

# Action, Research and Education Network Of Aotearoa (ARENA)

CRITIQUE OF THE PROPOSED CHILE/NEW  
ZEALAND CLOSER ECONOMIC  
PARTNERSHIP (P3 WITH SINGAPORE)

SUMMARY REPORT

Written by  
Prue Hyman  
**Dr Jane Kelsey**

**December 2004**

The logo for ARENA, featuring the word "arena" in a lowercase, italicized, sans-serif font. The letters are dark grey and have a soft, light grey shadow beneath them, giving it a three-dimensional appearance.

# CRITIQUE OF THE PROPOSED CHILE/NEW ZEALAND CLOSER ECONOMIC PARTNERSHIP (P3 with Singapore)

---

In November 2002 the governments of Chile and New Zealand announced negotiations for a free trade and investment agreement – euphemistically called a Closer Economic Partnership (CEP) - that would expand and extend the agreement between New Zealand and Singapore that came into force in 2001 to form a Pacific 3 (P-3).

These negotiations have taken place during 2003 and 2004, although Chile's governing centre left Concertacion and President Ricardo Lagos slowed the process in the face of significant resistance from large-scale agricultural landowners in the south. The three governments currently aim to complete the P-3 negotiations by April 2005, even though agriculture and other critical matters of services and investment are far from resolved.

**The decision to negotiate this agreement is ill conceived and irresponsible in ARENA's view.** Neither the New Zealand nor Chilean government has examined the real social and economic implications for their people and the potential of a P-3 to deepen structural inequalities that impact most severely on women and indigenous peoples.

Nor have they prepared any balanced assessment of the consequences of increased control by foreign firms of their farming, forestry, fisheries and other natural resources - despite the experience of both countries that free trade and investment agreements give overseas investors the right to strip mine a country's economy, jobs and communities in pursuit of short-term profits with no long-term responsibilities. This summary report produced by ARENA, and a more detailed study to be released early in 2005, attempts to fill that void.

Our research shows that there are no substantive trade barriers on trade in goods, services or investment. Instead, the New Zealand, Chile and Singapore governments are promoting a P-3 whose primary – and arguably only - beneficiaries are the transnational companies that straddle two of the three countries, including opportunists who locate there to take advantage of the deal. The greatest potential beneficiaries are the agribusiness interests of Fonterra and Nestle as they promote their shared strategy to dominate Latin America's dairy industry.

We are grateful for the research assistance of Alianza Chilena Por Un Comercio Justo Y Responsable (ACJR), a similar organisation that fights for social justice in Chile and internationally, while challenging their government's free trade/liberalisation agenda.

We hope these reports will provoke a belated public debate among parliamentarians, small business, unions, NGOs, media and local government. Most importantly, we hope they will help to inform and mobilise women's groups, indigenous peoples, trade unions and local communities to build on existing grassroots opposition in Chile and NZ and force the government to abandon the P-3.

# FELLOW TRAVELLERS

---

**Five important similarities between New Zealand and Chile** underpin our analysis.

*One* is the **history of colonisation that has dispossessed Maori in Aotearoa New Zealand and Mapuche and other indigenous peoples in Chile and left both peoples politically and economically marginalised.** Their struggles for control over resources and knowledge and a decent quality of life inevitably conflict with the profit-driven imperatives of neoliberal globalisation. Underlying this is a conflict of philosophies and worldviews: the indigenous, based on solidarity and one-ness with the natural world; and the neoliberal that celebrates competition and exploitation of people and resources for individual gain.

The *second* similarity is **the onslaught of radical neoliberal policies in both countries since the early 1980s.** The *Economist* magazine in 1987 hailed New Zealand as the OECD's version of (Pinochet's) Chile, while New Zealand's *National Business Review* proudly described the radical project of the fourth New Zealand Labour government as Pinochet's Chile "without the gun".

*Third* and related **the ideologically driven commitment in both countries to a radical free trade and investment agenda,** fuelled by the privatisation and deregulation of their domestic economies. Having exposed themselves to a volatile global economy, Chilean and New Zealand governments have insisted that every other country should do the same. When other countries did not follow suit and the institutions of world trade became paralysed, the governments of both countries refused to rethink their direction. Instead, they pursued the same troubled agenda through other avenues.

*Fourth,* **both countries are currently governed by social democratic Third Way governments that remain committed to that agenda.** Both aim to negotiate as many bilateral and regional free trade agreements as they can, based on the belief that economic globalisation is inevitable and can be given a social face. Chile has concluded far more treaties than New Zealand, having signed agreements with the US (strongly critiqued by ACJR), the EU, Canada and several South and Latin American countries. Neither government is prepared to acknowledge, let alone debate, the social, economic and democratic costs that this strategy involves. Reflecting on this 'meeting of minds' between Clark and Lagos, academics Murray and Challies observe: '*How ironic it is [that] two former socialist-leaning thinkers should solidify their relationship through the development of an agreement intended to further neoliberalism.*'

The *fifth* similarity is **the predictable and unacceptable consequences of the neoliberal free trade agenda.** Chile's market revolution produced the fastest growth in GDP in Latin America, but the gains have not spread down to most of its people. Chile's inequality indices are among the highest in the world and increasing. New Zealand's economic growth since the start of its economic restructuring 'experiment' in 1984 has been more sporadic and mostly sluggish. It, too, has seen rapidly increasing income inequality. Those who have suffered most in both countries were already the most vulnerable: women, indigenous peoples, refugees and poor migrants, the young and the old. It is their realities that this report seeks to put back on centre stage.

# THE TROUBLED HISTORY OF THE P-3

---

**The New Zealand government first raised the idea of a free trade agreement with Chile in the mid 1990s.** The Chileans said no, primarily because of sensitivities over agriculture – and even though Chile was embarking on arguably the most extensive programme of bilateral negotiations of any country.

**New Zealand Prime Minister Helen Clark raised the possibility again when she attended the inauguration of President Ricardo Lagos, a fellow Third Way social democrat, in March 2000.** He agreed, but suggested a cooperative relationship would ease the way and reduce the resistance. By then, the New Zealand government was mid-stream in its negotiations with Singapore. The proposal to coalesce in the P-3 was announced at the APEC meeting in Brunei in 2000. As three of APEC's purest free traders, the P-3 offered a way to resuscitate that moribund grouping and advance their commitment to the 'Bogor Goal' of free trade and investment by 2010.

**If completed, the P-3 will form part of a web of bilateral agreements under what the New Zealand government's trade strategist Tim Groser has dubbed the 'Trojan Horse' strategy to revitalise the global free trade agenda from below.** The ultimate game plan is to extend the P-3 to a Pacific 5 that includes the US, which has FTAs with Chile and Singapore, and Australia which has FTAs with Singapore and the US.

**Prior to launching formal negotiations New Zealand and Chile prepared 'studies': Chile never made its public; New Zealand's study was released and reveals a typically shallow analysis.** The New Zealand study follows the now-standard template for all such negotiations. It assumes that trade and investment liberalisation will always create efficiencies that enhance aggregate economic welfare. This guarantees the study will find the agreement is desirable even if it cannot manufacture statistics to back it up. It pays minimal attention to any direct negative economic impacts and none to indirect economic consequences for the trade balance, balance of payments or fiscal costs of any accompanying 'structural adjustments'.

