



Submission No 7

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

Organisation: Department of Foreign Affairs and Trade

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The Hon Mark Vaile MP

Deputy Prime Minister
Minister for Trade
Leader of The Nationals

Senator the Hon Alan Ferguson
Chair
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
CANBERRA ACT 2600

Dear Chair

Further to my letter of 1 March 2006, I am pleased to attach, for the Standing Committee's consideration, a submission from my Department to its inquiry into Australia's trade and investment relations under the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA, commonly known as CER). The submission provides an overview of progress since the signing of CER in 1983, an outline of the single economic market initiative, and comments on the future of CER.

The Department of Foreign Affairs and Trade would be pleased to provide additional information on the matter if required.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Mark Vaile'.

MARK VAILE

Department of Foreign Affairs and Trade

Submission to the Joint Standing Committee on Foreign Affairs, Defence and Trade Inquiry into Australia and New Zealand Closer Economic Relations (CER) April 2006

Introduction

Australia and New Zealand are natural allies, who have forged a close and cooperative relationship across a wide range of areas. Migration, trade, investment and defence ties, strong people-to-people links and extensive relations at the government-to-government level underpin this strong trans-Tasman sense of family and shared interest. **The Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA, commonly known as CER)** came into effect on 1 January 1983 and is the cornerstone of the strong bilateral economic relationship between the two countries. The agreement provides one of the most successful examples of economic integration in the world – the WTO has described CER as ‘the world’s most comprehensive, effective and mutually compatible free trade agreement’.

CER is a dynamic and living instrument which continues to evolve. The Australian and New Zealand governments are committed to furthering the objectives and achievements of CER through ongoing initiatives such as the further harmonisation of the trans-Tasman business and investment regulatory. The economic relationship underpinned by CER will continue to develop to our mutual benefit, thereby strengthening the Australian and New Zealand economies and reinforcing their global position.

CER and its achievements

The economic, trade and investment relationship between Australia and New Zealand has grown significantly since the entry into force of CER in 1983. Between 1983 and 2003, two-way trade in goods expanded at an average annual growth rate of 9 per cent. Based on trade in goods and services, New Zealand is Australia's fifth largest market, taking seven per cent of our exports, and is the eighth largest source of imports for Australia. Australia is New Zealand's principal trading partner, providing 21 per cent of its merchandise imports and taking 21 per cent of its exports. In 2005, trans-Tasman merchandise trade was up 3.2 per cent, with a value of \$14.4 billion. Two-way trade in services amounted to \$4.7 billion in the same year.

In 2004, two-way investment between Australia and New Zealand totalled \$61.8 billion. New Zealand is the sixth largest foreign investor in Australia, and is the third largest market for Australian investment abroad. Australia is the largest investor in New Zealand, over half of which is Foreign Direct Investment (FDI), reflecting the high level of economic integration. Recently there has been significant new commercial investment from Australia in New Zealand's transport and banking sectors.

The CER is complemented by a range of related agreements and arrangements which have contributed to the strong trans-Tasman economic relationship (see Attachment A). These cover principally:

- free trade in services;
- mutual recognition of goods and occupation;
- free labour market; and
- measures to remove technical barriers to trade.

Under CER all tariffs and quantitative import restrictions on trade in goods originating from Australia or New Zealand have been prohibited (with exemptions relating to specific policy objectives such as security and intellectual property protections). The 1988 Trade in Services Protocol to CER extended free trans-Tasman trade to include services, except those inscribed in the annexes. These annexes have since been substantially reduced and now include only a few items such as coastal shipping.

The **Trans-Tasman Mutual Recognition Arrangement (TTMRA)** (1998) has substantially reduced regulatory impediments to trans-Tasman trade relating to goods and occupations. It gives effect to two basic principles:

- any good that may be legally sold in Australia may be legally sold in New Zealand, and vice versa; and
- a person registered in Australia to practice an occupation is entitled to practice an equivalent occupation in New Zealand, and vice versa.

It is subject to some exemptions on health and safety and environmental grounds (for example quarantine). A review by the Australian Productivity Commission in 2003 found that TTMRA had harmonised standards and increased mobility of goods and labour across jurisdictions.

