



NEW ZEALAND
Permanent Mission
TE AKA AORERE

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TND/NSC/CEP/3

Mr Anand Grover
Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10
SWITZERLAND

Dear Mr Grover

Thank you for your letter of 19 July 2011 asking about allegations made in relation to the negotiations for a **Trans-Pacific Partnership Agreement (TPP)** and their potential human rights impacts, specifically in relation to the right to the highest attainable standard of health. This response first addresses each of the general points you make in respect of New Zealand's obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) before commenting on relevant New Zealand practice in trade negotiations and, specifically, in the TPP negotiation.

The right to health

You begin with the right of everyone to the enjoyment of the highest attainable standard of mental and physical health and the associated obligation on all States Parties to ensure that health facilities, goods and services are accessible, acceptable, of good quality and available to everyone. New Zealand has long been committed to the universal provision of healthcare as one of the core functions of government. The Public Health and Disability Act 2000 has stated objectives to protect the health of all New Zealanders, reduce disparities in health, and ensure community involvement.¹ It is our belief that New Zealand's approach to provision and funding of health services is consistent with our obligations under Article 12 of the ICESCR, not least in terms of accessibility for vulnerable and marginalized sections of the population without discrimination.

¹ The full purpose of the Public Health and Disability Act 2000 can be found at www.legislation.govt.nz/act/public/2000/0091/latest/DLM80057.html

You make specific reference to access to essential medicines. Our arrangements with respect to access to pharmaceuticals are widely regarded as one of the strengths of the New Zealand policy framework. The Pharmaceutical Management Agency of New Zealand (PHARMAC) works to improve New Zealanders' access to, and optimal use of, medicines.² The New Zealand model of listing medicines for publicly-funded subsidy continues to ensure universal access to essential medicines.

You note the stipulation of the Committee on Economic, Social and Cultural Rights that community participation and consultation in policymaking is central to the right to health. The Public Health and Disability Act 2000 includes the objective of providing a "community voice" in matters relating to these services and New Zealand has developed a consultative framework in respect of health policies both at a central and district level. Our processes for the formulation of health policies provide opportunity for input by individuals and groups who might be affected by those policies.³ In addition, in any reporting of New Zealand's progress on commitments we have entered into under a number of UN human rights instruments, the government consults with the public, providers, NGOs and other stakeholders on both the issues of concern to any examining committee, and the proposed government response to the UN examining bodies.

You note also the statement by the same Committee to the effect that States Parties should ensure that the right to health is given due attention in international agreements, taking steps to ensure that these instruments do not adversely impact upon the enjoyment of the right to health. New Zealand has been active in launching new trade initiatives, of which the TPP negotiation is one of the most recent. In each case New Zealand's Ministry of Foreign Affairs and Trade works closely with officials from multiple government agencies. In TPP, this includes the Ministry of Economic Development, the Ministry of Health and PHARMAC to ensure that health and intellectual property issues in the negotiations are carefully considered by those with the relevant expertise. Our objective in negotiating FTAs is to increase New Zealand's economic performance, and thus public revenues, which strengthens the Government's ability to fund essential health and other services that support New Zealanders' enjoyment of economic, social and cultural rights.

Finally, you refer to the Agreement on Trade-Related Aspects of Intellectual Property (TRIPS) flexibilities on patent rights in respect of developing countries and to the 2001 Doha Declaration on TRIPS and Public Health. New Zealand was active in supporting the 2001 Declaration and the associated 2005 amendment to allow WTO members to issue compulsory licences to export generic versions of patented medicines to countries with insufficient or no manufacturing capacity in the pharmaceutical sector. We remain strongly

² The PHARMAC website can be found at www.pharmac.govt.nz

³ Consultation Guidelines can be found at www.moh.govt.nz/moh.nsf/pagesmh/4321?Open

committed to the underlying principle that the TRIPS Agreement can and should be interpreted in a manner supportive of WTO members' right to protect public health and, in particular, to promote access to medicines for all. We take great satisfaction from the observed success of the framework developed pursuant to the 2001 Declaration.

