

BEFORE THE WAITANGI TRIBUNAL

WAI 2700  
WAI 2872

IN THE MATTER OF

the Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

the Mana Wāhine Kaupapa Inquiry (WAI 2700)

AND

IN THE MATTER OF

a claim by **Dr Leonie Pihama, Angeline Greensill, Mereana Pitman, Hilda Halkyard-Harawira and Te Ringahuia Hata (WAI 2872)**

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**BRIEF OF EVIDENCE OF ELIZABETH JANE KELSEY**Dated on this 28<sup>th</sup> day of November 2025

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## TĒNĀ E TE TARAIPUNARA:

### Introduction

1. I am a Professor Emeritus of the Faculty of Law at the University of Auckland. I hold a Bachelor of Laws (First Class Honours) from Victoria University of Wellington, postgraduate law degrees from Oxford University and the University of Cambridge, and a PhD in Law from the University of Auckland. I was appointed to the Faculty of Law at Auckland University in 1979 as a lecturer, was awarded a personal chair in law in 1997, and retired in December 2021.

### Relevant experience

2. I am Pākeha. Throughout my career I have researched and taught on three main areas: Te Tiriti o Waitangi (“**Te Tiriti**”) and decolonisation; contemporary law and policy; and international economic regulation. I am widely published in all fields.
3. I am an internationally-recognised expert on the negotiation, analysis and implementation of free trade and investment agreements. I have written numerous books and many articles on the subject; delivered invited keynote addresses at international conferences; analysed negotiating texts; briefed and advised government delegations, officials and parliamentarians from a number of countries; prepared technical reports, submissions and formal documents; advised and trained professional, business, trade unions and non-government organisations; and attended a number of ministerial conferences of the World Trade Organization (“**WTO**”) as a civil society participant. I have often worked alongside civil society groups, trade unions and non-government organizations that have a gender justice perspective.
4. A second relevant area of my academic expertise is contemporary Te Tiriti o Waitangi law and policy. I have written extensively on the tensions between the Crown’s obligations under Te Tiriti o Waitangi and the New Zealand State’s obligations under free trade and investment agreements. My policy analysis and teaching has included the impacts on wāhine Māori and their exclusion from policy development, negotiations and decisions.
5. I have given evidence in a number of Waitangi Tribunal inquiries, including *He Maungo Rongo: Report on Central North Island Claims*, Stage One, (WAI 1200); *Wānanga Capital Establishment Inquiry* (Wai 718); *Te Paparahi o Te Raki* Stage Two (Wai 1400); *Te Rau o te Tika* (Wai 3060); *Tomokia ngā tatau o Matangireia* (WAI 3300); *National Fresh Water and Geothermal Resources Inquiry* (WAI 2358); *Trans-Pacific Partnership Agreement Inquiry* (Wai 2522); *Tomokia ngā*

*tatau o Mātangireia/Constitutional Kaupapa Inquiry* (WAI 3300); and the *Climate Change Inquiry* (WAI 2700).

6. I have read the code of conduct for expert witnesses in the High Court Rules and agree to abide by it to the extent relevant to the matters in this brief of evidence.

### **Ngā Toki Whakarururanga**

7. Following the establishment of Ngā Toki Whakarururanga out of the Mediation Agreement with the Crown in the Wai 2522 Inquiry,<sup>1</sup> I have acted as a technical pūkenga advising that entity. Ngā Toki Whakarururanga’s Moemoea is “*He Whenua Rangatira: We are an independent and sovereign nation*”. Its kaupapa is to uphold Te Tiriti and He Whakaputanga o te Rangatiratanga o Nu Tirenī (“**He Whakaputanga**”) in the trade policy space and to hold the Crown to account against its Tiriti obligations in trade policy and negotiations.
8. Ngā Kaihautū, the governing body of Ngā Toki Whakarururanga, and its Pūkenga, advisers, have a majority of wāhine Māori with national and international expertise that ranges across many kaupapa, including creatives, tā moko, digital, rongoā and health, hua parakore, social procurement, among others. Their perspectives and experiences infuse Ngā Toki Whakarururanga’s approach.
9. In my role as a technical pūkenga, I have participated in preparation of a number reports and analyses relating to specific kaupapa affected by these agreements, and in numerous outreach activities, some of which are referred to in this brief of evidence. For reasons explained below about the nature of these negotiations and agreements, those analyses have not often specifically referenced gender, but that is intrinsic to the Tiriti perspective.

