

Notes from NZ US Council 10th Anniversary Conference

“Growing beyond the crisis: The Trans Pacific Partnership – prospects and opportunities for business”

The following comments are based what I noted during speeches and presentations. Undoubtedly there will be inaccuracies and I have included thoughts of my own. I attended the event as co-chaor of NZRise, but comments on the speakers are my own and not necessarily the position of NZRise.

Readers of this summary should keep in mind that for many years I have been a member of the Asia Forum and the NZ Institute of International Affairs. Catalyst IT is a corporate sponsor of the latter. Catalyst IT, of which I am a founding Director, is a Wellington based company with subsidiaries in Australia and Europe and clients and business partners across the globe. Catalyst and NZRise are in no sense anti-globalisation or against the concepts of free trade.

We do have some issues with so called “high quality” trade agreements which go against some fundamental economic principles of economic efficiency and the importance of breaking down trade barriers. The words “high quality” sometimes seem to be a substitute for some for protectionism and an imposition higher costs for consumers and businesses alike.

Finally I should note that the NZ/US Council was set up to celebrate and improve relations between the US and NZ. It has been an important force in building a better relationship between the two countries and this conference was, in part, a recognition of that success. The following notes focus on the TPP itself, in particular the IP issues that are so concerning, rather than the broader focus of US NZ friendship.

Session 1: “TPP and Progress in the NZ/US Relationship”

Speaker – Rt Hon Jim Bolger ONZ

Jim Bolger traced the trajectory and history of NZ/US relationships and how the NZ/US council grew out of the nuclear schism of the 1980s. A number of points he made about TPP are of interest:

1. That participating countries often failed to educate their population on the issue of “creative destruction”. This is the idea that trade agreements create a change in the economic profiles of countries which lead to initial job losses but (hopefully) improve the economy in the longer term.
2. That people who raised questions about the TPP were “less responsible voices”. Other speakers made similar points about “vested interests” opposing TPP. [*That included Washington DC lobbyist, Cal Cohen whose organisation, ECAT, represents some very powerful vested interests whose demands are doing far more to derail TPP in the eyes of many than those of us who are questioning the validity those demands*].
3. That an open and transparent negotiating process is required.
4. All parties need to make compromises. For the USA this means letting us sell them more milk powder and beef, for everyone else this means accepting US demands on IP.

Speaker – Len Brown, Mayor of Auckland

Auckland responsible for 30% of NZ economy but only 9% of exports. Wants this to change and for Auckland to become an export lead economy. Also looking for more inward investment.

Speaker – John Key

The issue of IP is very big for the USA as it is “the biggest developer of IP in the world”. The TPP has to include agriculture. He hopes that most issues will be concluded in time for the APEC leaders conference to be held in Vladivostok in September 2012.

[John Key has since re-iterated the point about the need for the USA to protect its IP, most recently at the NZ Institute of International Affairs annual dinner. These public statements must seriously undermine NZ's negotiating position.]

Speaker – David Huebner, US Ambassador to NZ

The Ambassador was in a particularly belligerent mood when it came to talking about the TPP. He said that a 21st century economy relies on robust, guaranteed IP protection. He claimed that patent and copyright industry represent 38% of US GDP and IP intensive industries are high waged industries.

[I lost track of the number of times the Ambassador used the word “protect”.

I would also note that the NZ digital sector can certainly be classified as “high wage” and “IP intensive” but that does not mean we think the form of “robust” protectionism demanded by the US is good for our industry.

As I sat through this lecture I realised that what the US is proposing is an IP regime for the 19th century industrial era. This has proven itself totally unsuitable for the modern internet age.]

Session 2: TPP and the Big Picture

Speaker – Jeff Schott, Petersen Institute, Washington DC

Jeff Schott presented some of economic theory behind FTAs. He said TPP was the biggest deal going right now with the WTO/Doha talks being stalled [later on some NZ speakers also referred to this. It seems that if Doha does kick into gear again it will be a much bigger deal].

He also mentioned harmonisation of “rule books”. That is “behind the border” stuff that allows overseas companies to bid equally for jobs. He also pronounced that NZ's SOE model was against the rules.

[This favours large overseas companies. They get to access local NZ markets, particularly government. However, because NZ companies are generally small their chances of getting reciprocal work is low. There was a lot of talk of having even or level playing fields, but as Douglas Pharmaceuticals pointed out later in the day, that approach is not the same as “equal impact”.]

Speaker – Michael Barnett, Auckland Chamber of Commerce

TPP will expand two way investment, eliminate market barriers, optimise efficiency of supply lines, put NZ trade relationships (with the US) on the same footing as Australia and Chile, give access to federal contracts and make protectionism less likely in the future.

Speaker – Cal Cohen, Emergency Coalition for American Trade (ECAT)

[I met with Cal Cohen earlier in the week and have notes from that meeting. ECAT is a powerful lobby group with big corporates inside. Cal told me that in the IT space they represent Oracle, Microsoft, IBM and Texas Instruments. However they do not represent US SMEs, Silicon Valley or any of the new Internet companies such as Google, Amazon, Facebook etc.]

Cal Cohen identified the unacceptable positions currently being held by countries negotiating the TPP. They are as follows:

- USA – fails on approach to agricultural
- NZ and Chile – fail on their IP stance (i.e. not supportive of USTR proposals)

- Australia – fails on rejection of investor-state dispute settlement clauses [no wonder, that's what is allowing tobacco companies sue the Aussie government!].

US businesses he represents want a comprehensive agreement with no exclusions. It needs to be strong on IP protection. Cal claimed that IP is an essential element of explosive growth. He made the extra-ordinary claim that the Internet could not have developed without strong IP protection.

