



## Submission No 9

### **Australia's trade and investment relations under the Australia-New Zealand Closer Economic Relations Trade Agreement**

**Submission made by:           New Zealand Government**

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## **NEW ZEALAND GOVERNMENT SUBMISSION TO THE JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE ON CER**

### **PART ONE: EXECUTIVE SUMMARY**

1 The New Zealand Government welcomes this inquiry into the Australia New Zealand Closer Economic Relations Trade Agreement (CER) by the Joint Standing Committee on Foreign Affairs, Defence and Trade, and is grateful for the Committee's invitation to make a submission.

2 The CER Agreement is underpinned by our countries' strong bilateral relationship. This is based on shared values, interests and strong historical, cultural, geographical and political ties.

3 New Zealand's trade and economic relationship with Australia is by far the most extensive and the deepest we have with any bilateral partner. The level of economic integration is reflected in our trade, investment and people flows, depth of regulatory coordination and in an array of inter-governmental trans-Tasman agreements and arrangements.

4 CER has brought significant benefits to Australia and New Zealand. New Zealand is Australia's fifth largest export market for goods and services and its primary market for elaborately transformed manufactures. Australia is New Zealand's largest export market. There are strong investment links between the two countries - New Zealand is Australia's third most important destination for outward investment, and the sixth largest source of foreign investment in Australia. New Zealand is the largest source of short term visitors to Australia, with over 1 million New Zealanders crossing the Tasman every year.

5 Trans-Tasman trade has grown at an average of 6% per annum per year for the past decade. Trade figures alone, however, do not illustrate the depth of economic integration between our economies. There is a significant degree of Australian ownership of New Zealand businesses and many head offices of businesses in New Zealand are based in Sydney and Melbourne. The majority of investment capital into New Zealand comes from Australia, providing Australian companies with a very good rate of return.

6 CER has created an 'Australasian market', giving New Zealand and Australian businesses a springboard to expand their exports to the rest of the world. Australia is the first offshore market for many New Zealand businesses and likewise, New Zealand provides a straightforward first market for many Australian companies.

7 CER has been described by the World Trade Organisation as the ‘world’s most comprehensive, effective and mutually compatible free trade agreement’. CER’s strength has been its ability to move beyond a traditional trade agreement and address broader regulatory issues to support deeper and wider business opportunities. CER has developed into a number of unique cooperation institutional arrangements which support deep and broad interactions across the spectrum of government and business activity.

8 We are now looking at where we can add value to CER and take it to the next level. In this context, our Governments’ shared goal is now a seamless business environment, or Single Economic Market (SEM). The objectives of deeper regulatory cooperation are to further reduce compliance costs for businesses operating in both economies, thereby promoting the competitiveness of the trans-Tasman economy and to achieve, where possible, greater economies of scale in carrying out complex and intensive regulatory functions, including effective enforcement.

9 The SEM agenda is not about prescribing a particular set of regulatory or institutional arrangements to govern trans-Tasman markets. Under the SEM umbrella, we are seeking to identify innovative and practical ways to reduce further barriers to trans-Tasman business, including, in particular under the business law cooperation programme. These may include barriers arising from different, conflicting or duplicative regulatory requirements, strengthening our joint capacity to influence international regulatory developments and enhancing international competitiveness by creating an economic environment that attracts global capital and skills. Global trend and rule are increasingly influencing Australia and New Zealand, driving an inevitable convergence in respect of some of our regimes.

10 It is important that both countries continue to give the ongoing development of the trans-Tasman trade and economic relationship the commitment it warrants, to ensure that it continues to bring benefits to both sides, including in the context of an increasingly globalised, internationalised economic environment. It is not a relationship that should be taken for granted.

11 Given the comprehensive nature of the trade and economic relationship, differences over specific access issues (apples being a prominent one for New Zealand) are inevitable, but should not overshadow what is an overwhelmingly successful economic and trade relationship.

12 New Zealand and Australia already cooperate extensively globally, regionally and in third markets to advance our shared interests. New Zealand values this cooperation greatly. As well as deepening trans-Tasman integration, a SEM will enhance New Zealand and Australia’s competitiveness and influence globally. We will often stand to gain much more in third markets by collaborating rather than competing.

13 This inquiry is another important contribution to the process of advancing a SEM. New Zealand welcomes the opportunity in this submission to explore development in the trade and economic relationship in more detail.

14 This submission is structured as follows:

Part One: the Executive Summary outlines the principal messages contained in the New Zealand Government's submission

Part Two: discusses the broader Australia-New Zealand bilateral relationship

Part Three: identifies the benefits that CER has brought to Australia and New Zealand

Part Four: discusses the existing cooperation between the CER partners globally, regionally and in third markets

Part Five: considers the future of CER - our Government's shared goal of a SEM and suggests opportunities for further cooperation in third markets

Part Six: the Conclusion summarises the principal issues identified in this submission.

Annex A: outlines the arrangements, agreements, regulatory and policy cooperation and instruments that comprise CER and the wider economic relationship.

## PART TWO: THE BROADER BILATERAL RELATIONSHIP

15 The CER Agreement needs to be considered in the context of the broader bilateral relationship between Australia and New Zealand. It is underpinned by a unique nexus of strong historical, cultural, geographical and political ties and of course by shared values and interests. Australia, indeed, is New Zealand's most important economic, diplomatic and security partner. The breadth and depth of the CER agreements and arrangements are mirrored across all aspects of the relationship.