The **Trans-Tasman Travel Arrangement** is a collection of ministerial understandings which allow Australians and New Zealanders to visit, live and work in each other's country without restriction. This arrangement is supplemented by a **Social Security Agreement** and a **Reciprocal Health Agreement**, further facilitating trans-Tasman freedom of movement by citizens of both countries.

There have also been ongoing measures to harmonise domestic policies, as mandated under Article 12 of CER, and to remove technical barriers to trade. Such measures allow for greater certainty and reduced costs in trans-Tasman trade. Examples include:

- the establishment in July 1996 of a system for the development of joint food standards, now known as **Food Standards Australia New Zealand (FSANZ)**. A Joint Australia New Zealand Food Standards Code came into operation in December 2002 and is developed and administered by FSANZ;
- a **Memorandum of Understanding (MOU) on Coordination of Business Law** was signed in 2000, and a revised and updated version in February 2006. The MOU recognises that the coordination of business law and regulation can

facilitate the deepening and widening of the trans-Tasman economic relationship by reducing transaction and compliance costs, and increasing competition;

- the **Open Skies Agreement**, signed in August 2002, formalised a November 2000 Memorandum of Understanding allowing Australian and New Zealand international airlines to operate across the Tasman and beyond to third countries without restriction;
- a **Treaty to establish a Trans-Tasman Joint Therapeutic Products Agency** was signed in December 2003. Negotiations to establish the agency are ongoing. The agency will replace the separate national regulatory agencies in the two countries;
- a **Trans-Tasman Triangular Tax Agreement** was concluded in 2003, giving access to franking credits for Australian shareholders in New Zealand companies operating in Australia, and for New Zealand shareholders in Australian companies operating in New Zealand. This will improve trans-Tasman capital flows.

The evolving nature of these agreements demonstrates the responsive and dynamic nature of CER, as do changes to the CER Agreement itself which is reviewed periodically. Most recently changes to the Rules of Origin (ROO) under CER were announced in February 2006. These saw the adoption of a Change of Tariff Classification (CTC) approach to the rules, which will simplify their administration and reduce compliance costs. The move to a CTC approach to ROO reflects an increasing international trend to use this type of classification in bilateral trade agreements.

Regular dialogue between Australia and New Zealand at ministerial level also contributes to the dynamic nature of CER. Prime Ministers meet annually, as do the Australian Treasurer and New Zealand Finance Minister, and Trade and Defence Ministers. Foreign Ministers meet biannually.

ANZCERTA and developments in associated CER agreements and arrangements are discussed and reviewed **annually at meetings** led by **Australian and New Zealand Trade Ministers**. In recent years, these annual meetings have been expanded through the participation of Ministers from each country with responsibility for agriculture, industry and other economic-related portfolios.

Ongoing Initiatives

With most of the trade goals of CER having been met, attention is now turning to creating a more favourable climate for trans-Tasman business through regulatory harmonisation.

In January 2004 the Australian Treasurer and New Zealand Finance Minister launched the **Single Economic Market (SEM)** initiative. The initiative is currently focused on 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.

Measures taken to progress SEM include:

- establishment of a **Trans-Tasman Accounting Standards Advisory Group**, agreed to by the Australian Treasurer and New Zealand Finance Minister in February 2004;
- establishment of a **Joint Trans-Tasman Council on Banking Supervision**, agreed to by the Australian Treasurer and New Zealand Finance Minister in February 2005. In February 2006, Ministers agreed to implement changes recommended by this Council which will require the banking supervisors in both countries (i.e. the Australian Prudential Regulation Authority and the Reserve Bank of New Zealand) to support and consult each other and to consider the impact of their actions on the financial stability of the other country;
- ministerial endorsement of the work programme outlined by the Australian Productivity Commission to achieve **closer coordination of competition and consumer laws**. In February 2006, the Australian Treasurer and the New Zealand Minister for Finance agreed to amend legislation to allow the Australian Competition and Consumer Commission and the New Zealand Commerce Commission to exchange information gathered in the course of investigating competition and consumer protection matters;
- establishment of the **Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement** in 2003, to consider streamlining court proceedings and regulatory enforcement;
- a **Treaty in relation to Mutual Recognition of Securities Offerings** was signed in February 2006. This promises to reduce red-tape for business and to facilitate increased trans-Tasman investment;
- as already mentioned, a revised **Memorandum of Understanding on the Coordination of Business Law** was signed in February 2006. The MOU provides a framework for the coordination of business law between Australia and New Zealand and includes an extensive work programme to increase coordination in business regulation.