[I could devote pages to demonstrating how the opposite was indeed the reality and how the proposals being made by ECAT and the US would mean that nothing like the internet could ever happen again. The collaborated spaces would be captured by private interest before they could be useful to anyone.]

Cal Cohen finished by saying that “vested interests are scaremongering relentlessly” against the TPP. *[This was the most stomach churning, venal point of the day given the self-serving nature of businesses Cal represents. When I spoke economics to him earlier he just replies that this is not what his businesses position. There seems to be no “national good” rational to ECAT's statements.]*

Phil Goff – Opposition Spokesperson for Foreign Affairs

Phil Goff traced the history of TPP, which is an NZ conception, and laid a reasonably valid claim to parenthood. He did say that the WTO Doha round was more important to NZ. He pointed out that the US Dairy industry needs to change its position as do protectionist agricultural interests in Japan, Canada and Mexico, three countries that have indicated a desire to join TPP.

Phil Goff said NZ needs to be as tough in its negotiations as the US. He identified some issues he and Labour are concerned about. These are Pharmac and TPP impacting on nations' ability to put in place health regulations (e.g. tobacco). He recognised the importance to the US of IP rights but he balanced those against the legitimate rights of consumers and innovators.

He finished up criticising the secrecy surrounding the negotiations.

TPP – Where to from here

Of the next three speakers the most interesting was **Jean-Pierre de Raad** of the NZIER. He presented an economic study that purported to show significant gains for the NZ economy by 2025 if the TPP is signed. It was not clear what the underlying assumptions were for these figures (e.g. how much extra milk NZ can and will export) so I have asked the NZ US Council to provide me with the original report.

Jean-Pierre de Raad said the main beneficiaries will be agriculture, food and chemicals - oil. Main losers textiles, and mining.

[I have since done some checking on the economic study referred to. It is incomplete as it fails to account for the costs of the TRIPS Plus IP regime the US is demanding. These costs include an end to parallel imports, higher consumer bills for content, reduced innovation as a result of software imports, higher costs for pharmaceuticals and a loss of the generic pharmaceutical industry. It is also not clear to the casual reader what assumptions are being made about extra market access to for NZ products. A peer review of the report on potential benefits of TPP is required.]

David Clark, the man in charge of the NZ negotiating team, said there was a round of negotiations planned for every 6 to 8 weeks. Dallas May 12th followed by APEC side meetings, July, September and December.

A speaker for the **Japanese Chamber of Commerce** indicated that Japan has taken the decision to join the TPP process.

TPP and Businesses Opportunities

Malcolm Bailey, Dairy Companies Association at first made it sound as though TPP was really all about dairy, although he did close by saying other sectors also need to see benefit.

Nick Leach – Medicines NZ indicated that TPP was a fantastic opportunity for NZ pharmaceutical exports, a position flatly contradicted by our only exporter, Douglas Pharmaceuticals. Nick also said that Pharmac was not under threat and US pharmaceuticals liked Pharmac.

[It seems clear that a deal is going to be done on Pharmac. My suspicion is that the US pharmas will get the longer patent terms and other favourable rules that ratchet up the cost of medicines, in return they will stop opposing the concept of Pharmac.]

Philip Gregan of the NZ Winegrowers pointed out just how will the wine industry of NZ did when some of the rules of origin were relaxed. Rules of origin are an IP issue that the US and NZ agree on. Only in this case the agreement is to weaken IP and enforcement.

Points From the Audience

At various stages the audience was invited to ask questions. I chose the business opportunity session to explain why the ultra-IP regime being proposed by the US was bad for our sector, bad economics and bad for the Internet.

This encouraged a spokesperson from Douglas Pharmaceuticals (<http://www.douglas.co.nz/index.cfm>) to make their case. Douglas employs over 400 people in Auckland, many of them scientists. They develop generic drugs, mainly for the export market. They are the only organisation in NZ with this manufacturing capability, an important consideration in the event our supplies of medicines are threatened.

The US IP proposals would have an unequal impact on NZ companies like Douglas as they would ensure that their medicines get to market behind those of companies in the USA and elsewhere. If they were to continue operation with their export model, they would need to move offshore. Presumably as a victim of “creative destruction”.

Closing Observations

The phenomenon of NZ having a strong dairy industry is fairly recent. The success being largely driven by commodity prices, control of which is beyond our control. The dairy industry can only employ a limited number of people and the rest of us cannot rely on its largesse for our ongoing well being. So to develop a trade policy and negotiating stance round this phenomenon is a risky strategy for New Zealand.

A strategy that encourages more diversification and investment in high paying industries, such as IT or pharmaceuticals is more sensible.

The US and others claims that vested interests are trying to scupper the TPP is incorrect. Most of the USTR's more extreme positions are driven by vested interests. When these positions were being discussed domestically as the SOPA and PIPA bills were presented to Congress, they were met with massive public and business opposition in the USA. In other words, the US position is not supported by Congress or its electors.

The economic justification for these demands is flimsy at best. There are many academic studies showing that overly strong and broad IPR regimes are economically damaging. This is currently being played out in the software industry where the relatively recent introduction of software patents has been shown to constrain growth, innovation and progress. NZ is relying on continuing high commodity prices for primary produce to offset the likely damage caused by the TPP. This is unsustainable as we know there is still massive untapped primary produce capability in the world,

particularly from developing nations in Africa, South America and Asia.

It was sad to see so many US positions being pushed from the stage as a “fait accompli” whilst none of the NZ concerns were expressed by speakers. The NZ speakers used the word “free” a lot whilst the US ones, “protect”. This is a clear signal of the misalignment in approaches and my belief is that we will swap 19th century “free access” for 21st century IP protectionism.