I trust this serves to demonstrate that New Zealand takes its commitment to the right to the highest attainable standard of health and to the provision of universal and high-quality health services seriously and is surprised at any suggestion that a New Zealand government would engage in any policy process, domestic or international, which would call into question this commitment. Additional information on New Zealand's general healthcare policies and practice is available online so should you need supporting detail I would be happy to assist.

New Zealand practice in trade negotiations

Let me turn to the TPP process and other trade negotiations in which New Zealand has been involved.

Trade negotiations, like most policy processes involving sensitive issues, have both a public and a private component. New Zealand's practice on the specific issues of observer access and release of texts has varied according to the circumstances of each negotiation. Large multilateral processes tend by their nature to be more open, often making it harder to reach agreement on sensitive issues. The general approach of New Zealand and other international parties in smaller trade negotiations, whether bilateral or plurilateral, is not to allow observers into the negotiating room nor to release texts until after signature. This is the practice followed in the TPP negotiation, but outside of these parameters we have made substantial efforts to engage with stakeholders at each step of the process:

- Engagement with civil society and other relevant stakeholders began before the TPP negotiations got under way. We sought initial public submissions on TPP at the end of 2008, after it was announced in September of that year that the United States would participate in negotiations to expand the original P4 Agreement involving Brunei, Chile, Singapore and New Zealand. Sixty-five public submissions were received and these are available online.
- The TPP negotiating team has been in contact with interested groups to update them on progress during the early stages of the negotiation. Some of this has come about through publicising our contact details and responding to approaches made by those who contact government agencies by phone, email or letter to express their views on TPP. Through this process, New Zealand's TPP team has collectively responded to hundreds of inquiries from members of academia,

individual businesses, unions, business lobby groups, non-governmental organisations and other civil society groups, as well as with Maori.

- There have been areas where we have proactively set up consultations with specific groups to discuss and gather views. This has allowed us to seek more detailed input on particular topics or from specific sectors, as we have gained greater clarity on positions and objectives of the other countries involved in the negotiation. A recent example is the Ministry of Economic Development-organised consultations with key intellectual property stakeholders around the country in May, which followed a similar round of consultations in 2010. These were highly relevant to some of the specific issues you flag in relation to access to medicines.
- The high level of public interest in TPP has led participating countries to organise a structured stakeholder programme to accompany the negotiating rounds. The round we hosted in Auckland, for example, featured short daily briefings by chief negotiators for the 112 registered participants as well as presentations on specific issues over the week.
- An online column has been launched on the Ministry of Foreign Affairs and Trade website to keep the public up-to-date with progress and the substance of the TPP negotiation.⁴ Through this medium the negotiating team has outlined our approach to aspects of the negotiations, addressed specific issues, and highlighted major pieces of commentary such as those raising human rights and health concerns. It would be our intention to highlight this dialogue with you as well on this forum at an appropriate moment. The column also links to a range of stakeholder websites both supportive and critical of the TPP negotiation.
- The final TPP text will go through the full Parliamentary treaty examination process before it is ratified by New Zealand. Once negotiated and before any binding treaty action is taken, New Zealand practice is for Members of Parliament to examine the trade agreement text and accompanying National Interest Analysis, which sets out the advantages and disadvantages for New Zealand in becoming a party. At this point, the text becomes publicly available and there may be a debate on the FTA in the House and a call made for public submissions.

Engagement, information sharing, and genuine consultation of this nature will continue as the TPP negotiations progress. One positive feature of the open and inclusive approach New Zealand has taken to the development of negotiating positions is the level of public support for the active trade agenda pursued by successive New Zealand governments.

⁴ The online column can be found at www.mfat.govt.nz/tpptalk

The specific questions

Your letter asks for the New Zealand Government's observations on five specific points.