Another important ongoing initiative in the trans-Tasman economic relationship is the annual **Australia New Zealand Leadership Forum (ANZLF)**. The Forum brings together high-level business and community representatives, government ministers, parliamentarians and officials in an independent, second-track forum to discuss issues which impact on the trans-Tasman relationship and the future direction of the economic relationship. The inaugural Forum was held in Wellington in May 2004 and the second Forum in Melbourne in April 2005.

The SEM initiative has been an important focus of the Forum. The 2005 Forum emphasised the benefits to the Australian and New Zealand economies of closer cooperation and integration through joint regulation and harmonised standards setting. It also identified what it considered should be priorities for SEM, including the

harmonisation of banking regulation, accounting standards, investment and securities regulation; the resolution of trans-Tasman tax issues, especially imputation credits and withholding tax; the adoption of common competition policy laws; and the general principle of less and more efficient regulation.

The next Forum will be held in Auckland in May 2006.

The Future of CER

In the 23 years since CER came into effect, Australia and New Zealand have continued to work together to facilitate and deepen economic integration across the Tasman as a key bilateral objective. The trans-Tasman economic relationship has changed over this time, reflecting changes in trading patterns and the Australian and New Zealand economies themselves. CER has likewise evolved in response to those changes, with a new emphasis on regulatory harmonisation being a good example of this.

Other measures are currently being considered to advance the CER relationship. In February 2006, the Australian Treasurer and New Zealand Finance Minister agreed to commence negotiations on adding an **Investment Protocol to CER**, with the aim of completing negotiations by early 2007.

The **Trans-Tasman Working Group on Court Proceedings and Regulatory Enforcement** was established in 2003 to review existing trans-Tasman cooperation in the field of court proceedings and regulatory enforcement, and to investigate the possibilities for improving existing mechanisms in areas such as service of process, the taking of evidence, recognition of judgments in civil and regulatory matters, and regulatory enforcement. It is co-chaired by the Deputy Secretaries of the Australian Attorney-General's Department and the New Zealand Ministry of Justice, and involves direct liaison between the two governments. Harmonisation of trans-Tasman legal systems in such areas promises, among other things, to further facilitate trade between Australia and New Zealand.

The establishment of the **Joint Therapeutic Products Agency**, arrangements for which are currently being negotiated, will create a joint therapeutics regulatory regime in Australia and New Zealand, and will be the first example of full institutional integration between the two countries.

The dynamism of CER has created an environment for innovation in bilateral cooperation, which has influenced Australia's relations with other countries. CER has provided a benchmark for the free trade agreements Australia has negotiated with Singapore, Thailand and the United States, and for Australia's current FTA negotiations. As recognised by the WTO, it has set an international example as a comprehensive and effective free trade agreement.

CER has come a long way over the past 23 years and continues to evolve in response to the needs of business and to the expanding and innovative economic and trade policy requirements of both countries.

ANZCERTA-RELATED AGREEMENTS AND ARRANGEMENTS

The *Trade in Services Protocol to the CER*, signed in 1988, brought services into CER from January 1989. All trans-Tasman trade in services is now open with the exception of air services, broadcasting and television, third party insurance, postal services and coastal shipping (Australia), and airway services and coastal shipping (New Zealand).

The Trans Tasman Mutual Recognition Arrangement TTMRA (1998) is an agreement between the Australian and New Zealand Governments and the Governments of the Australian States and Territories, which provides that goods, with some exceptions (therapeutics, hazardous substances, motor vehicles, gas appliances and radio communications), that may legally be sold in one country may also be sold in the other. A person who is registered to practise an occupation in either country is entitled to practise an equivalent occupation in the other (with the exception of medical practitioners). In the case of doctors trained in Australia and New Zealand, mutual recognition arrangements apply.

