was absent during the original TPPA/CPTPP negotiations, the creation of the Joint Declaration, and the work of ITAG to date. Our recommendations propose ways to remedy that failure.

Māori and other Indigenous Peoples had no effective voice during the negotiation of the TPPA/CPTPP. Nor do they have a place in its governance or implementation. There is no recognition of Māori or other Indigenous Peoples in any of the institutional mechanisms, nor is there empowerment of them to participate in decision making that directly affects them. The chapter-based structure of the TPPA/CPTPP and its committees means there is no committee, even comprised of State Parties, that has oversight of the positive and/or negative impacts of its implementation on Māori and other Indigenous Peoples.

The Joint Declaration Fostering Progressive and Inclusive Trade was developed and signed three years after the Wai 2522 claim was lodged. Yet, there was no attempt to discuss the Joint Declaration with the claimants or, we believe, other Māori entities. Presumably, the same applied to Indigenous Peoples in the territories of other state signatories to the Declaration. It seems ironic that an "inclusive trade" instrument was prepared in secret with no inclusion of those it purports to "include" and provides no place for them in its decision-making or implementation.

The ITAG Review reveals the almost-inevitable consequences of such a fundamental omission. The first pillar of its methodology was to gather information from committee leads. The Review itself concedes that some CPTPP committees have not yet met, while others are in the early stages of developing their work programmes. Given there is no chapter dedicated to Indigenous Peoples, there is no committee to provide this information. Chapter-specific committees are not equipped to do so. As the review observes, "CPTPP chapters and the implementing committees are not always well aligned with ITAG 'themes', nor do the Committees always understand how inclusive and progressive themes are relevant to their chapters and how to embed these themes into committee-level work programmes" (p.13). Given this context, it is no surprise that CPTPP committees had nothing to report on the Indigenous Peoples element of the Joint Declaration.

There has been a particularly low priority on action in relation to the Indigenous Peoples component of the Joint Declaration itself. The Work Plans for 2019-2020 and 2020-2022 were never raised with the Wai 2522 claimants or Ngā Toki Whakarururanga.

The 2019-2020 plan proposed an Indigenous business forum that was already scheduled and a "possible launch of Trilateral CPTPP side letter on trade and indigenous peoples", which appears not to have happened. The 2020-2022 plan names "Trade and Indigenous Peoples and Trade and Climate Change" as key priorities for consideration of further work, including possible negotiation of new instruments. Again, nothing seems to have happened. As a consequence, implementation issues of importance to Māori and other Indigenous Peoples have remained invisible to the ITAG and CPTPP Parties.

It is our expectation that tino rangatiratanga of Māori as guaranteed under Te Tiriti o Waitangi and the rights of Indigenous Peoples to have and to exercise self-determination over the global domain will be protected and not be undermined by this Agreement.

To address this we propose steps to see that both the ITAG and the CPTPP include processes to empower Māori, and other Indigenous Peoples within the territories of the CPTPP Parties, to examine and address the negative as well as positive impacts on them of the TPPA/CPTPP and to identify and seek redress for breaches of their rights, interests, duties and responsibilities under Te Tiriti and the UN Declaration. This includes having seats at the decision-making tables with due accountability to their people and independence from the state.

We recommend that the Crown

(a) proposes to the other ITAG parties the adoption of an institutional arrangement that ensures Indigenous Peoples have rights of representation and effective participation in decision-making in all ITAG activities, consistent with the UN Declaration and Te Tiriti o Waitangi; and

(b) seeks the support of the other ITAG Parties, as an implementation issue, for a revision of the TPPA/CPTPP's institutional arrangements in the forthcoming CPTPP review to ensure the Agreement provides rights of representation and effective participation for Māori and other Indigenous Peoples in decision-making, consistent with the UN Declaration and Te Tiriti o Waitangi.

B. COMPLIANCE WITH TE TIRITI O WAITANGI OBLIGATIONS TO MĀORI

The TPPA/CPTPP does not reflect Indigenous worldviews, values, ethics and practices, including trading relationships, and its provisions are often in conflict with them, for example on intellectual property rights, investor protections and enforcement, pure food production and GMOs, Te Taiao and climate, among others.

The terms of reference for the ITAG review, which focus on implementation of the CPTPP, do not provide space for consideration of the negative impacts of the Agreement on Māori and other Indigenous Peoples. In this regard, we are pleased that the Crown has supported a broader approach to reviewing "implementation" to enable these matters to be addressed.

"Implementation" is interpreted in this memorandum to mean both "compliance" with obligations under the CPTPP and the implications for recognised obligations to Indigenous Peoples, including omissions or failure to actively protect Māori rights, interests, duties and responsibilities. Incorporating these issues in the ITAG Review should enable the Parties to address them in the operation and work plans of ITAG and the forthcoming reviews of the Joint Declaration and the CPTPP itself. Ngā Toki Whakarururanga welcomes this opportunity to present that information to the other Parties, and provide a more complete explanation of the Waitangi Tribunal's reports and findings, as well as other issues, which will need to be addressed during these forthcoming reviews.

(i) Article 29.6 Treaty of Waitangi Exception

Māori were excluded from decision-making about how their rights, interests, duties and responsibilities would be protected in the TPPA/CPTPP. The Treaty of Waitangi Exception was drafted over twenty years ago, for the Singapore New Zealand Closer Economic Partnership 2001. It has been routinely rolled over since then, including in the TPPA/CPTPP,[4] despite the much broader scope of contemporary free trade agreements.