**The study ignored the documented trade costs that have already accompanied the Singapore New Zealand FTA.** Between 2000 and 2003, New Zealand's exports to Singapore declined by 37% (NZ\$180 million) while imports rose. The trade deficit with Singapore increased from \$24 million to \$323 million.

**It also completely ignored the broader non-economic impacts.** These studies *never* acknowledge, let alone address, the non-economic implications of FTAs for social wellbeing, employment or regional development. Such concerns are beyond the mandate of trade negotiators. But they are not dealt with anywhere else either. So the demonstrably negative impacts of global free trade and investment for most Maori, many women and low paid low skilled workers are ignored, although they are presumed to benefit through the (highly discredited) process of trickle down.

**Likewise, any treaty that in theory advances trade liberalisation is considered to be intrinsically good, even when it totally closes off the government's domestic policy choices and overrides democratic governance.** The P-3 has a profoundly anti-democratic objective - to lock future governments into maintaining the current level of exposure to foreign

goods, services and investments. This is viewed as a positive virtue. The kind of Executive lawmaking that would be considered a constitutional outrage if it occurred in the domestic arena is legitimised as an Act of State to be conducted exclusively and secretively by the Cabinet.

**‘Consultation’ over New Zealand’s P-3 study was a charade, because there was no space to contest the argument that the agreement was necessary and desirable.** The present Labour government requires (often reluctant) trade officials to ‘consult’. At best, this has produced vague promises that concerns might be addressed by tinkering at the edges. At worst, officials claim they have consulted critics so as to legitimate their actions, while totally ignoring what was said.

**Negotiations for the P-3 were formally launched in November 2002, with a comprehensive mandate to be a WTO-plus agreement that pushes existing free trade rules and commitments even further.** According to WTO rules, the P-3 is required to comply with rules of the GATT in relation to goods and GATS in relation to services. It is likely to go further than the WTO and the Singapore New Zealand agreement in both those areas. It will also extend to areas that are only partially covered by WTO obligations, and sometimes not at all, through chapters on investment, intellectual property, government procurement and competition policy

**Initial plans were to sign the agreement in November 2004 at the APEC Leaders Summit in Santiago.** Rounds of negotiation were held in July and September 2003. The Lagos government deferred the November 2003 negotiations, under pressure from Chilean farmers, so it could undertake more ‘consultation’. Meanwhile New Zealand and Chile negotiated three soft agreements on science and technology, the agriculture and forestry industry and export promotion, to foster the image of cooperation, rather than competition. These were signed when Lagos visited New Zealand in May 2004.

**The negotiations were resurrected after political talks during the Lagos visit.** A further meeting of the negotiating teams on market access, services and investment was held in December 2004. Significantly, the market access negotiations have deferred the thorny question of agriculture. Equally significantly, New Zealand is having technical and political problems finalising its unprecedented ‘negative list’ on services.

**The latest goal, to sign an agreement in April 2005, seems unlikely.** The political will is there. The New Zealand government seems eager to sign almost anything with anyone. Despite continued political opposition from the dairy sector in the run up to an election, the Chilean leadership also seems determined to proceed. However, major problems with agriculture, services and investment, offering the prospect that negotiations may become paralysed – as occurred in negotiations between New Zealand and Hong Kong.

That means there is still time to demand that the New Zealand government answers the questions, conducts the research and engages in the debate that should have happened before this process began.

# WHY (NOT) A P-3?

---

**For the New Zealand government, negotiating and signing off on another free trade agreement appears to be an end in itself.**

**It concedes that the P3 is not really about increasing trade.** Chile and New Zealand are both southern hemisphere countries with similar open economies, climates and seasons. They compete in major primary and related exports, such as agriculture, wine and fruit. Both have major forestry and dairy sectors. In addition, both governments' enthusiasm for trade liberalisation means they already have very low tariff levels. The opportunities for new investment, service and consultancy opportunities for New Zealand are small. Other gains such as cooperation on research and development or technological innovation do not require a FTA; that is likely instead to increase competition and the potential for corporate takeovers of local businesses.

**According to the official rationale, the three-way deal has considerable 'strategic benefits' for all three partners.** Initially, these 'benefits' referred to the 'demonstration effect' of maintaining the momentum of free trade negotiations after the WTO and APEC had stalled.

**More recently, Chile and Singapore have been positioning themselves as 'strategic platforms' from which foreign firms and investors can access their regions.** They believe that signing binding free trade and investment agreements that guarantee future governments will maintain the best possible treatment of foreign firms increases their attraction.

**New Zealand's only 'strategic platform' is into Australia,** with whom many governments, including Singapore, already have an FTA. So the New Zealand government is justifying the P-3 as an advanced form of marketing. It confirms New Zealand's desire to develop trade and economic relations with Asia, as the government works to secure FTAs with China, Malaysia and ASEAN. It also helps boost New Zealand's links with Latin America's most liberalised and well-connected economy by attracting the attention of Chile's businesses and politicians.

**In other words, the projected benefits from the P-3 for all countries, especially New Zealand, are intangible, speculative and ideological.** As our government 'markets' itself by guaranteeing best treatment to foreign firms and investors, it continues to dismantle New Zealanders' already limited control over our own destiny and endanger businesses and jobs in both manufacturing and services. The Singapore CEP already purports to lock in policies that restrict our capacity to manage our economy and currency, vet and impose reasonable conditions on foreign investment, prevent overseas control of key services or adopt a 'Buy NZ' approach to local and central government tendering. The P-3 will take this further; yet almost no one in New Zealand is aware of what is being proposed.

# FREE TRADE FOR COMPANIES, NOT COUNTRIES

---

**Neither Chile nor New Zealand is a major global player, but they are not equal either.** New Zealand's per capita GDP is 278% of Chile's or 143% in purchasing power parity terms. Any commercial gains that might result from the proposed FTA are likely to increase the inequalities between and within the two countries - and accrue largely to major New Zealand companies.

**Both countries' exports are focused on primary products and natural resources.**

- Copper remains Chile's top export item overall. However, non-traditional exports are now growing faster than minerals and contribute 60% of exports, up from 30% in 1975. The main items are forestry and wood products, fresh fruit, wine, processed food, fishmeal and seafood. Most are raw materials and industrial products with low value added and low labour content – 85% of forestry exports are unprocessed timber.
- New Zealand provides only 0.23% of world exports in merchandise trade, but constitutes a significant proportion of world exports in dairy produce, sheep meat and some specialist products. Despite government policy to diversify away from primary sector exports, dairy products remain the dominant commodity, comprising 20.3% of merchandise exports in the June 2004 year. Meat (16%) and forestry (10%) were other key commodity exports. Non-agricultural products were 46% of total exports, down from 47.9% the previous year. Like Chile, much of New Zealand's natural resource exports are low value added products, such as milk powder and raw logs.

**Trade between Chile and New Zealand is comparatively insignificant:**

- In 2001, Chile was New Zealand's 56th most important export destination, taking 0.11% of total NZ exports and 49th most important import source, supplying 0.11% of all imports.