16 This includes, vitally, the freedom of Australians and New Zealanders to visit, reside and work in each other's country largely without restriction across the Tasman (under the Trans-Tasman Travel Arrangements (the TTTA)). Trans-Tasman freedom of movement has become a key element of the relationship, underlining the essential people to people links and economic growth under CER. Citizens of each country are able to travel across the Tasman freely, as there is generally no need to apply for a visa beforehand. Eligible New Zealanders are issued with a visa on arrival in Australia and Australians do not need a visa to visit New Zealand. These arrangements are supplemented by reciprocal eligibility for certain health and security benefits (including under the Australia-New Zealand Social Security Agreement, the Australia New Zealand Reciprocal Health Agreement and the Child Support Agreement).

17 The relationship is also underpinned by significant, high-level, political interaction. As Australian Prime Minister Howard noted earlier this year

*“The relationship between our two countries could not be closer or better, but nonetheless we have both taken the view that it's important not to take that closeness for granted. And that is why we have regularly embraced...the discipline of bilateral meetings in each other's countries each year”*

This commitment to the relationship has been reflected at every level of the Government. The two Prime Ministers meet annually in formal talks and also meet less formally in other settings each year. Foreign Ministers have met on a six-monthly basis since 1989. The annual meeting of Trade Ministers has been expanded to a full “CER Ministerial Meeting” which includes Ministers with responsibilities in agriculture and other domestic industries. The Ministers of Defence, the Ministers of Customs and the Treasurer/Finance Ministers meet at least annually. New Zealand Ministers participate in many of Australia's State/Federal Ministerial Councils, such as the Primary Industries Ministerial Council (PIMC). There are joint Ministerial Councils in areas where we have (or have agreed to implement) joint agencies (namely, the Australia New Zealand Food Regulation Ministerial Council and the Therapeutic Product Interim Ministerial Council.)

18 Complementing these formal encounters, senior business, community, media, senior public servants and political leaders meet annually in the context of the Australia New Zealand Leadership Forum. This is a high-level “Track Two” event designed to

ensure that there continues to be a strong constituency in each country that is well-informed about and positively disposed to the other, and to foster the development of a closer relationship between the two countries.

19 In addition to formalised arrangements, there is a network of links throughout the corporate world, industry associations, professional organisations and a myriad of business, cultural and sporting groups.

### PART THREE: THE BENEFITS THAT CER HAS BROUGHT TO AUSTRALIA AND NEW ZEALAND

20 CER remains one of the world's most open and successful free trade agreements. It continues to be extraordinarily successful in improving trans-Tasman trade and investment links and in boosting the international competitiveness of both countries.

21 Between 1983 and 2003, two way trade in goods expanded at an average annual growth rate of 10%. In 2005, trans-Tasman merchandise trade increased 3.2% on the previous year and was valued at A\$14.4 billion.

22 Despite its smaller size, New Zealand has consolidated its position as a major trading partner of Australia. Australia's exports to New Zealand have grown rapidly under CER. New Zealand is the fifth largest export market for Australian goods and services and eighth largest source of imports. New Zealand is Australia's number one market for elaborately transformed manufactures, an important sector of the Australian economy. Likewise, New Zealand's exports to Australia have increased. Australia is New Zealand's largest export and import market.

23 Australia's bilateral investment ties with New Zealand have also deepened under CER. In 2004, two way investment between Australia and New Zealand was A\$61.8 billion. Australia's total investment in New Zealand was estimated at A\$39.4 billion, while New Zealand's in Australia was A\$22.4 billion. New Zealand is Australia's third most important destination for outward investment, and the sixth largest source of foreign investment in Australia. Australia is the second largest destination for New Zealand investment abroad after the United States. Australia is also the largest foreign investor in New Zealand. New Zealand and Australian investment in each other's countries contributes to economic growth and productivity.

24 New Zealand is Australia's number one source of short-term visitors, with approximately 1 million visits by New Zealanders each year. There were approximately 875, 000 Australian visits to New Zealand in 2005. Tourism is a significant driver of two way trade and the majority of New Zealand visitors to Australia are holiday makers (959, 000 out of a total of 1, 249 000 arrivals in the 2004 - 2005 year). New Zealand visitors make a significant contribution to the Australian economy, spending approximately A\$1.2 billion in the 2004 - 2005 year.

25 The trade is good for both economies, although the balance is in Australia's favour. In 2004-2005, for instance, New Zealand exported approximately A\$5.3 billion worth of goods to Australia, while Australia exported A\$9.2 billion worth of goods to New Zealand.

26 CER has not just been about trade. It has led to an Australasian market, with deep and strong links between the two economies. Australia has access to another

domestic market about the size of Queensland, and the effective size of the New Zealand domestic market has been increased six-fold. Together, the two countries provide our businesses with easy access to a combined market of 24 million people.

27 CER is also seen by New Zealand as having been highly successful as a spur to the internationalisation of the two economies and to a more competitive, dynamic business environment in New Zealand. It encouraged business people and the general public to understand the vital importance of international linkages.

28 CER has led to many trans-Tasman firms and commercial linkages. For larger firms, success in the trans-Tasman market has been a catalyst for expanding into Asia, the Americas and Europe. For example, Heinz Watties is a truly 'Australasian' company. It operates as Heinz in Australia, Watties in New Zealand, and Heinz Watties internationally, using its trans-Tasman platform to export to Asia.

29 For some small and medium sized enterprises (SMEs), this has meant trading or integrating across the Tasman. Australia is the first offshore market for many New Zealand businesses and likewise, New Zealand provides a straightforward first market for many Australian companies. SMEs are an important part of the trans-Tasman economy generally and particularly the food and beverage sector.

30 As well as being highly successful bilaterally, CER, as an FTA model that was compatible with the interests of a small economy (with principles of openness, simplicity, comprehensiveness and WTO consistency) provided a valuable framework for other FTAs.