Unfortunately, the Crown's account of the Waitangi Tribunal's views on the Treaty Exception in the ITAG Review (pages 26-27) is incomplete, as it omits repeated advice to reconsider the Exception. At the initial hearing held under urgency the Tribunal found that, at a general level:

> "the exception clause will be likely to operate in the TPPA 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."[5]

The Tribunal then observed that:

> "Adjustment of the Treaty exception may be necessary and we suggest that this could include space for dialogue between the Crown and Māori on this important provision. There may be practical and logistical questions, but these ought not to be insurmountable given the lines of communication established during this inquiry …"
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> "Claimants must recognise that additional dialogue does not imply or guarantee particular outcomes. A judgement call will have to be made as to whether some

changes to improve the exception might put the entire exception at too great a risk or rejection by other states, or cause too much uncertainty as to the application of the Treaty exceptions in existing FTAs. However, this is not a sufficient reason to deny domestic dialogue".[6]

The subsequent Tribunal report on the Plant Variety Rights Regime/UPOV 1991 reiterated that:

> "We did not find a breach of the Tiriti/Treaty principles in that inquiry, but our report expressed some concerns and suggested further dialogue between Māori and the Crown over an appropriate exception clause for future trade agreements."[7]

The Wai 2522 Mediation Agreement envisages the identification of options for an alternative Treaty clause to be discussed with the Crown.[8]

The Wai 2522 Tribunal took an even stronger position on the Treaty of Waitangi Exception in its report on the CPTPP E-commerce chapter. It found that the Exception, even when read in conjunction with other exceptions, was not sufficient to mitigate the significant risks that the claimants identified and did not provide the level of active protection for mātauranga Māori the Crown was required to provide. In other words, in this case the Treaty Exception was not "likely to provide reasonable protection of the kind envisaged by the Crown", as the Tribunal anticipated in the urgency hearing. The Tribunal went further, observing that "the predominant reliance on exceptions falls short of the active protection standard".[9]

The Trade for All Advisory Board report to the Minister of Trade in 2019 reinforced these concerns and recommended as an "immediate measure":

> "Discussing the drafting of the 'Treaty of Waitangi exception' used in New Zealand FTAs with Māori, as recommended by the Waitangi Tribunal in Wai 2522; decisions made on the future text of the exception should only be made following that dialogue."[10]

The forthcoming CPTPP review is an important opportunity to address this issue, and we urge the Crown to seek the support of other ITAG partners to do so. We note that the Crown has recognised and sought to address these concerns in other agreements. In negotiations on a Joint Statement Initiative (JSI) on E-commerce at the World Trade Organization, New Zealand has proposed a Treaty of Waitangi Exception on the lines supported by Ngā Toki Whakarururanga:

> **Article [x]: Indigenous Peoples**
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> "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.
>
> 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 of this agreement."[11]

In our view, this wording can provide genuine protection consistent with the Crown's Tiriti o Waitangi obligations and removes almost all the current uncertainties. It is a stronger version of an Indigenous rights exception recently included in the United States Mexico Canada Agreement (USMCA) between states that are current or former parties to the TPPA/CPTPP. The USMCA Indigenous Exception is similar to the Treaty of Waitangi Exception but omits the limiting words "more favourable treatment". However, it retains the "chapeau" that still provides an avenue for challenges based on "arbitrary or unjustified discrimination" or disguised restraints on trade.

We believe that Canada, Mexico, and other CPTPP countries in which Indigenous Peoples live, such as Peru and Chile, who are all signatories to the UN Declaration, may welcome the opportunity to adopt a broader Indigenous rights carveout as part of the CPTPP.

We urge the ITAG parties to include in their Work Programme a commitment to work with Indigenous Peoples in their territories to co-design a broad and comprehensive Indigenous rights carveout and to promote its adoption in the forthcoming CPTPP review.

We recommend the Crown

(a) proposes to extend the scope of the Joint Declaration to include examining and addressing the negative as well as positive impacts of the TPPA/CPTPP on Māori and other Indigenous Peoples, to be included in the next ITAG Work Programme plan; and

(b) seeks agreement from other ITAG Parties, as part of their Work Programme, to co-design with Indigenous Peoples who live in the territories of those Parties a broad and comprehensive Indigenous rights carveout to the CPTPP and to propose the adoption of that carveout during the forthcoming review of the CPTPP.

(ii) Taonga Species: Chapter 18 (Intellectual Property) Article 18.7.2 & Annex 18-A

The Crown's failure to provide effective protection for rangatiratanga (full authority) and kaitiakitanga (responsibilities as protectors) over all taonga species (native birds, plants and animals of special cultural significance and importance to Māori) is a long-standing, and still unresolved, Tiriti o Waitangi issue in Aotearoa.

The Wai 262 Waitangi Tribunal claim started as an inquiry relating to flora and fauna, partly in response to the negotiation of the Trade-related Agreement on Intellectual Property Rights (TRIPS), and was later expanded to all forms of mātauranga Māori.

The Wai 262 report *Ko Aotearoa Tēnei*[12] was published in 2011. In 2019 the Crown established a process to develop a whole-of-government response to Wai 262, Te Pae Tawhiti. The goal of developing a Tiriti-based approach to domestic law and policy under Te Pae Tawhiti requires protection of the policy space to do so in the international arena, including in negotiations of international free trade agreements, such as the TPPA/CPTPP.

