

December 2012
To the Prime Minister
Parliament Buildings

Re: Trans Pacific Partnership Agreement

Dear Rt Hon Prime Minister John Key,

We representatives of the medical community of New Zealand are writing to express our concerns about the future impacts of the proposed Trans Pacific Partnership (TPP), upon New Zealand's ability to deliver Public Health Policy, and in particular to achieve a Smokefree Aotearoa by 2025.

We urge the government to consider:

- its obligations to the World Health Organization international community under the Framework Convention on Tobacco Control. In particular Article 5.3. "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law." The proposed Partnership has already undermined, and will continue to undermine New Zealand's obligations in this regard.
- its own commitment, as an obligation to Te Tiriti o Waitangi – as it is written in its response to the Māori Affairs Select Committee's Report on its inquiry into tobacco – to reduce inequity between ethnic populations through the reduction of supply and demand for tobacco. There is well-documented evidence that Māori and Pacific communities in New Zealand carry a disproportionate burden of disease and lower life expectancy. The commitments currently negotiated in the TPP's context of foreign policy and trade are in conflict with the commitments to Te Tiriti.
- its own commitment to achieve a Smokefree Aotearoa by 2025, which entails reduction and elimination of the existing foreign investment by Big Tobacco in New Zealand's current market. In view of this the tobacco industry should have no place at the table in discussing protection of its investments, intellectual property or otherwise, in New Zealand.
- the way a tobacco company, Philip Morris, is bringing litigation, costly to the state, against the Australian Government regarding smokefree legislation, in particular plain packaging of cigarettes, under the terms of an older trade agreement, and how Investor State Dispute clauses inside such agreements stand to similarly threaten or penalize New Zealand legislation to protect public health. That this is no idle concern is shown by the expressed intention of Philip Morris to protect its investment including "Intellectual Property" and branding under the terms of the TPP.

In view of the above considerations we urge you in particular, Prime Minister, but all of your government also, to:

- insist on there being no Investor-State Dispute provision for tobacco companies in the TPPA
- insist on strong protections for public health in all 29 chapters of the Agreement, including those dealing with protection of investments and Intellectual Property, so that public health legislation can proceed in response to scientific evidence and without threat of legal or financial penalties from parties that have no interest in the health of New Zealanders.
- insist on total exclusion of tobacco companies from participation in any negotiations or rights to protection of their investments or Intellectual Property.
- maintain awareness of the need for scrupulous analysis of all chapters of the Agreement by experts charged with doing so in the interests of social equity in New Zealand and not just in the interests of foreign policy and trade.
- contest – and rally all other signatory nations to contest beside you – the inequity of access to the draft agreement during negotiations, and the veto/revision powers of the United States Congress, that privileges the United States and its trade corporations at the expense of the democratic powers of the other signatory nations.

We also strongly express our opposition to

- the implications of the leaked Intellectual Property chapter of the proposed TPP, which exposes how it will give foreign investors in our domestic health marketplace patent protection and data exclusivity that potentially leaves New Zealanders with less access to affordable medicines for longer. In particular are clauses that effectively force Pharmac's and Medsafe's protection of foreign investors' intellectual property over and above generic manufacturing and subsidized costs for medicines that New Zealanders need.
- the lack of public consultation and academic scrutiny in the negotiations of the TPP. Trade agreement negotiations that are continuously conducted beyond any powers of the public to analyse and advise our negotiating representatives are undemocratic.
- the way the negotiations for the Trans Pacific Partnership (Agreement) are taking place behind closed doors in a process which has the potential to overrule many domestic laws.
- the fact that around 600 commercially invested advisors to the US negotiators have been given rights to see drafts of the TPP, a fact that leaves their ability to lobby their own investment interests throughout negotiations another fundamentally undemocratic factor of this process. Furthermore, the United States Congress

reserves powers, once all nations have signed the Agreement, to veto and/or revise the final copy, leaving all other signatory nations vulnerable to changes beyond what was negotiated.

In sum, this amounts to a substantial loss of our nation's sovereignty posed by:

- a) the fact that the US Congress, together with its commercial interests and corporations, has more say than the New Zealand public and academic experts, in affairs which radically affect our country.
- b) the "chilling effect" of the legal and financial threats to domestic legislation arising from trade agreements with protectionist clauses that serve offshore companies, and that are enforced via arbitrations outside our domestic jurisdiction, without democratic accountability.

We believe that the Government, if it agrees to the existing conditions of negotiation of the TPP, is putting the health and wellbeing of all New Zealanders at risk, while it leaves the Smokefree 2025 goal in particular jeopardy. This may even reverse the trend of declining smoking experienced in recent years, and will reduce the democratic powers of the New Zealand Government to protect its citizens.

Yours sincerely