**Commodity trade between Chile and New Zealand has fluctuated due to variable political and economic conditions and volatile markets for key commodities:**

- Between 1991 and 1996 New Zealand exports to Chile increased by 407% to reach US\$55.2 million.
- From 1992 to 1996 Chilean exports to New Zealand increased by 298% to reach a high of US\$22.6 million.
- Trade in both directions then fell to a low of NZ\$43.6 million imports from Chile and \$23.41 million exports from New Zealand in 1999.
- Trade revived in 2003 as Chile moved out of recession. Figures for the year ending June 2004 show merchandise imports from Chile at NZ\$37.9 million, slightly exceeding New Zealand exports to Chile at \$36.4 million.

**The composition of trade has also changed:**

- In 1998 dairy products comprised over half of New Zealand's exports to Chile, but fell dramatically the next year as Chile's dairy sector grew. After a brief revival in 2000, they were less than a quarter of exports in 2002. By 2003 dairy constituted only 13.2% of New Zealand exports to Chile. However, dairy remains the second highest value item in exports to Chile, after machinery.

- Fruit, wine and copper are the top value items among exports from Chile to New Zealand. Wine imports reflect a partial complementarity of products where there is an actual or perceived differentiation in the quality of products. New Zealand wine is viewed as ‘first division high quality’, while Chilean wine produced with cheap labour is perceived as ‘medium quality’.

**Removing tariffs will make no difference to trade.** Tariffs on imports of Chilean products into New Zealand averaged 2.4%. Chile is not a significant exporter of textiles and clothing, which attracts the only significant tariffs, so the commercial impact of zero tariffs would be minimal. Exports to Chile currently attract a tariff of 6%, which most New Zealand exporters report has a minimal effect.

**When the New Zealand government says the P-3 is more an ‘economic partnership’ than a FTA, it confirms the real goal: to increase inter-corporate trade and investment that allows the same agribusiness to dominate in New Zealand and Chile.** For Fonterra, the P-3 is not about exporting more to Chile. It already holds a 57% controlling interest in Chile’s largest dairy company, Soprole. In 2003 Soprole operated five major plants in Chile, accounted for 23% of total industrial milk reception, and marketed over 200 products. The P-3 (and similar agreements) guarantee Fonterra special privileges in agricultural trade, services and investment not just in Chile, but as a ‘platform’ for expansion in the Latin American region. Significantly, one reason why the New Zealand government exempted Fonterra from Commerce Commission scrutiny when it was formed in 2001 was specifically to facilitate this capture of the global dairy market.

**In recent years, trends in both countries’ dairy trade have been largely determined by the global strategies of Fonterra and other agribusinesses.** In the 1990s dairy products were imported to Chile from New Zealand through the intra-company channels of the New Zealand Dairy Board (pre-Fonterra) and its Chilean subsidiary Soprole. This accounted for an average of 57% of total imports from New Zealand. That volume has declined as Chile’s domestic production and exports have increased. Soprole remains the second biggest importer of New Zealand products in 2001, accounting for 18.4% of exports to Chile. However that would change again if a proposed joint venture between Soprole and Nestle proceeds and they adjust their procurement to suit their regional strategy.

# CORPORATE PLUNDER

---

## **The investment relationship between Chile and New Zealand is unequal and uneven:**

- Chile has no significant investment interests in New Zealand.
- Between 1974 and 1996, New Zealand investment was US\$412 million. This amounted to 2.4% of total materialised inward investments into Chile. New Zealand ranked as Chile's tenth most important source of Foreign Direct Investment (FDI).
- For the next 15 years New Zealand companies invested heavily in Chilean forestry, food wholesaling and distribution, fisheries and construction enterprises, peaking at US\$4 billion.
- When Fletcher Challenge and Carter Holt sold their joint venture assets, New Zealand investment fell sharply.
- New Zealand government figures put current investment at around US\$300 million, but Challies notes that an alternative estimate from the New Zealand government of US\$162 million in 2001 is cited in Chile's study on the P-3.
- According to provisional figures, there was no new materialised investment of New Zealand origin in Chile in 2002 or 2003.

## **The history of New Zealand's investment in Chile dates back to 1985 when the fourth Labour government removed capital controls.** There were three main investors:

- In 1987 Carter Holt Harvey and the business interests of the Angelini family formed a joint venture that controlled 60% of Chilean conglomerate Cia de Petroleos de Chile (Copec), which in turn owns Chile's largest forestry company. The Angelini family is one of Chile's most powerful, and accumulated massive wealth under the Pinochet regime.
- Fletcher Challenge invested in forestry, pulp and paper, and Methanol. Its subsidiary Tasman Chile S.A. bought a half share in forestry plantations and a newsprint mill in Concepcion in 1986 and took total control in 1989. In 1991 Fletchers took a 90% interest in Cape Horn Methanol.
- In 1988 the New Zealand Dairy Board bought into Soprole, Chile's largest dairy company that was established in 1947.

**These firms were attracted by Chile's low labour costs and minimal workplace protections under the notoriously repressive Pinochet regime.** In addition to high profits, these 'benefits' allowed the forest product companies to resist strikes and break down unions in New Zealand by supplying their customers from Chile. There was remarkably little criticism of their apparent complicity with Pinochet.

## **An exception was a 1988 TVNZ *Frontline* documentary (*New Zealand Commercial Involvement in Chile, 1 May 1988*) that exposed their exploitation of Chilean workers.**

Fletcher Challenge forestry workers were shown axing trees while wearing open-toed sandals and living in rat-infested huts. The company rationalised these dangerous and exploitive working conditions by saying they complied with local pay and conditions. Carter Holt's chairman Richard Carter said he did not believe that torture was still taking place under the Pinochet regime 'in a government-condoned sense'. Carter and Ron Trotter (chair of Fletcher Challenge and the Business Roundtable lobby group that spearheaded New Zealand's neoliberal programme) both argued that Chilean-style labour laws were needed at home – something that was largely achieved under the Employment Contracts Act 1991.

**Both forestry firms are now foreign controlled and have pulled out of Chile.** Carter Holt's arrangement with the Angelini Group allowed the latter to run the venture until 2007. When US giant International Paper took over Carter Holt it wanted more control. Angelini threatened to sue for more than US\$500 million. It was especially concerned that Carter Holt intended to expand from a New Zealand forestry business to an international wood products and forestry company that would compete with Copec. To avoid protracted litigation, it was agreed that the Angelini Group would buy Carter Holt's 30% stake in Copec for NZ\$2.5 billion. Carter Holt separately sold its other Chilean interests in forest products, packaging, cut paper and tissue manufacturing to the Angelini Group. Fletcher Challenge sold its Chilean forestry operations in 1993 and 1999, and Fletcher paper's BioBio mill was part of the business when it was sold to Norwegian paper giant Norske Skog in 2004.

**Although there is now limited New Zealand direct investment in Chile's forestry sector, it remains an area where both governments seek to cooperate.** That may boost the profits of foreign forestry companies operating in Chile, but it will not improve the lives of Chile's forestry workers. Trade unions representing Chile's forestry workers say not a lot has changed since 1988. They are still employed under exploitative contracts on sub-living wages, with minimal health and safety protection, no long-term security if they suffer disabling injuries, and almost no chance to save enough for a liveable pension.