This issue came to the fore in relation to the proposed obligation to adopt the International Union for the Protection of New Varieties of Plants (UPOV) 1991 in the TPPA. The Crown was negotiating the TPPA while the Te Pae Tawhiti process was evolving. It apparently recognised that adopting UPOV 1991 would breach its Tiriti obligations and that the Treaty of Waitangi Exception would not provide effective protection.

The Crown secured the inclusion of Annex 18-A to the TPPA's Intellectual Property chapter of a provision that allowed it either to adopt UPOV 1991 or a sui generis version thereof that was nevertheless consistent with Te Tiriti o Waitangi. However, that obligation was adopted without any involvement from Māori (outside of the Crown), a practice that should no longer occur under the terms of the Mediation Agreement in the Wai 2522 claim.

The Annex 18-A obligation was the subject of a Waitangi Tribunal hearing in December 2019. The claimants argued that the TPPA obligation would prevent Te Pae Tawhiti from proceeding in a holistic manner, given that rangatiratanga and kaitiakitanga over taonga species are an integral element of Te Pae Tawhiti. They also predicted that the wording of Annex 18-A (notably reference to "indigenous plant species") would be problematic, and the three-year time frame for its implementation would be unachievable if the policy and legislative processes were to be Tiriti-compliant.

The Crown assured the Tribunal that there was no problem with the wording and that Annex-18A would allow the Crown to meet its Tiriti obligations. It further argued that to seek a delay would seriously undermine New Zealand's credibility with the other parties to the CPTPP and would be unlikely to be agreed to.[13]

The Tribunal reported on this issue in August 2020. The Crown's account of this in the ITAG Review over-simplifies the findings and obscures important issues for the future. The Tribunal reached a curious conclusion that the Crown had not breached its Te Tiriti obligations, because by including Annex 18-A "*it is reducing the extent to which it is not in full compliance with its Tiriti/Treaty obligations*."[14]

The resulting Plant Variety Rights Review was always under time pressure because of the TPPA/CPTPP obligation. Annex 18-A required the sui generis legislation to be implemented by 30 December 2021. That did not happen. The Plant Variety Rights Bill was introduced to Parliament in May 2021. The Select Committee hearings were in November 2021, one month before the CPTPP deadline, and the committee took 6 months to report back. Following consultation on regulations necessary for the legislation to be implemented the Act and regulations entered into force in January 2023.[15]

It is unclear what reasons New Zealand gave to the CPTPP Parties for its failure to comply with the timeline. Some delay could be attributed to Covid-19. But other legislation was passed more expeditiously during that time. The delays were also caused by concerns raised with officials and at the Select Committee, especially by Māori, that the Bill failed to meet the Crown's Tiriti obligations. That required further consideration and redrafting of key provisions.

The Crown's determination to proceed with the stand-alone UPOV-related legislation has denied Māori the right to have these matters addressed in what they consider to be a Tiriti-compliant manner through Te Pae Tawhiti. The actual legislation was drafted after the Tribunal's report, so its substantive provisions were not subject to the inquiry. Notably, the parts of the new legislation that implement the UPOV 91 obligations came into force immediately, but protections for Māori taonga species under Part 5 were not required to do so for another 2 years.[16] This meant Māori Tiriti rights were vulnerable to more intrusive exploitative rights over plant varieties than prior to the TPPA/CPTPP.

The following extracts from Māori submissions on the Bill[17] express a clear view that the Plant Variety Rights Bill was driven by the Crown's obligations to implement Annex 18-A, by-passed Te Pae Tawhiti and was not consistent with its Tiriti o Waitangi obligations:

> ***Angeline Greensill, Chairperson for Tainui o Tainui Charitable Trust, Environmental Spokesperson for Tainui Hapū of Whaingaroa Raglan and Wai 2522 claimant***: "the introduction of the bill appears to undermine Te Pae Tawhiti and the work being carried out by Minister Mahuta and fellow Ministers. … On the 30 December 2021 deadlines imposed on the New Zealand Government by the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) take effect. It is my belief that rather than waiting for Te Pae Tawhiti to be completed the PVR Bill has been rushed through to meet external deadlines, and appease breeders who stand to benefit financially from exclusively owning plant varieties. Allowing domestic policy on Maori issues raised in Wai 262 to be resolved under Te Pae Tawhiti in a treaty compliant manner is collateral damage."
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> ***Te Kāhui Rōngoa Trust, the national collective of Māori healers***: "The approach proposed in this Bill is inconsistent with the approach led by Minister Mahuta when she established Te Pae Tawhiti and fails to allow Māori to exercise tino rangatiratanga over mātauranga Māori and taonga. … The Bill, as it stands, undermines the efforts being made by the current Government to establish a more positive relationship with its Treaty partner. It calls into question the Crown's integrity. It erodes the trust that is necessary to establish a working partnership. As has been too often the case since the signing of the Treaty, when it comes to the crunch Māori always take second place and it reinforces the view held by many Māori that the Crown can not be trusted to keep its word."
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> ***Tainui-Waikato:*** "Consistent with the principle of co-management, the 2008 Settlement and Settlement Act specifically require the Crown to engage directly with Waikato-Tainui at an early stage when developing any legislation or policies, or making any decisions, affecting the Waikato River. This includes our wai and related environs. The Crown has failed to do this. … It is simply inconceivable to Waikato-Tainui how the Crown has failed to consider a comprehensive engagement strategy with iwi and hapū and not meeting such obligations under the Te Tiriti o Waitangi or related commitments through Te Tiriti Settlements between the Crown and Iwi."
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> ***Wakatū Incorporation:*** "acknowledges the importance of this Bill as part of broader reform that seeks to (in part) respond to Wai 262. While we consider that the Bill does respond to aspects of the recommendations in Wai 262, we note that there is still a broader constitutional conversation that needs to occur (as noted at [14] of this submission). We remind the Committee that a key part of the Wai 262 claim was seeking a review of constitutional issues, with an emphasis on recognition of a true partnership and real shared decision making between Māori and the Crown. The long- term vision of the claimants being 'Māori control over things Māori'."