### **Scope of my evidence**

10. The presiding officer Her Honour Judge Sarah Reeves has asked:
  2. *What are the Crown’s duties and obligations under te Tiriti/the Treaty in relation to the ability of wāhine Māori to participate in and hold leadership and decision-making roles at the local, regional, and central government levels?*

*Including:*

  - (i). *in the development and implementation of legislation, policies, and international agreements – including in treaty settlement policies and processes?*

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<sup>1</sup> Mediation Agreement between the Crown and Claimants, Wai 2522 in Waitangi Tribunal, CPTPP, Stage 3 Report, Wai 2522, Appendix II.

11. My evidence addresses this question in relation to international trade and investment agreements with reference to their conceptual, substantive and procedural elements. It draws on both my academic expertise, and my knowledge as an expert pūkenga for Ngā Toki Whakarururanga. However, I do not claim expertise in the rangatiratanga of wāhine Māori. This brief of evidence therefore provides background information for those presented to this Inquiry from Carrie Stoddart-Smith and Dr Jessica Hutchings, who speak as wāhine Māori, and should be read as supporting and complementing theirs.

### **Mana Wāhine and Treaty Making**

12. My starting point is the relationship of rangatiratanga to kāwanatanga in international treaty making. I have written extensively on this and provided evidence to the Waitangi Tribunal in several claims.
13. That analysis is summarised in a recent paper for Ngā Toki Whakarururanga on *Mana and Constitutional Transformation of Treaty Making*, which draws heavily on previous work by Dr Moana Jackson.<sup>2</sup> This makes it clear that the power to treat with other polities, whether hapū or foreign states, is intrinsic to mana and that rangatira would, and could, never have ceded that mana to the Crown under Te Tiriti o Waitangi or through any other avenue.
14. As set out in the brief of evidence from Carrie Stoddart-Smith,<sup>3</sup> mana wāhine is an integral element of the broader mana motuhake or rangatiratanga to treat with other polities, as evidenced by the wāhine Māori who signed Te Tiriti o Waitangi itself.
15. In direct contradiction, the Crown asserts an exclusive right to negotiate international treaties, which it derives from a Royal Prerogative that is a direct incidence of its illegitimate assertion of sovereignty over Aotearoa.
16. It also commonly claims that this is an attribute of kāwanatanga conferred on the Crown through te Tiriti o Waitangi and that this was recognised in the Wai 262 inquiry. That assertion is refuted in *Mana and Constitutional Transformation of Treaty Making*.<sup>4</sup>
17. The Crown further commonly justifies its denial of any distinct place for Māori, including wāhine Māori, in international negotiations and decision making on the basis that New Zealand needs to speak with one voice in the international domain.

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<sup>2</sup> *Mana and Constitutional Transformation of Treaty Making*, Ngā Toki Whakarururanga, August 2025.

Attached as **Appendix “A.”**

<sup>3</sup> Brief of Evidence of Carrie Stoddart-Smith dated 28 November 2025.

<sup>4</sup> *Mana and Constitutional Transformation of Treaty Making*. Attached as **Appendix “A”** at pages 22-35.

It is true that a state speaks as one at international law. But it does not follow that the one voice for the state of Aotearoa New Zealand must exclusively be that of the Crown. That voice could, and should, reflect the relationship of rangatiratanga and kāwanatanga envisaged in He Whakaputanga me Te Tiriti o Waitangi. The Crown clearly does not want to share power in that way, irrespective of its Tiriti obligations.

