LOVEGROVE, Sarah (FTU)

From: Atom Smasher [atom@smasher.org]
Sent: Monday, 8 December 2008 3:19 p.m.
To: FTP4
Subject: SUBMISSION ON THE TRANSPACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT NEGOTIATIONS WITH THE UNITED STATES

SUBMISSION ON THE TRANSPACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT NEGOTIATIONS WITH THE UNITED STATES

To: Ministry of Foreign Affairs & Trade

I am Atom Emet, and I recently gained Permanent Residence status in New Zealand after leaving the United States a little over a year ago. I am employed in the information technology field. Beyond my day job I am a father, musician, software developer, published author, and I have presented at computer security conferences here in New Zealand and in the United States.

I strongly oppose any proposals to extend the term and/or scope of copyright, patent and/or trademark protection, strengthen digital restrictions management (aka DRM, TPM), assign investigation or enforcement powers to rights holders beyond what has been traditionally defined by civil law, or otherwise use the concept of so-called "intellectual property" in any way that harms competition, consumers, or technology. I also strongly oppose any interference with parallel importing.

I find it alarming that there is not a group representing the interests of consumers and "the commons". Copyright and patent protection are based on the concept of striking a balance between artists/inventors, by granting a temporary monopoly over their works, and the public, who should freely benefit from those works after the monopoly expires. Instead the US has been pushing for perpetual copyright, by means of an installment plan[1].
While this certainly serves well for Disney, the collateral damage is that artists and publishers desiring to make use of works created as long ago as the 1920s cannot make use of these works unless they get "clearance" from the copyright holder (who may have died long ago). This is compounded by the fact that no usable system exists to find the current owner of a copyrighted work; the result is orphaned works that are not, and cannot, be used for any artistic or commercial purpose.

While the "artists" are presumably represented via their proxies such as the MPAA and RIAA (and their NZ counterparts), there is no balance representing the commons, that hypothetical construct consisting of consumers of that artistic body of work. But there is concern that those bodies who claim to "represent the best interests of the artists" and "make sure the artists get paid" aren't even doing that[2]; New Zealand's own Peter Jackson could attest to the business of "Hollywood accounting"[3],[4],[5].
It seems that most efforts to "strengthen copyright" and "fight piracy" do little, if anything, to support the artists; instead they are designed to preserve and expand the monopoly rights of the content distribution companies, the same companies that have tried to outlaw or control virtually every technology from the phonograph, to video recorders[6] to general purpose computers[7]. One of the latest targets of the big content distributors is peer-to-peer file sharing; and just like their opposition to so many previous advances to technology, they have it wrong[8] here too. If they wanted to destroy p2p file sharing only at their own expense, I wouldn't mind so much, but p2p is a viable and legitimate distribution tool for many works that they don't own.
Consider the case of a local NZ musician who becomes popular: They might choose to make their music freely available for download (which has worked well for Nine Inch Nails and Radiohead[9],[10]), but there are technical and financial barriers to hosting free downloads in NZ. p2p file sharing solves the problem! My concern is that the "big" content distribution companies want to destroy a distribution system simply because they have failed to understand and profit from it.

I believe that "fair use" rights are being eroded, both through legal and technical means. If it is fair to quote the written word with proper attribution, why is it illegal to "sample" a film or song? The US is leading the world in the wrong direction in regard to "intellectual property". This is nothing less than a theft from the commons.

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Further, it needs to be honestly questioned whether "intellectual property" actually achieves its desired goals of "promoting the useful arts and sciences". This, and other relevant questions, are raised by Michele Boldrin (Professor of Economics) in his work[11] and the only logical conclusion, however counter-intuitive it may be, is that it would be best for everyone (except patent and copyright lawyers) to phase out copyright and patent protection. Artists like Nine Inch Nails and Radiohead are proving that the "all rights reserved" copyright model isn't the only way to succeed as an artist.

I'm not against free trade, as such, and believe that an honest free trade agreement can be accomplished with a single sheet of A4 paper. What I've seen of WTO style "free trade" is a unilateral treaty process claiming to be a multilateral process. It is my firm belief that the only "free trade"
that can serve a net benefit would be bilateral agreements, without the arm-twisting called "normalization" that requires sovereign countries to rewrite their laws, and allow either participant to pull out of the treaty if they decide it's not working. Having left the US a little over a year ago, I have seen first hand the side-effects of "free trade", and can say that its current implementation is truly a race to the bottom. Looking at the pending financial collapse of the US and the human-rights and environmental devastation in China, it does seem that the anti-corporate-globalization protesters have been right all along[12],[13],[14].

Aside from the issues raised above, I think the comment period should remain open longer, and there needs to be outreach regarding public input.

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2) http://www.recordingartistscoalition.com/industrypractices.php
3) http://en.wikipedia.org/wiki/Hollywood_accounting
4) http://www.hollywood.com/news/Jackson_Hits_Back_at_New_Line_Boss/3606938
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6) http://en.wikipedia.org/wiki/Sony_Corp._of_America_v._Universal_City_Studios,_Inc.
7) http://en.wikipedia.org/wiki/Consumer_Broadband_and_Digital_Television_Promotion_Act
8) http://www.theregister.co.uk/2006/11/08/peter_jenner/
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14) http://www.epi.org/content.cfm/bp196

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http://atom.smasher.org/
762A 3B98 A3C3 96C9 C6B7 582A B88D 52E4 D9F5 7808

"Proprietary software seeks to maximize its value solely in monetary terms by achieving a monopoly. Open Source software maximizes its value by assuring that a monopoly cannot be achieved."
-- Mark Webbink, Senior Vice President and General Counsel of Red Hat

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8 December 2008

SUBMISSION

To: Ministry of Foreign Affairs and Trade, Private Bag 18901, Wellington

On: Trans-Pacific Agreement

Introduction

1. This submission is from Agcarm Incorporated, PO Box 5069, Wellington.
2. Agcarm is an industry association which represents crop protection, animal health, and rural supplies firms. Agcarm members distribute and sell the majority of animal remedies and crop protection products in New Zealand. For further information go to www.agcarm.co.nz
3. If you have any queries, please contact Agcarm chief executive Graeme Peters 04 499 4225, gpeters@agcarm.co.nz

1. Summary

Agcarm members fully support the expansion of the Trans-Pacific Agreement to new membership, including the United States.

The United States is the world's largest economy, and is New Zealand's second most important export destination. It is a particularly important buyer of New Zealand beef, dairy and wood products.

A comprehensive free trade agreement would allow greater access to New Zealand exports. This would be of particular benefit to agriculture, in which there are some barriers such as import tariff quota restrictions on dairy products. Removing these barriers would be good for New Zealand farmers and growers and positive for the entire New Zealand economy.

Another benefit from of an improved trading relationship with the United States is access to its innovation, knowledge, and technologies.

New Zealand is too small to be a world leader in research and development in areas such as biotechnology, crop protection, and animal health products.

Access to these technologies is vital for New Zealand agriculture to continue to boost productivity and to stay ahead or in step with agricultural production in other countries.

However, access to the latest active ingredients and their formulations (products) are in many cases lost to New Zealand because of its inadequate protection of data used to support the mandatory approval to market these products.

Unfortunately for New Zealand, the lack of adequate data protection is a strong disincentive to bring new, innovative and more environmentally benign products to New Zealand.

The lack of data protection is also a strong disincentive to develop new uses for existing products, and to produce additional data to allow the continued sale of agrichemicals and veterinary medicines when they are reassessed.

Being denied access to these products is of concern to New Zealand farmers and growers. It is also of concern to Agcarm members, who - to obtain market entry for innovative products - have to collectively invest millions of dollars, only to see their products quickly copied by generic companies at no cost to them.

Agcarm therefore seeks in any free-trade agreement with the United States the following periods of data protection:

	Currently	**Should be**
For innovative substances/new organisms	**5 years**	**10 years**
For new uses/new formulations	**zero**	**10 years**
For reassessments of existing substances	**zero**	**10 years**

The proposed time frames must commence from the date a regulator gives the go ahead to allow marketing of pesticides and veterinary medicines that are approved by the Environmental Risk Management Authority and/or the Agricultural Chemical and Veterinary Medicines Group (part of the New Zealand Food Safety Authority).

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2. What Is Data Protection?

Data protection is the protection of information that is required by New Zealand regulators for approval of pesticides and veterinary medicines, collectively known as agricultural compounds. The raw data is considered confidential to regulatory authorities; however data summaries may be made available for public consultation purposes.

The proprietary information is required to assess a product for its safety to humans, crops, animals and the environment, and its efficacy and impact on export trade.

Proprietary information to support the sale of agricultural chemicals and veterinary medicines can cost many millions of dollars to generate. So there is good reason to seek to protect it from unfair commercial use in all countries where the active ingredient and its associated products are registered.

Data protection runs concurrently with any relevant patents (see section 5 below) for a limited period of time to allow the owner of the data the opportunity for a return on the investment.

Data protection does not prevent another company developing the same data, assuming any relevant patents have expired, and obtaining its own approval. It only prevents them 'free-riding' on data that the regulatory authority already holds, and which has protected data status.

3. The New Zealand Situation

3.1 New substances

Current data protection in New Zealand for innovative substances lasts for five years.

Data protection is limited only to the initial registration of an innovative substance (active ingredient and the associated formulations). This protection is defined in the ACVM Act and replicated in the HSNO Act. It is the New Zealand legislative implementation of section 39 of the Trips Agreement for agricultural chemicals.

Agcarm recommends that data protection needs to be lengthened and extended to other substances through the Trans-Pacific trade agreement.