The Regulatory Impact Statement and exposure draft for accompanying regulations was released in December 2021,[18] and the proposed regulations were published in April 2022. The guide to the proposed regulations conceded that definitions of "taonga species" should have been addressed in Te Pae Tawhiti:

> "We acknowledge that it has been a challenge for this review to address the issue of defining 'taonga species'. The scope of the PVR regime is too narrow for this question to be comprehensively addressed, and it is better considered as part of Te Pae Tawhiti, the response to the Wai 262 report. If subsequent work settles on a more comprehensive definition of taonga species, the approach taken in the Bill and these regulations can be revisited."[19]

However, it remains uncertain whether the Te Pae Tawhiti review will be able to address taonga species in the comprehensive manner it would have without the CPTPP-driven legislation. In the Tribunal hearing, the claimants raised the prospect that other CPTPP Parties might object if New Zealand amends its implementation of Annex 18-A on the basis that it has revised its understanding of what its own Tiriti obligations are, and whether the prospect of such objections may have a chilling effect on its willingness to do so. That risk still needs to be addressed.

We recommend, as part of the current ITAG review, that the Crown informs the ITAG Parties that

(a) the ongoing Te Pae Tawhiti process is likely to have implications for the Intellectual Property chapter of the CPTPP that may require it to seek a review of that chapter;

(b) that the Crown may need to revisit the sui generis legislation developed pursuant to Annex 18-A on UPOV 1991 in light of the outcome of the Te Pae Tawhiti review; and

(c) it seeks their support to take these necessary steps.

(iii) Digital: Chapter 9 (Investment), Chapter 10 (Cross-border Services), Chapter 11 (Financial Services) & Chapter 14 (Electronic Commerce)

The Waitangi Tribunal found that Chapter 14 on Electronic Commerce of the TPPA/CPTPP breached the Crown's Te Tiriti o Waitangi obligations by failing to ensure active protection of mātauranga Māori, which the Tribunal described as going to the heart of Māori identity.[20] We believe the Crown has a responsibility to correct that breach in the pending review of the CPTPP. Compliance with that finding is an urgent implementation issue to be advanced through the ITAG review.

The obvious solution is to amend the Treaty of Waitangi Exception to provide a more effective and comprehensive carveout that is not limited to "more favourable treatment" and does not include the chapeau, as New Zealand has proposed in the JSI on e-commerce, discussed above.

An alternative position, which we find less attractive because it provides less protection, is a chapter-specific carveout of the kind included in the NZ EU FTA (Article 12.1.2c). That would still be constrained by the "chapeau". It would also only apply to Chapter 14, and not apply to Chapters 9, 10 or 11 that include obligations that have a similar effect, but which were out of scope for the Tribunal hearing.

A further option is to insert a new non-conforming measure (NCM) to New Zealand's Annex II on cross-border services and investment, similar to the wording in the NZ EU FTA. But that does not provide effective protection as it only applies to certain rules. The EU FTA wording is also limited to measures affecting electronically enabled services, which may not include the digital-enabling services themselves. Including a more comprehensive NCM through the forthcoming

review would provide increased protection, but still only partially address the prejudice to mātauranga Māori. This should also be advanced through the ITAG.

We recommend that the Crown conveys the findings of the Wai 2522 Waitangi Tribunal on CPTPP Chapter 14 Electronic Commerce, and its obligations under Te Tiriti o Waitangi, to the other ITAG Parties and seeks their support for the adoption of a comprehensive Indigenous rights carveout in Chapter 14 in the forthcoming review of the CPTPP. Failing that, any lesser measures need to be more robust than those in the EU NZ FTA and co-designed with Māori and other Indigenous Peoples to the point of final drafting and adoption.

(iv) The Climate Crisis: Chapter 9 (Investment) & Chapter 20 (Environment)

Environment and climate crisis (we prefer the more accurate descriptor than "change") policies and measures are of existential importance to Māori, to Aotearoa and the world. There is no effective protection for climate crisis measures in the CPTPP. Chapter 20 Environment is weak and does not require any specific action to be taken. Article 20.15 simply acknowledges that "transition to a low emissions economy requires collective action" and proposes possible areas of cooperation. The General Exception makes environmental measures subject to a "necessity test" and the chapeau, creating a high risk when relying on that as a defence.[21] There is particular concern about special rights of investors to which the General Exceptions do not apply.[22]

Risks to Te Taiao (environment) were raised in the initial pleadings for the Wai 2522 claim, but were not among the four selected to go to full hearing. Nevertheless, the Waitangi Tribunal expressed concern in its urgency report about the risks of a dispute being brought by an investor in a controversial offshore investor-state dispute settlement (ISDS) process and the uncertainty of whether the Treaty Exception would apply to such disputes.[23]

The Tribunal proposed a protocol be developed to ensure Māori had some guaranteed input into and influence over such a dispute.[24] Ngā Toki Whakarururanga considers the protocol MFAT adopted falls short of the Tribunal's proposal and our own expectations. Even if the Protocol was more robust, it would not remove the legal risk of a dispute, only how it would be handled.