**Most forestry operations also take place on disputed Mapuche land,** often illegally and backed by force. A projected series of court cases brought by Mapuche failed to restore control of 80,000 hectares of ancestral land, much of which was in forests owned and milled by Carter Holt's subsidiary. In October 1998 the company allegedly ignored a court order not to fell the forest and brought in private security personnel to deal with Mapuche who tried to stop them. A number of Mapuche were seriously injured and charges were laid against several of their leaders under Chile's internal security laws. Mapuche leaders likened the government's response to 'the darkest years of the military dictatorship'.

**As with merchandise trade, there are currently no barriers to New Zealand investments in Chile.** The risk for foreign investors is that in the future a socially responsible Chilean government may seek to impose protections for indigenous peoples, workers and the environment that reduce the profitability of these firms or deny them entry altogether.

**Given the history of New Zealand investment in Chile any sensible government would want to retain the right to curtail the operations for such companies or keep them out altogether.** Yet the Lagos 'Third Way' government seeks to lock open its doors and establish itself as their platform for Latin America. New Zealand's Labour government is prepared to provide equivalent guarantees to foreign investors, despite the history of asset stripping and failed privatisations here.

# P - 3 = FONTERRA + NESTLE

---

**For New Zealand governments, global free trade is primarily about agriculture.** This has raised alarm among Chilean farmers, especially dairy farmers in the south. Many fear the economic, social and environmental cost and the loss of food security as corporate farming displaces subsistence producers and agribusinesses intensify their control over the food system. Accusations of collusion among the major dairy corporations have already been brought before Chile's competition authority. Others have voiced concern over the possible flooding of the Chilean market by cheaper New Zealand imports because Chile is now a net exporter of dairy products and the potential for absorbing such imports may be exhausted.

A thesis completed by Edward Challies in 2004 **compared the dairy complexes of Chile and New Zealand, and the impacts of neoliberal restructuring on each.** There are several important differences in primary production between the two countries, with the New Zealand sector far more profitable:

- The composition of the primary productive sector in Chile is characterised by a much higher proportion (around 80%) of subsistence and small to medium scale farmers and significantly fewer large operations.
- The average dairy herd size is 12 cows in Chile as against 285 cows in New Zealand, a contrast between largely subsistence/local operations and commercial enterprises.
- New Zealand farmers are able, through collective ownership, to realise benefits from value-adding stages along the production chain. For most Chilean farmers the benefits end at the farm gate when their raw milk is collected.
- New Zealand's dairy sector is highly oriented towards exports, whereas the Chilean dairy sector has been almost entirely focused on the domestic market, with exports only recently starting to grow.
- While prices paid to producers in New Zealand have fluctuated, they have been increasing over the last decade. In Chile, prices received by many producers remain below the costs of production.

**Dairy currently provides employment for thousands of small-scale farmers and farm workers in the south of Chile whose futures are already threatened.** During the 1980s the Chilean government provided price support for dairy products through tariffs and minimum customs values. These measures were phased out in the late 1980s and early 1990s. Tariffs were reduced from 20% in 1986 to less than 10% in 1999 and subsequently to the current flat rate of 6%.

**A few dominant transnational agribusinesses, including Nestle and Soprole (Fonterra), are able to dictate the prices of both raw materials and final prices.** The minority of large-scale commercial farmers and corporate dairy enterprises may thrive and expand in this environment. Subsistence and small-enterprise farmers are forced to operate at a loss as agribusinesses continue to raise quality standards and suppress milk prices. Many face deep debt and loss of their land as government and private banks insist on repayment of loans. The neoliberal response - that the industry is inefficient and must restructure - means trauma for small farm families, farm workers and their communities and greater stress on the environment from corporate farming practices. In some regions, these threats range across the dairy, fruit

and grain sectors and threaten the food security of local communities that depend on subsistence production and local markets. Urban migration, especially of Mapuche, intensifies the dependence on imported foods by those who have no wage income.

**In March 2002 Fonterra announced a joint venture with Nestle, called Dairy Partners America, as their vehicle for a shared strategy to control the 'milk business' in Latin America.** Fonterra is the world's largest dairy exporter, responsible for one third of international dairy trade, and operates in 36 countries. It describes its position as the world's lowest cost supplier of commodity dairy products as its most important competitive advantage: 'Our future success depends on our ability to protect this position.' Nestle is a mega-food conglomerate, operating in more than 80 countries with sales volume of 50,000 million pesos, slightly less than the Chilean GDP, with some 500 factories and more than 200,000 employees. It is notorious for pursuing global corporate strategies that maximise profits with no concern for ethics, public health, the rights of workers or the sustainability of producers and local communities.

**The minority (47%) shareholder in Fonterra's Chilean operation Soprole, the Chilean Isabel Aninat Foundation, has veto power over decisions that require a qualified quorum, including merger, sale or dividing the company.** Its decision to block the merger has provoked a very dirty boardroom battle. Fonterra's tactics include an unsolicited hostile bid for the Foundation's shareholding, which was rejected because the price was too low and the joint venture's dominance would cause 'an earthquake' in the milk sector - a view shared by FEDELECHE, the Federation of Milk Producers.

**New Zealanders who see this as Chile's loss and New Zealand's gain are shortsighted.** The average New Zealand dairy farmer is currently in a more enviable situation. Having recovered from the trauma of rapid and radical deregulation in the mid-1980s, most farmers are part of a profitable, efficient and technology-intensive commercial operation and are exclusive shareholders in Fonterra, a world-leading, transnational agribusiness. But this may not last.

**Trade liberalisation, deregulation and rationalisation of production have concentrated ownership and control of dairy production in fewer and larger operators in New Zealand as well.** The dairy sector is dominated by Fonterra, complemented by a few medium-scale and some very small companies. Notionally, 13,000 farmer-shareholders control Fonterra's decisions. In practice a few major players drive its global strategy. As corporate farming increases, so will their control of the company. Once corporate farmers secure a majority shareholding in Fonterra, and especially once those shares become tradeable as they inevitably will, foreign agribusinesses like Nestle will move to take control. Like in Chile, small farmers will struggle to survive as New Zealand loses control over domestic milk prices and its dairy export industry.

# SIGNING AWAY SERVICES

---

**The P-3 would impose unprecedented obligations on the New Zealand government to promote and protect the interests of foreign services firms.**

**There are no accurate statistics for services trade between the two countries, but it is small.** Chile has no obvious services interests in New Zealand. A number of New Zealand companies currently provide advice on a range of primary industry issues in the areas of meat processing, silviculture, and deep-sea fisheries. Major contracts also include:

- Air New Zealand's 5-year contract to maintain the Chilean navy P3 Orions;
- Glidepath Ltd's maintenance contract for baggage handling systems at Santiago International Airport;
- Christchurch based company NovaTek Ltd's intermediary work in contracts that generate about NZ\$1.75 million for New Zealand companies, mainly related to the Chilean petrochemical industry;
- Wellington consulting firm Sinclair Knight Merz has recently undertaken risk analysis consultancy for Santiago's metro rail system.

The government lists education, professional and consultancy services, tourism and postal services as potential areas for export growth.

**There is no commercial justification for a free trade in services agreement.** New Zealand services firms do not face any barriers to operating in Chile.

**Free trade in services under the P-3 is a purely ideological move to prevent governments from limiting entry to, and ultimately control over, services that have been deregulated and privatised.** Such guarantees pre-empt the choices of present and future governments, including the right to implement policies for which they have an electoral mandate. While governments can withhold certain services from coverage, oversight or deliberate decision can mean that vital services are fully exposed to exploitation by profit-driven transnational companies.