18. The conflict over sovereign power brings with it a paradigmatic conflict of worldviews. As explained in the brief of evidence of Dr Hutchings,<sup>5</sup> I understand a Tiriti-based world view to be sourced in the cosmology of Hineahuone and Papatūānuku, bound by relationships of whakapapa and values of manaakitanga, whanaungatanga, kaitiakitanga, centres te taiao, and governed by tikanga. It is that worldview which provides the foundation for relationships with other polities, including in the extensive range of areas now covered by free trade and investment agreements.
19. By contrast, international trade and investment regimes have been made and remade over several centuries by imperial and colonial states as instruments of western capitalism, and informed Christian patriarchy. The current international “rules-based” trade regime embodies the interests of the powerful states who framed it and entrenches and operationalises their ideology and geostrategic position and objectives. Rules included in contemporary free trade agreements (“FTAs”) extend far beyond commodity trade in industrial goods and agriculture to an ever-expanding array of “services”, “intellectual property rights”, “electronic commerce”, “government procurement”, and more.
20. Poorer states, especially former colonies, have always been rule takers; over time, they have been absorbed into a paradigm and system of rules not of their making.
21. Indigenous Peoples are totally invisible in this system, except for rare occasions where Indigenous Peoples control the government of a state. As explained in *Mana and Constitutional Transformation of Treaty Making*,<sup>6</sup> international law was crafted by and for imperial powers and legitimised by the “doctrine of discovery”, which serves to deny indigenous sovereignty. Indigenous worldviews are silenced by that denial of sovereignty and the imposition of an alien colonising paradigm, including within the international trade and investment regime.
22. Because the legal texts of these agreements build on what already exists, and are required to be consistent with Member states’ obligations under the global rules

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<sup>5</sup> Brief of Evidence of Dr Jessica Violet Hutchings dated 28 November 2025.

<sup>6</sup> *Mana and Constitutional Transformation of Treaty Making*. Attached as **Appendix “A”**, at pages 12-21.

of the WTO, it becomes almost impossible to shift the conceptualisation, power relations and interests that are embedded in them, even incrementally – unless a major power decides it no longer serves their interests and blow it up, as the Trump Administration in the United States of America is doing now.

23. In my opinion, there is absolutely *no* room, absolutely *no* possibility, that wāhine Māori can *be* wāhine Māori in this space, or that the regime governing international trade and investment can be reformed to embrace, value, protect and advance tikanga and values, responsibilities and duties sourced in Papatūānuku and Hineahuone.

### **Two Examples: Wai 262 and GMOs**

24. Let me illustrate this with two examples that have challenged that denial of rangatiratanga through international trade agreements: the Wai 262 Inquiry and GMOs. While neither explicitly centres wāhine Māori, the analysis is intrinsically embedded in the critique of colonial capitalist patriarchy and the cosmological worldview articulated by both Carrie Stoddart-Smith and Dr Jessica Hutchings in their briefs of evidence. In noting that, I also recognise that this lack of explicit visibility is a matter of significance for this inquiry.

#### ***Wai 262 Inquiry***

25. The Wai 262 inquiry heard challenges to the “denial and deprivation of tino rangatiratanga” that has:

25.1 *“dispossessed Māori of major spiritual, cultural, scientific and economic resources. ... To ensure the survival of a Māori way of life for future generations, the remedy sought by the claimants is Crown acknowledgement and recognition of the tino rangatiratanga of iwi as defined by tūpuna, as represented in tikanga, as reaffirmed in He Whakaputanga and as recognised in Te Tiriti o Waitangi – and as part of that recognition, for control of Indigenous flora and fauna to be returned to iwi.”<sup>7</sup>*

25.2 The claim was amended in 1997 to include the Agreement on Trade-related Intellectual Property Rights (“TRIPS”) at the WTO and its implementation in domestic law. The key points of the claim included: *“That the Crown has entered into international trade agreements and*

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<sup>7</sup> *He Kai te Rongoā, He Rongoā te Kai, Report of the Evidence Presented by te Waka Kaiora to the Waitangi Tribunal's Inquiry into the Wai 262 claim*, Te Waka Kaiora, October 2022 at page 18. Attached as **Appendix “B”**.