The Labour-New Zealand First Government elected in 2016 during the final stages of negotiating the CPTPP said it would no longer include ISDS in FTAs. However, it was unable to renegotiate its obligations in the CPTPP. Instead, it sought bilateral side-letters with other parties agreeing not to permit the use of ISDS as between them. Those side-letters with Australia, Vietnam, Brunei, Malaysia, Peru, and Chile only prevent an ISDS dispute under the CPTPP and do not apply to any other agreements between the same parties which also provide for ISDS. Nor do they protect New Zealand from an investment dispute on a state-state basis.

International developments show the potential for challenges to climate change measures under the TPPA/CPTPP Chapter 9 Investment is very real, making it a pressing implementation issue. The same risk applies to climate legislation, rulings of administrative tribunals, or resource management decisions. These cases are already occurring overseas.[25] There is also potential for a state-state dispute involving the investment chapter. Canada recently requested consultations under the investment chapter of the USMCA over Mexico halting the issue of permits under its energy reforms,[26] which could lead to a state-state dispute if unresolved.

This poses an equally real risk to Tiriti-based climate initiatives, which are mounting. Recent litigation brought by the spokesperson on climate change for the Iwi Chairs Forum relied in part on tikanga Māori and Te Tiriti o Waitangi.[27] The Supreme Court in a recent case has also observed that tikanga Māori is part of the law of Aotearoa New Zealand.[28] A Māori Party Bill to legislate against deep sea mining was recently before Parliament, but was not referred to select committee.[29] Parliament's Environment Committee has launched an inquiry into seabed mining, which will doubtless involve Tiriti and trade law issues.[30]

The pending review of the CPTPP provides the opportunity for all Parties to revisit the ISDS provisions given the growing trend of countries to avoid or withdraw from them. We note there is no ISDS in the Regional Comprehensive Economic Partnership (RCEP) to which Australia, Brunei, Malaysia, Japan, Singapore, Vietnam, and New Zealand are Parties. It was almost totally removed from the USMCA, which involves two other CPTPP parties, Mexico and Canada. There is no ISDS in New Zealand's FTAs with the United Kingdom and European Union. The ITAG Parties should collectively support such a move.

At a minimum, New Zealand should seek support from ITAG parties, in advance of the forthcoming CPTPP review, for side-letters between all the CPTPP countries and New Zealand that cover ISDS between them under any agreement, not just the CPTPP.

We recommend that the Crown seeks the support of the other ITAG Parties to promote, as an implementation issue, the exclusion of ISDS from the CPTPP during the forthcoming review; for those Parties that have signed side-letters with New Zealand committing to non-application of ISDS to extend them to cover to all agreements between them; and for ITAG Parties that have not yet signed such side-letters to do so.

(v) Natural Resources, Chapter 9 (Investment) Section B: Investor-State Dispute Settlement, Chapter 10 (Cross-border Services)

Similar concerns, especially but not solely around ISDS, apply to developing Tiriti-compliant legislation and decisions involving natural resources, such as water and mining. These were raised in the Wai 2522 Urgency hearing but not part of the four issues selected for the full hearing. There are already instances of policy advice from MFAT that an export tax on water would breach the TPPA/CPTPP.[31] It is likely that similar issues would arise if moves to assert Māori customary rights over water, or protests against consents to extract large amounts of groundwater, forced foreign bottling export operation to shut down.[32] To provide active protection against this occurring requires a comprehensive Indigenous rights carveout.

We recommend that the Crown seeks the support of the other ITAG Parties to

(a) take the steps to address ISDS, described under (iv) climate crisis;

(b) initiate, as part their Work Programme, a thorough review of how non-conforming measures in the Investment and Cross-border Services chapters of CPTPP can provide better protection for measures that are based in whole, or in part, on meeting the Parties' obligations under Te Tiriti o Waitangi and/or the UN Declaration, and take action to implement those findings in the forthcoming CPTPP review.

(vi) Mātauranga Māori and Kaitiakitanga (other than digital): Chapter 10 (Cross-border Services), Chapter 18 (Intellectual Property), Chapter 20 (Environment)

The Crown has obligations to actively protect mātauranga Māori (knowledge, concepts and values), and the exercise of related rights, interests, duties and responsibilities under Te Tiriti o Waitangi. This includes rangatiratanga and kaitiakitanga over culture, identity, taonga works, or natural domains such as awa, maunga or whenua. The TPPA/CPTPP chapters on intellectual property, cross-border services, and environment, neither recognise nor protect these fundamentals in relation to Te Ao Māori. The implementation of the intellectual property rights required in the TPPA/CPTPP, for example, constitute an ongoing violation of Te Tiriti. This is a Wai 262 matter being pursued under Te Pae Tawhiti, raising similar issues to those discussed above for taonga species.

