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CATHOLICS IN COALITION FOR JUSTICE AND PEACE

Catholics in Coalition for Justice and Peace 2015 Occasional Paper Series

**Edited responses to Questions to Dr Ranald on the TPP at the
Sunday Seminar in June:**

The Trans Pacific Partnership – What does this mean for us?

Sunday 21st June 2015

Dr Ranald's responses to edited questions on the TPP.

This Government really supports the idea that foreign investors should be able to sue governments – they call that 'investor protection' and they say, for instance, that Australian companies are investing in other countries, they'll be able to use this if a government does something unfair to them. My response to that is, I don't want Australian companies to sue other governments.

The reality is that apart from, say, BHP and a few global Australian companies, no small Australian companies are going to use that because it's too expensive. It's designed for the big global companies to use.

Our Government is also being lobbied very strongly by these companies that want investor rights to sue. They're being lobbied by the pharmaceutical companies. if they don't get these extra years of protection on new biologic



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drugs then they won't have the incentive to invent the new drugs. Particularly the public health associations, the AMA, a lot of health organisations have come out against this and said this is just not reasonable. They already have a 20 year monopoly. They do not need more incentives.

So it is really about the corporate influence on government and also there's ideology that it's always a good idea to reduce so-called barriers, regulation and red tape. I think it's also because we're in the US Alliance.

Q: This whole concept of these fair trade agreements appears to be about high investor returns to corporations and a lowly paid workforce.

You can sum it up that way. What they want is global rules that suit them and so what suits them is being able to invest anywhere they want at the lowest possible cost, and if you look at the China FTA what it really is is treating people like commodities. Having agreements about migration in a trade agreement, where there's nothing about their rights as workers.

When you intensify global competition you tend to have downward pressure on human rights and workers' rights and the environment. Even with enforceable rights it's difficult to enforce them through a trade agreement, too.

We've got to assert our right to have public interest regulation and to have labour rights and environmental protection. That's what the Pope is saying too.

Q: A Liberal politician said there'd been no cases of governments being sued but that's not true. I think there was one in Central America where a company sued – it hadn't even started work there but it was suing on the basis of losing future investment.

There's some terrible cases in Latin America. There's a case in Peru that has been going since 2012 involving a lead smelting company. There was a lot of lead pollution. A Peruvian court found that they should clean up the pollution and pay some compensation, so they counter-sued using this provision, saying that the court was an unfair process and they're demanding compensation from the Peruvian Government. The US-Peru FTA is a relatively recent agreement and it has these so-called safeguards which are meant to prevent cases like that, but it doesn't prevent them from taking the case.

There's another one with El Salvador. A Canadian-US gold mining company sued under the Central American FTA, then the company was taken over by an Australian company. They had been refused a licence for gold mining because it was near the main water source in El Salvador. El Salvador is a tiny country, it only has about 200,000 people, and they are suing them for \$300 million, which is like their education budget. The El Salvador Government is fighting that case but again it's been going on for years. The Australian company is called Oceanagold Corporation and it has headquarters in Melbourne. There's been a specific campaign, involving the Edmund Rice Centre and a number of other churches, along with us. We've been pressuring the company, writing them letters, having demonstrations outside, to drop the case but they haven't dropped it yet.

Q: Where do these companies sue? What courts do they go to?

It's not in a court. It's a special international tribunal. That's why we say it's not a fair system. It's been set up under these international rules. There's one lot run by a branch of the World Bank and another lot run by a branch of the UN Investment Regulator. Basically, when you sign up you agree that if there is a case you will go into this tribunals system. There's no permanent sitting judges. There's a panel of investment experts and the government chooses one, the company chooses one, there's one agreed. The problem is that they come from this pool of people who are investment law experts and they don't have to stop being lawyers, so they can be a lawyer one month, acting for a company, and an arbitrator the next. They're not impartial or independent.

Q: What if the country says, we're not paying? Are they going to take the whole country to jail?

Again, you sign up for these rules that say that if the case is found against you you will pay, but there have been some governments who have refused to pay. There have been quite a lot of cases against governments in Latin America and that's why a number of governments in Latin America [are against these deals]. Brazil has never signed one of these things. The Argentinians and about half a dozen other countries have said they won't sign any more. South Africa, India, Indonesia, and (because it's come up in this European Union agreement with the US) both Germany and France, have said they won't be in it. Germany in particular has been sued by a Swedish company because of its policy against

nuclear power. After the Fukushima disaster, Germany changed its policy. Germany has a conservative government; they said, we're not having any more nuclear power plants. One of the companies that had been given a licence but hadn't built the plant yet are suing the German Government. That really shocked the German Government and they are saying, we're not going to agree to this in the Trans Atlantic pact because the companies that are the most frequent users are US-based companies. They know that they could be sued.