*obligations which further impact on taonga.*<sup>8</sup>

26. In 2006, Te Waka Kaiora became a party to the claim, challenging *inter alia*, ...  
*the Crown's Australia-New Zealand Therapeutic Products Authority (ANZTPA) agreement. This agreement sought to establish a joint body for the regulation of therapeutic products, including commercially sold traditional medicines, for the purpose of harmonising the efficacy and safety standards of therapeutic products, and minimising the trade barriers between the two countries. Of concern to Te Waka Kai Ora was the impact the ANZTPA would have on rongoā Māori and rongoā Māori producers and practitioners, and particularly their ability to develop commercial rongoā products. Alongside this was the concern that the proposed ANZTPA had been developed without any engagement with Māori – including Ngā Ringa Whakahaere o te Iwi Māori Inc, the national body of traditional Māori healers. Our claim also widened to include Crown failures relating to the protection of Māori organic food production or 'Hua Whenua, Hua Māori, Hua Parakore', and particularly that the Crown authorised the use of harmful organochlorine pesticides and herbicides such as DDT, PCP and other dioxin-based substances.*<sup>9</sup>
27. The main complaints from Te Waka Kai Ora were:<sup>10</sup>
- 27.1 That the Crown failed to consult with or seek input from hapū, iwi and relevant rōpū about its development, including Ngā Ringa Whakahaere o te Iwi Māori Inc, the national body of traditional Māori healers;
  - 27.2 That by sharing decision making with Australia, the Crown placed a new obstacle between the discharge of its obligations to hapū and iwi under Te Tiriti o Waitangi;
  - 27.3 That the Crown failed to protect the tino rangatiratanga of hapū and iwi in relation to the use and development of rongoā, including its commercial development; and
  - 27.4 That the Crown created new opportunities for the exploitation and commercialisation of Indigenous flora and fauna and mātauranga Māori by non-Māori.
28. The brief of evidence from Angeline Greensill, as part of Te Waka Kai Ora, described a single meeting to discuss the proposed legislation to implement the

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<sup>8</sup> Ibid at page 19.

<sup>9</sup> Ibid at page 19.

<sup>10</sup> Ibid at pages 49-50.

arrangement:<sup>11</sup>

- 28.1 *“Being advised of the meeting at late notice (the day before), which meant significant disruption to claimants’ lives to be there, and the inability to be briefed by legal counsel ahead of the meeting;*
  - 28.2 *Claimants’ request for the hui to be recorded was refused by the Crown’s representatives on the basis that it “would inhibit full and frank discussion”;*
  - 28.3 *Claimant’s request that the Crown undertake a Treaty-compliant consultation process on the ANZTPA was not committed to, because those who were there from the Crown did not have the authority to do so and “could only make recommendations that might be followed”;*
  - 28.4 *Claimants’ request that the ANZTPA Bill be deferred to allow this process to happen was similarly unable to be committed to; and*
  - 28.5 *The limited scope of the korero, which consisted of being “essentially just told how things would go”.*”
29. In her brief of evidence to the Wai 262 tribunal, Dr Hutchings *“also raises the way in which international agreements and bodies like the ANZTPA undermine the Tiriti relationship and marginalise the mana and tino rangatiratanga of Māori.”*<sup>12</sup>
30. For completeness, I note that the Therapeutic Products and Medicines Bill was introduced to Parliament in December 2006 but was never passed.

### ***Genetically modified organisms (“GMOs”)***

31. Free trade rules reduce genetically modified seeds, and products made with genetically modified content, to abstract commodities that are traded transactionally for profit.
32. Countries like the United States of America (“US”) promote rules in FTAs on behalf of their corporation that minimise the regulation of and restrictions on GMOs. This minimalist approach ties the legality of regulations and other measures to risk assessments that are conducted according to western science. It is also common to require the other party to the agreement to recognise their certification and authorisation for biotech products.

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<sup>11</sup> Ibid at page 51.

<sup>12</sup> Ibid at page 52.