The omission of active and effective protection from the CPTPP is, we believe, an implementation issue that needs to be addressed in the forthcoming CPTPP review. To that end, we urge the Crown to secure a commitment from other ITAG Parties as part of their Work Programme to work together with Indigenous Peoples in their territories to develop and secure a comprehensive Indigenous rights carveout in the pending CPTPP review.

We recommend the Crown:

(a) takes the steps relating to Intellectual Property rights in the CPTPP, described under (ii) Taonga Species;

(b) take the steps relating to an Indigenous rights exception in the CPTPP, described under (i) Treaty of Waitangi Exception.

(vii) Hua Parakore and Genetic Modification: Chapter 2 Section C (Agriculture)

Māori have long resisted genetic modification (GM) and GM organisms (GMOs) as incompatible with the protection of the whakapapa of flora and fauna, mātauranga and tikanga, and kaitiaki responsibilities. They also endanger Māori control over organic food production through tikanga based practices.

This fundamental Tiriti issue was not among the four selected for the Waitangi Tribunal Wai 2522 claim. The secrecy surrounding the TPPA meant the inclusion of provisions on GMOs was not known until the text was concluded and released.

However, GMOs had already been the subject of the Wai 262 inquiry. The Report of the evidence presented by Te Waka Kai Ora to the Wai 262 Tribunal shows why accepting GM would violate Māori rights, interests, duties and responsibilities and breach the Crown's obligations under Te Tiriti o Waitangi. Dr Jessica Hutchings, a long-standing member of Te Waka Kai Ora (the Māori organics network) and a kaihautū of Ngā Toki Whakarururanga specifically warned the Wai 262 Tribunal of the risks that trade agreements pose to a GM-free Aotearoa:

> *The debate regarding GM raises not only the issues of protecting mauri ... but also the issues of globalisation, free trade, intellectual property rights and the plundering of global resources for profit. If we as Māori are to reject GM then we must also make the connection and strongly reject globalisation and free trade on our land: biotechnology is the new global wave of colonisation.*[33]

Consistent with the Wai 2522 Tribunal findings on digital, we believe the inclusion of biotech obligations in free trade agreements could circumscribe or chill domestic policy and the endorsement of Tiriti-based approaches to GMOs. As the Treaty of Waitangi Exception only covers measures that give "more favourable treatment" of Māori, we fear that it would not protect a breach the GM rules intended, at least in part, to protect Māori rights, interests, duties and responsibilities.

In addition to a comprehensive Indigenous rights carveout, we urge the ITAG Parties to include an Indigenous-led inquiry into the implications of the implementation of the biotech provisions in the CPTPP for Indigenous rights, interests, duties and responsibilities.

We recommend the Crown seeks agreement from other ITAG parties to:

(a) take the steps relating to an Indigenous rights exception in the CPTPP, described under (i) Treaty of Waitangi Exception; and

(b) conduct as part of their Work Programme an Indigenous-led investigation of the implications of CPTPP provisions relating to biotech and GMOs for the right of Māori and other Indigenous Peoples to exercise rights, interests, duties and responsibilities in relation to food, seeds, and the natural domain consistent with Te Tiriti o Waitangi and the UN Declaration, and to take action to ensure more effective protection for them during the review of the CPTPP itself.

(viii) Waipiro/Alcohol: Chapter 8 (Technical Barriers to Trade), Chapter 9 (Investment), Chapter 10 (Cross-border Services), Chapter 26 (Transparency)

A claim currently before the Waitangi Tribunal relating to the Sale and Supply of Alcohol Act 2012 (Wai 2624) seeks findings that alcohol policies and laws fail to protect Māori from the disproportionate exposure to and harm caused by alcohol.[34] There are legal arguments that various CPTPP chapters (technical barriers to trade, investment, cross-border services and transparency) may chill the adoption of alcohol policies and laws designed to protect Māori from the disproportionate exposure to and harm caused by alcohol, as occurred with tobacco.

The schedules of protections or NCMs for the CPTPP services and investment chapters only relate to the wholesale and retail trade in alcoholic beverages, not for example to advertising, marketing and promotion, entertainment, or digital services. Article 29.5 in Chapter 29 Exceptions allows the parties to block ISDS disputes over tobacco control measures, which implicitly recognises the risk of such disputes. There is no equivalent protection for alcohol control measures against similar risks of investor-state disputes being brought by Big Alcohol.

This is another instance where measures to meet the Crown's Tiriti obligation would not involve "more favourable treatment" for Māori under the Treaty of Waitangi Exception. The recommended work in ITAG to co-design an effective and comprehensive carveout for Indigenous Peoples should be complemented by a thorough review of non-conforming measures to identify how they can provide more effective protections for matters like alcohol when implementing CPTPP rules.

We recommend the Crown seeks agreement from other ITAG Parties to:

(a) take the steps relating to an Indigenous rights exception in the CPTPP, described under (i) Treaty of Waitangi Exception; and

(b) take the steps relating to non-conforming measures in the Investment and Cross-border Services chapters recommended under (v) Natural Resources.

(ix) Rongoā: Chapter 8 (Technical Barriers to Trade), Chapter 18 (Intellectual Property)

The introduction of a Therapeutic Products Bill to Parliament in November 2022 has been vigorously challenged by rongoā practitioners and other Māori as a breach of Te Tiriti o Waitangi.[35] The initial scope of that legislation included rongōa Māori and denied Māori rangatiratanga and kaitiakitanga over the sources, processes and uses of rongōa.