## PART FOUR: COOPERATION BETWEEN THE CER PARTNERS GLOBALLY, REGIONALLY AND IN THIRD MARKETS

### *The WTO*

31 New Zealand and Australia continue to work together closely on trade policy issues, to promote our shared interests and maximise our impact regionally and internationally. Both our countries' highest trade priority is to secure an ambitious outcome from the World Trade Organisation (WTO) Doha Round of negotiations. As agricultural exporters we face common challenges, such as global distortions to trade caused by prohibitive market access barriers and high levels of subsidies, along with increasing competition internationally for our goods and services. In this context, the importance to both countries of getting a good result in the current WTO Round cannot be overemphasised. We have shared objectives across a number of areas in these negotiations. On agriculture, our shared objectives are to substantially improve market access, including those products deemed the most politically "sensitive" (such as dairy and meat,), substantially reduce domestic support and eliminate export subsidies.

### *The Cairns Group*

32 New Zealand strongly supports the continued profile of the Cairns Group as a significant participant in the negotiations and appreciates that important role that Australia plays as Chair. The Cairns Group, under Australia's leadership, is crucial to our shared efforts to secure our objectives in the WTO, particularly for market access. This is important for both New Zealand and Australia's direct trade interests.

### *APEC*

33 New Zealand and Australia also have an active and cooperative relationship in APEC and share many objectives. We cooperate closely on trade and investment, for example, promoting FTA best practice and expanding APEC's investment work. New Zealand looks forward to supporting Australia in its role as chair in 2007 and maintaining a close dialogue on its themes and objectives for that year.

### *FTAs/CEPs*

34 While both our Governments are committed to multilateral trade liberalisation first, New Zealand and Australia have also been active in negotiating bilateral and regional trade agreements<sup>1</sup>. As well as being successful bilaterally, CER has provided a good model for these negotiations. High-quality and comprehensive regional and

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<sup>1</sup> Australia has FTAs/CEPs with Thailand, the USA, Singapore and is currently negotiating with Malaysia, China, ASEAN and the UAE. New Zealand has FTAs/CEPs with Thailand, the Trans-Pacific Economic Partnership (with Brunei, Chile, Singapore), which will enter into force in 2006, and is currently negotiating with Malaysia, ASEAN and China.

bilateral trade agreements, such as CER, can make a useful contribution to moving the WTO process forward, by highlighting the benefits of trade liberalisation. Such agreements also contribute to achievement of the APEC Bogor Goals of free and open trade and investment by 2010 for developed economies and 2020 for developing countries.

35 New Zealand values greatly the dialogue that it has with Australia on FTAs. Complementing our efforts in the WTO, we are currently negotiating jointly with ASEAN on an ASEAN-Australia/New Zealand Free Trade Agreement. These negotiations were launched in November 2004 and are due to be completed by March 2007. This is the first time that the CER partners have collaborated on an FTA with third countries, and reflects the recognition by ASEAN of the close integration between Australia and New Zealand – that it makes sense to deal with us as a grouping.

36 Our officials also maintain a close dialogue on FTAs that we are negotiating separately (for example China and Malaysia), with regular exchanges of information and views. While our interests may be different in some areas, we have important shared policy objectives. Given the integration of our economies, New Zealand and Australia have a vested interest in ensuring that neither country negotiates conditions with third countries that could disadvantage the other country economically.

37 We wish to maintain an active dialogue with Australia on FTAs and are open to opportunities to work closely together in future where it would be mutually beneficial to do so.

## PART FIVE: LIKELY FUTURE TRENDS IN CER: A SINGLE ECONOMIC MARKET (SEM)

38 Since the establishment of CER, substantial progress has been made integrating the Australian and New Zealand economies - in trade, investment, the flows of people and regulatory approaches (see Annex A for the range of the arrangements, agreements, regulatory and policy cooperation and coordination that comprise CER and the wider economic relationship today). Under CER, tariffs and quantitative restrictions have been removed, the suppliers of goods and services from both countries are treated on a similar basis and business law is more coordinated. The focus is now firmly fixed on identifying, developing and implementing reforms that seek to progress the development of this relationship to create a seamless trans-Tasman business environment - a Single Economic Market (SEM) between New Zealand and Australia. This section identifies key achievements under the SEM concept to date and outlines the current work programme.

39 The SEM concept was first articulated in 2004 at the annual meeting between Treasurer Costello and Finance Minister Dr Cullen. It is an important part of New Zealand's economic transformation agenda. While there are no formal barriers to goods, services and factors of production moving across the Tasman, the degree to which they will move will depend upon the extent to which there is "friction" in the combined market created by differences in regulatory and other policy interventions — "behind-the-border" regulation — and other non-regulatory factors. The current SEM reform agenda is focused on reducing these behind-the-border barriers to trade in goods, services and factors of production.

40 Ultimately, the SEM agenda is about improving productivity and growth in both countries through: lowering non-tariff barriers to trade and regulatory barriers to investment; providing greater economies of scale for businesses and regulators, and better access to new capital and technology; spurring innovation through greater competition and the transfer of knowledge; creating greater employment opportunities and increased choice. The current SEM work programme spans a broad range of regulatory and policy areas with potentially wide implications for business. These can broadly be grouped under the following four themes:

- reducing the impact of borders — focusing on reducing formal barriers (such as rules of origin and investment screening) and streamlining border clearance processes;
- improving the business environment through regulatory coordination — focused on reducing behind the border barriers to trade by streamlining trans-Tasman regulatory frameworks;

- improving regulatory effectiveness — focusing on finding ways for regulators on both sides of the Tasman to operate more efficiently and effectively; and
- supporting business opportunities through industry and innovation policy cooperation — focusing on facilitating connections between businesses to take advantage of increasing openness in trans-Tasman markets.