3.2 New uses/formulations

New Zealand offers no data protection for information supporting the registration of new uses and formulations of existing substances.

Consequently there is little incentive in New Zealand to develop new uses and formulations. A good example is the extension of use of a pesticide that is registered for apples to include kiwifruit, or the extension of a vaccine used in cattle to use in sheep; or the development of a new formulation to improve efficacy, and safety in handling, etc.

These extensions require trials, usually conducted in New Zealand, to generate appropriate information for the regulatory authorities. It is this additional information - regardless of the country in which it is generated - for which protection is sought.

Such protection would provide an incentive to develop new applications, especially in respect of minor crops and animal species. This incentive would apply equally to New Zealand and multi-national organisations.

3.3 Reassessments

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ERMA and ACVMG can formally reassess the continued use of existing products available in New Zealand. Examples of recent reassessments by ERMA include endosulfan, hydrogen cyanamide, and 1080. The reassessment process may result in a product receiving continued approval to be sold, approval to be sold with additional controls, or being deregistered.

During a reassessment, regulators may require additional data. But this proprietary information may not be supplied into the New Zealand system without sufficient protection, putting the continued supply of important agrichemicals (eg, 2,4,D) into doubt. A lack of data also reduces the quality of information available for the regulator to make an informed decision and lead to unnecessary controls being imposed, uses lost, or the chemical being removed from the market.

Without adequate data protection a data owner may decide to withdraw from that market in preference to other markets where data protection occurs and there is a greater chance of obtaining a return on investment.

4. Striking A Balance

Opponents to data protection may say that innovator (research and development) companies have a vested interest in supporting greater data protection. They would argue that the status quo is workable for the industry.

It is true that innovator companies receive higher returns for longer if they can optimise intellectual property protection. This applies to all innovators in business, including makers of proprietary software, movies, music, pharmaceuticals, animal health products, and agrichemicals

However, R&D companies see the importance of a balance between infinite or unlimited protection, and no protection. It is important to note that Agcarm members are seeking to strike that balance -- between the rights of R&D companies to receive an acceptable return from their investment in innovative products, while working in a competitive market in which generic copies of their products keep prices down.

That is why Agcarm is not asking for unlimited or infinite data protection.

5. What About Patents?

Some would argue that R&D companies can adequately protect their intellectual property through a patent.

Generics companies in particular would say that the huge investments costs associated with the delivery of new molecules and the associated regulatory data are adequately protected by the 20-year patent period. So why do R&D companies seek data protection?.

The answer is that patents protect the invention, not the data required for mandatory pre-market approval by regulatory authorities. Patents and data protection run concurrently so in some cases the data protection period will expire at or about the same time as the patent.

The reason is linked to the long time period between when a patent is conferred and when products are marketed.

Inventors of new agricultural chemicals and veterinary medicines would patent their product as soon as its efficacy was revealed. They then see this patent period eroded because of the time taken to prove that the discovery is safe to use. This time period has been gradually increasing as the demands of regulatory agencies have become more stringent.

Thus, unlike the inventor of a "widget", someone who holds a patent on an new agricultural compound is facing not only much higher costs to prove product safety, but also the patent

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protection period in which they can obtain a return on their investment is reduced by seven to 10 years.

Sometimes the value of an active ingredient in New Zealand is not identified until the patent has lapsed or is well through its life. Without data protection it may not be economically viable to gain approval, as once the patent has expired anyone could enter the same market cost free.

6. Farmers and growers missing out

There is another reason to support data protection, on top of the need for R&D companies to obtain an acceptable return on their investment.

There is evidence that R&D companies are not bringing new active ingredients and their associated products into New Zealand, because these approvals are quickly copied cost free by other manufacturers. Similarly, R&D companies are not approving their products for other uses, or developing better formulations for already approved active ingredients.

A subsequent disincentive means farmers and growers are missing out on new technologies and new uses of existing technologies. For example, growers of minor crops and farmers of less common livestock (eg goats) miss out on overseas technology specifically targeted for their crops and animals.

New Zealand agriculture is internationally recognised as being innovative and creative in the ways it meets market requirements. It is extremely important that on-shore Kiwi innovation is matched with and complemented by the very best in innovative products available overseas.

New Zealand is a relatively small market for the major multinational R&D companies and, if New Zealand is not able to provide protection for intellectual property, it is a market they can and do bypass.

7. The period of protection

At present, innovative active constituents and associated products have five years data protection from the time of granting the first product registration by the ACVM Group. New uses and formulations developed after the five years have elapsed have no data protection (or at best are only covered by the remaining protection), and reassessments have no data protection.

Agcarm seeks the following periods of protection:

- **For innovative substances – 10 years exclusive protection from date of the regulatory decision allowing approval to market the product.**
- **For new uses/formulations – 10 years exclusive protection from date of regulatory decision.**
- **For reassessments – 10 years mandatory compensatory protection from date of regulatory decision.**

These periods are generally in line with minimum periods in Australia, North America and Europe. They are seen as the minimum to support continuing product development and retention of important existing products in New Zealand.

The proposed protection periods should cover all agvet chemicals:

- Agricultural and horticultural products;
- Animal health products used on the farm and for pet care;
- Home garden products;

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- Household pest control products;
- Public health pest control products (products used on road and railway verges, etc);
- Industrial pest control products;
- Turf products (for golf courses, sports fields, parks, etc).

For obvious reasons, generics companies would not support the "10-10-10" approach. That said, even generics companies believe that the current data protection requirements are too lax, and would support five years protection on new uses and formulations (currently nil protection).

8. The Australia-US Free Trade Agreement

Increased data protection for pharmaceuticals and agrichemicals was included in the Australia-United States free trade agreement of 2005. The relevant article is quoted below. Note that 1(b) is the key clause, but it is supported by others.

1.1.1. Article 17.10 : Measures Related To Certain Regulated Products

1. (a) If a Party requires, as a condition of approving the marketing of a new pharmaceutical product, the submission of undisclosed test or other data concerning safety or efficacy of the product, the Party shall not permit third persons, without the consent of the person who provided the information, to market the same or a similar product on the basis of that information, or the marketing approval granted to the person who submitted such information, for at least five years from the date of marketing approval by the Party.

(b) If a Party requires, as a condition of approving the marketing of a new agricultural chemical product, including certain new uses of the same product, the submission of undisclosed test or other data concerning safety or efficacy of that product, the Party shall not permit third persons, without the consent of the person who provided the information, to market the same or a similar product on the basis of that information, or the marketing approval granted to the person who submitted such information, for ten years from the date of the marketing approval of the new agricultural chemical product by the Party.

(c) If a Party permits, as a condition of approving the marketing of a new pharmaceutical or agricultural chemical product, third persons to submit evidence concerning the safety or efficacy of a product that was previously approved in another territory, such as evidence of prior marketing approval, the Party shall not permit third persons, without the consent of the person who previously submitted information concerning safety or efficacy, to market the same or a similar product on the basis of evidence of prior marketing approval in another territory, or information concerning safety or efficacy that was previously submitted to obtain marketing approval in another territory, for at least five years, and ten years for agricultural chemical products, from the date of marketing approval by the Party, or the other territory, whichever is later. [17-25]

(d) For the purposes of this Article, a ***new product*** *is one that does not contain a chemical entity that has been previously approved for marketing in the Party.*

(e) If any undisclosed information concerning the safety or efficacy of a product submitted to a government entity, or entity acting on behalf of a government, for the purposes of obtaining marketing approval is disclosed by a government entity, or entity acting on behalf of a government, each Party is required to protect such information from unfair commercial use in the manner set forth in this Article.

2. With respect to pharmaceutical products, if a Party requires the submission of (a) new clinical information (other than information related to bio equivalency); or (b) evidence of prior approval of the product in another territory that requires such new information, which is essential to the

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approval of a pharmaceutical product, the Party shall not permit third persons not having the consent of the person providing the information to market the same or a similar pharmaceutical product on the basis of the marketing approval granted to a person submitting the information for a period of at least three years from the date of the marketing approval by the Party or the other territory, whichever is later.[17-[26]]

3. When a product is subject to a system of marketing approval in accordance with paragraph 1 or 2, as applicable, and is also subject to a patent in the territory of that Party, the Party shall not alter the term of protection that it provides pursuant to paragraph 1 or 2 in the event that the patent protection terminates on a date earlier than the end of the term of protection specified in paragraph 1 or 2, as applicable.

4. Where a Party permits, as a condition of approving the marketing of a pharmaceutical product, persons, other than the person originally submitting the safety or efficacy information, to rely on evidence or information concerning the safety or efficacy of a product that was previously approved, such as evidence of prior marketing approval by the Party or in another territory:

(a) that Party shall provide measures in its marketing approval process to prevent those other persons from:

(i) marketing a product, where that product is claimed in a patent; or

(ii) marketing a product for an approved use, where that approved use is claimed in a patent,

during the term of that patent, unless by consent or acquiescence of the patent owner; and

(b) if the Party permits a third person to request marketing approval to enter the market with:

(i) a product during the term of a patent identified as claiming the product; or

(ii) a product for an approved use, during the term of a patent identified as claiming that approved use,

the Party shall provide for the patent owner to be notified of such request and the identity of any such other person.

Agcarm requests that at least a similar provision should be inserted in the Trans-Pacific agreement.

Agcarm therefore seeks in any free-trade agreement with the United States the following periods of data protection:

	Currently	Should be
For innovative substances/new organisms	**5 years**	**10 years**
For new uses/new formulations	**zero**	**10 years**
For reassessments of existing substances	**zero**	**10 years**

Notes: re-assessment protection was not included in the Australian agreement as some protection was already in place; veterinary medicines were not included in the Australian agreement, however they were included in the legislation that implemented the free trade agreement (US Free Trade Agreement Implementation Act 2004).

