

Thursday 19 July 2018

Greg Rzesniowiecki

To: **Coordinator, Climate Change Unit, Environment Division, MFAT.**

Subject: **Zero Carbon Bill – Legislate for Abundance**

Greetings Climate Change Unit,

I focus on enforceability of climate change and public policy. There's plenty who know what we need to do. What is clearly missing is uncompromising political will to make it happen!

Government ability to regulate for effective climate action is undermined by trade and investment treaties with ISDS property rights protection for foreign investors.

Critical to good policy and its implementation is the the legislative freedom to make laws that are unable to be challenged by interests keen on maintaining business as usual.

I've contributed over one hundred pages of material to various Climate Change consultations run by the NZ Government since the 2015 INDC consultation that closed at the same time that South Dunedin was turned into a swimming pool by the weather gods.

I attach the following to underpin my suggestions;

1. Paper offered in respect to the 2015 INDC consultation June 2015
2. Paper offered in relation to your April 2018 consultation, "New Zealand's priorities in the international climate change negotiations"
3. 2016 paper offered to Victoria University of Wellington (VUW) Pacific Climate Change conference Feb 2016
4. Paper offered to the FADT TPP treaty examination process; "TPP text on trade and climate change/transmission to a low emissions and resilient economy: comparison of leaked and final text" Deborah Gleeson, 7 November 2015

Additionally civil society engaged in respect to the Trans Pacific Partnership (TPP) now called CPTPP proposing a strategy to ensure that trade and investment treaties do not cut across New Zealand's ability to regulate its political economy and regulate for the benefit of inhabitants

The strategy is outlined in the www.dontdoit.nz 2018 petition to the Parliament. That offered the following much of which has relevance in respect to climate action – specifically clauses in blue;

We, the undersigned, express our grave concern that:

- a) The Labour Party, New Zealand First and the Green Party all said in the Select Committee report on the Trans-Pacific Partnership Agreement (TPPA) that they would not support its ratification;
- b) The text agreed by eleven countries after the US pulled out, the TPPA-11, remains the same as the original TPPA, with a small number of items in the original text being suspended, not removed;
- c) [The government has promised a new inclusive and progressive approach to trade and investment agreements](#), but there is nothing new and progressive to justify the renaming of the TPPA-11 as the Comprehensive and Progressive Agreement on Trans-Pacific Partnership;
- d) [There are many provisions in the TPPA-11 that restrict the regulatory sovereignty of the current and future Parliaments](#);
- e) [The Government has instructed officials not to include investor-state dispute settlement \(ISDS\) in future agreements, yet the TPPA-11 still contains the core investor protection rules that can be enforced through ISDS](#);
- f) The secrecy that the governing parties criticised in the original negotiations continues and that the text will apparently not be released until after the agreement is signed;
- g) There has been no analysis of the economic costs and benefits of the TPPA-11, including the impact on employment and income distribution, as the governing parties called for in the select committee report;
- h) [There has been no health impact assessment of the revised agreement as called for by the current Government in the select committee report, nor any assessment of environmental impact or constraints on climate action](#);
- i) The Crown has not discussed ways to improve the Treaty of Waitangi exception and strengthen protections for Maori as the Waitangi Tribunal advised;
- j) Despite these facts, the Government has announced its intention to sign the TPPA-11 on 8 March 2018;

and urge the House to call upon the Government:

- k) not to sign the TPPA or the Comprehensive and Progressive Agreement on Trans-Pacific

Partnership;

l) to conduct a principles-based review of New Zealand's approach to free trade, investment and economic integration agreements that involves broad-based consultation;

m) to engage with Maori to reach agreement on effective protection of their rights and interests consistent with te Tiriti o Waitangi and suspend negotiations for similar agreements until that review is concluded;

and further, urge the House to pass new legislation that

(n) establishes the principles and protections identified through the principles-based review under paragraph (l) as the standing general mandate for New Zealand's future negotiations, including;

i. excluding ISDS from all agreements New Zealand enters into, and renegotiating existing agreements with ISDS;

ii. a requirement for the government to commission and release in advance of signing an agreement independent analyses of the net costs and benefits of any proposed agreement for the economy, including jobs and distribution, and of the impact on health, other human rights, the environment and the ability to take climate action;

iii. a legislative requirement to refer the agreement to the Waitangi Tribunal for review prior to any decision to sign the treaty; and

(o) makes the signing of any agreement conditional on a majority vote of the Parliament following the tabling in the House of the reports referred to in paragraph (n) (ii) and (iii);

and for the House to amend its Standing Orders to

(p) establish a specialist parliamentary select committee on treaties with membership that has the necessary expertise to scrutinise free trade, investment and economic integration agreements;

(q) require the tabling of the government's full mandate for any negotiation prior to the commencement of negotiations, and any amendment to that mandate, as well as periodic reports to the standing committee on treaties on compliance with that mandate;

(r) require the tabling of any final text of any free trade, investment and economic integration agreement at least 90 days prior to it being signed;

(s) require the standing committee on treaties call for and hear submissions on the mandate, the periodic reports, and pre-signing version of the text and the final text and report on those hearings to Parliament;

(t) require a two-third majority support for the adoption of any free trade, investment or economic integration agreement that constrains the sovereignty of future Parliaments that is binding and enforceable through external dispute settlement processes.

I generally support Generation Zero's Zero Carbon Act submission:

<http://zerocarbonact.nz/assets/Uploads/Generation-Zero-Zero-Carbon-Bill-consultation-submission-July-2018.pdf>

The passage on page 33

s/Uploads/Generation-Zero-Zero-Carbon-Bill-consultation-submission-July-2018.pdf

the Commission's funding below.

Generation Zero also submits that the Commission's independent expertise should be drawn on to influence New Zealand's evolving international obligations, for example, when the Government is negotiating, signing or ratifying treaties that affect climate change policy required to reach the long-term target. This would include international environmental treaties as well as trade, investment and economic integration treaties that could pose challenges for mitigation or adaptation measures, in light of Te Tiriti and Zero Carbon Act principles, such as a just transition. Options to incorporate the Commission's expertise in this area include (a) amending the Standing Orders relevant to the examination of international treaties, or (b) including a statutory requirement in the Zero Carbon Act for the Ministry of Foreign Affairs and Trade to seek advice from the Commission on matters relevant to climate policy and the future implementation of mitigation and adaptation measures.

The consistent concern is that trade and investment treaties have enforceability whereas human and ecological treaties and conventions do not have the same weight in law. This deficiency needs to be remedied to ensure that nothing impedes well considered regulations to reduce New Zealand's load of greenhouse gas emissions to atmosphere. Similarly New Zealand requires that the enforceability of any trade and investment treaty does not disable or discourage any nation state from strong climate action either through the UNFCCC or their own initiatives over and above commitments offered under UNFCCC auspices.

I strongly urge Mfe Climate Change Unit to take note of the Parliamentary FADT CPTPP legislation examination closing date for public input 17 August 2018;

https://www.parliament.nz/en/pb/sc/make-a-submission/document/52SCFD_SCF_BILL_78569/trans-pacific-partnership-agreement-cptpp-amendment-bill

Also any renegotiated agreement such as the China FTA currently being reexamined.

Many thanks for the opportunity

Greg Rzesniowiecki

Attachments

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