

NGĀ TOKI WHAKARURURANGA

#3. BIG TECH'S AGENDA, FREE TRADE AGREEMENTS & TE TIRITI (July 2024)

Ngā Toki Whakarururanga's commitment to a Tiriti-based Kaupapa aims to ensure that international free trade agreements preserve the rangatiratanga of Māori within a digital world.

Today, we depend on tech for almost everything we do at work and outside of work – communicating with each other, paying for stuff, transport, work and study, media and entertainment, online shopping, zooms and whatsapps This gives immense power to the Tech companies that own the applications and technologies that facilitate all of this activity.

US companies like Microsoft, Alphabet (Google, gmail, YouTube), Amazon, Meta (Facebook, Instagram, Whatsapp) and Apple, and China's weChat and AliBaba, dominate the Internet. [How some of them make their billions](#) isn't obvious. Facebook makes 98% of its money by advertising online – to you - and by selling data they collect from you and others who use their services for "free".

What have free trade rules got to do with big tech?

Big Tech are able to dominate the Internet because there are almost no rules anywhere to stop them. They want to keep it that way – and that's where free trade agreements come in. Digital trade or "electronic commerce" rules in free trade agreements are not really about trade. The rules say what laws and policies the countries who have signed them can – and *cannot* – adopt to govern the digital ecosystem. They have been written for, and literally by, Big Tech. That leaves no place for Indigenous data sovereignty or mātauranga, kaitiakitanga and tikanga Māori.

10 reasons why free trade agreements are so attractive to Big Tech

Big Tech zoned in on free trade agreements as the way to lock in these rules on a global scale because:

- 1) "Free trade" rules are biased to business interests.
- 2) The rules make a Western capitalist worldview the norm.
- 3) Trade rules restrict how governments can regulate business activities across the border, which is mainly how Big Tech operates.
- 6) The texts are written in a technical language that only "trade" specialists can really understand.
- 7) Exceptions are vague, hard to prove, and would be judged by a panel of trade lawyers.
- 8) The agreements are negotiated in secret.
- 9) In many countries, including Aotearoa, the agreements are made by the executive (Cabinet) not even Parliament, so there is no scrutiny until after they are signed.
- 10) Those who may be negatively, including Indigenous Peoples, have no seat at the table, are excluded from information about what is proposed, and can't challenge the ideological and worldview being locked in through the agreement.

The TPPA was the vanguard

The Trans-Pacific Partnership Agreement (TPPA) was the first of these agreements. Remember the TPPA? It was US-led free trade deal among 12 countries, including Aotearoa NZ, negotiated in secret from 2010 to 2016. Māori led big protests against its signing in February 2016. Its “e-commerce” rules went far beyond any other FTA and were kept secret until the very end. The original TPPA never came into force because Trump withdrew the US. But the remaining 11 countries rebranded it as the “CPTPP”. The e-commerce rules were kept unchanged.

TPPA trade rules were made by and for Big Tech

The TPPA’s “e-commerce” rules were literally designed by Big Tech - the US negotiator spent 23 years as President of the US Business Software Alliance. He made sure the tech lobby got all of its [Digital 2 Dozen](#) wish list. This includes obligations on governments that adopted the TPPA/CPTPP:

- Not to restrict the **transfer and storage of data** offshore.
- Not to require that data is held in **country it is sourced from**.
- Not to require offshore providers to have **local presence** in the country they operate in.
- Not to require the disclosure of **source codes/algorithms**.
- Not to require the use of **local content**.
- Not to **discriminate** between local and foreign firms.
- Not to hold online platforms **liable for 3rd party content**.
- Not to require employment of locals if they can access **proprietary knowledge**.
- To **consult** with affected digital companies before introducing new measures.

The Waitangi Tribunal found the TPPA/CPTPP breached Te Tiriti

The claimants who challenged the TPPA/CPTPP in the Waitangi Tribunal (Wai 2522) said these “e-commerce” rules breached Te Tiriti o Waitangi by shutting the door the future introduction of a future Tiriti-compliant regime of Māori data sovereignty and digital governance. The Tribunal agreed. [It found](#) that the TPPA/CPTPP “e-commerce” rules threatened mātauranga, which it described as “the core of Māori identity”, and protections in the agreement, including a standard “Treaty of Waitangi Exception” that dates back to 2001, were not strong enough.

The breaches continue ...

Ngā Toki Whakarururanga was created out of that Wai 2522 claim. We have kept the pressure on the Crown to fix the TPPA/CPTPP breach and not repeat it in other agreements. The Crown reluctantly accepted the findings. But it continues to negotiate FTAs that include similar digital trade rules, with varying degrees of Tiriti protection.

- The UK FTA repeats the TPPA and promises a future review of the digital trade chapter’s rules with reference to the Wai 2522 report.
- The EU FTA is better; it protects law, policies and other measures the Crown takes to protect Māori rights, duties, interests and responsibilities affected by the digital trade chapter, but is subject to some worrying conditions.
- The Crown proposed a genuinely effective protection for e-commerce rules in the WTO, but other countries said no, so the Crown backed down.

The Tribunal warned that “in the years to come, digital technologies will continue to profoundly change our society...”. So long as the Crown decides these rules and what, if any, protections there will be nothing will change. And if Māori don’t advocate for what is tika in our ever-changing society, then no one will.

Ngā Toki Whakarururanga is committed to protecting taonga in the trade space.

Check us out at ngatoki.nz/kaupapa/digital/ and join in spreading the word.