**The Singapore New Zealand agreement was dangerous enough.** It prevented future governments from reversing the then new threshold for corporate foreign investment (introduced secretly in 1999) which exempted investments of less than \$50 million from Overseas Investment Commission vetting, where those investments involved services and were made through Singapore. It also extended the range of New Zealand services that were covered by the WTO's free trade rules.

**It set these commitments out using a 'positive list' approach** - the services to be covered by free trade rules had to be specifically mentioned. That is problematic enough because mistakes can be made or new domestic policies and technological changes can alter the meaning of commitments. As with railways and airlines, privatisations can fail and governments have to resume control. Market-driven services, such as education, construction and taxis also fail. Above all, in an electoral democracy the government and voters are supposed to have the right to choose a different approach.

**The current P-3 services negotiations are more dangerous than any New Zealand has previously undertaken because it has agreed to a 'negative list' approach.** The US required

Chile and Singapore to use a 'negative list' in their FTAs, something Chile had already done in the Canada FTA (but not in its agreement with the EU). Both countries now treat this as 'best practice' and suggested that New Zealand should follow suit.

**A 'negative list' means that all services *except those explicitly listed* would be covered by free trade rules and locked open to control by foreign transnationals.** This potentially allows foreign firms to secure comprehensive control of New Zealand's services, ranging from finance, tourism and transport to education, health and broadcasting. There would be two lists. Annex A would list 'currently non-conforming' measures that could not be made more restrictive and would subsequently be brought into line. Annex B lists 'reserved sectors' in which the government retains the full right to regulate. Nervous trade officials have 'consulted' so-called 'stakeholders' about what might be in these lists. But they have not provided any detailed analysis of the potential risks to help people make informed responses, and they do not intend disclosing the details of what is being proposed before the Cabinet signs it off - and probably not until the deal is concluded.

**The 'negative list' is unprecedented for New Zealand**, aside from the CER agreement with Australia, which should be treated as unique. It greatly intensifies the already unacceptable risks that attach to free trade in services agreements. Yet the Chile NZ Background Study released in October 2002 provides no justification for the negative list approach and the government appears to have adopted it without understanding what is involved. As with Singapore and Chile, it is likely to be treated as a precedent for future free trade negotiations.

**In addition to the schedules of services, New Zealand also seems likely to commit future governments to maintain its latest new open slather policy for foreign investors in services.** The Overseas Investment Bill introduced into Parliament in late 2004 would allow the government to lift as high as it likes (by regulation) the threshold value of investments below which most foreign investors are exempt from seeking permission. It currently proposes to lift the threshold from \$50 million to \$100 million, but could face pressure to raise it even higher. Locking this in through the P-3 would effectively prevent any future government from changing the rules to protect New Zealand interests. In theory this would only apply to foreign investors in services, but today that it is inextricably tied to natural resources, agriculture, manufacturing and information technology. The official New Zealand study on the P-3 specifically refers to services related to agriculture, forestry, engineering, energy and construction, especially consultancy.

**In a further major departure from previous agreements, the rights of services firms from one of the P-3 countries to invest in another will be covered under the investment provisions.** This reflects the realities that transnational corporate activities span trade in goods, services and investment – and often intellectual property rights as well.

**To repeat, the P-3 is not about increasing trade in services. It aims to shift the current GATS framework to another plane that provides even greater security for foreign services companies while tying the hands of future New Zealand governments.**

# A CHARTER FOR TRANSNATIONAL COMPANIES

---

**The P-3 is not a trade agreement.** Its rules are designed to maximise the ability of transnational companies to move goods and capital across borders without restriction and to receive as good or better treatment than local firms. This guarantees foreign investors privileges and protections beyond those that are available to their domestic counterparts and empowers them to enforce those guarantees directly against governments in secret cases before international tribunals. In other words, the P-3 will increase the concentration of production, profits and power in the hands of a small number of large global companies.

**A P-3 aims to bring together New Zealand's existing investment agreements with Chile and Singapore into a mega-agreement.**

- **The New Zealand and Chilean governments signed an Investment Promotion and Protection Agreement (IPPA) in 1999.** This included highly controversial rules on 'creeping expropriations' or 'takings' that the investors themselves can enforce. Similar provisions in the North American Free Trade Agreement and other bilateral investment treaties have led to massive multi-million dollar law suits against governments that introduced regulations or made policy decisions for sound environmental or health reasons, because they reduced the value or profitability of foreign investments. The Chile/New Zealand IPPA never formally came into effect because the Chilean government did not take the final steps to activate it. In 2003 the Lagos government placed a moratorium on all new IPPAs, but decided to bring existing ones into effect. The P-3 will do that.
- **The Singapore/New Zealand FTA has a specific chapter on investment.** As noted earlier, New Zealand locked in the threshold of NZ\$50 million for Overseas Investment Commission vetting, which means almost no foreign direct investment that is channelled through Singapore will ever need to seek approval. Even above that level, the allowable criteria for vetting an investment are very weak. This went much further than the only other similar commitment (in the GATS) which bound the threshold at NZ\$10 million.

**The combination of these two agreements would take New Zealand's guarantees to foreign investors to a totally unprecedented level.** The Singapore agreement guaranteed foreign investors operating through Singapore the right to set up their operations and receive at least as favourable treatment as local firms once they had done so. But it did not contain any provisions on expropriation. The Chile IPPA did not provide guarantees on establishment, but did contain guarantees against expropriation.

**Binding and enforceable rules on creeping expropriation would strengthen the already dominant position of the transnational forestry and dairy companies in both countries,** most of which are effectively controlled by investors in third countries. The New Zealand government would effectively sign away the right to re-regulate foreign investment and impose restrictions on their activities where that reduces the profits or value of shares or assets. In other words, they will place the profitability of foreign firms ahead of the needs and rights of New Zealanders.

**Foreign investors will be able to enforce these rights directly against the government in secret before an international tribunal.** It is unacceptable enough to provide these guarantees for transnationals when only governments can enforce them. It is outrageous to give TNCs the right to take the Chile, New Zealand or Singapore government before a secret international court and seek multi-million dollar damages for actions that are in the national interest.

**Bringing services under investment rules will greatly extend New Zealand's investment commitments on services** and create new enforceable long-term obligations to foreign investors who choose to operate through Singapore or Chile. Including guarantees to foreign services firms under the investment chapter rather than the services chapter means they would become subject to investor-state dispute settlement. That vastly increases the risks of damages suits against governments for measures that reduce the profitability of services transnationals, such as restricting foreign firms in education or media. It may also set a new precedent that later becomes 'international best practice'.

**Given Chile's experience with New Zealand foreign investors, it may seek to adapt the IPPA provisions in line with the Chile/US agreement.** That tries to limit the scope of 'indirect expropriation' and says that 'except in rare circumstances' it does not apply to government actions that are designed to protect 'legitimate public welfare objectives' such as public health, safety and environment – provided they are applied equally to local investors. This is still no watertight guarantee.