### *Business Law Coordination*

41 The 1988 Memorandum of Understanding (MOU) on the Coordination of Business Law provided the starting point for dialogue between Australia and New Zealand on business law issues. In August 1999, Australian and New Zealand officials agreed to revise the existing MOU to ensure that it reflected Australia's and New Zealand's common understanding of coordination in business law, key objectives for progressing work in this area, and revised work programme. A Memorandum of Understanding on the Coordination of Business Law was subsequently signed in August 2000. This is focused on coordination and recognition that one single approach would not necessarily be suitable for every area. Since the signing of the MOU, coordination of competition law, securities law and takeovers law has been extensive. Work is proceeding on consumer protection law, electronic transactions law, disclosure regimes, cross-border insolvency and intellectual property rights.

42 A revised Memorandum of Understanding (MOU) on Coordination of Business Law was completed and signed by the Minister of Commerce and the Australian Treasurer in February this year. The MOU provides a framework for further work aimed at reducing some of the difficulties that New Zealand and Australian business face as a result of the differences in our banking systems. These include unnecessary compliance and transactions costs. Over the coming years as these costs are reduced, it will become less expensive for New Zealand businesses to access and operate in the Australian market, and vice versa. Key outcomes from the MOU review are a revised action agenda identifying specific areas of business law where greater coordination may deliver benefits; and a commitment by both countries to consult each other where policy reforms have potential to impact the other country.

### *Securities*

43 The 1994 Memorandum of Understanding between the Australian Securities and Investments Commission and the Securities Commission of New Zealand aims to enhance the efficiency and fairness of the securities and futures markets by providing a framework for cooperation, including channels for communication and the exchange of information and investigative assistance to the extent permitted by the laws and practices of Australia and New Zealand.

44 In February 2005, the Minister of Commerce and the Australian Treasurer signed a Treaty allowing mutual recognition of trans-Tasman securities offerings such that issuers can now offer securities in both countries using the same offer documents and structure. This is expected to promote investment and reduce the costs of raising capital, while maintaining investor protection through appropriate disclosure.

#### *Taxation*

45 The 1995 Double Taxation Agreement was designed to share the costs of eliminating double taxation. The Agreement is also aimed at reducing tax impediments to cross-border trade and investment and assisting tax administration. Imputation legislation has also been reformed in both countries. Previously, New Zealand residents lost access to imputation credits if they invested in a New Zealand company via an Australian company, and Australian residents lost access to franking credits if they invested in an Australian company via a New Zealand company. Australia and New Zealand have since extended their imputation laws, with effect from 1 April 2003, to remedy this.

#### *Banking Supervision*

46 A Trans-Tasman Council for banking supervision was established in February 2005. In June 2005 it recommended legislative changes that would allow greater cooperation between the Reserve Bank of New Zealand (RBNZ) and the Australia Prudential Regulatory Authority (APRA) in fulfilling their respective statutory functions. This will help to ensure, among other things, that where reasonably practicable, each country considers the interests of the other in times of financial crisis. These legislative changes have been supported by the governments on both sides of the Tasman. The next steps in the work programme of the Council are to oversee implementation of the legislative changes in both countries, to work on joint crisis management, and investigate any further impediments to the seamless provision of banking services.

#### *The Trans-Tasman Accounting Standards Advisory Group*

47 The Trans-Tasman Accounting Standards Advisory Group (TASAG) has been established to advise the Australian and New Zealand accounting standard and oversight bodies on strategies to establish a single set of trans-Tasman accounting standards within the broader context of both jurisdictions' objective of adopting international accounting standards, and to maximise the influence of Australia and New Zealand in the development of international accounting standards and the international accounting standard setting process. The Advisory Group will also help formulate advice to the two governments on these issues. The role of TASAG in the international accounting standards process provides a good example of frameworks for cooperation in multilateral fora, in areas where our interests are closely aligned and are better served through working together rather than separately;

48 Cross appointments for TASAG have been completed and a cooperation and coordination MOU agreed and signed. The next step for this group is to move from a focus on standards to reporting requirements and barriers to a single set of accounts. In particular, they plan to report back this year on the existence of sector specific regulation that requires particular reporting that differs across jurisdictions.

#### *Trans-Tasman Court Proceedings and Regulatory Enforcement Working Group*

49 The Trans-Tasman Court Proceedings and Regulatory Enforcement Working Group was established by the Prime Ministers of Australia and New Zealand to review the effectiveness and appropriateness of various procedural and regulatory arrangements. The Group's work aims to "reduce barriers to trans-Tasman commercial activity and support effective and efficient dispute resolution by enhancing legal cooperation in areas such as service of process, the taking of evidence, the recognition of judgments in civil and regulatory matters and regulatory enforcement."

50 The issues that this group is working on underpin a wide range of other legal coordination issues. Increased cooperation in areas such as consumer protection, competition law, securities regulation and therapeutics regulation will all be supported by improved enforcement of regulatory regimes across the Tasman, such as measures to enable, for example, the more effective enforcement of civil pecuniary penalties where a person in one country targets consumers or investors in the other country.