33. This was discussed by Ngā Toki Whakarururanga in 2023 when the Crown was participating in trade negotiations for the Indo-Pacific Economic Framework (“IPEF”), which were led by the US and potentially included GMOs on agriculture.
34. In seeking to influence these negotiations, Ngā Toki Whakarururanga prepared a short brief that was grounded in Māori cosmology. It explained that:
- 34.1 *“Genetic Modification is a hāra or a trampling of tikanga Māori. Genetic Modification impacts on the mauri, mana and whakapapa of living beings and as such reorders and changes the fundamental relationship that Māori have with the natural world. It is also outside of the natural order to tamper with life forms through altering the essence of the organism and its DNA. It is considered a form of biopiracy, a new wave of colonisation that works at the level of the genetic materials and is strongly resisted by Indigenous Peoples all around the world. ...*
- 34.2 *This goes to the very core of being Māori and our duties, responsibilities, rights and interests, and the Crown obligations, under Te Tiriti o Waitangi. It is why Genetic Modification was strongly opposed by Māori interested persons parties at the Royal Commission on Genetic Modification. And it is why Ngā Toki Whakarururanga are opposed to it in ... other international trade agreements.”<sup>13</sup>*
35. However, trying to convey to negotiators whose worldview is firmly embedded in that western capitalist model of agriculture, and whose only negotiating options are variations within it, was a frustrating task, as reflected in the comment from one Crown negotiator about “*how difficult it will be for New Zealand to progress anything novel in the Agriculture chapter*”.
36. The trade pillar of IPEF was never concluded and the negotiating documents are therefore not public. However, Ngā Toki Whakarururanga and others raised significant concerns about the implications of the Crown’s changes to the domestic law on biotech under the Gene Technology Bill and that this could become locked in through future free trade agreements. Dr Hutchings addresses these issues further in her brief of evidence.

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<sup>13</sup> Ngā Toki Whakarururanga, Position Paper on Pure Food and Genetic Modification, March 2023. Attached as **Appendix “C”**.

## **“Inclusivity” in the international trade regime**

37. It is important to record that attempts to inject broader gender justice perspective into the international trade and investment regime face parallel conceptual, systemic and textual barriers.

### ***Gender Justice Critiques***

38. International networks, such as Development Alternatives with Women for a New Era (“DAWN”), the International Gender and Trade Network (“IGTN”), Asia Pacific Forum on Women, Law and Development (“APWLD”), have produced damning critiques of trade and investment agreements from gender justice perspectives for as long as I have worked in this area.
39. Most of these feminist critiques are theoretically informed about the inter-relationship of capitalism, patriarchy and colonialism, and argue that international free trade rules are driven by corporate interests from major powers and exploit and disempower women, especially from the Global South and Indigenous women.
40. Their research and advocacy engages empirically with a broad range of gender justice issues common to wāhine Māori, such as: seeds and food; traditional medicines; access to medicines and health care; exploitation of women workers; transnational corporate practices, such as mining, forestry, tourism; resource extraction that causes displacement, water pollution and violation of Indigenous, women’s and other human rights; denial of information, and exclusion from decisions on negotiation of international agreements and their implementation.
41. Their research and advocacy variously highlights the negative impacts of agreements on women and their communities; the exclusion of women’s voices from developing international trade policy and negotiations; and the systemic denial of alternatives that can deliver gender justice.
42. Some look for ways to reform the current international trade regime, its agreements and institutions; many, including myself, believe that is not possible within the prevailing paradigm.

### ***The Illusion of “Gender Empowerment”***

43. As one example, the late 1990s saw the rise of what was often described as the “anti-globalisation” movement. That was fuelled by the escalating inequality, and often devastating economic, social and environmental impacts, of the “hyper-globalisation” agenda advanced by the international free trade and investment agreements. Those agreements and negotiations continue to face a serious legitimacy crisis and lack of social license.

44. The response was not to rethink the paradigm and agreements, but to re-brand them. An early example was the 11<sup>th</sup> WTO Ministerial Conference in Buenos Aires (“MC11”) in December 2017, where a Ministerial Declaration on Women’s Economic Empowerment was announced on its margins.<sup>14</sup> The Declaration was endorsed by 118 WTO Members, including New Zealand.
45. Within two days of the proposed declaration becoming known, 164 women’s organisations from around the world, including a number of Indigenous Women’s organisations, had released a letter calling on governments to reject a Declaration that:
- 45.1 *“fails to address the adverse impacts of WTO rules and appears to be designed to mask the failures of the WTO and its role in deepening inequality and exploitation.”*<sup>15</sup>
46. I issued a press release at the time that described the Declaration’s claims to “inclusivity” and “progressive” trade agenda as “gender pinkwashing”.<sup>16</sup>
47. I have attended all the WTO ministerial conferences and all WTO’s Public Forums since the MC11 and had many interactions with trade officials from many countries. There has been an abundance of rhetoric about “gender inclusivity” and “gender empowerment” - to a lesser extent, about the inclusion of “Indigenous Peoples”, and almost never about Indigenous women. This rhetoric has been championed by the current WTO Director General Ngozi Okonjo-Iweala.
48. In my expert opinion as an active observer of this process, the narrative of “inclusivity” was and remains a public relations exercise. There is zero potential for any reconsideration of the current “rules-based system” to advance gender justice, let alone for Indigenous women.
49. That scepticism is reinforced in the current context, where the WTO faces an existential crisis in the wake of a US-led assault.
50. It may be that something progressive can emerge from this crisis and the ashes of the WTO, including for gender justice and wāhine Māori, but there is no sign of that occurring at the present time.