Again, this Tiriti issue has a history in trade agreements. In 2006, the proposed establishment of the Australia New Zealand Therapeutic Authority under the Closer Economic Relations agreement was subject to an urgent Waitangi Tribunal claim by Te Waka Kai Ora as part of Wai 262.[36] That claim challenged the authority of the Crown to define the identities and inherent authority that is imbued within the descent lines of the claimants and the rights of the Crown to template the claimants within foreign frameworks, telling them, their whānau, and their hapū who they are, or who they should be, and what their traditions are.

In June 2023 the Government announced rongoā would be excluded from the Bill except for products made for commercial wholesale or export.[37] That compromise suggests that trade agreements like the TPPA/CPTPP are a factor that circumscribes the way that rongoā can be regulated in Aotearoa and that the Treaty Exception was not considered sufficient to excuse the non-application of such rules. This reinforces our view that the ITAG Parties need to work urgently with Indigenous Peoples to co-design a comprehensive Indigenous rights carveout.

We recommend the Crown takes the steps relating to an Indigenous rights exception in the CPTPP, described under (i) Treaty of Waitangi Exception.

D. ASSESSING ECONOMIC IMPACTS OF CPTPP FOR MĀORI

The Minister's states in his Foreword to MFAT's ITAG Review that Māori are "relatively well placed to experience the benefits of CPTPP". We believe that conclusion is premature.

The data on Māori employment and Māori exporters on pages 23 to 25 of the ITAG Review is not robust enough to draw any firm inferences. Even taken at face value, the quantitative assessment of the commercial, economic and employment benefits of the TPPA/CPTPP to Māori is underwhelming, especially if these gains are meant to compensate for negative impacts of other parts of the Agreement.

For example, it is impossible to tell how much of the small increase reported in Māori export activities or Māori jobs in businesses exporting to CPTPP countries is due to trade diversion of exports that would have gone to other countries, rather than a real increase in economic activity and related employment. The distributional data only deals with goods, so there is no indication of if or how CPTPP provisions might have affected services exports in crucial sectors for Māori

such as tourism, especially compared to other factors like the value of the dollar, immigration rules or circumstances like the pandemic or wars. The fall in the number of Māori small businesses is also likely to be disproportionately significant for provincial communities.

These, among other, questions highlight the problem that decontextualised statistics tell us nothing qualitative about what is happening in the real world of Māori work and businesses, especially in the regions. Any proper assessment of impacts on Māori need to take a holistic and qualitative approach to wellbeing. We recommend that MFAT works with the Productivity Commission to identify a more appropriate Kaupapa Māori methodology that combines embodied data with narratives viewed through the lens of Te Ao Māori that can provide a more fully informed assessment of the CPTPP's impacts on Māori businesses and workers.

We recommend that

(a) the Crown works with experts in Kaupapa Māori methodology and the Productivity Commission in Aotearoa to develop an appropriate methodology that combines embodied data and narratives to allow a fully informed assessment of the implications of the TPPA/CPTPP for Māori, through the lens of Te Ao Māori; and

(b) the ITAG Parties incorporate a similar initiative into the ITAG Work Programme to develop a broadly common methodology based on Indigenous knowledge systems for future use in assessing the implementation and impacts of the TPPA/CPTPP on all affected Indigenous Peoples.

[1] https://www.ngatoki.nz/mous

[2] https://www.justice.govt.nz/assets/WT-Wai-2522-2.5.0009-TPPA.pdf

[3] Mediation Agreement on the Trans-Pacific Partnership Agreement Issues of Engagement and Secrecy, (Wai 2522), 2 October 2020, https://www.ngatoki.nz/whakapapa

[4] **Article 29.6 Treaty of Waitangi.** "Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, nothing in this Agreement shall preclude a Party/Member from adopting or maintaining measures it deems necessary to accord more favourable treatment to Māori in respect of matters covered by this Agreement, including in fulfilment of its obligations under the Treaty of Waitangi.
The Parties/Members agree that the interpretation of the Treaty of Waitangi, including as to the nature of its rights and obligations arising under it, shall not be subject to the dispute settlement provisions of this Agreement. Chapter 28 (Dispute Settlement) shall otherwise apply to this Article. A Panel established under Article 28.7 (Establishment of a Panel) may be requested to determine only whether a measure referred to in paragraph 1 is inconsistent with a Party's rights under this Agreement."

[5] Waitangi Tribunal, *Report on the Trans-Pacific Partnership Agreement*, (Wai 2522), 2016, x https://tpplegal.files.wordpress.com/2015/12/pre-publication-report.pdf

[6] Waitangi Tribunal, *Report on the Trans-Pacific Partnership Agreement*, (Wai 2522), 2016, 57.

[7] Waitangi Tribunal, *The Report on the Crown's Review of the Plant Variety Rights Regime. Stage 2 of the Trans-Pacific Partnership Agreement Claims*, (Wai 2522), 2020, 2 https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_167062478/Plant%20Variety%20Rights%20Regime%20W.pdf

[8] Mediation Agreement on the Trans-Pacific Partnership Agreement Issues of Engagement and Secrecy, (Wai 2522), 2 October 2020, [13.8].