#### *Border issues*

51 New Zealand and Australian customs services continue to work together to simplify and harmonise trans-Tasman import/export procedures. This was given further impetus in 2005 by the establishment of a "Customs to Customs High Level Steering Group", which was charged with developing improvements to trans-Tasman trade and passenger facilitation processes, trade security standards and mutual support for Pacific Customs administrations. Following discussions at Customs Ministerial Talks in July 2005 and the first meeting of the Customs to Customs High Level Steering Group in August 2005, changes were made at Australia's eastern international airports to allow New Zealand passport holders to queue in the same lanes as Australians when passing through Customs and immigration checks. Similar arrangements have already been in place for Australian passport holders arriving in New Zealand for a number of years. This is likely to reduce passenger clearance times for New Zealanders entering Australia as well as being an important symbolic action in terms of a single market.

#### *Review of the TTMRA*

52 The Australian Productivity Commission undertook a review of the TTMRA in 2003 on behalf of the Australian and New Zealand Governments. Overall, the review demonstrated that the TTMRA and Australia's Mutual Recognition Agreement (MRA)

were working well, contributing significantly to increased trans-Tasman mobility of goods and labour.

53 The Cross Jurisdictional Review (CJR) Forum, which consists of Australian Federal, State and New Zealand senior officials was tasked to consider the Productivity Commission's findings and prepare a final report to the Governments. All heads of government endorsed the CJR Forum's report in September 2005. The CJR Forum is now implementing recommendations arising from the review, which aim to improve the operation of the TTMRA and ensure that it remains an effective cornerstone of a Single Economic Market. These recommendations include:

- the development of an information/education campaign to remind regulators and the respective policy machineries of the strategic objectives and obligations of the TTMRA
- the development of explicit mechanisms to ensure TTMRA integration objectives are factored in at an early stage of policy and regulatory design on both sides of the Tasman. In June 2004, the Council of Australian Governments (COAG) agreed to amend its *Principles and Guidelines for National Standards Setting and Regulatory Action by Ministerial Councils and National Standards Setting Bodies* to include consideration of the TTMRA and MRA principles and objectives. New Zealand is also currently reviewing its Guide to Preparing Regulatory Impact Standards with the intention of making similar changes. In addition, a protocol was agreed between the Australian Government's Office of Regulatory Review and its new Zealand counterpart that requires consultation on regulatory impact statements for proposals that may have trans-Tasman implications with a view to resolving any issues at an early stage of the policy development process and facilitating regulatory coordination, where appropriate
- the establishment of the CJR Forum, under new terms of reference, to implement the review recommendations as well as to act as a "ginger group" to consider and promote discussion on the next phase of regulatory integration issues, and
- a streamlined approach to the annual roll-over of the Special Exemptions, whereby the reporting requirements associated with Cooperation Reports would be simplified.

54 The current Council of Australian Governments (COAG) review of occupational mobility within Australia aimed at rationalising and harmonising the licensing requirement imposed by State regulators under the MRA will be relevant to New Zealand, in light of the TTMRA. We would wish to maintain a close dialogue with Australia throughout this exercise, to ensure it does not result in a system that might

make it harder for New Zealanders working in those licensed occupations to obtain mutual recognition in Australia.

*Australia New Zealand Therapeutic Products Authority (the Authority)*

55 The Australia New Zealand Therapeutic Products Authority will be another significant addition to CER and an important flagship institution for the Single Economic Market, setting a new benchmark for trans-Tasman regulatory cooperation and reducing barriers to trade. The aim in establishing the Authority was to safeguard public health and safety in Australia and New Zealand through an effective and sustainable regulatory system. The Authority will regulate all therapeutic products in the two countries, including over-the-counter and prescription medicines, blood and tissue products and medical devices.

56 The Australian and New Zealand Governments signed an *Agreement between the Government of Australia and the Government of New Zealand for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products* in December 2003, which is at the heart of the model for the joint scheme and Authority. Importantly, the Treaty sets the scope of the regulatory model, which aims to protect public health and safety, and sets out the corporate governance structure for the Authority. The governance structure aims to ensure that any concerns around sovereignty are managed by giving each country an equal voice in the running of the Authority. Implementing legislation is currently being drafted in both countries, with a view to the introduction of Bills in both Parliaments in mid 2006.

57 Due to the groundbreaking nature of the scheme and complex issues regarding the underlying legal frameworks of the two countries and the settings of our respective public management systems, implementation has proved challenging for both countries. In particular, a key challenge was the governance and accountability arrangements that would apply to the scheme and Authority, given the need for the Authority to report, and be accountable, to both Governments. A compromise solution was agreed, whereby governance and accountability provisions would be placed in the domestic implementing legislation implementing the Authority in both countries, and work would be done on a generic governance and accountability framework for any future trans-Tasman regulators that would, in due course, apply to the Authority.

58 Both countries have learned valuable lessons from the negotiation process, that are becoming apparent as officials commence the generic framework discussions. This work will be valuable in lowering the cost and complexity of negotiating similar institutions in future, should they be required. New Zealand welcomes the commencement of the work on a generic model for governance and accountability provisions in trans-Tasman regulators, which will be developed after the completion of negotiations for the Authority.



### *CER Investment Protocol*

59 CER has continued to evolve. Both countries are exploring options for reducing barriers to trans-Tasman capital flows by adding an investment component to CER. At their annual meeting this year, Dr Cullen and Mr Costello announced that concluding an investment agreement by 2007 would be a key priority in their work programme.

### *CER rules of origin*

60 New CER rules of origin were agreed between the two countries in 2005. The new rules will have a liberalising effect on trans-Tasman trade, support the competitiveness of businesses and reduce compliance costs. Legislation to implement the new rules will need to be given priority by both governments in order to meet the announced implementation timeline of 1 January 2007. The new rules of origin allow manufacturers to take advantage of competitive global inputs and still benefit from the market access conditions CER allows. New Zealand was, however, disappointed with the outcome on men's suits and looks forward to the review in 2009.