Agreed Minute on Industry Assistance, signed by Trade Ministers in 1988, and amplified by later correspondence, provides for consultation between the Australian and New Zealand Governments on changes to industry assistance.

The Open Skies Agreement Transport Ministers agreed in a Memorandum of Understanding in November 2000 to allow Australian and New Zealand international airlines to operate across the Tasman, and beyond to third countries, without restriction. (The MOU gave immediate effect to an Air Services Agreement signed in August 2002.) In addition, international airlines of both countries are able to operate dedicated freight services using what are known as "seventh freedom" rights. These rights, for example, allow a New Zealand dedicated freight carrier to operate services directly from Australia to third countries without operating out of New Zealand. Open Skies formalized the *Single Aviation Market* arrangements of 1996, which allowed all Australian and New Zealand-owned airlines to operate trans-Tasman services and domestic services in either country subject to the necessary safety approvals.

Customs Cooperation Arrangement (1996) provides for cooperation to harmonise customs policies and procedures, assist in the prevention, investigation and repression of offences, and resolve problems of customs administration and enforcement, particularly in the Asia Pacific Region.

Protocol on the Harmonisation of Quarantine Procedures, signed in 1988, provides for work to be undertaken towards common administrative procedures for quarantine.

Joint Accreditation System Australia and New Zealand JAS-ANZ (1991), established under the *Agreement on Standards, Accreditation and Quality* (1990), is the joint accreditation body for certification of management systems, products and personnel.

Arrangement on Food Inspection Measures Under the *Imported Food Control Act 1992* and following a 1996 exchange of letters between Trade Ministers, all food traded between Australia and New Zealand, with the exception of that identified as Risk Food, is exempt from import inspection.

Food Standards Australia New Zealand (FSANZ) is a bi-national statutory authority that develops common food standards to cover the whole of the food chain "from paddock to plate". FSANZ operates under the *Food Standards Australia and New Zealand Act 1991*. ***The Joint Australia New Zealand Food Standards Code*** became the sole food standards code in operation in Australia and New Zealand on 20 December 2002.

Memorandum of Understanding (MOU) on Business Law Coordination 2006, a revised version of the 2000 MOU provides a framework for the alignment of business laws in order to increase the ease of capital flows and trans-Tasman business integration.

Government Procurement Agreement (ANZGPA) In 1989, following a review of CER, New Zealand joined the National Preference Agreement (NPA) (originally signed by the Commonwealth, States and Territories). The NPA was in turn reviewed in 1991 and amended to include all services procured by governments. It was renamed the Government Procurement Agreement (GPA).

Trans-Tasman Therapeutic Products Agency Australian and New Zealand Ministers for Health have agreed to establish a joint therapeutic goods regulator. The new agency will replace Australia's Therapeutic Goods Administration (TGA) and the New Zealand Medicines and Medical Devices Safety Authority (Medsafe). It is expected to be operational in the second half of 2007.

Trans-Tasman Travel Arrangement A term applied to the collection of Ministerial understandings which allows Australians and New Zealanders to visit, live and work in the other country.

Social Security Agreement 2002 A cost sharing arrangement covering aged pensions, disability support pensions and carer payments for partners of disabled persons.

Reciprocal Health Care Agreement 1998 deals with access to health care by Australians and New Zealanders travelling in the other country.

The ***Double Taxation Agreement 1995*** contains provisions for the avoidance of double taxation and the prevention of fiscal evasion in relation to income flowing between Australia and New Zealand. In February 2003, the Treasurer and his New Zealand counterpart agreed to extend Australia's and New Zealand's imputation regimes to include certain companies resident in the other country. The reform addressed the 'triangular tax' or 'double taxation' problem, whereby Australian and New Zealand shareholders investing through a company resident in the other country that earned income and paid taxes in their own jurisdiction were unable to get imputation credits arising from the payment of such taxes. From 1 October 2003, Australian shareholders of New Zealand companies have been able to access franking credits arising from the payment of Australian tax by these companies.