On the question of accuracy, the preceding information shows that the picture set out in the allegations you cite bears little resemblance to the reality of New Zealand policy and practice, including in the TPP negotiation. With regard to the other specific questions you mention concerning patent procedure, ex officio border measures, monopolies for life-saving medicines and higher medicine prices, I should just repeat that no New Zealand government would consider becoming party to a negotiated outcome that called into question either the right to health or access to essential medicines.

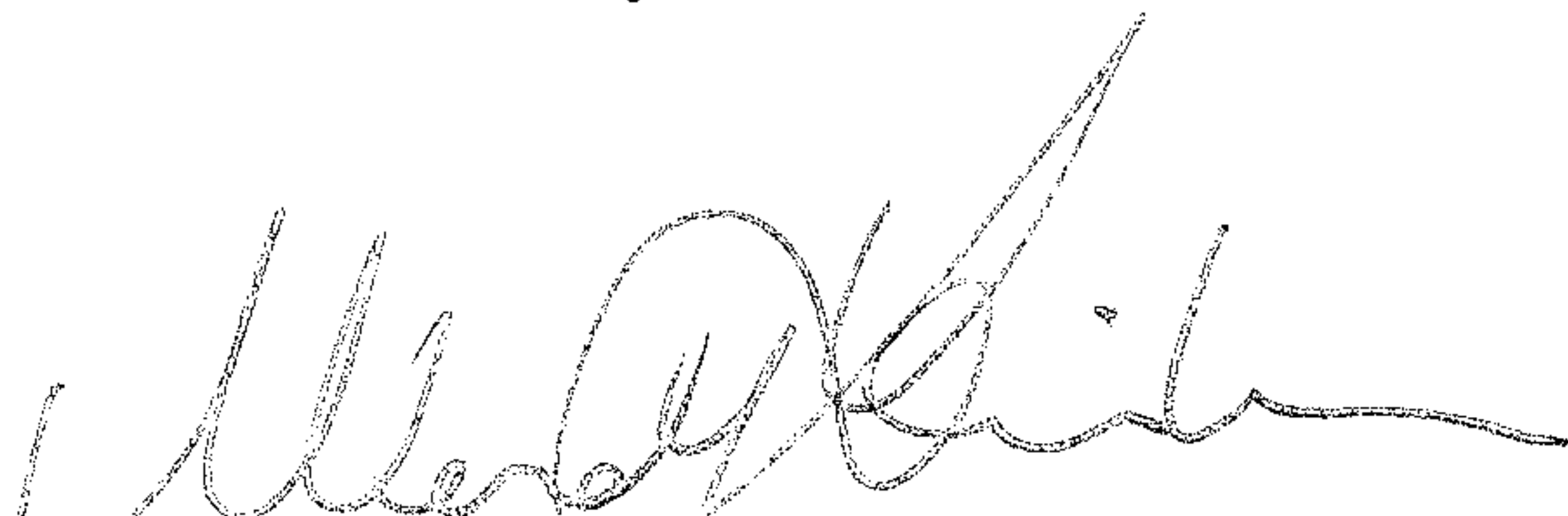
I have also addressed the 'secrecy' question in detail above. New Zealand's approach to the public and private components of trade and other policy processes in the TPP negotiations, including around access to texts, is consistent with international practice.

With respect to your question about consultation with civil society and other stakeholders, I have demonstrated that our process has been inclusive by providing various opportunities for information exchange and consultation with interested individuals and groups.

With regard to your final question, New Zealand remains committed to ensuring the enjoyment of the right to the highest attainable standard of health and our policy framework has been successful in achieving this. TPP is, for New Zealand and others at the table, an important path to achieving economic growth that will allow governments to ensure even higher levels of access to health services (or other government services) that can improve the health of New Zealanders.

Please accept the assurances of my highest consideration.

Yours sincerely



Wendy Hinton
Chargée d'affaires a.i.