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9. Public Access

Data protection covers unfair commercial use, but it does not restrict reports from being viewed. In an open democracy, it is important for the public and organisations to have controlled access to data for consultation purposes. Data protection only prevents the regulator using the data to approve another product without the permission of the data owner.

In fact, overseas legislation specifically allows access to regulatory data (protected data or not) under carefully specified circumstances (no note taking, no photocopying, the signing of a statement that the information will not be used by a competitor, etc).

Also, in overseas jurisdictions, including Australia, 'public release summaries' are provided (usually developed jointly by the applicant and the regulator).

10. What Happens In Other Countries?

European Union

- Active substance data -- 10 years data protection.
- Product data -- 10 years data protection.
- Additional data provided to maintain an active substance Annex 1 listing, or varying the conditions for the substance -- 5 years data protection.

Australia

- New active constituent not previously registered in Australia – 8 years exclusive data protection plus up to 3 years additional protection depending on the number of minor uses included on the label.
- New product, formulation or use of an active constituent -- 5 years exclusive data protection for agricultural chemicals; 3 years data protection for veterinary chemicals used only for meat and fibre producing animals, from the date of regulatory decision.
- 'Call-in' or reassessment data for review – Currently 2-7 years compensatory protection from the date of submission; in the process of being changed to 10 years from date of regulatory decision.

United States

- Registration of a new active and first product(s) -- one-off 10 years exclusivity from the date of first registration, plus 15 years compensatory protection running concurrently.
- A further three years data protection on approval of three additional minor uses added to the label.
- Registration of new use results in exclusive protection during any existing 10 year period of exclusive protection, plus 15 years compensatory protection from date of submission on "required" data and running concurrently with any remaining exclusive period.
- Where there is a call-in data, there is 15 years compensatory protection from the date of submission of required data.

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Canada

- 10 years of exclusive protection from the date of first registration, extendable by one year for each addition of three minor uses to the label, to a maximum of 5 additional years.
- 12 years mandatory compensable protection status for data submitted for use expansions, new formulations, and data requested and considered by the PMRA in the context of re-evaluation and special review.

11. Conclusion

Agcarm supports the inclusion of the United States in the Trans-Pacific agreement.

The agreement must allow for greater data protection for crop protection products and veterinary medicines. Greater data protection is good for New Zealand agriculture, as it will allow farmers and growers access to a greater range of newer technologies.

Greater data protection is also fair to the companies which spend many millions of dollars researching and developing new products.

Ends

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LIAC Library and Information Advisory Commission
Ngā Kaiwhakamārama i ngā Kohikohinga Kōrero

Monday 8 December 2008

Ms Jennifer Troup
Coordinator, Trans-Pacific Strategic Economic Partnership
Ministry of Foreign Affairs and Trade
email ftp4@mfat.govt.nz

Trans-Pacific Agreement Submissions
FTP4
Ministry of Foreign Affairs and Trade
Private Bag 18901
Wellington

Submission by the Library & Information Advisory Commission (LIAC) to MFAT, on the negotiations with the United States and others to extend the TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT

Dear Jennifer,

On behalf of the Library and Information Advisory Commission (LIAC), I wish to submit comments in response to the call for public submissions on the forthcoming negotiations between the members of the Trans-Pacific Strategic Economic Partnership Agreement and the United States.

LIAC is an independent statutory body, established under the National Library Act 2003, whose purpose is to advise directly the Minister Responsible for the National Library on all matters relating to libraries and information. LIAC members are drawn from academia, local government, the IT industry and sectors outside central government. The views of LIAC are its own and do not necessarily reflect those of the National Library.

LIAC's submission is as follows:

The Library and Information Advisory Commission, an independent statutory body, is concerned that New Zealand's current domestic policy settings, as reflected in legislation and regulations, should be defended as firmly as possible in the forthcoming Trans-Pacific Agreement negotiations.

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In particular, LIAC considers that the New Zealand negotiating position in the Trans-Pacific negotiations should:

1. defend the present balance in copyright legislation between the interests of intellectual property rights owners and legitimate users of information
2. oppose any extension of the present term of copyright protection, should that be proposed by other parties to the negotiations
3. oppose any proposal for any IP-related measure that would have negative effect on the ability of Māori to defend their cultural intellectual property
4. oppose any proposals which would pose a threat to the continuing economic viability of taxpayer-funded library and information services

In respect of points 1 and 2 above, LIAC is aware of the submission made by the Standing Committee on Copyright of the New Zealand Vice-Chancellors' Committee ("NZVCC Copyright Committee"), making a number of points based on evidence from New Zealand sources, as well as Australian and US sources. That evidence comes from a number of high-level reports regarding: the strategic importance to New Zealand of continued adherence to current international instruments (such as the WIPO treaties), the economic value of access to information, the need for New Zealand to develop as a knowledge economy and knowledge society, and the likely threat to the operations of New Zealand cultural and educational institutions were the balance between IP rights and permissions to be tilted toward rights owners, particularly those located in overseas jurisdictions.

LIAC endorses those arguments advanced by the NZVCC Copyright Committee.

In respect of point 3, LIAC is strongly of the view that negotiators should be alert to potential threats to the ability of Māori to ensure the protection of their IP rights under New Zealand's current legislation. LIAC proposes that negotiators should seek support for New Zealand positions from other states parties to the negotiations who have recognised indigenous peoples within their jurisdictions.

LIAC notes that the Report of the Waitangi Claims Tribunal on the WAI262 claim is expected early in 2009, and reserves the right to make a further submission when it has been able to study that Report.

In respect of point 4, LIAC notes that the provision in New Zealand of tax-payer funded library and information services, whether at national or local level, and including library services in the various education sectors, is dealt with in the present P4 Trans-Pacific Agreement in Chapter 11 on Trade in Services. This is dealt with by the 'negative list' approach. LIAC considers that the same approach should be taken in the case of the negotiations to extend that Agreement.

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If you have any questions relating to our submission, please do not hesitate to contact me.

Please note that LIAC would like the opportunity to provide further comments from time to time, as the New Zealand negotiating position is developed, and later at relevant stages of the negotiations.

Please note also that I will provide a copy of this submission to the Hon Dr Richard Worth, Minister Responsible for the National Library, as part of the regular process of advising the Minister.

Yours sincerely,

Brian Pauling
Chair, Library and Information Advisory Commission
paulingb@clear.net.nz

Copies:
- Hon Dr Richard Worth
- Members of LIAC

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LOVEGROVE, Sarah (FTU)

From: Andrew Russell [andrew.russell@mindware.co.nz]
Sent: Monday, 8 December 2008 3:53 p.m.
To: FTP4
Subject: Feedback RE:Trans-Pacific Strategic Economic Partnership Agreement Negotiations with the United States

What do you see as the potential benefits of the United States participating in the Trans-Pacific Agreement?
It is always better to have multilateral agreements rather than unilateral ones.

What do you see as the potential risks of the United States participating in the Trans-Pacific Agreement?
Not too many risks as the United states will ignore an agreement if politics make it too uncomfortable.

What impact do you think a free trade agreement involving the United States will have on your business?
The biggest impact is likely to be negative due to overly restrictive IP licencing (Patents, Copyright extensions and penalties, anti circumvention i.e. DCMA).

As a software developer I watch the Public Domain being eroded by Patents where patents are granted that allow the stifling of innovation especially for small companies like mine. The legal process is expensive to access and other than large companies with extensive patent portfolios there are no winners in the patent game.
Even Microsoft and Apple are heavilly taxed by the litigation costs. But small companies are excluded from patent crosslicencing. Open source software creates liable users, Innovation is stifled because of the hight 'start up' costs of a business. NZ is especially vulnerable with :small company size, IP litigation not on home soil, low ownership of patents.
Please note that the average software program can infringe hundreds of US patents.

The situation is getting better in the US with the 9th circuit backing away from the State Street verdict (Business/Software Patents), but we also run a risk of locking in the worst of the bad (case) law in the United States by agreeing to restrictive copyright, anti circumvention and patent law.

Copyright law is also undergoing a strenthening in the last 20 years, which there is a substantial backlash to in the United States. There is a risk that the RIAA and MPAA like bodies will leverage any penalty regime to penalise our youth at the expense of the fabric of society, as well as effectively making a substantial number of our citizens criminals. We need new ways to look at the problem to find solutions like the blanket licencing laws we use for the radio and public performance industries now.
I understand that the recent copyright Act has already taken away some of our freedoms, nothing I can do about that.
We must allow innovation in this space and agreeing to any enhancement of protections is likely to exeracerbate the problems.

Private business interests (United States based) usually drive these negotiations (forcing countries to ignore fair use rights for example), please take this into account and do not sell our freedom cheaply. 'Content' IS our culture and if individuals or corporations can control our culture we all lose, our culture is hijacked and cheapened.

I am confident that solutions to the manifest harms will be forthcoming, with court cases and

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creative commons licensing leading the way.

Please give the Unitied States, New Zealand and the rest of the world the space to resolve these issues free from burdensome constraints of a free trade agreement.

Are there specific outcomes that you would like to see from a free trade agreement involving the United States?
No increase in IP restrictions.

General Issues

I am worried that the MFAT is looking at the agreement from a constrained point of view and not considering the 'consuming' public in this conversation, throwing the baby out in order to get the SUV sold into California.
Please consider the Citizens of NZ as well as our strict business interests when negotiating the 'Free' trade agreement.

The polular wisdom about the Australian Free Trade agreement got nothing for the overly restritive copyright law, please do not let this happen to NZ, if it does not make sense for us please withdraw from the agreement.

