

3. HOW FREE TRADE AGREEMENTS PROMOTE BIOTECH AND GMOs

WHAT FREE TRADE AGREEMENTS DO FOR BIOTECH

Indigenous communities are repositories of valuable genetic and biological resources and traditional knowledge that include traditional plant varieties, medicinal plants, and genetic material. Under the extractive logic of capitalism, these become valuable resources to be commodified, owned, and profited from. Biocolonialism is a joint venture between powerful biotech corporations that make the profits, and their patron states who develop global rules to benefit and protect them. Trade agreements have become the vehicle of choice. They are pro-corporate, negotiated in secret, binding and enforceable, and very hard to change. The more powerful the country, the stronger the rules they demand on behalf of their corporations.

FTAS TRUMP OTHER AGREEMENTS THAT PROTECT INDIGENOUS RIGHTS

International agreements like the UN Declaration on the Rights of Indigenous Peoples, the Convention on Biological Diversity (CBD) and the Nagoya Protocol aim to protect traditional knowledge and establish fair and equitable access and benefit-sharing mechanisms, although the Crown has still not signed up to the Nagoya Protocol. These international treaties are not enforceable, but FTAs are, so the trade agreements override those protective international treaties when their rules conflict.

HOW TRADE RULES REWARD BIOCOLONIALISM & BIOPIRACY

The ever-expanding reach of FTAs includes three crucial areas for Hua Parakore and GMOs:

- exclusive intellectual property rights over seeds, plants, knowledge, names;
- rights for biotech products to enter other countries markets and prevention of GMO bans;
- protections for foreign investors against new laws and policies that undermine their profits.



*Taro from Papatūānuku Kōkiri Marae
Photo source: Jessica Hutchings*

COMMODIFICATION OF KNOWLEDGE THROUGH INTELLECTUAL PROPERTY RIGHTS

Biotechno-sciences knowledge has been steadily commodified through international intellectual property rights regimes. These rights enable patents and ownerships over lifeforms, while further concentrating wealth and power in the hands of a few global corporations. Patents entitle pharmaceutical companies and biotech firms to exploit Indigenous knowledge and resources without equitable benefit-sharing or informed consent from the Indigenous communities. Indigenous Peoples are further marginalised, excluded from exercising our duties as kaitiaki and from the benefits derived from our ancestral knowledge and resources, which are exploited for profit by powerful corporations.

MĀORI FOOD PRODUCERS' RESISTANCE IN AOTEAROA

Te Waka Kai Ora joined the Wai 262 Waitangi Tribunal claim in 2007, which challenged the intellectual property rights agreement (TRIPS) in the newly established world Trade Organization (WTO) over which Māori had no say. While the main focus for Te Waka Kai Ora was the impact of an agreement with Australia on rongoā Māori, it was extended to cover organic Māori food production. The recommendations sought included legislation and regulation to prevent further research into the use of GM and GMOs in Aotearoa given its incongruence with tikanga Māori. We are still waiting..

RIGHTS TO EXPORT GM FOOD TO OTHER COUNTRIES

The US agritech industry is massive and it expects the US government to ensure it can expand into every country without hindrance. That is the story of the US, the biotech industry, and FTAs, starting with the North American Free Trade Agreement (NAFTA) between the US, Mexico and Canada in 1993. Indigenous Peoples opposed the negotiation, fearing imports of GMO corn that would contaminate their traditional grains.



Chiapas protests in Mexico. Photographer: Jane Kelsey

INDIGENOUS RESISTANCE TO NAFTA

On 1 January 1993, the Zapatistas launched their rebellion against colonial rule in Mexico. That was symbolically the day NAFTA came into force. Ten years later, the Indigenous Peoples of Chiapas, part of the Via Campesina movement for food sovereignty, led protests against the World Trade Organization (WTO) in Cancun, Mexico, under the slogan “WTO out of food and agriculture”. While GMOs have been kept out of the WTO, the US has rights to export them to Mexico under NAFTA and its successor the US Mexico, Canada Agreement (USMCA).

THE US IS SUING MEXICO OVER GMO CORN UNDER THE USMCA

In February 2023 the Mexican government issued a decree that bans the use of biotech corn in tortillas or dough, and instructs Mexican government agencies to gradually substitute—i.e., ban—the use of biotech corn in all products for human consumption and for animal feed. The US says Mexico’s measures are not based on science and undermine the market access it promised the US in the USMCA. The US is suing Mexico in a special trade tribunal under the USMCA, not in Mexico’s courts, before a panel of trade experts, not judges. If Mexico loses, it could suffer heavy penalties against its exports to the US, its biggest export market.

NZ'S CLOSE CALL IN US NEGOTIATIONS

The Trans-Pacific Partnership Agreement (TPPA) also includes biotech in its agriculture chapter, but we didn't know that until negotiations were over. The US pulled out of the TPPA, but these rules are still in its successor, the CPTPP. The GMO rules are subject to our domestic laws, which currently allow very limited GM. The new government threatens to change that, which could lock open the door. New Zealand's (secretive) negotiations for another US-led agreement, the Indo-Pacific Economic Framework (IPEF), also had biotech on the table. Thankfully, that has collapsed (for now).

BIOTECH INVESTORS PROTECTED UNDER PRO-CORPORATE INVESTMENT AGREEMENTS

A third corporate gain from FTAs provides special protections for foreign investors if a government adopts a new law, policy practice, or even decision, that significantly erodes the value and profits of their investment. The investor can enforce those rights directly against the government in offshore tribunals for mega-compensation before tribunals that are notoriously pro-investor. Investor-state dispute settlement (ISDS) became so controversial in the TPPA that the Labour/NZ First government said no more in future agreements. But it still exists in NZ FTAs with some countries that permit GMOs and from which US biotech firms can operate. Opening the door to GMOs, then shutting it again, could easily lead to an ISDS dispute. Even threatening a dispute could prompt a backdown.



Heritage seed varieties. Photo source: Jessica Hutchings

HOW WE CAN ADDRESS THE THREAT OF FTAS TO PURE FOODS?

Insist that Te Tiriti takes precedence over international trade treaties, including by:

- Conducting all negotiations in public in the same way any domestic law should be.
- Māori having a seat at the table to decide what is or is not up for negotiation and compromise
- Providing a genuine carveout that ensures Māori duties, responsibilities, rights and interests, and Crown obligations, under Te Tiriti are in all FTAs
- Ensure other treaties that provide protections for Māori are not undermined by FTAs.