

數位貿易下的包容性貿易與原住民族議題： 以紐西蘭貿易協定實務與懷唐伊委員會報告為例

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摘要

國際貿易法領域近年來透過「包容性貿易」政策，逐步擴大貿易協定下所涵蓋的非貿易政策範圍，例如從早期的貿易與環境、貿易與勞工，擴及到貿易與性別、貿易與永續發展。在貿易連結議題 (Trade Linkage Issues) 的發展中，貿易與原住民族為一個新興課題。儘管原住民族議題涉及到人權保障，國際社會也透過國際勞工組織第 169 號決議通過有國家中的原住民族與部落民族公約、聯合國發表原住民族權利宣言等承認原住民族的相關權益，但是從紐西蘭毛利族質疑政府未在跨太平洋夥伴全面進步協定履行其應落實國內原住民政策一案中，凸顯出原住民族議題之非個人權利面向，包含原住民族知識文化系統與族群認同的「集體性權利」，以及在承認原住民族的經濟文化事務自治權之「國家治權共享」。有鑑於紐西蘭長期積極將國內原住民族政策與貿易政策、貿易協定相互連結且有豐碩的成果，本文以紐西蘭貿易協定的實踐為核心，藉由紐西蘭懷唐伊委員會 (The Waitangi Tribunal) 針對 CPTPP 與該協定之懷唐伊條約例外條款是否有效保障紐西蘭原住民族權益於 2021 年做出的報告，分析此貿易協定之例外規定對於落實國內原住民族政策與維護其權益的效益，具體探討貿易協定處理原住民族議題目前面臨兩個規範模式的侷限：例外條款的侷限、既有貿易協定從「利益衡平」方式調和貿易與非貿易政策之侷限。最後，本文以紐西蘭在 WTO 針對電子商務談判提出之原住民族相關提案及近期的雙邊貿易協定原住民族規範等新發展為基礎，提出「政策主流化」模式可能是未來貿易協定處理貿易與原住民族議題之方式。

關鍵字：永續發展、包容性貿易政策、懷唐伊條約例外條款、懷唐伊委員會、CPTPP 之電子商務規範、政策主流化、原住民族經濟貿易合作協議、集體性權利與自治權

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Abstract

In recent years, international trade law has gradually expanded the scope of non-trade policy areas covered under trade agreements through "inclusive trade policies". This expansion has gone beyond the early focus on "trade and the environment" and "trade and labor". Within the expansion of trade linkage issues, one emerging topic is the linkage between trade and indigenous peoples. Indigenous issues are part of international human rights law, and the international community has recognized indigenous rights through instruments such as the International Labour Organization's Convention No. 169 concerning Indigenous and Tribal Peoples and the United Nations Declaration on the Rights of Indigenous Peoples. However, a case involving New Zealand's Māori questioning the government's failure to implement domestic indigenous policies under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) highlights the complex of indigenous issues. That is about "collective rights" related to indigenous knowledge and cultural systems and indigenous identity and the indigenous' self-governance over their economic and cultural affairs. This article focuses on the practice of New Zealand on addressing trade and indigenous nexus. It analyzes reports issued by the Waitangi Tribunal, which examines whether the Comprehensive and Progressive Agreement for Trans-Pacific Partnership effectively and the Treaty of Waitangi exception clause protecting the rights/authorities of New Zealand's indigenous peoples. By exploring the effectiveness of multi-layered exceptions in CPTPP, it discusses the challenges faced by trade agreements in addressing indigenous issues in terms of normative models: the limitations of exception clauses and the constraints of the "interests-balanced approach" adopted by existing trade agreements in reconciling trade and non-trade policies. In conclusion, drawing on recent developments such as New Zealand's indigenous proposals in the WTO plurilateral negotiation on e-commerce and modified indigenous provisions in bilateral trade agreements, the article suggests that a "policy mainstreaming" model may pave the way for the trade and indigenous nexus in international trade law.

Keywords: Sustainable Development, Inclusive Trade Policies, Treaty of Waitangi Exception, Waitangi Tribunal, E-commerce chapter of CPTPP, Policy mainstreaming, Indigenous Peoples Economic and Trade Cooperation Arrangement (IPETCA), Indigenous Peoples' collective rights and self-governance