Thank you.
Andrew Russell.
027-2412500
Andrew.Russell@mindware.co.nz
Lower Hutt.

p.s. Your submission form did not allow my email address, thinking it was invalid.

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22.

SUBMISSION ON NEGOTIATIONS FOR A COMPREHENSIVE US-P4+ FTA

The global free market model of liberalization and light-handed regulation is currently in meltdown. The depth and ramifications of this crisis are impossible to predict. Newly elected Prime Minister John Key, among other political leaders and pro-market economists, has called for the reining in of free market excesses, including the re-regulation of the financial sector and financial services industry.

The solution to the excesses of free market regulation is *not* more light-handed regulation! It is deeply worrying that negotiations between the US and the P4 for further liberalization and pro-market regulation of financial services and investment are already well advanced.

It is time for New Zealand's advocates of FTAs to set aside their obsession with expanding market access for Fonterra's dairy exports and acknowledge that today's FTA are primarily vehicles for foreign investors and investments.

This would allow them to recognize that now the worst time imaginable to begin negotiating an agreement that aims to further the failing liberalization and deregulation agenda and to tie the hands of governments in responding to the collapse of highly leveraged transnational investors, investments and corporations and rampant speculation.

Political Realities of US FTA negotiations

The purpose of the current consultation is not clear as I understand the previous US administration set a schedule for the first negotiations at the end of March 2009.

Unlike previous FTA negotiations, no preliminary studies have been undertaken. While those earlier studies were ideologically biased and methodologically flawed, there was at least a pretense of assessing the potential benefits (although rarely the costs) of those agreements.

An agreement with the US is simply assumed to be beneficial. That is despite numerous warnings about the reality of negotiations with the US from those who know. According to Dr. John Wood, former NZ ambassador to the US:

> The United States' underlying stance was that the other negotiating party should either accept its proposals, or adjust to the reality of them anyway.[1]

During his visit to New Zealand in 2008 Joseph Stiglitz, former economic adviser to US President Clinton, reiterated the reality that the US effectively dictates the terms of FTAs:

[1] "American Negotiating Behaviour" by Dr. John Wood, Adjunct Professor, School of Political Science and Communication, University of Canterbury, Public Lecture, University of Canterbury, Christchurch, 17 October 2007.

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> Most of these free trade agreements are not good deals... they're managed trade agreements and they're mostly managed for the advantage of the United States, which has the bulk of the negotiating power.

Specifically in relation to a USNZFTA, Stiglitz said "one can't think that New Zealand would ever get anything that it cares about". Because New Zealand's agriculture interests are head to head against those of the powerful American agricultural lobby "you'll lose".[2]

Further, the deeply unpopular President George W Bush initiated these negotiations by a during the lame duck stage of his administration. Like Bush, the newly elected US President Obama does not have fast track authority to negotiate an FTA that Congress must accept or reject in entirety. Without that authority, the Congress will pick apart any FTA that New Zealand negotiates and attack any gains that might have been secured.

To date the US Democrats who dominate the Congress have been primarily concerned with labour and environment provisions in FTAs and the use of investor enforcement powers for takings. The former are already included in FTAs with the P4+ countries and part of New Zealand's negotiating position. The China NZ FTA sought to restrict the scope of the latter along similar (but not identical) lines to recent USFTAs. However, President-elect Obama has also expressed concerns about the impact of FTAs on US domestic economy, businesses and jobs. This will intensify with the deepening recession and costly bailouts. The new administration can be expected to take a strong position in defense of those interests in all FTA negotiations.

Objective Impact Assessment Study

Given these political realities a FTA with the US is potentially a treaty of economic surrender. The burden of proof in any decision to negotiate such an agreement rests on its advocates. They need to demonstrate that there is a firm prospect of genuine gains and that these outweigh the predictable costs *before* any negotiations begin. If negotiations are launched this assessment must be reviewed at regular intervals and opened to public scrutiny. The stakes are too high to continue the existing practice of confidential negotiations that can only be assessed once they are concluded.

I therefore challenge the Ministry and government to conduct a genuine cost benefit analysis of a comprehensive FTA drawing on the following information that is available:

- the existing FTA texts negotiated between the US and other P-4 parties (Chile and Singapore) and non-P4 states that have joined the negotiations (Australia and Peru), given that these agreements can be expected to provide the minimum platform for negotiation of a US/P4+ FTA;

[2] "Clinton's economist warns NZ off US trade deal", by Anthony Hubbard, *Sunday Star Times*, 9 March 2008

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- the tangible outcomes that have resulted to the above parties from their USFTAs, noting that Australia's balance of trade declined significantly in the initial period following the USFTA;

- the text and political context of the US Colombia 2006 and US Korea 2007 FTAs, which reveal the most recent US negotiating objectives and strategies;

- the special exclusions or lengthy phase in periods that the US has demanded in FTAs to defend its domestic interests and the potential insistence on similar base-lines by the US in areas of offensive interest to New Zealand;

- the history of US use of anti-dumping, subsidy and safeguards mechanisms and the likely manipulation of those mechanisms to maximize US defensive interests even if concessions are secured in areas of offensive interest to New Zealand;

- the primary targets identified by the USTR in recent assessments of New Zealand's trade barriers, including:

  - restrictions on sale and manufacture of GMOs and labeling requirements for GM foods;
  - NZ's strict sanitary and phytosanitary rules, especially for pork, poultry, grapes;
  - parallel importing, especially for music and computer programmes;
  - intellectual property protection in the digital media and pharmaceuticals;
  - the Pharmac scheme for buying and subsidizing drugs;
  - voluntary local content quotas for broadcasting;
  - dominance of Telecom over competitors and new entrants; and
  - restrictions on foreign investments.

- The likely US position on the (already limited) exceptions provisions on culture and indigenous rights and the Treaty of Waitangi that NZ has included in most FTAs;

- The implications of New Zealand's current and pending MRN obligations in its FTAs with Australia, Singapore, Thailand, China and ASEAN, and proposed negotiations with large economies, such as India.

Financial services and investment

The US Trade Act requires the USTR to formulate its negotiating demands in FTAs in consultation with Congress and US industry. The corporate lobby is especially strong in relation to financial services, directly and through the financial services committee of the US Coalition of Services Industries. The key players since the late 1970s have been AIG, Citigroup, Merrill Lynch, American Express, and the big four accounting/consulting firms. Indeed, executives from these firms claim to have drafted the financial services and disciplines on regulation of accountancy in the

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GATS agreement and framed their extension in the FTAs. Those same firms have dominated recent disclosures of reckless speculation, corporate collapses and massive government bailouts.

The massive negotiating leverage of the US (supported by the EC on behalf of the UK) in the GATS and FTAs has been used to secure binding and enforceable commitments to the model of liberalization and light handed regulation of financial services and markets that has now plunged the global economy into crisis. The adoption of this model on an international scale has broken down traditional territorial and sectoral boundaries that previously prevented the concentration and fostered the global dominance of a few players to the point that they cannot be allowed to fail. At the same time the wide-ranging definition of financial services constrained the ability of governments to regulate secondary players, such as derivatives traders, hedge fund operators, private equities and credit rating agencies. In a classic illustration of moral hazard, the primary beneficiaries of these agreements are also the beneficiaries of state-sponsored corporate welfare. In other words, GATS and FTA allow them to reap massive profits and executive salaries while they bear no risk from their operations.

Meanwhile, the ability of governments to re-regulate financial services for fiduciary purposes is tightly defined in the GATS and FTAs and subject to challenge. It does not permit governments to re-regulate for broader reasons, such as stabilization of the economy and employment. In recent agreements the US has even secured provisions that prevent governments from suspending their obligations for balance of payments emergencies, drawing criticism from the IMF.

I understand that there have been three rounds of negotiations on financial services and investment between the US and P4. There is no publicly available information on what has been proposed or agreed. However, it is logical to assume that the US has sought to build on the existing GATS and FTA precedents to secure further liberalization and constraints on governments' regulatory options.

The implications of any such commitments need to be understood in the context of both the global crisis of finance capital and foreign ownership of New Zealand's financial sector. Much has been made of the relative stability of New Zealand banks because of their Australian ownership. That is a shortsighted assessment, given the exposure of those banks to an Australian recession, speculative investments of their corporate customers such as Macquarie, and bad debts. Further, if the current policy on foreign ownership of Australian banks is changed, mergers and acquisitions of Australian banks by offshore interests will flow on to New Zealand.

The systemic risk arising from the current model of financial services and investments is intensified by the investment promotion and protection provisions that are now commonly included in FTAs and are a base line for the USTR. Foreign ownership of New Zealand's natural resources, financial services, utilities, transport and retail sectors, among others, already leaves us highly vulnerable to strategic realignments and short-term profit taking by their owners. The increasing presence of foreign pension funds, private equities and other speculative investors who have suffered major losses in the financial crisis is of particular concern.

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Given that vulnerability, alongside our chronic balance of payments deficit, we should be looking at re-regulation of foreign investment, not further liberalization. Our ability to do that has already been constrained to an unacceptable degree by existing FTAs, especially the ratchet clause in the services chapter of the P4. In light of the fiasco over attempts to legislate to prevent the sale of Auckland airport to Canadian pension funds, and the subsequent pretence that the sale was prevented to protect 'sensitive rural land', we should be using the current negotiations to wind back, rather than extend, commitments to liberalization of FDI.