### *Research and Innovation*

61 Hon Ian MacFarlane, the Federal Minister for Industry, Tourism and Resources, has recently written to Mr Mallard (as Minister of Economic Development) and Mr Maharey (as Minister for Research, Science & Technology) inviting them to agree to officials taking up membership of CSTACI (the Commonwealth, States and Territory Advisory Council on Innovation) to ensure that we share our policy thinking and learning. This offer will be willingly accepted, as Australia and New Zealand face many common issues around innovation, such as strengthening industry investment in research to ensure that science's contribution to innovation-led economic growth is maximised. New Zealand (MoRST and MED) will host the CSTACI meeting in November 2006. MoRST has also taken up membership of the recently established Australian National Science Forum (NSF) and will host the November NSF meeting the day following the CSTACI meeting.

62 Deepening the trans-Tasman economic relationship is a strategic priority for the New Zealand and Australian Governments. There are many reasons to continue to cooperate:

- to lower business compliance costs and technical barriers to trade;
- to increase regulatory effectiveness across borders;
- to increase the cost effectiveness of regulatory agencies and enhanced regulatory capacity; and
- to increase our influence over international norms, rules and standards

63 The initiatives above illustrate the breadth and depth of trans-Tasman cooperation. Future regulatory cooperation will depend on the clear establishment of benefits for both countries. The assessment of when and how coordination takes place will need to take place on a case by case basis. The appropriate mechanism of coordination will also need to be considered. The broad spectrum of mechanisms of coordination is illustrated in this submission, ranging from the unilateral coordination of laws to joint institutions. Initiatives have and will continue to be undertaken under three broad vehicles<sup>2</sup>:

- unilateral coordination of laws – New Zealand or Australia uses the law of the other country as the basis of its own law (modified for domestic conditions and preferences), or one country unilaterally recognises the outcomes of the regulatory regime of the other. For example, New Zealand recognises Australia’s vehicle safety standards on this basis;
- bilateral undertakings that are not legally binding – supported by good will and reputation and sometimes by law changes (that, for example, allow regulators to share information). Such undertakings may be aimed at reducing regulatory costs, harmonising standards, providing mutual assistance in international forums, and/or facilitating enforcement activities. For example, the MOU on business law coordination; and
- bilateral legally binding commitments - typically by Treaty and sometimes backed up by legislation, to share decision-making on what rules should apply to regulated markets and/or governance and resources (as is the case with joint bodies, such as the AUTHORITY).

#### *Opportunities for further cooperation in third markets*

64 As well as deepening the bilateral trade and economic relationship, a SEM will enhance New Zealand and Australia’s influence and competitiveness globally, regionally and in third markets. New Zealand and Australian industries are facing similar challenges globally. At the same time as embracing the trade opportunities that CER has created, some sectors have protested at the need to compete in supplying trans-Tasman consumers. But we cannot have one without also accepting the other. Given that our markets are of mutual importance to each other, we risk limiting economic growth if we seek to set limits on trans-Tasman competition, as some agricultural sectors have sought. Rather than being viewed as a threat, competition can be seen as a driver of innovation and an opportunity for producing stronger New Zealand and Australian businesses better able to enter the global marketplace.

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<sup>2</sup> More information on the different policy coordination mechanisms available is contained in the New Zealand Government’s submission to the Legal and Constitutional Affairs Committee’s inquiry into the harmonisation of legal systems.

65 It is essential for us to continue to work together as CER partners to strengthen the Australasian market. In light of the similar challenges Australia and New Zealand are facing in third markets, including issues of scale and increased global competition, food and beverage has been agreed as the focus for the 2006 business dialogue that accompanies the annual CER Ministerial. We see potential benefits from collaboration, in particular on international regulatory issues where we have common interests. Food and Beverage industries on both sides of the Tasman have a relatively high level of common ownership and, more importantly, face similar issues in consolidation of the sector and access to third markets

66 One of the greatest opportunities for collaboration lies in the two countries working together to enter third markets. This may open up opportunities for agencies (e.g. AusTrade and New Zealand Trade and Enterprise (NZTE)) to collaborate to encourage greater economic productivity and growth. In some sectors this collaboration is already in place.

67 For example, one strong area of innovation-based industrial collaboration is biotechnology (the focus of the 2003 CER business sectoral dialogue), particularly through the Australia-New Zealand Biotech Alliance (ANZBA). Together New Zealand and Australia constitute the world's fifth largest biotechnology hub worth a combined NZ\$14 billion and employing more than 10,000 people, of which New Zealand has about 4,000. As a demonstration of its commitment to ANZBA, NZTE established a \$12 million Australia New Zealand Biotechnology Partnership Fund in 2004. It is designed to facilitate and accelerate trans-Tasman biotechnology industry collaboration. Developing greater regional critical mass will give Australian and New Zealand biotech companies better access to global market opportunities. As part of this, New Zealand and Australia now exhibit together at the annual BIO Conference in the United States. Already the fund has supported 25% of \$27 million raised across four projects.

68 The New Zealand and Australian brands are both well recognised internationally. More recently, the New Zealand New Thinking Brand is promoting New Zealand as a country of creativity, innovation and technology. There is potential for shared research, pooling of resources and marketing offshore. Situations where industry development collaboration in third markets might be successful include:

- where New Zealand and Australia have complementary specialities which collectively enable both countries to take advantage of opportunities in third markets (for example, linking in with Australian key contacts to enter the defence market in the United States);
- where New Zealand and Australia have a shared special image, for example, in the clothing, sport and tourism sectors our shared outdoor living/adventure brand;

- where we are both facing competition from emerging markets in Asia and South America, for example, wool; and
- in research and development (for example, joint research initiatives such as in expensive specialist technologies in the biotechnology sector) or where attaining scale in an industry is important for both countries (for example, procurement in the electronics industry).

