Standing Committee on Legal and Constitutional Affairs: Questions further to the harmonisation inquiry public hearing, 21 March 2006

1. *In the Department's view, are there other mechanisms which could be just as effective but more readily achievable than regulatory harmonisation (particularly the single regulatory body approach)?*

   Experience confirms the view that the mechanism used to further harmonise the Australian and New Zealand economies should be determined on a case-by-case basis, taking into account the issue being addressed and the extent of harmonisation currently in place. Approaches less than a single regulatory body, such as enhanced cooperation, adopting joint or integrated standards, mutual recognition, and alignment of economic, legal and accounting requirements, all have their place.

2. *Can the department provide some examples of increased compliance costs (arising from differences in business law or directly from a lack of business harmonisation between Australia and New Zealand)? How are these costs measured?*

   Anecdotal evidence suggests that the costs of meeting multiple sets of regulatory requirements discourage cross-jurisdictional trading. For example, a product manufacturer benefits from the Trans-Tasman Mutual Recognition Arrangement that might otherwise require a product to undergo specific modification to meet the standards defined for the receiving market. Likewise, mutual recognition or harmonisation of accounting and reporting requirements may reduce the need for similar but market specific reports, which translates into staffing and other resources consumed in the preparation and filing process. Increased harmonisation may also achieve the critical mass required, in terms of market size, to make investment in research and development feasible, where it might not have been for the individual markets in isolation.

   The Memorandum of Understanding (MOU) on Coordination of Business Law signed by Australia and New Zealand in 2000, and revised in 2006, recognises that coordination of business law and regulation can facilitate the enhancement of the trans-Tasman economic relationship, reducing transaction and compliance costs, and increasing competition.

3. *Can the Department clarify: are the differences in privacy law and in the application of trade practices law also impediments to trans Tasman business activity?Are there other important barriers to trans-Tasman business resulting from the lack of harmonisation?*

   Differences in law are not necessarily an impediment to trans-Tasman business activity. However it is possible that such differences may increase the costs to business of entering the market and complying with accounting, reporting and other requirements.

4. *What would the Department's view on the concept of a model contract code, applying between Australia and New Zealand, as a means of harmonising contract law between the two countries?*

DFAT does not have the expertise to comment and recommends that such questions be directed to the Attorney-General's Department.

5. *What would be the Department's response to the proposition that, even if legal, harmonisation is achieved between Australia and new Zealand in a given area(s), separate judicial interpretation in the two countries will erode such harmonisation over time?*

DFAT does not have the expertise to comment.

6. *In the Department's view, would greater regulatory harmonisation between the two countries result in a higher annual growth rate in trade?*

DFAT considers that greater harmonisation has the potential to further increase the annual growth rate in trade.

7. *In the department's view, should the Government use its external affairs powers to harmonise the regulation of therapeutic goods and poisons within Australia via the legislation to establish the trans-Tasman Joint therapeutics Agency?*

DFAT does not have the expertise to comment.

8. *Is it the Department's view that there is a need for additional arrangements/ activities for pursuing trans-Tasman harmonisation at this time, or do the existing arrangements suffice?*

CER is a dynamic and living instrument which forms the cornerstone of the bilateral relationship and which continues to evolve. Most recently, changes to the Rules of Origin (ROO) under CER were announced in February 2006, foreshadowing the adoption of a Change of Tariff Classification approach to the rules. This will simplify the administration of ROO and reduce compliance costs for trans-Tasman traders and potentially open the market to new participants.

There is also an extensive work program to enhance coordination between Australia and New Zealand, principally through the Single Economic Market (SEM) initiative, which encompasses five areas: banking, competition and consumer laws, accounting standards, investment, and the mutual recognition of securities. Changes in other business-related areas that broadly fit within the SEM context include: tax treaties, court proceedings and regulatory enforcement, intellectual property and cross border insolvency.

This is a significant and evolving agenda. DFAT will continue to work with other government agencies, Australian businesses and New Zealand to identify and progress further areas where additional regulatory harmonisation will benefit both countries and make progress towards the goal of establishing a single economic market.

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What are the implications for Australian businesses of New Zealand signing onto the 1997 Kyoto Protocol of the United Nations Framework Convention on Climate Change?

The Kyoto Protocol does not prevent businesses in non-Party countries from engaging with counterparts in Party countries in the Clean Development Mechanism (CDM), Joint Implementation (JI) projects and emissions trading. Australian businesses may thus engage with New Zealand counterparts in these areas.