[9] Waitangi Tribunal, *Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, (Wai 2522), 173, https://forms.justice.govt.nz/search/Documents/WT/wt_DOC_195473606/Report%20on%20the%20CPTPP%20W.pdf

[10] *Report of the Trade for All Advisory Board*, November 2019, [36.c], see also [67] https://www.mfat.govt.nz/assets/Trade-General/Trade-policy/Trade-for-All-report.pdf

[11] WTO, Joint Statement Initiative on E-Commerce, Discussion paper on Digital Inclusion, Communication from New Zealand, INF/ECOM/71, 25 November 2022.

[12] Waitangi Tribunal, *Ko Aotearoa Tēnei* (Wai 262), 2011, https://waitangitribunal.govt.nz/news/ko-aotearoa-tenei-report-on-the-wai-262-claim-released/

[13] Waitangi Tribunal, *The Report on the Crown's Review of the Plant Variety Rights Regime. Stage 2 of the Trans-Pacific Partnership Agreement Claims*, (Wai 2522), 2020, 40.

[14] Waitangi Tribunal, *The Report on the Crown's Review of the Plant Variety Rights Regime. Stage 2 of the Trans-Pacific*

Partnership Agreement Claims, (Wai 2522), 2020, 9.
[15] https://bills.parliament.nz/v/6/d2ec5576-40ba-46a6-835a-87968b2fea04?Tab=history
[16] https://www.legislation.govt.nz/act/public/2022/0061/latest/whole.html
[17] https://bills.parliament.nz/v/6/d2ec5576-40ba-46a6-835a-87968b2fea04?Tab=sub
[18] https://www.treasury.govt.nz/publications/risa/regulatory-impact-statement-regulations-accompany-new-plant-variety-rights-act
[19] MBIE, Guide to the Proposed New PVR Regulations, April 2022, 3. https://www.mbie.govt.nz/dmsdocument/19887-guide-to-the-proposed-new-plant-variety-rights-regulations-2022
[20] Waitangi Tribunal, *Report on the Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, (Wai 2522), xiv, 45.
[21] Daniel Rangel, "The WTO General Exceptions. Trade Law's Fayulty Ivory Tower", Public Citizen, https://www.citizen.org/wp-content/uploads/WTO-General-Exceptions-Paper_-1.pdf
[22] Especially Minimum Standards of Treatment (TPPA/CPTPP Art 9.6), Expropriation (TPPA/CPTPP Art 9.8). TPPA/CPTPP Article 29.1 General Exceptions does not apply to the Investment Chapter.
[23] Waitangi Tribunal, *Report on the Trans-Pacific Partnership Agreement*, (Wai 2522), 2016, x, 40-41.
[24] https://www.mfat.govt.nz/en/trade/trade-law-and-dispute-settlement/an-isds-protocol/
[25] UNCTAD, 'Treaty-based Investor-State Dispute Settlement Cases and Climate Action', IIA no.4, Sept 2022, https://investmentpolicy.unctad.org/publications/1270/treaty-based-investor-state-dispute-settlement-cases-and-climate-action
[26] https://arbitrationblog.kluwerarbitration.com/2022/11/25/mexicos-new-energy-sovereignty-puts-the-usmca-dispute-resolution-mechanisms-to-a-test/
[27] Michael John Smith v Fonterra & Ors, https://www.courtsofnz.govt.nz/cases/michael-john-smith-v-fonterra-co-operative-group-limited-genesis-energy-limited-dairy-holdings-limited-new-zealand-steel-limited-z-energy-limited-new-zealand-refining-company-limited-and-bt-mining-limited; see also https://www.minterellison.co.nz/insights/what-s-hot-climate-change-litigation-in-new-zealand
[28] *Peter Hugh McGregor Ellis v R* [2022] NZSC 114.
[29] Prohibition on Deepsea Mining Legislation Amendment Bill 2023, https://www.parliament.nz/en/pb/hansard-debates/rhr/combined/HansDeb_20230510_20230510_28
[30] Inquiry into Seabed Mining in New Zealand, https://www.parliament.nz/en/pb/sc/make-a-submission/document/53SCEN_SCF_DDFFCA39-6C0A-4157-17D5-08DB51C92C39/inquiry-into-seabed-mining-in-new-zealand
[31] https://www.stuff.co.nz/national/politics/99401595/export-tax-on-water-would-breach-tpp-and-other-free-trade-agreements-mps-told
[32] https://www.rnz.co.nz/news/te-manu-korihi/407280/maori-water-rights-case-aims-to-stop-water-bottlers; https://waateanews.com/2023/03/24/iwi-petition-water-bottling-consent/
[33] *He Kai te Rongoā, He Rongoā te Kai*, Te Waka Kai Ora, October 2022, 49. https://www.tewakakaiora.co.nz/site_files/24901/upload_files/Wai262Report_DIGITAL_SMALL(1)(1).pdf?dl=1
[34] https://www.tematalaw.co.nz/our-mahi/wai-2624
[35] https://thespinoff.co.nz/atea/15-06-2023/rongoa-and-the-therapeutic-products-bill-explained
[36] Waitangi Tribunal, *Ko Aotearoa Tēnei* (Wai 262), 2011, vol.2, 637-8.
[37] https://www.beehive.govt.nz/release/therapeutic-products-bill-reduces-regulation-small-scale-producers-exclude-rongo%C4%81