**There is a risk that P-3 could be worse than the notorious Multilateral Agreement on Investment (MAI), which the New Zealand Labour Party rejected when it was in opposition.** All the arguments that forced the collapse of negotiations for an MAI remain valid, but they are being by-passed through less visible agreements like the P-3 that achieve the same objective 'from below'. To recap, these investment agreements

- constitute a bill of rights for transnational companies whose rights then take precedence over New Zealand citizens;
- override democratic processes of policy making and laws by binding the hands of future governments;
- impose constraints on local governments, which are not party to the negotiations and are generally responsible for local development initiatives;
- risk huge damages suits when governments regulate in ways that reflect the national interest and promote social, environmental, cultural and regional development;
- prevent governments from giving preference to local firms, including licences to use natural resources or run activities such as tourism or education;
- intensify the risk of foreign control over activities that are essential to New Zealand life, despite the track record of foreign firms for profit gouging and failure to reinvest;
- prevent the government from stepping back in when foreign investors fail to meet the needs of New Zealand people, businesses and communities;
- give foreign investors rights that are not available to local firms; and
- are enforceable by transnational companies in secret supranational courts.

# SOCIAL DUMPING ON WOMEN

---

**The theory of the global free market pretends it has no gender, culture or politics.** Yet the lived experience of diverse groups of women across the world shows that feminisation of poverty, marginalisation, exploitation and disempowerment are common and systemic features of this economic paradigm. The strategic objective of the P-3 – to lock-in neoliberal policies and establish ‘platforms’ that entrench the interests of transnational corporations – positively prevents those issues from being addressed.

**Around the world, women, indigenous peoples and other community leaders are challenging the perverse ‘development’ agenda and its assertion that ever-increasing exports will automatically lead to better living standards and less poverty.** Chilean grass-roots environmentalist Sara Larrain asked at the 1999 WTO meeting in Seattle: “Why is it that people from the North think exports benefit us? They are wrecking our environment and increasing inequality.”

**Promises that FTAs will lower prices to consumers while increasing corporate profits are never balanced against the impacts on the jobs and incomes of the lowest paid workers in each country.** Likewise, claims that trade liberalisation policies, by incorporating women into paid work, will end current divisions of labour and hence overcome women’s subordination are contradicted by reality. Some more work may become available for women, but at a high cost and with less privileged women being the most easily exploited. Many women are left to choose between exploitation as low paid labour, often in unsafe workplaces, or as unpaid and undervalued domestic labour.

**In rural Chile, neoliberal policies are responsible for the appalling conditions in which many women struggle to sustain themselves and their families.** ACJR has documented how the ‘winners’ from these policies have led the country into a state of economic vulnerability that is paid for largely by the ‘losers’ - mainly lower level workers, both women and men. There are few women among the ‘winners’. Women’s employment has grown faster than men’s, but their conditions in several sectors of the economy are very poor, with higher unemployment rates and proportionately more precarious jobs, especially in export sectors.

**Most jobs in agriculture and in aquaculture and processing of sea products – two focal areas of the P-3 - have low salaries, high disease risks and long hours of work.** Fruit growing is mostly small scale and relies largely on the casual and seasonal employment of women. A day’s work often exceeds 16 hours, there are no work contracts and virtually no unionisation. Environmental and social problems related to fruit export and agribusiness include liquid industrial wastes that contain toxic substances (chrome, tannin and chlorine) and suspended solids that are directly dumped into ditches and drains without treatment.

**In New Zealand women, particularly Maori and Pacific Island women, are over-represented in the part time, casualised and low wage sections of the labour market that are most affected by free trade agreements.** Trade liberalisation combined with labour market deregulation has impacted especially hard on lower waged workers in the manufacturing sector. Restructuring forced by tariff cuts has destroyed the entire car assembly industry and decimated

small communities and industrially dependent suburbs. Privatisation and sub-contracting has left the many women, often migrants, who work in low paid low skilled services, such as cleaning, vulnerable to exploitation by the transnational firms that now control those sectors. The textiles, clothing and footwear industry is the only sector that has resisted tariff cuts successfully, although they have merely slowed the process.

**Free trade policies commonly pit low waged women in one country against those in another.** The classic example is New Zealand's textile, clothing and footwear (TCF) industry. Despite the devastating impacts of tariff cuts, the sector still employs directly and indirectly nearly one tenth of the total manufacturing workforce, although the number actual workers is half that of 12 years ago. Three quarters of the 18,000 workers whose jobs depend on the sector are female; many are Maori, Pacific Island and Asian women. Although low waged by local standards, the industry is unable to compete with low cost clothing from China, Fiji and some other Asian countries. The cheap labour strategy that is integral to the free trade agenda has increasingly restructured the global labour market on race and gender lines.

**In Chile public policies theoretically incorporate gender issues, but the subordination of women is still the norm.** Access to paid work is less a matter of self-determination than of work overload. Self-determination assumes monetary resources and time management. For most women, long work shifts, time spent travelling to and from paid work and household duties make that impossible.

**In New Zealand, policies to promote the economic empowerment of women fail to recognise and address the counter-productive impacts of trade liberalisation,** especially on poor and low-paid women. The Ministry of Women's Affairs has made numerous attempts to inject broader considerations into economic policy. But there is still very little recognition of how the overall direction of economic policy impacts on different groups of women. The 2003 consultations on a National Plan of Action for Women focused on the potentially broad-ranging themes of economic sustainability; balancing work, family and community; and wellbeing. Yet the documents did not seek, or even seem to envisage, input on broad economic policies such as globalisation that create the conditions for these specific areas.

**Even where the negative impacts on women are recognised, the remedies are assumed to lie within the free trade model.** The 7<sup>th</sup> APEC Women Leaders Meeting in 2002 'recognise[d] that the social and economic impacts of trade and investment liberalisation can reflect and exacerbate the existing gender inequalities'. Yet APEC's foundational 'Bogor' goal – which will be embedded in the P-3 - is free trade and investment by 2010. That limits APEC's solution to gender inequality to removing the barriers for women to become entrepreneurs within a market-driven economic model and helping them develop a stake in the capitalist system. There is no place for commitments to equity, redistribution, rights for women workers and farmers, or better living standards for all – let alone social justice and redress for the dispossession and impoverishment of indigenous women wrought by colonisation.

# NEO-COLONISATION

---

**Indigenous peoples in most countries are among the lowest paid workers and the most adversely affected by structural adjustment and trade liberalisation policies.** That is the shared and documented reality of Mapuche and other indigenous peoples of Chile and Maori in Aotearoa New Zealand.

**In a continuation of colonial practices, their land, resources and knowledge are expropriated and exploited by the state and major companies.** In New Zealand this is exemplified by the latest government moves to guarantee existing private property rights over the seabed and foreshore, whilst confiscating the rights of Maori that were affirmed by the Crown in te Tiriti o Waitangi. Plunder of land and other resources of indigenous Mapuche for more than a century has resulted in a loss of political and economic autonomy. Half the Mapuche population now lives in urban settlements in conditions of poverty.

**Indigenous rural poverty in Chile has been exacerbated by a crisis in traditional agriculture.** A forced transformation of small-scale indigenous farming into export cropping has seen the introduction of transgenic seeds, pesticides, fungicides and expensive technologies, which Mapuche communities cannot afford. At a recent workshop for Mapuche women that ACJR organised in Temuco, participants described how the municipal rural development agency had provided seeds, fungicides and pesticides, in place of their traditional crops and seeds, in the name of improving their competitiveness in the market. This had further undermined traditional, culturally informed methods of maintaining rural sustainability and devastated the production of medicinal plants that for hundreds of years has sustained the physical and spiritual health of Mapuche communities.