Further, the new government clearly intends to use public private partnerships (properly private finance initiatives) to fund roads, prisons and other infrastructure. PPPs/PFIs involve consortia of finance, construction and management arms that operate through special purpose vehicles with minimal asset backing. The long-term cost of these arrangements is between three and five times the cost of government pursuing them directly by public debt. The sovereign debt status of the contracts and long term secure funding streams will make them very attractive to foreign investors who are looking for stable and lucrative investments. Long-term contractual commitments with such consortia would leave New Zealand's core infrastructure highly vulnerable to the collapse of international investors and make the government liable for expensive rescue packages.

Those and other investors from any of the US/P4+ states would have the benefit of protections and investor-initiated disputes under an FTA. This would be a recipe for long and costly litigation and have a further chilling effect on legitimate responses to market failures and social needs. Presumably, negotiation of an investment chapter would also bring investment and an investor-disputes mechanism formally into ANZCERTA.

For these reasons I urge the New Zealand government not to proceed with the US-P4 negotiations on financial services and investment or the broader US-P4+. If there ever was an appropriate time to negotiate an FTA with the US (which I believe there is not) it is certainly not now. If these negotiations do proceed, then there must be much greater openness than in any previous NZ negotiations to ensure full and informed debate about its implications for our country.

Professor Jane Kelsey
University of Auckland

8 December 2008

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NEW ZEALAND WINE
PURE DISCOVERY

NEW ZEALAND WINEGROWERS SUBMISSION ON THE TRANS-PACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT NEGOTIATIONS WITH THE UNITED STATES

8 DECEMBER 2008

1. INTRODUCTION

1.1 New Zealand Winegrowers (NZW) welcomes the opportunity to provide comments to the Ministry of Foreign Affairs and Trade on the upcoming negotiations between the members of the Trans-Pacific Strategic Economic Partnership (the P4) and the United States.

1.2 NZW is the organisation that provides strategic leadership, researches, promotes and represents the interests of New Zealand grape growers and wine makers. NZW was established in 2002 as a joint venture between the New Zealand Grape Growers Council Inc. and the Wine Institute of New Zealand Inc.

1.3 Every grape grower and winemaker in New Zealand is a member of our organisation. Accordingly, NZW is recognized as New Zealand's principal wine industry organisation. We currently have 618 winery and over 1100 independent grape grower members.

2. GENERAL COMMENTS

2.1 The US is a priority export market for the New Zealand wine industry and NZW is strongly supportive of US participation in the Trans Pacific negotiations.

2.2 NZW is grateful for the opportunity to provide comment at this early stage of the negotiations between the United States and the P4 and would like to express our interest in being involved in further consultation opportunities as the negotiations progress.

2.3 Through our work as an industry delegate to the World Wine Trade Group we have fostered close working relationships with US wine industry contacts and would be pleased to draw on those linkages to assist negotiations where appropriate.

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3. THE MARKET FOR NZ WINE IN THE USA

3.1 The US is the largest retail wine market in the world by value.[1] The U.S. Department of Commerce estimates that California accounted for 61 percent of all wines sold on the US market; imported wines account for 26 percent; and other US state wines account for 13 percent.

3.2 New Zealand wine exports to the US are currently valued at $160 million with a growth rate of 110% by volume and 109% by value since 1998. The US is New Zealand's third largest export market after the UK and Australia. Wine is New Zealand's sixth biggest export to the US and one of the US' top ten suppliers of imported wine.

3.3 With an average FOB price of NZ$9.52 per litre, New Zealand wine is in the higher price bracket of wine sold in the US market.

4. CHALLENGES FOR NZ WINE

Tariffs and taxes

4.1 An import duty of 6.3 cents per litre applies to wine of alcoholic strength by volume not over 14% (HTC 2204.21.40). In addition, a federal excise tax of US$1.07 per gallon applies to wine of 14% or under. State excise tax, sales tax, wholesale taxes and other taxes vary according to the state.

4.2 As a significant export market for New Zealand wine, the importance of an agreement that achieves the elimination of tariffs for wine into the US is clear and will position New Zealand on a level playing field to its competitors such as Australia and Chile who have already signed preferential access agreements. More importantly, the benefit of such an agreement is that it may provide the platform to further reduce barriers to New Zealand wine trade. We provide further information about those barriers below.

Non-tariff Challenges

4.4 Before a wine can be labelled for shipment to the US, exporters must apply to the US Alcohol and Tobacco Tax and Trade Bureau (TTB) for label approval. With the introduction of the Bio-Terrorism Act in December 2003, it is also a requirement for all facilities in the US and overseas which produce food or beverage for consumption in the US to register with the Food & Drug Authority.

4.5 In addition, we are aware that a recent amendment to the Lacey Act requires importers of plant or plant product to make a declaration detailing, among other things, the scientific name of the plant, value of the importation, quantity of the plant, and name of the country from which the

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plant was harvested. The USDA has reserved its decision about whether wine falls within the definition of "plant or plant product", and we expect to receive confirmation of this in April 2009.

4.6 The Miscellaneous Trade and Technical Corrections Act of 2004 requires that all imported wine be accompanied by an affirmed laboratory analysis and a government-issued certificate stating that the practices and procedures used to produce the wine comply with US law. New Zealand wine is exempt from these requirements by virtue of the Mutual Acceptance Agreement on Oenological Practices.

4.7 While we accept that this work area may be outside the scope of your discussions with the US, we would appreciate any steps taken to streamline the wider customs and import procedures for New Zealand goods.

4.8 As part of the negotiations we would also appreciate clarification as to the existence of any non-tariff preferential arrangements that are in place between the US and third countries relating to wine and, if so, to what extent these arrangements apply.

5. GEOGRAPHICAL INDICATIONS

5.1 Geographical indications (GIs) are vitally important to the New Zealand wine industry as a branding platform, an item of consumer information, a form of intellectual property and, in some cases, a tool for market access.

5.2 Article 10.5 of the Trans-Pacific Agreement 2005 provides Parties with the means to submit a list of GIs in order to guarantee protection of those terms in the territories of the other Parties. In our view, there is a risk that GI chapters of this kind which are formed on a bilateral or plurilateral basis, may cut across work being done at the WTO on the proposal to create a multilateral register for GIs under Article 23(4) of the TRIPS Agreement. Given that those negotiations are ongoing, our preference would be that any decision on the form and content of a GI chapter in the Agreement with the US be postponed pending the outcome of those talks.

5.3 Alternatively, if the Parties decide to pursue the approach of the 2005 Agreement, NZW requests the opportunity to submit a list of New Zealand GIs (within the meaning of Article 22 of the TRIPS Agreement) for inclusion under Article 10.5.

6. RISK TO NZ WINE INDUSTRY

6.1 There appear to be few risks to the New Zealand wine industry from including the US in the Trans-Pacific Agreement. The US wine industry is not a major exporter to New Zealand and wines from all countries enjoy very liberal access into the New Zealand market in any event.

[1] The Wine Institute (California).

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7. CONCLUSION

7.1 New Zealand Winegrowers sees potential net benefit for the wine industry in the US inclusion in the Trans-Pacific Agreement. Such an agreement could give New Zealand wines preferential access to this important market, and could also provide a platform for enhancing the non-tariff market access conditions for New Zealand goods into the US.

7.2 We also note that the US's willingness to engage with this Asia Pacific grouping has longer term implications in that it could also reinvigorate the APEC process and also be positive for the WTO negotiations.

7.3 New Zealand Winegrowers would welcome an opportunity to be involved in any future consultation opportunities. In the meantime, if you have any questions please contact Philip Gregan, Chief Executive, or John Barker, Manager Policy and Membership (contact details set out below).

Yours sincerely,

Philip Gregan
Chief Executive
Direct Dial 09 306 5555
Mobile 027 496 4564
Email philip@nzwine.com

John Barker
Manager Policy and Membership
Direct Dial 09 916 1561
Mobile 021 798 353
Email john@nzwine.com

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24.

SUBMISSION ON THE

TRANSPACIFIC STRATEGIC ECONOMIC PARTNERSHIP AGREEMENT NEGOTIATIONS WITH THE UNITED STATES

To: Trans-Pacific Agreement Submissions
FTP4
Ministry of Foreign Affairs & Trade
Private Bag 18901
WELLINGTON

email: ftp4@mfat.govt.nz

Introduction

This Submission is from the New Zealand Vice-Chancellors' Committee, Standing Committee on Copyright ("Copyright Committee") whose office address is:

11, 94 Dixon Street
PO Box 11915
WELLINGTON 6142

This submission strongly opposes any proposals to extend the term of copyright and otherwise strengthen copyright law for the benefit of rights owners.

The New Zealand Vice-Chancellors' Committee ("NZVCC") represents all eight New Zealand Universities and acts as a consultative and advisory body for its members.

Universities are both generators and consumers of copyright materials and are in the position to benefit from and be disadvantaged by any changes to the Copyright Act 1994 (the "Act").

The Copyright Committee consists of academics with specialisations in copyright and law, published authors, administrators and librarians and has authority to negotiate with any copyright licensing agency, terms and conditions of copyright licences on behalf of Universities. Issues relating to copyright are addressed by the Committee and recommendations made to NZVCC and individual universities as to agreeing to licences or the need for any legislative change.

The Copyright Committee is required to keep abreast of national and international copyright developments and liaise with other educational groups in New Zealand with an interest in copyright issues. The Committee has consulted with academics with specialisations in copyright and law, published authors, administrators and librarians working within member Universities.

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Submission

The Copyright Committee wishes to comment, in particular, on the intellectual property and copyright aspects of the Trans-Pacific Strategic Economic Partnership Agreement Negotiations with the United States.

