

14 October 2011

To Rt. Hon John Key  
Prime Minister of New Zealand

Hon Tim Groser  
Minister of Trade

### **Transparency in the Trans-Pacific Partnership Agreement (TPPA) Negotiations and Release of Memorandum of Understanding**

On 10 February this year twenty-four organisations that represent hundreds of thousands of New Zealanders, along with more than 500 individuals, wrote to you demanding:

at a minimum, that the New Zealand government commits itself to publish simultaneously on its website all documents that it tables at the TPPA negotiations and proposes to all the other the TPPA negotiating parties at the forthcoming negotiations in Chile in February 2011 that they agree collectively to:

1. Create and maintain a public website which governments and civil society can post information and participate as equals in a dialogue and debate;
2. Post the draft text of each chapter as it is completed to open them to expert and public scrutiny. Given the global financial crisis, the perfect starting point is the texts on investment and financial services, completed in the December 2010 Auckland round;
3. Post countries' position papers on specific subjects that are tabled during negotiations;
4. Guarantee that all civil society has equal access to information and engagement with the process, regardless of whether they are supportive or critical of the proposed agreement, ending the privileged treatment that pro-TPPA corporate lobby groups have enjoyed to date.

Similar open letters were addressed to the leaders of the governments of Australia, Chile, Malaysia and the United States of America by trade unions, environmentalists, faith and social justice organisations. Copies of those letters were hand-delivered to the lead negotiators of all delegations during the Trans-Pacific Partnership Agreement round in Santiago in February 2011.

Your government and all the other parties have rejected demands for greater transparency. Worse, you and they have insisted on a level of secrecy that reverses recent initiatives to facilitate more informed, open and democratic debate by releasing draft negotiating texts of free trade and investment agreements. We cite, in particular, the precedents of the Free Trade Area of the Americas, the Multilateral Agreement on Investment, the Anti-Counterfeiting Trade Agreement and the Doha round negotiations at the WTO.

Your government has also blocked the hearing of submissions by the Foreign Affairs, Defence and Trade select committee on the implications for New Zealand of the proposed TPPA, which was requested by a number of prominent national organisations through a parliamentary petition in May 2011.

We now understand that the parties negotiating the TPPA signed a Memorandum of Understanding dated 4 March 2010 that set out the terms of the negotiation process, including disclosure of documents. It is apparent from the cover page of the leaked draft Intellectual Property chapter tabled by the United States government that the Memorandum includes rules on classification that *inter alia* restrict the declassification of documents for 'Four years from entry into force of the TPP agreement or, if no agreement enters into force, four years from the close of the negotiations.'

While we reiterate our earlier demands for comprehensive disclosure, we consider it utterly unacceptable for a document on the terms of the negotiation to remain secret.

At the stakeholder briefing in Chicago on 11 September 2011, the Chair for the Chicago round, Assistant USTR Barbara Weisel, said the parties would have to consider the request for the release of the Memorandum of Understanding. We have since learned that New Zealand is the repository of all the TPPA documents and that the lead negotiator is currently consulting with other governments regarding the request for release of the Memorandum.

We therefore demand that New Zealand supports the immediate release of the Memorandum of Understanding and actively encourages the other parties to agree to do this before or at the forthcoming round in Lima, Peru. The release of that document would provide a better understanding of the rationale for the extreme level of secrecy surrounding the TPPA negotiations, the rules that the parties have agreed should govern the negotiations, and the nature and duration of the restrictions on disclosure and classification.

Yours sincerely,

Helen Kelly, President, New Zealand Council of Trade Unions  
Russel Norman, Co-leader of the Green Party of Aotearoa  
Hone Harawira, Leader of the Mana Movement  
Barry Coates, Executive Director, Oxfam NZ  
John Roberts, President Elect, Methodist Church of New Zealand  
New Zealand Council of Civil Liberties  
InternetNZ  
Tech Liberty  
New Zealand Society of Authors  
Ben Youden, Director, ASH New Zealand  
Prof Doug Sellman, Alcohol Action New Zealand  
Pax Christi  
First Union (formerly National Distribution Union and FinSec)  
Tertiary Education Union  
UNITE Union  
Our Water Our Vote  
Campaign Against Foreign Control of Aotearoa  
NZ Not For Sale  
Tauwi Solutions