Q: We're trying to divest from fossil fuel mining and there's the coal seam gas projects. Is it possible that we could be sued by companies that want to continue mining fossil fuels?

Yes. In fact, now that we have signed the Korean Free Trade Agreement, it's open to Korean companies now to sue Australian governments. In NSW there's three big developments that are owned by Korean-owned mines including Bylong Valley. They're actually coal, not coal seam gas.. In all of those communities, there have been local movements against those mines and the NSW Government actually did introduce a couple of years ago some new regulation about mines not being near water tables, and being so far distant from towns and so on. If one of those companies gets refused a licence, that could be the action that triggers this kind of thing. It doesn't mean they will do it, but it would be a choice that they would have.

Q: [Is there room for it to] still come back to the Australian Parliament?

It's limited because what happens is that Cabinet makes the decision to sign the agreement and after that you can't change the text. It does go to a parliamentary committee and they will take submissions, so of course we'll put in submissions and point out what we see as the problems but that committee can only make recommendations and parliament can only vote on the implementing legislation. So for the China FTA the main legislation that they'll vote on will be the changes to tariffs. If the parliament wants to stop the agreement they will have to vote 'no' to that legislation, which is about tariffs; it's not about movement of people or the rights of investors to sue. So we are going to be campaigning around that. The chance is in the Senate, because the Government doesn't have a majority in the Senate. The ALP would have to agree to vote against.

We have a cross-parliamentary group now which has ALP, Greens and cross-benchers. The Greens and cross-benchers will probably not vote for these kinds of trade agreements, but there's a debate in the ALP because a lot of people in the ALP see the problems, but the leadership in particular is very worried about being seen as 'anti-trade' and if you saw all the hype around the China FTA this week in the newspapers - it's going to mean cheaper cars, cheaper this, cheaper that, and it's going to mean all these wonderful opportunities for Australian investors to invest in China - which are actually quite limited but there's some increase ...

We haven't had that sort of debate about whether it is really in the national interest. We have to get politicians to focus on that.

Q: Has anyone pulled out of a free trade agreement and what are the ramifications if you do?

There have been countries in Latin America who refused to pay after they've lost cases. Argentina had done that. The big penalty is meant to be that no one will ever invest in your country again because you haven't abided by this and the Brazilians have never agreed to any, but actually there's still investment going on in those countries, especially in Brazil.

It really is a control mechanism with groups like the International Chamber of Commerce saying we must have this because this protects investors, and if we don't have it then no one will invest in your country, but actually, if you look at the studies, there's not much difference between levels of investment in countries that have this thing and countries that don't.

In terms of withdrawing from actual trade agreements, it's much easier to withdraw from bilateral trade agreements. Bolivia has withdrawn from some bilateral agreements. In terms of saying 'no' to ISDS, all those countries I mentioned before in Latin America, India, South Africa, Indonesia - they're all reviewing their commitments to ISDS and most of those are in bilateral investment agreements. They are saying, we are going to get out of these and we're not going to have any new ones.

I'm not saying we can't defeat it but this is what keeps it going, It's grown into this institution that has its own culture, its own profitability for some people. But it wouldn't keep going unless the big corporations were actually backing it.

Q: My question is about water.

The cases I know that are about water were in Argentina where the Argentinian Government privatised water in the 1990s. There was a big push for privatisation of water in the 1990s from these international companies, like Veolia. They contracted the management of their water service to Veolia because Veolia promised that they would invest in extending the water system outside the capital cities and provide a water service to people who didn't already have it. But once they got the contract they didn't actually do this. They focused on the more profitable parts of the water system and so as the contract came to its end the Argentinian Government, which by then was a more progressive government, said we're going to terminate the contract because you haven't done what you promised. So they sued using this ISDS and they actually won the case, Veolia won the case, but the Argentinian Government said, we're not going to pay, and they've never paid.

Q: This cross-party group in the Senate, can we find that somewhere?

Our website has a link to it. I can tell you who's involved. There's Melissa Park, Labor MP from Fremantle; Peter Wish Wilson from the Greens; and there's Nick Xenophon, an Independent from SA, who actually gets elected with a quota. They've got people around them in each of their groups. Nick Xenophon in particular has got together a group on this issue, there's him, John Madigan, and two of the ex-Palmer people, Jacqui Lambie and Glen Lazarus, and even the one Palmer person remaining, Dio Wang, who is actually quite sympathetic on these issues.

If Labor plus Green plus all of those people voted against it, it could stop it. They'd have to vote against the implementing legislation.

I haven't mentioned financial regulation, but the TPP has a financial services chapter which hasn't yet been leaked. We suspect again that there will be some limitations on what governments can do in financial regulation. Now that's mad, given we've just had a global financial crisis, but the financial institutions have been fighting back against the kinds of regulation that governments have introduced since the GFC and they are trying to use trade agreements to have another way around it.