69 There may also be opportunities to explore shared information and other services offshore where there is mutual gain for both countries (for example, in the areas above).

## PART SIX: CONCLUSION

70 Australia is New Zealand's closest partner in every sense – strong historical, cultural, geographical and political ties underpin our countries close trade and economic relationship. The level of economic integration our countries has achieved is unique and unlikely to be repeated with any other country.

71 Twenty three years on from CER, the trans-Tasman trade and economic relationship is in excellent shape. CER has brought significant benefits to both countries. It has reduced tariffs, quotas, and other trade barriers to bring our economies closer together. But CER is not just about trade, it has also allowed greater coordination of rules in quarantine, business law, customs and government procurement. CER has created a truly Australasian market.

72 The few outstanding issues that exist between our countries should not overshadow what is an overwhelmingly successful economic and trade relationship.

73 CER has facilitated a thriving economic relationship that is now, in many respects, driven by the private sector and a web of other networks outside government. The ongoing development of the economic relationship, however, requires the dedicated commitment of both our Governments. We should not take the benefits for granted.

74 Having achieved its aim of free trade in goods and services, the focus of CER work is now on 'behind the border' trade facilitation and regulatory coordination issues. Our Governments' shared goal is now a seamless business environment, or Single Economic Market.

75 New Zealand and Australia already cooperate in multilateral fora, regionally and in third markets to advance our shared interests. New Zealand values this cooperation greatly. This submission has discussed opportunities, in a SEM context, to deepen and enhance that cooperation to make our economies more competitive and robust internationally, both at the government and industry level.

76 The New Zealand Government would be happy to provide further information on any of the topics discussed in this submission, if that would be of assistance to the Committee.

## ANNEX A: CER AND RELATED AGREEMENTS AND ARRANGEMENTS

1 The 1983 Australia New Zealand Closer Economic Relations Trade Agreement (CER) provided for the elimination over time of tariffs, import licensing and quantitative restrictions, and export incentives, for all goods which complied with the specified “rules of origin”. The CER agreement took a comprehensive, “everything is included unless expressly excluded” approach to bilateral trade. Twenty three years later, it continues to facilitate one of the closest economic relationships between any two countries.

2 The CER agreement was extended to cover trade in services with the addition of a services protocol, signed in 1988. This protocol provided for market access, rights of establishment, national treatment of service providers and “most-favoured-nation” treatment of service providers. The services protocol took the same comprehensive, overarching approach as the original 1983 agreement had taken in relation to goods. All services were covered, unless expressly identified on a (short) negative list.

3 CER was so successful that free trade in goods and in nearly all services was achieved by 1990, five years ahead of schedule. To ensure that free trade in goods was achieved, antidumping and safeguard actions were abolished at the same time. Both countries have since moved progressively towards much deeper cooperation in policies, laws and regulatory regimes through processes of coordination, mutual recognition and coordination. CER has grown to encompass a range of arrangements and agreements. These agreements together establish what has been described by the World Trade Organisation as “the world’s most comprehensive, effective and mutually compatible free trade agreement.”

4 CER is continuing to evolve, as demonstrated by the agreement to new rules of origin in 2005 and the current work aimed at adding an investment component to CER.

### *Measures to remove Technical Barriers to Trade*

5 Under the 1988 Memorandum of Understanding (MOU) on Technical Barriers to Trade, both Governments committed to work towards harmonising requirements relating to such matters as standards, technical specifications and testing procedures, and domestic labelling.

### *Quarantine*

6 The 1988 Protocol on the Harmonisation of Quarantine Administrative Procedures sought to improve the efficiency and speed of the flow of goods between the two countries by harmonising quarantine administrative procedures. Under the Protocol, New Zealand and Australia reaffirmed their commitment to the principle that quarantine requirements should not be deliberately used as a means of creating a technical barrier to trade where this is not scientifically justified. The Protocol placed

some rules or disciplines on harmonising technical measures with international standards where they exist, and promoted bilateral harmonisation of quarantine and inspection standards and procedures. The Protocol also provided for the establishment of a bilateral consultative group to drive quarantine harmonisation, coordinate technical committees and help resolve technical differences relating to quarantine. Under the Protocol, New Zealand and Australia agreed to work towards the speedy resolution of quarantine issues hindering the trans-Tasman trade in goods set out in the annex to the Protocol. The overwhelming majority of these issues have now been resolved, with only one or two remaining. Access of New Zealand apples to the Australian market remains very prominent in this regard and New Zealand looks forward to the expeditious resolution of this issue.

#### *Industry Assistance*

7 Under the 1988 Agreed Minute on Industry Assistance, the Australian and New Zealand Governments agreed not to pay (from 1 July 1990) production bounties or like measures on goods which are exported to the other country, and undertook to try to avoid the adoption of industry-specific measures (bounties, subsidies and other financial support) which have adverse effects on industry in the other country.

#### *Agreement on Food Inspection*

8 The Arrangement on Food Inspection Measures (AFIM) (1997) reduced compliance costs associated with food inspection by recognising many exported New Zealand food items, for inspection purposes, as Australian domestic product and vice versa.

#### *Government Procurement*

9 The 1997 Australia New Zealand Government Procurement Agreement provided for a single trans-Tasman government procurement market. As well as ending inter-state or trans-Tasman preference margins on Australian and New Zealand content in government purchasing, both countries undertook in the Agreement to accord each other's products and suppliers equal treatment, and to promote opportunities for them to compete for government business on a value-for-money basis.