The Copyright Committee is concerned that by entering into a Free Trade Agreement with the United States, New Zealand may be put into a position where it is forced to accept a further tipping of the balance between rights owners and users in the Intellectual Property regime in favour of rights owners which would have an adverse effect on Universities' ability to deliver their courses and undertake research.

The Ministry of Economic Development in its introduction to its webpage on the New Zealand intellectual property framework notes that:

> "New Zealand is a net importer of intellectual property. This means the creators and inventors of most of intellectual property consumed in New Zealand are located overseas. (e.g. films, books, computer software, patented inventions or branded products). Like many other net technology – importing countries, New Zealand's technological development is likely to depend quite heavily on 'cumulative innovation'.[1]

Any widening of the intellectual property regime in favour of rights owners would have a negative impact on New Zealand and on Universities in particular since Universities rely heavily on imported books, software and electronic databases of copyright works for their teaching and research. New Zealand educational institutions play a key part in implementing the New Zealand Government's policy directed towards developing a knowledge based economy.

The extension of the copyright term demanded by the United States in all its free trade agreements will impose upon universities, libraries, cultural institutions and the wider public increased costs to copy creative works. Firstly, royalties that may be higher than necessary to evoke the creation of the relevant work; and secondly, a requirement that one seeking to copy all or part of a copyright work must obtain the rights holder's permission for a longer period of time until copyright in that particular work expires.

The Report of the E-Learning Advisory Group for the Ministry of Education (the "Report") summarised a submission by the NZVCC which noted the importance of maintaining the balance between the "interests of copyright owners and users which is conducive to the promotion of an inclusive, innovative New Zealand economy". The Report further stated that this principle of balance must serve to safeguard the right of all members of our society to be active lifelong learners. The Report noted that "overseas experience with digital copyright legislation shows tertiary institutions are subject to an ever-increasing financial and administrative burden, whilst their rights and entitlements as educators are

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[1] Ministry of Economic Development "New Zealand's Intellectual Property Framework" http://www.med.govt.nz/templates/page___121.aspx

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progressively removed." This is particularly significant with the rise of the digital age and a paradigm shift in the provision of education towards more flexible learning.[2]

The Report noted that, internationally, copyright reforms have tipped the balance in favour of copyright owners. Compliance with our international treaty commitments such as the WIPO Internet Treaties and the TRIPS agreement New Zealand has acceded to do not require granting further rights to copyright owners. The WIPO Treaties provide a minimum standard of protection and give individual countries enough discretion to interpret the treaties in a manner that allows individual countries to strike the necessary balance between the rights of copyright owners and users. In particular, there is no requirement under the WIPO Internet Treaties and the TRIPS Agreement to increase the duration of copyright beyond life of the author plus 50 years. The Report warned that "There is a danger, however, that offshore interests or strong lobby groups' interpretations of the treaties will endanger New Zealand's ability to strike a balance that is appropriate to our domestic needs.... A shift in balance towards owner rights is not in New Zealand's interest, especially if it wishes to sustain a 'knowledge economy'."[3]

Current trade between the United States and New Zealand already favours the United States. The call for submissions notes that "the United States is New Zealand's second largest individual export destination. In the year to June 2008, New Zealand exported NZ$4.02 billion worth of merchandise to the US... Over the same period New Zealand imported NZ$4.12 billion worth of merchandise from the US...."

Any greater restriction on the rights of copyright users is likely to further tip the balance of trade in favour of the United States, as the Australian experience suggests. Under the comparable Australian United States Free Trade Agreement ("AUSFTA") which came into effect on 1 January 2005, Australia extended the term of Copyright from 50 years plus the life of the author to 70 years plus the life of the author. Since Australia entered into AUSFTA there has been a widening trade deficit and a decline in manufactured exports to the United States.[4] The main advocate for the copyright term extension in the US was the Motion Picture Association of America, the United States Copyright Owner Group. The Allens Report, commissioned by the Motion Picture Association of America in support of the AUSFTA copyright term extension did not produce any empirical economic evidence that supported an extension of the copyright term.[5]

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[2] Hon Steve Maharey, Associate Minister of Education (Tertiary Education) "The Report of the E-Learning Advisory Group March 2002"
http://executive.govt.nz/minister/maharey/highways/app3htm

[3] Hon Steve Maharey, Associate Minister of Education (Tertiary Education) "The Report of the E-Learning Advisory Group March 2002"
http://executive.govt.nz/minister/maharey/highways/app3htm

[4] Background Note: Australia's Free Trade Agreements
http://www.aph.gov.au/library/pubs/bn/2008-09/AustFreeTradeAgreements.htm

[5] Allens Consulting. *Copyright Term Extension: Australian Benefits and Costs.* A Report commissioned by the Motion Pictures Association of America, Copyright Agency Limited, APRA and Screenrights July 2003.
http://www.allenconsult.com.au/resources/MPA_Draft_final.pdf

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In particular, the Allens Report failed to address the evidence of Nobel Laureates about the copyright term extension. Nobel-prize winning economist Milton Friedman testified before the Supreme Court of the United States that "it is highly unlikely that the economic benefits from copyright extension under the CTEA [Copyright Term Extension Act] outweigh the additional costs".[6] Friedman feared that the legislation would have a detrimental impact upon the welfare of copyright consumers.

The Australian Digital Alliance has also provided a critique of the deficiencies of the Allens Consulting Report. Miranda Lee observed:

> "The report is also alarmingly dismissive of what would seem to be an extremely important factor in the consideration of economic costs and benefits of copyright term extension in Australia; Australia remains by far a net importer of copyright materials. The report brushes over the point as if it were pesky detail rather than a primary concern for Australia's present and future trading strategy and does not provide any basis for its assertions that copyright extension would be positive for the future of Australia's copyright industries".[7]

New Zealand, like Australia, is a net importer of copyright work and we submit would be similarly disadvantaged by any extension to the copyright term.

The extension of the term of copyright in the United States to life plus 70 years was strongly opposed by a number of groups in the United States including an electronic publisher, Eric Eldred who had started Eldred Press, a free site devoted to publishing HTML versions of work in which copyright had expired. Eldred was concerned that the Act would prevent him from publishing books that had been previously in the public domain. A group of seventeen economists led by Roy Englert Junior and including five Nobel Laureates, Milton Friedman, James Buchanan, Ronald Kost and Ken Arrow made an amicus curiae submission in support of the petitioner in the resulting case, *Eldred v Ashcroft*. The submission made the following points about the economic effect of the extension of the copyright term:

1. The longer term for new works provides only a marginal increase in anticipated compensation for an author;
2. The term extension for existing works makes no significant contribution to an author's economic incentive to create, since in this case the additional compensation was granted after the relevant investment had already been made;
3. The legislation extends the period during which a copyright holder determines the quantity produced of a work, and thus increases the inefficiency from above-cost pricing, that is by lengthening its duration; and

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[6] G Ackerlof, K Arrow, T Bresnahan, J Buchanan, R Coase, L Cohen, M Friedman, J Green, R Hahn, T Hazlett, C Hemphill, R Litan, R Noll, R Schmalensee, S Shavell, H Varian, R. Zeckhauser (2002) Amici brief filed in *Eldred v. Ashcroft* 20 May.

[7] Miranda Lee "The Copyright Term Extension: The Pressure Rises", October 2003, http://www.digital.org.au/issue/ipwoct03.htm

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4. The legislation extends the period during which a copyright holder determines the production of derivative works, which affects the creation of new works that are built in part out of materials from existing works.[8]

The legal challenge was pursued all the way up to the Supreme Court of the United States. Although the claim was ultimately unsuccessful, Justice Breyer, in his dissenting judgment, discussed the serious cultural costs of the copyright term extension. His Honour commented:

> "This Statute will cause serious expression-related harm. It will likely restrict digital dissemination of copyrighted works. It will likely inhibit new forms of dissemination through the use of new technology. It threatens to interfere with efforts to preserve our Nation's historical and cultural heritage and efforts to use that heritage, say, to educate our Nation's children."[9]

The Copyright Committee submits that any extension to the copyright term will have a severe impact upon universities and cultural institutions in New Zealand. The effects Justice Breyer observed are just as relevant to New Zealand:

> "[T]he costs of obtaining permission, now perhaps ranging in the millions of dollars, will multiply as the number of holders of affected copyright increases from several hundred thousand to several millions. The costs to the users of non-profit databases, now numbering in the low millions, will multiply as the use of those computer-assisted databases becomes more prevalent. And the qualitative cost to education, learning and research will multiply as our children become ever more dependent with the content of their knowledge upon computer-assessable databases — thereby condemning that which is not so assessable, say, the cultural content of early 20th Century history, to a kind of intellectual purgatory from which it will not easily emerge." [10]

Supporting briefs with the petitioners in *Eldred v Ashcroft* included comments from the American Association of Law Libraries who pointed out that the clearance process associated with creating an electronic archive, documenting the American South, "consumed approximately a dozen man hours" per week.[11] Petitioners also pointed to music fees that may prevent youth or community orchestras, or church choirs, from performing early 20th Century music.[12] Copyright extension also caused abandonment of plans to sell sheet music of Maurice Ravel's 'Alborada del Gracioso'.[13]

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[8] *Eldred v Ashcroft* (2003)123 s. Ct. 769

[9] *Eldred v Ashcroft* (2003)123 s. Ct. 769 at 813

[10] *Eldred v Ashcroft* (2003)123 s. Ct. 769 at 806.

[11] Arnold Lutzer. "Brief for American Association of Law Libraries et al Amicus Curiae Supporting Petitioners", 20 May 2002, p. 20.

