Dissenting Report—Hon Dr Sharman Stone MP and Mr John Forrest MP

As members of the Joint Standing Committee on Treaties, we cannot support the *Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).* This treaty was tabled on 11 May 2011.

Australia and New Zealand currently screen each other's private investment proposals using different dollar thresholds and considering different domestic interest criteria. The new protocol is intended to address non-government proposed investment disparities that currently exist between New Zealand and Australia. The aim is to give New Zealanders the same treatment as our most preferred trading partner, the United States of America.

New Zealand investors would see the threshold for the scrutiny of their proposals raised from 15 per cent of $AU231 million for general investment, $AU5 million for heritage properties and $AU50 million for commercial properties, to the one trigger of 15 per cent of an $AU1,005 million asset for any investment by a New Zealand corporation or businesses.

Australians, on the other hand would only see the investment screening threshold raised from 25 per cent of $NZ100 million to 25 per cent of $NZ477 million, and the New Zealand Overseas Investment Authority (NZ OIA) would retain its current "sensitive assets" criteria. The dollar threshold disparities have been argued on the basis that New Zealand has a smaller economy.

Both these amounts are to be indexed via each country's GDP price deflator. (The original 2005 threshold triggering Australian screening as determined with the USA was $800million.)

While it presumes to be doing more, the new ANZCERTA Investment Protocol is only focussing on changing the dollar thresholds that trigger screening in either country. It is not addressing the different percentages of investment triggering

scrutiny, or the levels of proposed investment triggering screening. Nor does it consider the different definitions of so called "sensitive assets" in New Zealand (which include rural land over 5 hectares and any water frontage property) or Australia's "prescribed sensitive areas" (which include media, telecommunications, transport, defence related industries and uranium).

Australia also screens investment in existing residential urban properties regardless of value and only allows certain purchases by non-citizens of vacant urban land or new buildings, which they must occupy, to discourage speculation. New Zealand citizen investors are given a special visa category which exempts them from these conditions, however Australian citizen investors in New Zealand are still restricted by water frontage and land over 5 hectare criteria.

The NZ OIA charges a significant application fee of some $NZ 12,000 or so while the Foreign Investment Review Board of Australia does not charge fees for screening. The protocol does not address this anomaly.

New Zealand Treasury has calculated that the Protocol as proposed would reduce current costs for investment in business assets by around two thirds. It would appear that this will largely come from Australian businesses less frequently triggering the NZ OIA application fees, and few New Zealand investors triggering the Australian thresholds. Therefore this saving comes at a cost of less scrutiny and transparency for either country, and cannot be seen as a savings carrying a benefit of increased efficiency or effectiveness in ensuring the national interests of both countries are preserved.

While Australia accepted the conditions of the Australia – United States Free Trade Agreement for screening of non-government investment in Australia by US corporations or businesses, this was not reciprocal, nor harmonised. The USA has no formal dollar threshold triggering screening, but instead requires voluntary notification of any proposed investment which may trigger "national security" sensitivities. Failure to notify may lead to Presidential intervention.

It seems we still have not learned much about equal or reciprocal bilateral trade arrangements.

Article 8 (Senior Management and Boards of Directors) provides that neither party may restrict the nationality or residence of the senior management or board members of an enterprise of that party. Nationality or residency requirements may only be placed on a minority of board members where this would not materially impair the ability of the investor to exercise control over its investment.

We are concerned that such an arrangement could lead to a diminution of Australia's national interests if a Board or senior management is not resident in either country and does not have Australian or New Zealand nationality, but enjoys preferential investment screening treatment.

In Summary:

The only new obligations imposed by this new protocol on Investment to the *Australia-New Zealand Closer Economic Relations Trade Agreement*, is the requirement that Australia substantially increases the threshold for screening New Zealand private sector investment proposals. Fees charged are not harmonised and special considerations are not aligned. Given the growing public disquiet about the lack of transparency and accounting for foreign investment in Australia, especially for farming land and manufacturing, now is not the time to simply raise the bar triggering less scrutiny, assessment of national interest and accountability.

We cannot give our approval to this Protocol.

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Member for Murray

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