#### *Aviation*

10 The 1996 Australia New Zealand Single Aviation Market Arrangements and 2000 Open Skies Air Services Agreement provide an almost unrestricted market for Australasian airlines, to the benefit of consumers and traders. The 1996 Single Aviation Market Arrangements already provided for virtually unrestricted services between and within each other's countries, which have been incorporated into the new Agreement. The transition to "open skies" has removed restrictions on the airlines of each country

operating services beyond the other country. Foreign investment restrictions on airline investment have also been relaxed.

*Trans-Tasman Mutual Recognition Arrangement (TTMRA)*

11 The Trans-Tasman Mutual Recognition Arrangement (TTMRA), which came into operation in 1998, is a key driver of regulatory coordination and delivers on both the Australian and New Zealand Governments' strategic objective of creating a single trans-Tasman market for the sale of goods and the registration of occupations. By allowing producers and registered occupations to meet only one set of standards, rather than two or more, mutual recognition reduces the barriers to, and costs of, movements across jurisdictions. This means that most goods able to be legally sold in one country can be legally sold in the other. This principle applies regardless of any difference of sales-related regulatory requirements applying in each country. Similarly, under the TTMRA people registered to practise an occupation in one country are entitled to practise the equivalent occupation in the other country without the need to undergo further testing or examination.

12 This Arrangement lowers compliance costs for business and reduces technical barriers to trade by enabling them to manufacture to only one standard for the trans-Tasman market. It also provides greater consumer choice and supports an open trans-Tasman employment market.

13 The operation of the TTMRA is supported by a range of institutional arrangements, most importantly the COAG Ministerial Councils and the Senior Officials' process that support these. New Zealand participates in the Ministerial Councils with full membership and voting rights when TTMRA issues arise. As such, the Ministerial Councils have an important role in driving the development of regulatory outcomes that support mutual recognition and harmonisation of the respective regulatory regimes.

14 Currently, five product sectors are subject to special exemptions under the Arrangement, while standards and regulatory regimes are brought closer together. These sectors are therapeutics, hazardous substances, industrial chemicals and dangerous goods, motor vehicles, gas appliances and radio communication standards. In terms of occupations, only medical practitioners are exempted. However, in the case of doctors trained in Australia and New Zealand, a mutual recognition-type arrangement already applies. Until 2005, there was also a special exemption for consumer products safety standards. This began with 300-400 Australian product safety standards and bans and 14 New Zealand product safety standards and bans. Over the past five years mutual recognition and, in some cases, harmonisation has been negotiated for all but one of these standards. The issues around the final standard, that for child car-safety restraints, are intrinsically aligned to the standards applied to the motor vehicle fleet in the respective countries. It was therefore moved to the road vehicle Special Exemption which saw the successful conclusion of this Special Exemption.



15 Progress is also being made in the other areas. Mutual recognition in the therapeutics sector is being addressed through the negotiation of a bi-national therapeutics regulatory agency. In the area of hazardous substances, industrial chemicals and dangerous goods, Australian and New Zealand authorities are also working together and have developed a five year work plan to address existing trans-Tasman differences. Likewise, in December 2003, Australia and New Zealand introduced common regulatory requirements for nine radio communication product categories. The focus of the special exemption is now on four product categories where harmonisation or mutual recognition is not possible in the short to medium term because of historical differences in the radio frequency bands used in Australia and New Zealand. It is anticipated that the scope of this special exemption will be further reduced as technology and product use changes.

#### *Agreement for joint standards between Australia and New Zealand*

16 In November 2003, Standards New Zealand and Standards Australia International Limited signed a Memorandum of Understanding for the development of joint trans-Tasman standards. The MoU replaced a prior arrangement between the two national standards bodies and strengthened their close working relationship. Joint standards facilitate trade to the mutual benefit of both countries by avoiding the deliberate or inadvertent creation of barriers to trade from the creation of different standards for the same goods or services. At present, more than 80% of New Zealand standards are joint Australia/New Zealand standards, totalling some 2,254 documents.

#### *Joint Accreditation System of Australia and New Zealand (JAS-ANZ)*

17 Very close relationships have developed between the two countries' standards bodies, which have lead to the development of joint standards across a wide range of areas and mutual recognition exists between our countries' respective testing authorities. The Joint Accreditation System of Australia and New Zealand (JAS-ANZ) was established under treaty between Australia and New Zealand in 1991. The organisation's key objective is the establishment of an internationally recognised accreditation system for quality management systems, product certification and personnel certification. This accreditation establishes confidence in, and recognition of, the producers and products of New Zealand and Australia. In 1996 a regulation was made under the Australian International Organisations (Privileges and Immunities) Act 1963 declaring JAS-ANZ to be an international organisation to which the Act applies.

#### *Food Standards Australia New Zealand (FSANZ)*

18 The Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (1996) established a joint Australia New Zealand Food Authority (ANZFA) to develop food standards for both

countries – the first bi-national agency. This was renamed Food Standards Australia and New Zealand (FSANZ) in 2002 following amendments to the Agreement, which addressed some of New Zealand's concerns about the governance arrangements. The Agreement gives both countries greater joint influence in the establishment of international food standards. A Joint Food Code was agreed by the Health Ministers of New Zealand and the Australian Commonwealth and States and Territories in November 2000, and came into force on 20 December 2002. The Food Treaty is currently being reviewed by Australian and New Zealand officials, to identify the extent to which it has met its objectives and identify any measures to improve its operation and effectiveness and clarify its scope.