[12] Lawrence Lessig and Others. "Brief for Petitioners in *Eldred v Ashcroft*", 20 May 2002, p3-5

[13] Caroline Arms. 'Getting the Picture: Observations from the Library of Congress on Providing Online access to Pictorial Images', *Library Trends,* 1999, Vol. 48, p. 379,405

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In many instances the difficulties and attendant costs involved in having to trace copyright owners or their estates will frequently be such that it is an unproductive and prohibitive exercise either encouraging lack of effort or abandonment of the effort entirely.

In New Zealand there are a number of initiatives to digitise content, in which copyright has expired, in Library and Museum collections and make these freely available under creative commons licences. Any extension of the copyright term would mean that some works which are currently available on line would have to be taken down and not be made available for another 20 years. Works of unknown authorship first published in 1957 are now out of copyright. Any extension of copyright would mean these works would not be digitised and available until 2027. This would remove thousands of images and documents from our cultural heritage out of reach of all but a small number who are able to physically access these works and would have a detrimental impact on scholarship in these areas and the documentation and publication of New Zealand history and our cultural heritage.

For New Zealand there would be little benefit in extending the term of copyright. As Justice Breyer noted:

> "[The 20-year extension] primary legal effect is to grant the extended term not to authors, but to their heirs, estates, or corporate successors. And most importantly, its practical effect is not to promote, but to inhibit, the progress of 'Science' – by which word the Framers meant learning or knowledge."[14]

The impact on Universities will mean that copies of materials which are now in the public domain will suddenly have to be paid for. New Zealand is a small country which consumes vast amounts of information. The United States, on the other hand, is an exporter of copyright material. Any move to extend the copyright term would be detrimental to the public benefit and artistic creativity.

Dr Matthew Rimmer in a submission to the Joint Parliamentary Standing Committee on Treaties on the United States Australia Free Trade Agreement and the copyright term extension noted:

> "A number of canonical literary and scientific works will be affected by the extension of the copyright term. A few illustrations will give a sense of this impact. The great German modernist novelist, Thomas Mann (1875-1955) wrote such classic works as *Buddenbrooks, Death in Venice,* and *The Magic Mountain*, and received the Nobel Prize in 1929. Such novels were due to fall into the public domain next year but now they will be subject to copyright protection for another twenty years. Albert Einstein (1879-1955) was the famous physicist and mathematician who won the Nobel Prize in 1921. The estate of Einstein places strict conditions on access to the use of his scientific and non-scientific writings. ...Such material would have fallen into the public domain in Australia next year in 2005. However, it seems that permissions will have to be negotiated and fees

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[14] *Eldred v Ashcroft* (2003) 123 S. Ct. 769 at 801

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and royalties paid in respect of his scientific and non-scientific writings for another two decades"[15]

Any extension to the copyright term will also mean that many plays and musical works will be unable to be performed as executors of estates often prevent works from being performed without considerable costs. This will mean universities will have the expense of seeking permissions and paying royalties to copyright estates in respect of some classical works. For example, Bertolt Brecht (1898-1956) works fell into the public domain in 2006. Any extension to the copyright term will mean they will not be available for free use until 2026.

Parliament has recognised the importance of the academic freedom of tertiary institutions to question and test received wisdom, to put forward new ideas and to state controversial or unpopular opinions and has protected this by enacting s 161(2)(a) of the Education Act 1989. Copyright is a means by which control can be exerted over that academic freedom to the detriment of the academy and cultural life. Some estates such as the estate of Samuel Beckett, the Irish playwright and Nobel Laureate, have been aggressive in taking legal action against productions which depart from the author's strict instructions.[16]

Professor Peter Drahos of Regnet at the Australian National University observed that the copyright term extension has enormous social costs:

> "The social costs of this are huge. When a classic copyright work falls out of protection, as did H G Wells' *The Time Machine* in 1951 in the US, cheaper editions and a wave of innovation follows. Since *The Time Machine* came into the public domain it has continuously been in print and has been the subject of five sequels, five films, two musicals, a ballet, video games and comic books. The copyright extension term applies to a whole range of lucrative works like Fitzgerald's *The Great Gatsby*, Gershwin's *Rhapsody in Blue* and films such as *Gone with the Wind* and *Casablanca*. This represents a significant wealth transfer. The annual earnings from a nationwide licence for a Gershwin song, for example, are around the US $250,000 mark. The Midas touch begins to pale when compared to the copyright touch."[17]

Drahos concluded that the AUSFTA agreement is very much in favour of companies in the United States because Australia is a net importer of intellectual property.

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[15] Dr Matthew Rimmer, "Submission to the Joint Parliamentary Standing Committee on Treaties "The United States-Australia Free Trade Agreement & The Copyright term extension".

[16] Matthew Rimmer. "Damned to Fame: The Moral Rights of the Beckett Estate", *Incite*, May 2003,Vol. 24 (5), http://www.alia. org.au/incite/2003/05/ beckett.html.

[17] Peter Drahos. "Creative Pursuit". Consuming Interest, Winter 2003, p. 26-27, http://www.choice.com.au/goArticle.aspx?id=103898&p=1

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The Copyright Committee also strongly opposes any proposal to repeal the Copyright (Removal of Prohibition on Parallel Importing) Amendment Act (the "Amendment Act") which would substantially increase the cost of books and other materials members of Universities rely on to undertake teaching and research as libraries in particular import books directly from overseas suppliers. A prohibition on parallel importing would mean that books would have to be purchased through agents in New Zealand, substantially increasing the costs and inefficiencies to libraries' purchasing systems as was illustrated by the submissions which lead to the passing of the Amendment Act.

Summary

This submission strongly opposes any proposals to extend the term of copyright. As is shown above, the consequences of such a change would significantly restrict the rights of copyright users with no benefit for the public and would be contrary to the balance between rights owners and users in our current copyright legislation.

The Copyright Committee further strongly opposes any proposals to further tip the balance in favour of rights owners by repealing or amending the parallel importing and digital rights management provisions of the Act.

Any changes to the Act which favour rights owners will have a significant impact on Universities and their ability to implement a knowledge economy.

The Copyright Committee would like the opportunity to make further comments from time to time on copyright issues, as the New Zealand negotiating position is developed and later during the negotiation process.

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artists alliance

Submission on the Trans-Pacific Strategic Economic Partnership Agreement Negotiations with the United States of America

To: New Zealand Ministry of Foreign Affairs and Trade

Artists Alliance welcomes the opportunity to make this submission on the Trans-Pacific Strategic Economic Partnership Agreement Negotiations with the United States of America.

Artists Alliance is a membership based organisation established in 1991 as a not-for-profit incorporated society to represent and advance the professional interests of the visual artists of Aotearoa/New Zealand. In 2001 Artists Alliance joined the list of organisations receiving recurrent funding from Creative New Zealand.

Artists Alliance sees itself as having a unique role, which is

- to be the membership organisation of choice for visual artists
- to be the advocate for the visual arts sector in the wider arts community
- to have strategic partnerships with other key organisations, both nationally and internationally, for the benefit of members, constituents and the wider arts community
- to provide a comprehensive set of services which are specific to the visual arts sector.

Artists Alliance has 617 individual members and 54 organisational members which includes eight tertiary art institutions.

Artists Alliance acknowledges the possible positive outcomes of such an agreement between New Zealand and the United States of America but has concerns about potential provisions regarding intellectual property.

During negotiations we would ask the Minister of Foreign Affairs and Trade to bear in mind the UNESCO Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005, ratified by New Zealand, in order to protect our cultural identity and the work and rights of our creators.

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Whilst recognising the huge benefits of the New Zealand Government's negotiations to gain access to the United States market on more reasonable terms for agricultural and pastoral goods, we ask that it is not at the expense of information and creative industries and individuals.

We request that Artists Alliance be provided with NZUSFTA negotiation details as they unfold for further submission and negotiation.

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December 8, 2008

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SUBMISSION

by

EMPLOYERS AND MANUFACTURERS' ASSOCIATION (N) INC.
(Incorporating Export Auckland, Export Waikato and Export Bay of Plenty)

Submission to
Ministry of Foreign Affairs and Trade

On

Trans-Pacific Agreement Negotiations (P4 to P7)

Prepared on 4 December 2008

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1. BACKGROUND

This submission is made by the Employers and Manufacturers Association (Northern) Inc. (EMA).

The EMA is made up of some 8500 member business units covering the New Zealand region north of Taupo. This membership includes approximately 1500 manufacturers ranging from large to SME.

The EMA (N) operates the Export New Zealand regional organisations for Auckland, Waikato and Bay of Plenty and this submission includes this representation.

Within our membership there are a significant number of companies and organisations involved in the manufacture, importation, supply, distribution and retail of most product types and the provision of services in a wide range of service sectors including governmental, contractual, tourism, IT, banking, insurance and business advisors.

The EMA supports free trade as a matter of principle however we are also keen to ensure that any free trade agreement has adequate protections, is not damaging to the New Zealand economy and has balance to provide bi-directional benefits once in force.

As the leading voice of business in the upper North Island we actively participate in both the submission process and in any Free trade agreements or proposals for review of these agreements.

2. CONTACT

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3. Submission

The EMA (N) supports negotiation for expanding the current Trans Pacific Trade Agreement into the wider agreement including the US and now other countries (post APEC) now dubbed P7

This type of agreement will give consistency of trade rules across a number of markets and by drawing in the US will give a suitable template for ultimately all of APEC should other countries wish to join in.

We see the current agreement as fair and with adequate protections in terms of intellectual property and anti-dumping which are prime concerns of our members although we recognise there is potential to improve the agreement further.

ISSUES

Investment

We note the US wishes to tighten up on investment rules and while this is necessary in the current credit climate, it is important to ensure that international trade is not stifled by over regulation created as a requirement under this agreement.

