



17 JAN 2018

David Brown

fyi-request-6905-ed0ee88b@requests.fyi.org.nz

Dear David Brown

Thank you for your email of 28 November 2017 in which you request the following under the Official Information Act 1982:

“Could you please explain if there are any reason to believe that future New Zealand governments could face economic sanctions if they refuse to comply with any sections of the TPP?”

Could you explain the punitive actions which other member states or the TPP body could take against New Zealand?”

All of New Zealand's trade agreements, including the World Trade Organisation (WTO) agreements, contain state-to-state dispute settlement mechanisms. This is to ensure there is a rules-based and transparent process to settle disagreements between governments over the obligations in these agreements. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) also contains state-to-state dispute settlement.

Typically state-to-state dispute settlement involves a number of steps. First, the countries involved try to resolve the dispute through consultation and negotiation. New Zealand's preference, which is included in CPTPP, is to provide for and encourage alternative dispute resolution (e.g. mediation) with the goal of preventing disputes going to formal dispute settlement. If the dispute cannot be settled through consultations then the complaining country may request that an adjudicative panel be established to consider the matter.

If the panel finds there is a breach of the agreement then the party is required to bring its laws into compliance. If the country does not wish to do so, it may agree to pay compensation, or the complaining country may suspend equivalent benefits it provides to the country under the agreement. CPTPP also contains a remedy whereby the country that has breached the agreement can agree to pay money into a fund that will be used to assist that country meet its obligations under the agreement.

Many of our trade agreements also include investor-state dispute settlement (ISDS). ISDS allows investors to take cases against governments over alleged breaches of certain investment obligations in those agreements. While the Government has said

that it will oppose ISDS in future trade negotiations, the CPTPP contains ISDS. Investment obligations in CPTPP to which the ISDS mechanism apply are the investment chapter and limited aspects of the financial services chapter, subject to certain exceptions.

It is important to note, however, that a variety of safeguards has been included in CPTPP to reduce the risk of a successful ISDS claim. These safeguards include limiting the scope of our investment obligations, creating a high threshold for investors to prove breaches of investment obligations, exceptions to safeguard important areas of policy including ruling out claims in relation to tobacco control measures, procedures that discourage frivolous claims and prevent punitive damages, and confirmation that no ISDS tribunal can overturn New Zealand law.

To date New Zealand has not been sued at the WTO or under any subsequent trade agreement. However, we have taken nine state-to-state disputes to the WTO on behalf of our exporters. They include a case tackling Indonesian agricultural trade barriers that we succeeded on in November this year. You can find more information about these cases on the Ministry of Foreign Affairs and Trade's website at www.mfat.govt.nz/en/trade/trade-law-and-dispute-settlement/.

You have the right under section 28(3) of the Act to seek a review of this response by the Ombudsman.

Yours sincerely

A handwritten signature in black ink, appearing to read 'David Parker', is positioned above the typed name.

Hon David Parker
Minister for Trade and Export Growth