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<sup>14</sup> Joint Declaration on Trade and Women’s Economic Empowerment on the Occasion of the WTO Ministerial Conference in Buenos Aires in December 2017. Attached as **Appendix “D”**.

<sup>15</sup> “Women’s Rights Groups call on Governments to reject the WTO Declaration on Women’s Economic Empowerment,” December 2017. Attached as **Appendix “E”**.

<sup>16</sup> Jane Kelsey, “Gender ‘pinkwashing’ at the WTO bodes ill for a new progressive trade agenda,” 11 December 2017. Attached as **Appendix “F”**.

## *The Crown's approach to "Inclusivity"*

51. Since 2017, there has been a proliferation of provisions or chapters on "Inclusive Trade", "Gender Empowerment", or sometimes "sustainable development" in free trade agreements, including those negotiated by the Crown for New Zealand.
52. The Chapter on Trade and Gender Equality in New Zealand's FTA with the United Kingdom includes references to wāhine Māori.<sup>17</sup> But:
- 52.1 The provisions are "soft" ("acknowledge", "affirm", "identify barriers", "promote awareness") and require the parties to implement their laws.
- 52.2 The parties in Article 25.2 "***intend to implement the agreement in a manner that advances women's economic empowerment and promotes gender equality***" (emphasis added).
- 52.3 Likewise, Article 25.5 lists a raft of possible cooperation activities that aim to "***enhance the ability of women including workers, entrepreneurs, businesswomen and business owners, and the opportunities created under this Agreement***" (emphasis added). This assumes an agreement based on a western capitalist patriarchal paradigm can empower women and promote gender equality.
- 52.4 In addition to Article 25.5, there is a commitment to a framework for better data, and again a list of possible areas of cooperation. But the state parties decide what, if any, of the list are taken up depending on their interests and available resources.
- 52.5 The chapter is unenforceable.
53. The New Zealand European Union FTA, which entered into force in 2024, has a Trade and Gender Equality provision (Article 19.4) in Chapter 19. Trade and Sustainable Development.<sup>18</sup> This also uses language of "affirm", "recognise", "agree on the importance of incorporating a gender perspective into the promotion of inclusive economic growth", "shall promote", etc, and promises to facilitate cooperation. In this case, cooperation is mandatory: New Zealand and the EU "shall facilitate cooperation between relevant stakeholders, including wāhine Māori" with a long list of matters of joint interest.

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<sup>17</sup> New Zealand United Kingdom Free Trade Agreement, 2023, Chapter 25. Trade and Gender Equality. Attached as **Appendix "G"**.

<sup>18</sup> New Zealand European Union Free Trade Agreement, 2024, Chapter 19. Trade and Sustainable Development. Attached as **Appendix "H"**.

54. These chapters do nothing to change the paradigm or worldview of the agreements in ways that recognise and operationalise those of wāhine Māori. Nor do they “empower” wāhine Māori to exercise rangatiratanga in any governance, decisions, amendments or reviews. The chapters have no impact on the rules and obligations in other parts of the agreement that impose constraints on Tiriti-based measures the Crown may adopt in areas like digital, rongoā, or social procurement. The exceptions to the rules, including the limited Treaty of Waitangi Exception, do not provide effective space for that, either.