**Deregulation of markets, foreign investment and expansion of forestry plantations in their lands in the south of Chile have intensified this crisis.** Forestry transnationals have received large incentives, including exemptions from fiscal and land taxes, to expand forestry operations that are often on disputed Mapuche lands. Plantation forests also have dire consequences for the environment, such as the disappearance of water sources and permanent droughts, which destroy the viability of traditional agricultural production. Construction of highways, urban growth and the installation of cellulose plants and pipes for toxic waste disposal have further eroded Mapuche control of their traditional lands.

**Services, such as tourism, that are promoted through the P-3 are a further site of exploitation.** The southern Mapuche territories are rich in natural resources with little pollution. Management of those tourism ventures is mainly by non-Mapuche entrepreneurs, who have little interest in the negative impact of their activities on the indigenous communities.

**These changes have, in turn, imported patriarchal practices and undermined the cultural roles and social valuation of Mapuche women.** One of the main responsibilities of Mapuche women has been to educate their children on cultural issues, a task valued by the rest of the community. The women have also been valued for their contribution to the economy, for their knowledge of medicinal plants and for their work with the weaving loom. This is no longer so. Many women are now forced to work out of the community as seasonal workers and domestic labour. These transformations have contributed to higher migration to the cities, where women compete for low qualified jobs with minimal wages, such as live-in housework.

**It is hardly surprising that numerous Mapuche groups in the south of Chile oppose free trade agreements or that debate on the issues has become increasingly confrontational.** In particular there has been significant Mapuche resistance against large forestry developments and violent confrontations have occurred. Suppression of resistance has often involved collaboration between private security firms and state forces.

**Similarly, in New Zealand many Maori have vigorously opposed what they see as the latest wave of colonisation.** At the APEC Miss-Leaders conference in 1999, Leonie Pihama portrayed globalisation, free markets and neo-liberalism, and capitalism itself, as contemporary practices of colonisation. Annette Sykes described how worldwide accumulation and exclusion attack elementary human rights, with consequences that are visible for those who are prepared to see. In Aotearoa New Zealand these assaults on land, resources, language, culture, spirituality and wellbeing amount to a denial of tino rangatiratanga and hence a fundamental violation of te Tiriti o Waitangi.

**Maori opposition is a sensitive issue that New Zealand governments will not confront because it goes to the root of the colonisation-cum-globalisation agenda.** In the Singapore New Zealand FTA the Labour-led government sought to deflect Maori challenges to neoliberal globalisation and its incompatibility with the Treaty of Waitangi by including a stand alone Article 74 on the Treaty of Waitangi. This says: *'nothing in this Agreement shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Agreement including in fulfilment of its obligations under the Treaty of Waitangi.'* This wording goes further than the very narrow limitation in the GATS schedules that allows preferences for 'Maori commercial and industrial undertakings', and extends to all aspects of goods, intellectual property, investment and government procurement, as well as services. The Singapore government is also proscribed from challenging New Zealand government decisions to invoke this Article, except on the grounds that it constitutes a disguised barrier to trade.

**However, this Article does nothing to override other trade agreements that have no such provision and no New Zealand government is required to adopt such measures.** It leaves Maori exposed to the impacts of the agreement unless and until the government decides to invoke the provision. If it does, the government can subsequently change course, as the Labour government's recent retreat from pro-Treaty policies shows. There is no right for Maori, as the other party to te Tiriti o Waitangi, to intervene.

**It is not clear how this provision would emerge in a P-3.** The Singapore government reluctantly agreed to Article 74 because New Zealand said it was a base line. The Labour government may have lost the political will to maintain that line. Even if it does, Chile is unlikely to extend its coverage to Mapuche and other indigenous peoples – leaving them even more vulnerable to the kinds of exploitation that they have suffered at the hands of New Zealand companies in recent years.

# WORKERS RACE TO THE BOTTOM

---

**Free trade and investment agreements aim to improve the efficient exploitation of capital, labour and natural resources, so as to increase profits and generate further ‘economic growth’.** This is presented as a win-win for capital and labour. Yet the reality for many workers is that increased efficiency and productivity equates with low wages, job insecurity and unsafe working conditions. This is intensified by the global investment strategies of transnational corporations that pit workers in one country against those in another in a destructive race to the bottom.

**The New Zealand Labour government has adopted a ‘framework for integrating labour and environmental standards in trade agreements’** which says *‘as a minimum, the outcomes of all trade agreements to which New Zealand is a party must be generally consistent with and not undermine these core [ILO] principles, the promotion of decent work, and the promotion and protection of universal human rights standards’.*

**The centre-piece is the ILO’s Declaration of Fundamental Principles and Rights at Work** and covers:

- the right of association;
- the right to organise and bargain collectively;
- a prohibition on the use of any form of forced or compulsory labour; and
- a minimum age for employment of children and prohibition and elimination of the worst forms of child labour.

‘Decent work’ is defined as the provision of opportunities for work in which minimum standards are protected and adequate income is generated within an infrastructure that ensures social protection. However, the government stresses that each country is free to implement those fundamental principles according to its own laws and practices. Agreements must be acceptable to developing countries, who should not be denied the legitimate comparative advantage of lower labour costs.

**Although the New Zealand government says it is working to include labour and environmental clauses in the P-3, it gave way when the Singapore government adamantly rejected a labour clause in the FTA on which the P-3 is based** (although Singapore did reluctantly agree to one in its FTA with the US). The Singapore New Zealand agreement says nothing about workers or labour protections beyond the standard exception for goods produced by prison labour.

**In agreeing to set aside its own policy, the Labour government was prepared to jettison its Third Way slogan of ‘globalisation with a social face’ in favour of unreconstructed neoliberalism.** It justified this by saying that labour standards were not an issue in Singapore. According to New Zealand’s trade ministry, Singapore may not have a minimum wage but the average monthly wage is S\$3283. The same cannot be claimed for Chile, where the minimum *monthly* wage is 115,648 pesos, about US\$165 or NZ\$284 - less than the *weekly* minimum in New Zealand. Although workers’ rights have improved somewhat in recent years, organised labour is still highly dissatisfied with working conditions and benefits. On 13 August 2003, thousands of Chileans participated in a national general strike, the first for almost 20 years, called by the Unitary Workers Federation. Peaceful demonstrations and a march of over 3,000 workers in Santiago were violently repressed, according to Nelson Viveros, President of the National Association of Education Ministry Officials.

**It is expected that Chile might agree to a provision that is based on the labour chapter in the Chile/US FTA, whose wording and substance are very weak.** Each country has the right to establish its own domestic labour standards, but they must provide a legal process to enforce labour laws and provide remedies. Even then, it explicitly reserves the discretion of governments not to allocate enough money to enforce those laws. Vague wording reinforces the cosmetic nature of these protections. Governments promise to ‘strive to ensure’ and ‘endeavour’ to comply with ILO standards and agree that it is ‘inappropriate’ to encourage trade or investment by weakening protections in existing labour laws in ways that reduce adherence to ILO Core Labour standards.

