



Oral Submission to the select committee on the United Kingdom Free Trade Agreement Legislation Bill 25 August 2022

Peter:

Tena koutou katoa. I'm Peter Garrick executive secretary of the Justice & Peace Commission of the Catholic Diocese of Auckland. With me today is Loraine Elliott who is Vicar for Social Impact and Communication for the Diocese.

Loraine: (introduction)

Firstly I would like to acknowledge Mary Brophy who prepared our written submission on behalf of our Peace & International Justice Committee. Unfortunately, because of the short notice given for oral submissions on this Bill Mary was not able to join us today.

Our submission is based on the recognition of the human dignity and right to protection of all members of society particularly the most vulnerable.

In our oral submission we wish to concentrate our comments on the Preamble and Chapter 26 Māori Trade and Economic Cooperation which as you will be aware were preoccupations of Māori in signing Te Tiriti o Waitangi with the United Kingdom in 1840.

As we mentioned in our written submission we wish to register our opposition to this Trade Agreement on the basis that it falls significantly short of our Tiriti o Waitangi obligations.

This is particularly the case in the lack of protection for the intellectual property and digital data of cultural and physical taonga and whakapapa clearly leaving Māori open to future exploitation in these key areas.

In contrast the UK Free Trade Agreement's **enforceable** rules on goods, intellectual property rights, investment, financial services, and the crucial new area of digital trade clearly favour protection for big business and multinational corporations.

As Māori we are long players in the movement to redress structural injustice. We are however particularly conscious of the credibility of participants in the process.

It is surely a positive step to see in the preamble to this UK-Aotearoa trade agreement that Te Tiriti o Waitangi 'is a foundational document of constitutional importance to New Zealand.' (Paragraph 6 of Preamble)

It is also significant that the document recognizes 'the unique relationship that exists between Māori and the United Kingdom, noting that representatives of the British Crown and Māori were the original signatories to Te Tiriti o Waitangi...' (Preamble paragraph 5).

But it is disappointing that the UK seemingly then disowns any continuing obligations to the Treaty it signed with Māori in 1840. Where does this leave the credibility of this present agreement?

Peter

We find it interesting that when saving the official version of the Preamble chapter, the pdf comes up with the subtitle 'Legal Scrub'.

Is this an indication that UK legal beagles have been charged with going through it to remove any acknowledgement of UK legal responsibilities for Te Tiriti which it signed in 1840? Will these same legal advisers at some later date go through this NZ-UK FTA to similarly remove any acknowledgement of legal responsibility for any inconvenient parts of the present NZ-UK FTA?

There are indications that 'smoking guns' have already been inserted in this document to later facilitate this process. In Article 26.5 for example when referring to how the Parties may facilitate activities with Māori, a footnote is added as follows:

‘For greater certainty, the provisions in this Chapter do not impose any legal or financial obligations requiring the Parties to explore, commence, or conclude any individual cooperation activities.’ (Footnote 1 to Article 26.5)

Loraine

The question then becomes: ‘What does denying responsibility for the clear legal implications of a previous agreement (Te Tiriti o Waitangi) say about the credibility of the UK in signing this agreement?’

Peter

Despite the apparent provision for Māori to benefit from the deal, an examination of the relevant chapter in the main document makes it clear that there is no process for enforcing any of the provisions contained therein.

A Ministry of Foreign Affairs and Trade report of the Trade for All Advisory Board (MFAT) published in November 2019, states that Māori engagement with trade issues is essential because trade agreements can affect the ability of Māori organisations to control taonga and exercise tino rangatiratanga. The report recommends that “the Government should incorporate the protection and promotion of indigenous intellectual property into New Zealand’s trade agreements.”¹

Loraine

In late 2020 Nga Toki Whakarururanga (NTW) was set up, following mediation between the Crown and claimants from a Waitangi Tribunal inquiry into Māori involvement in trade negotiations.

NTW found that the trade negotiations had been entirely controlled by the government. It alone had decided the negotiating mandate, what compromises to accept and the final text, with no role for Māori at the table separate from the Crown.

¹ MFAT Report of the Trade of All Advisory Board: www.tradeforalladvisoryboard.org.nz

When NTW's technical advisors were provided with an edited version of the draft text in late 2021 its contents had to be kept secret which meant they could not consult with affected Māori outside the group. Most of the input from the advisors was too late to be effective and had minimal impact on the final FTA.

A reference group of Māori leaders had only discussed the Māori Trade Chapter (with little final effect) and not the risks from other chapters.

The NTW report also pointed out that the Treaty of Waitangi exception clause allowing the Crown to accord 'more favourable treatment' to Māori remained unchanged from previous FTAs, despite recommendations from the Waitangi Tribunal and the Government's Trade for All Advisory Board that more effective protections were needed.

In a recent statement to RNZ, NTW spokesperson Pita Tipene said the FTA had been a missed opportunity to set a new bar for honouring te Tiriti o Waitangi. He added that "As far as Māori making economic gains, the figure we've seen, from research for te Taumata, is a \$13 million increase in GDP for a Māori asset base of \$68 billion."²

On July 26, 2022 Te Pati Māori co-leader and trade spokesperson Rawiri Waititi announced that te Pati Māori will oppose the United Kingdom Free Trade Agreement because it shut Māori out of negotiations and failed to protect Māori rights and interests. He described the trade deal as "yet another failed opportunity to reimagine trade policy", adding that vague statements about how Māori would be better off was not partnership.³

Peter

We as a Justice and Peace Commission call on the New Zealand Government not to endorse this Trade Agreement in its present form.

²Sachdeva, Sam. Govt must Step Back from UK Trade Deal over Treaty Concerns – Maori Group.
<http://www.newsroom.co.nz/govt-must-step-back-from-uk-trade-deal-over-treaty-concerns-maori-group>

³ Māori Party <http://waateanew.com/2022/07/27/Māori-party-spurns-uk-fta>

At very least it should insist on the removal of the undermining footnote 1 to Article 26.5 and as recommended by the Waitangi Tribunal, immediately set up a much more inclusive consultation process with Māori in negotiating future Trade Agreements.

We thank the Select Committee for the opportunity to speak today and for the convenience of members will email a copy of our script to the Secretariate. We are happy to answer any questions members may have.