ROO

The use of principles with governing formats for calculation of ROO etc is preferable to prescriptive line by line requirements.
We would not wish to see the agreement expanded in detail to the levels used in the Chile/US agreement as we believe such detail reduces the ability of SME's to understand and take advantage of the agreement

Dispute resolution

We have seen the US act unilaterally on areas such as Lamb and Steel with considerable adverse impact to New Zealand business so we believe that a fast dispute resolution mechanism would be something that we would like to see should such actions occur in the future.

Intellectual Property

The US has particular views on Pharmac and generic drugs and these will need to be addressed inside an agreement even if it is to exclude anything that might inhibit the right of a country or business to purchase or use generic materials and products such as drugs.

We are not particularly of a view that this need be the case but we are aware that companies hold views both for and against Pharmac and the issue of centralised purchasing appear to be part of the concerns that companies hold.

Anti-dumping and trademark protection should be retained within the agreement with both needing to retain an effective recourse for companies facing issues in these areas.

Producer Companies

The issue of virtual monopolies like Fonterra should be able to be addressed without needing the breakup of the company. There is the option of competition in this and other former producer boards and we believe that the US needs to understand that the removal of exclusive rights also allows the market to drive competition against these companies.

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Agriculture
All agriculture must be included with the US and exclusions or long transition in this regard need to be carefully thought through before accepting such proposals. Ideally the US would join and work to existing timeframes within the agreement.

Unscientific agricultural barriers to trade should be included in dispute resolution provisions and particularly should Australia sign into the agreement. This does not prevent legitimate protection of countries by applying **"reasonable"** Phyto-sanitory rules to protect domestic agriculture/horticulture, native species or maintain GM free policy should that be required.

Manufactured goods
We need to ensure that there are no additional exclusions for manufactured goods within this agreement from day one of it coming into force with new participants other than to align with existing reductions schedules of tariff where tariffs still remain.

Services
Services now offer significant growth for New Zealand business and it is important that this be retained although there may be additional rules for financial services that are operated across borders given the current economic crises

Employment and Labour
The free movement of skilled labour between counties is important and recognition of particular qualifications between countries in areas such as medicine should be addressed where ever possible.
Trade skills are transferable between most countries and this should be a foundation recognition although immigration policy must remain the prerogative of the respective country in respect of need.

BENEFITS
Any agreement that includes the US will be of benefit to New Zealand Inc but the wider implication of this agreement including the US is the other countries that will then wish to sign up such as Malaysia or perhaps those that already hold either agreements with New Zealand or the US already and for whom this agreement would not pose any great concern.

OUTCOMES
We wish to see a comprehensive agreement in place for an expanded Trans-Pacific Agreement including the US and as many other countries as are willing to also sign into this agreement at this round of negotiations.

We believe this agreement with the involvement of the US would provide a template for a wider APEC agreement that could be expanded to pick up all APEC economies over time however with some of those economies it will be necessary to see structural changes within their economy in order to be in a position to sign up to the agreement.

We also believe this agreement once the US is involved would not need significant future change to add most other APEC economies and therefore it would be more about those economies making their changes in order to enter the agreement.

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Potential benefits:

" Securing an FTA negotiation with the United States as the world's largest economy holds out the opportunity to establish a Trans-Pacific Partnership (T-PPA), which is widely viewed as a model free trade agreement". As the first trade agreement with a membership spanning Asia, Oceania and the Americas, The Trans-Pacific Partnership bridges the Asia-Pacific region and is a high-standard, comprehensive agreement that is consistent with WTO. By promoting increased trade liberalisation it will support continued ambition in the Doha round in the same way that the creation of Apec was a spur to other countries to complete the Uruguay Round of the WTO. Of benefit with the United States participating in T-PPA will be government procurement, intellectual property, rules of origin,Trade -in Services (including Financial Services), Investment and provision on market access and related rules, along with disputes settlement and strategic cooperation between Parties. New Zealand has also taken exemptions for certain types of procurement including research and development; the contruction or refurbishment of chanceries aboard; and public health, education and welfare. The agreement reaffirms the Parties commitment to the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement with additional provisions on cooperation, information exchange and traditional knowledge. UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects (Rome, 24 June 1995), convinced of the fundamental importance of the protection of cultural heritage and of cultural exchanges for the promoting of understanding between peoples, and the dissemination of culture for the well-being of humanity and the progress of civilisation.

Potential risks:

"The question of whether more liberalisation is good and how to do it is now very much an issuse". Everyone with any credibility agrees that trade is good, protectionism is bad, and that we should solidify the gains made so far. New trade deals fail a simple cost-benefit analysis. Dropping tariff barriers and other forms of protection requires a highly complex piece of international choreography - the world's trade representatives have been at work on the Doha round since 2001 and the potential benefits might not be earth-shattering enough to warrant all that trouble, benefits from the Doha round have humbler goals than complete liberalisation. The gains implied by the World Bank are "nothing to scoff at", the problem is that "if you are going to be spending political capital, spend that capital in areas where it can make a difference". So what is worth the effort? Something that most people don't even consider a part of "trade" at all; labour mobility. The economic effects of migration are "profound" whether it is created through a guest-worker programme, a small increase in migration can produce significant welfare gains and those welfare gains can be much larger than complete trade liberalisation. The Convention on the Protection and Promotion of the Diversity of Cultural Expression - October 2005. As part of the activities for the Decade (1995 to 2005), the United Nations Assembly adopted this Convention. This convention is fundamentally flawed, simply because it does not provide the necessary cultural framework, Core generics, classification levels, cross-crediting, seamless system investment and insurance for the value systems inherent in culturally sensitive and commercially sensitive considerations as they relate to the Protection and Promotion of the Diversity of Cultural Expressions. The Cultural framework policies and measures are to general in quantifying and qualifying cultural values and practises, along with measures aimed at providing public financial assistance does not provide protection or promote cultural diversity. All it will create is cultural dependency on the State. The International Fund for Cultural Diversity, also sets a dangerous precedence as the funds in trust is established in accordance with Financial Regulations of UNESCO; there is nothing cultural diverse about these financial regulations.

Impact:

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The UN Declaration on the Rights of Indigenous Peoples was adopted by the UN General Assembly by a vote of 143 in favour, 4 against and 11 abstentions (13 September 2007). NZ was one of the four states which voted against the adoption of the Declaration - Australia, Canada and the USA were the others. While New Zealand took international human rights and its international human rights obligations seriously, it was unable to support a text that included provisions that were so fundamentally incompatible with its democratic processes, legisalation and contitutional arrangement. UN Permanent Forum on Indigenous issues - Hon Parekura Horomia, Minister of Maori Affiars - 13 May 2002. For the first time, indigenous peoples are participating in the work of a United Nations body on the same basis as that of States. We are encouraged that representatives of both States and indigenous peoples will work together alongside one another and believe that this embodies the aim of the International Decade of the World's Indigenous People. This Decade has been important in giving indigenous peoples greater leverage. We look forward to seeing indigenous peoples make their own unique contribution to the work of the UN as we move ahead together in a spirit of engagement and cooperation. We believe that this can be achieved because, to us, the Forum is about partnership. Partnership between States, indigenous peoples internationally and the UN. Partnership is an important themein NZ. We realise that expectations around the world, including NZ, are high for the Permanent Forum and what it might achieve, but it is important that we are all clear about the Forms role, which is to advise and to co-ordinate. The mandate of the Forum is a broad one, in being able to discuss concerns relating to economic and social development, culture, the environment, education, health and human rights. etc The Trans-Pacific Strategic Economic Partnership (P4) has provided a framework on which relationships between the Parties can be strengthened. The Council for the Humanities has explored ways in which knowledge created in and by the arts, culture and humanities-aronui can contribute effectively to public policy development in New Zealand. Education is to society as industry and business are to the economy. Cultural knowledge is the bedrock on which human societies and economies are built; it is vital knowledge being both created and conserved by real people in the ordinary process of social living in specific places and landscapes. A new account is needed to guide and inform further social and economic transformation in Aotearoa New Zealand.

Are there specific outcomes?:

The President-elect has called for "a new dawn of American leadership" and will renew old alliances and forge new and enduring partnerships. Strategy for Engagement with Maori on International Treaties; To identify areas of developing international law of relevance to Maori interests and the Crown's Treaty of Waitangi relationship, and in particular, new international treaties which may make a potential impact on Maori. Engagement with Maori on particular treaties will enable the development of an ongoing relationship with Maori on matters of interest to them. It should extend beyond initial consideration of international treaties by the governmentto the implementation of such treaties. As part of this development of an ongoing relationship, iwi will be invited to provide feedback to the lead agency responsible for a particular treaty.

Is there any specific information you can provide?:

Consider being in a business environment built on trust, a board of directors which customers elect, and there is transparency for all stakeholders. The key to this trusted relationship is openness and transparency. Where educating and training the leadership is a core principle that ensures the business is focused on the long-term mission of the business. A cooperative is a business which is owned and controlled by the people who use its services. This means leaders of cooperatives manage to a double bottom line of economic return and social benefits for the member owners. What drives the leadership in a cooperative is a foundational set of shared principles and values that have held up for over a hundred years. The National Cooperative Business Association, the leading national cooperative membership association in the Unitied States.

General comments:

With the government regulation of financial businesses and the likely effects they will have on co-operatives and mutuals in these difficult times for financial businesses. What similarities their are in operating as a mutual and how this difference could be communicated to the public at large. It is clear their is alot to share and gain through collaborative engagement on regulatory and business issues that can result in definitive future actions for mutual benefits.

Supporting document 1:
Supporting document 2:
Supporting document 3:

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