### **The Inclusive Trade Action Group**

55. Many other “inclusive trade” arrangements follow a similar pattern. In 2022 New Zealand MFAT and the OECD produced a lengthy Trade and Gender Review on the impacts of trade and trade policies on New Zealand women as workers, consumers, and business owners and leaders had a handful of passing references to wāhine Māori.<sup>19</sup>
56. The Trans-Pacific Partnership Agreement (“**TPPA**”), which was the subject of the Wai 2522 Waitangi Tribunal claim, was rebranded the “Comprehensive and **Progressive** Agreement for Trans-Pacific Partnership (“**CPTPP**”) following the United States exit from the TPPA (emphasis added). Some of the TPPA’s most controversial obligations were suspended, but by no means all.
57. At the time, a number of state parties to the CPTPP<sup>20</sup> established an Inclusive Trade Action Group (“**ITAG**”) that covers several categories: women, Indigenous Peoples, and Small and Medium Enterprises. Subsequently, a Global Trade and Gender Arrangement was created, which has attracted new members including from outside the CPTPP; but there is no equivalent for Indigenous Peoples.
58. When New Zealand chaired the CPTPP in 2022, it produced a three-year review of ITAG. Ngā Toki Whakarururanga wrote a comprehensive critique that identified a series of changes that would be required in the forthcoming (now current) review of the CPTPP for it to become nearer to being Tiriti compliant. These referred particularly to rongoā, hua parakore, creatives, digital, and health. Again, this review did not explicitly present a mana wāhine perspective, because it was framed by the structure and content of the CPTPP.<sup>21</sup> I acknowledge that is

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<sup>19</sup> OECD, *Trade and Gender Review of New Zealand*, 2022. Attached as **Appendix “I”**.

<sup>20</sup> There are now seven countries involved: Australia, Canada, Chile, Costa Rica, Ecuador, Mexico, New Zealand.

<sup>21</sup> Input from Nga Toki Whakarururanga to the ITAG review of the CPTPP, 21 Piripi 2023. Attached as **Appendix “J”**.

a significant omission.

59. It is clear that the changes to the CPTPP that Ngā Toki Whakarururanga called for will not be achieved, because they would require a change in paradigm and all parties would have to consent to any amendments.
60. I frequently recall Dr Moana Jackson’s adage that “incrementalism is stasis if it is not a path to transformation”. The preceding analysis makes me highly pessimistic about the prospects that treaty making in the current international trade and investment space, and the resulting instruments, could genuinely empower Māori, and wāhine Māori in particular, in a Tiriti-consistent manner.

### *Exercising rangatiratanga*

61. While I conclude that the current international treaty-making paradigm and process has no place for wāhine Māori to exercise their rangatiratanga, that rangatiratanga can be, and is, exercised outside the Crown’s space to challenge the ongoing denial of te Tiriti.
62. In April 2024, Te Papawhakaritorito Trust, Te Waka Kaiora and Ngā Toki Whakarururanga co-sponsored a symposium *He Rongo Whenua – International Indigenous Seed, Soil and Food Sovereignty Symposium* in April 2024, which had the challenge to colonial capitalist patriarchy at its core. The programme read:

*“Day One of the three-day symposium began in the international context and looks at the impacts globalisation, capitalism and free trade agreements are having on Indigenous duties and rights, the rights of nature, food, farming and our sacred traditional medicines. Indigenous resistance movements and strategies are discussed and pathways to developing alternative post-capitalist economies where food, farming and nature are free from capitalist patriarchy are explored.”<sup>22</sup>*

63. From these and other initiatives came the Mana Wāhine Declaration for Hineahuone, referred to in Dr Hutchings’ Brief of Evidence, which was signed by 300 people and presented to environmental activist and food sovereignty advocate Dr Vandana Shiva in India. The declaration is an urgent call by Indigenous women to return to ways of listening and being in relationship with Hineahuone (Soil deity) and Papatūānuku (Earth Mother) and use Hua Parakore principles to restore mauri and bring harmony back to the whenua.

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<sup>22</sup> Symposium Programme: He Whenua Rongo – Indigenous Seed, Soil and Food Sovereignty Symposium, Tamaki Mākaaurau, April 2024. Attached as **Appendix “K”**.

64. In the time-honoured strategy for transformation – praxis - these parallel strands provide a potential to shift the seemingly impenetrable façade of the international trade and investment regime.
65. As I noted earlier that regime is currently failing under its own contradictions, and that creates potential space - and a desperate need - for alternatives that are sourced in the values, practices and tikanga of wāhine Māori.

**DATED at Auckland** on this 28<sup>th</sup> day of November 2025



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**Elizabeth Jane Kelsey**