**‘Labour laws’ are defined in the Chile/US FTA as those that are directly related to the core ILO labour Conventions.** This includes ‘acceptable’ conditions of work with respect to minimum wages, hours of work and occupational safety and health – but does not include the standards and levels of minimum wages, only their enforcement.

**The labour chapter establishes three bodies, none of which has any guaranteed role for trade unions:**

- A *Labour Affairs Council*, made up of senior politicians or their delegates, who decides on a work programme, *may* establish ‘governmental’ working and expert groups, who *may* consult with or seek advice from ‘non-governmental organisations or persons’.
- A *National Consultative or Advisory Committee* which governments *may* convene to advise on the implementation of this Chapter of the agreement and whose members *may* include members of the public, including representatives of labour, business and other persons.
- A *Labour Cooperation Mechanism* based in each government’s labour ministries to develop a work programme of information exchange, research and education.

**The weak obligations on both governments to enforce their domestic labour (and environment) laws are subject to the dispute mechanism,** but they are only enforceable by a monetary assessment of up to US\$125 million annually.

**There is no guaranteed right of input by unions or workers into any of these processes, which contrasts with the (still-weak) role for NGOs in the Chile/US FTA on the environment.** The exception is the right for unions (as well as corporations) to seek permission to provide written views, effectively an *amicus curiae* brief, on a matter that is subject to a dispute under the agreement – but given the lack of substantive obligations this is largely meaningless.

**It is not clear what would happen if New Zealand and Chile agreed to such a clause and Singapore remained opposed. Whatever the outcome, it would make no real difference to the underlying vulnerability of workers in Chile or New Zealand when faced with the free trade and investment agenda that is represented by the P-3.**

# P - 3 STYLE GLOBALISATION THREATENS DIVERSITY

---

**Biodiversity, indigenous knowledge and cultural diversity are intimately connected.** All are potentially threatened by the services, investment and intellectual property provisions of a P-3.

**New Zealand-linked forestry companies Tasman Chile S.A. and Carter Holt Harvey/Copec exemplify the conflict between ecological sustainability and biodiversity and the free trade and investment model.** Their 'tree farms' – presumably called that to avoid the sentimentality that attaches to calling them 'forests' – were created by tearing up Chile's native forests and planting of environmentally destructive exotics, *pinus radiata* and *eucalyptus*.

**Some environmental groups believe that free trade and environmental sustainability can be reconciled by inserting a 'green clause' into FTAs that requires governments to respect core environmental principles.** New Zealand's Labour government favours this approach – but failed to secure any such commitments in the FTA with Singapore.

**As with the labour clause, Chile may be inclined to accept provisions in a P-3 along the lines of the detailed, but flawed, Environment Chapter in the Chile-US FTA.** This urges the impossible: *'to contribute to the parties' efforts to ensure that trade and environmental policies are mutually supportive and to collaboratively promote the optimal use of resources in accordance with the objective of sustainable development'*.

**This explicitly recognises the interests of business and environmental groups, but fails to recognise indigenous rights over those resources and provides no protection for biodiversity.** Each government must provide for the receipt and consideration of public communications on the chapter and make 'best efforts' to respond favourably to requests for consultations from business and environment NGOs. As with labour, establishing an advisory committee is discretionary; so is representation from NGOs.

**It also envisages the negotiation of a US-Chile Environmental Cooperation Agreement,** with a requirement that governments take into account public comments and recommendations. The potential for 'cooperation' reflects predictable neoliberal priorities: public-private partnerships to achieve environmental objectives; exploring environmental activities pertinent to trade and investment; and use of economic instruments for environmental management.

**A green clause would have little effect on the real threats to sustainability.** Environmental researcher Maxine Lowy reports that more than 60% of illegal logging cases in Region 10 that were brought to local police by landowners, citizens or rangers between 1989 and 1993 were dropped. Similar complaints are heard today. That seems unlikely to change under the weak provisions of an FTA. Green clauses also fail to address other fundamental concerns, such as the displacement of thousands of Mapuche by commercial tree farming on their traditional lands.

**Staunch resistance to environmental dumping is reflected in a renaissance of indigenous activism and cultural pride.** According to an article in the *Los Angeles Times* in March 2003: *Because eucalyptus trees are thirsty, Victor Ancalaf became a rebel. Growing like cabbages in neat rows planted by one of the largest forestry companies in South America, the trees suck the water out of the ground, killing off streams and making wells run dry in this corner of Chile. For Ancalaf and other Mapuche Indian leaders, that is one indignity too many. So every now and*

*then, the Mapuche set ablaze the trees and the trucks of companies that plant them. Ancalaf is charged with burning five vehicles as part of a smouldering, low-tech war that also is being fought with slingshots, chainsaws and homemade shotguns. Just as often, however, the Mapuche fight back with peaceful means. Medicine women called machis pray for the spirits of the water and the earth to stand fast against the “exotic species” transplanted from North America and Australia*

**Hydro-electricity operations have a similar impact, and have provoked equally sustained resistance.** Opposition to construction of a hydro dam at Ralco in Southern Chile, which threatened to destroy unique forests and endanger wildlife as well as ancient cemeteries, religious ceremonial grounds and Pehuenche communities, was led by four Pehuenche women who vowed to die in defence of their land. The Indigenous Law 1993 states that land owned by native peoples cannot be sold without the owner’s consent. But Chile’s 1982 Electricity Law allows expropriation of private property to provide energy for the public good, whether or not it is indigenous land.

**The intellectual property chapter of a P-3 also raises fears for biodiversity.** Because an FTA must be WTO-compatible, its starting point will be the TRIPS agreement at the WTO. This effectively overrides principles for the protection of biodiversity that are permitted under the Cartagena Protocol and any other international environmental instrument. Objections that a trade agreement, designed to promote profit and enforced by courts of trade experts, should not take precedence over treaties that are designed to protect the ecosystem have made little progress. The New Zealand government could rely on a Treaty of Waitangi Article in the P-3 to justify moves to protect indigenous knowledge and species, but that would require it to concede the validity of Maori claims that it is currently contesting before the Waitangi Tribunal in what is known as the WAI 262 claim.

**In its broadest sense, market-driven globalisation threatens cultural diversity.** The Singapore/New Zealand FTA included protections for national culture that allowed the government to adopt any measures that are *‘necessary to protect national works, items or specific sites of historical or archaeological value, or to support creative arts of national value’*. An illustrative list of *‘creative arts’* covers: *the creative arts, including nga toi Maori (Maori arts), comprise a range of art forms and disciplines including dance, music, theatre, haka, waiata and other performing arts, whakairo (carving), raranga (weaving), ta moko; literature; film and video; language arts and new media. Cross-disciplinary arts activities that incorporate more than one art form are also included.* This was prompted by the Labour government’s frustration that it could not introduce compulsory local content quotas in broadcasting because of a previous government’s commitments to the WTO. It may be repeated in the P-3. But it remains largely symbolic because the WTO commitments still cover another 145 countries. It also fails to address the more fundamental threat to cultural diversity that is posed by the homogenising impacts of neoliberal globalisation.

Arena (Action, Research & Education Network of Aotearoa)  
P O Box 2450, Christchurch  
Tel: +64 3 3662 803 Email: arena.nz@clear.net.nz  
www.arena.org.nz