

**TREATY BETWEEN THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF NEW ZEALAND ESTABLISHING  
CERTAIN EXCLUSIVE ECONOMIC ZONE BOUNDARIES  
AND CONTINENTAL SHELF BOUNDARIES,  
DONE AT ADELAIDE ON 25 JULY 2004  
[2004] ATNIF 01**

**Documents tabled on 4 August 2004:**

**National Interest Analysis**

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## **NATIONAL INTEREST ANALYSIS: CATEGORY B TREATY**

### **SUMMARY PAGE**

**Treaty between the Government of Australia and the Government of New Zealand  
Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf  
Boundaries, done at Adelaide on 25 July 2004  
[2004] ATNIF 01**

#### **Date of Tabling of Proposed Treaty Action**

1. 4 August 2004.

#### **Nature and Timing of Proposed Treaty Action**

2. By Article 5, the Treaty will enter into force when both parties have notified each other in writing that they have completed their requirements for bringing the Treaty into force.
3. It is proposed that Australia notify New Zealand in the above terms in advance of Australia's lodgement with the Commission on the Limits of the Continental Shelf (CLCS) of its submission on the outer limit of Australia's continental shelf where it extends more than 200 nautical miles (nm) from the baselines from which the breadth of the territorial sea is measured (the territorial sea baseline), which in accordance with the United Nations Convention on the Law of the Sea (UNCLOS) will occur by 16 November 2004. If New Zealand has by then notified Australia in the necessary terms, the Treaty will enter into force immediately on Australia's notification to New Zealand, otherwise it will enter into force when New Zealand gives Australia its written notification.

#### **Overview and National Interest Summary**

4. The proposed Treaty will settle the maritime boundaries between Australia and New Zealand in the Tasman Sea and adjacent areas of the south-western Pacific Ocean. There are currently no boundaries agreed between Australia and New Zealand. The establishment of such boundaries will provide Australia with security of jurisdiction over the relevant offshore resources west of those boundaries. The boundaries in the Treaty represent an equitable and fair outcome for Australia.
5. The Treaty will benefit Australia's resources industries. For petroleum, finalisation of the continental shelf boundaries will create certainty and in the long term allow the release of new areas for exploration should the industry express interest in this. For fisheries, finalisation of the maritime boundaries will make easier the joint management with New Zealand of any stocks shown to occur in the vicinity of the boundaries, over which jurisdiction would otherwise have been uncertain.
6. The settling of the maritime boundary between Australia and New Zealand greatly reduces the potential for future disputes and serves as a model of bilateral cooperation in the region. In the short term, it also ensures that New Zealand will support Australia's submission to the CLCS on the outer limit of its continental shelf when it is lodged in November 2004. Sections of the boundary settled by the Treaty would form part of the outer limit submitted to the CLCS by Australia.

## **Reasons for Australia to Take the Proposed Treaty Action**

7. Under the 1982 United Nations Convention on the Law of the Sea (UNCLOS), to which both Australia and New Zealand are parties, coastal States are entitled to a continental shelf and exclusive economic zone (EEZ) extending up to 200 nm from the baselines from which the breadth of the territorial sea is measured. Where the natural prolongation of a coastal State's landmass extends beyond 200 nm, the State is entitled to an additional area of shelf within limits established under UNCLOS. The maximum extent of the continental shelf in these circumstances is determined by a complex set of rules, but in no case can it exceed the greater of 350 nm from the baseline or 100 nm from the 2500-metre isobath (a line connecting all points lying at a depth of 2500 metres).

8. A coastal State exercises certain "sovereign rights" over the continental shelf and EEZ, namely to explore and exploit, conserve and manage the natural resources. It also has jurisdiction to protect and preserve the marine environment and to undertake marine scientific research.

9. Where the entitlements of opposite States overlap, it becomes necessary to delimit maritime boundaries in order to provide certainty of jurisdiction and thus a secure basis for the resources of the maritime zones to be exploited. Under Articles 74 and 83 of UNCLOS, delimitation "shall be effected by agreement on the basis of international law as referred to in Article 38 of the Statute of the International Court of Justice in order to achieve an equitable solution."

10. An overlap exists both of EEZs and of continental shelves extending beyond 200 nm from the Australian and New Zealand baselines to which both countries are entitled under the UNCLOS rules. It was thus necessary to delimit the areas of overlap in accordance with Articles 74 and 83 of UNCLOS.

11. The Treaty delimits the maritime boundary in six areas:

- (a) the EEZ between Norfolk Island (Australia) and Three Kings Island (New Zealand);
- (b) the EEZ between Macquarie Island (Australia) and Campbell and Auckland Islands (New Zealand);
- (c) the small area of extended continental shelf north of Macquarie Island and west of Auckland Island;
- (d) another small area of extended continental shelf south-east of Macquarie Island and south-west of Auckland Island;
- (e) the extended continental shelf between Lord Howe Island and New Zealand (including the area of extended shelf associated with West Norfolk Ridge to the south of Norfolk Island); and
- (f) the extended continental shelf on Three Kings Ridge east of Norfolk Island.

12. The Treaty does not delimit the maritime boundaries (territorial sea, EEZ and continental shelf) between the Australian Antarctic Territory and New Zealand's Ross Dependency. New Zealand, which has not yet declared an EEZ in this area, was not willing to delimit these boundaries for the time being.

13. Settlement of the boundary will also assist Australia when it makes its submission to the CLCS on the outer limits of its continental shelf beyond 200 nm from the territorial sea baseline. Although it would be possible to make a submission to the CLCS without it, the agreed boundary, part of which would contribute to Australia's outer limit, simplifies Australia's task and may expedite the issuing of recommendations by the CLCS on the submitted limit. UNCLOS provides that an outer limit established by a coastal State on the basis of the recommendations of the CLCS is "final and binding".

#### Details of Boundaries

14. The boundary has two discontinuous parts, one in the north separating the EEZ and continental shelves from Lord Howe Rise past Lord Howe and Norfolk Islands to Three Kings Ridge (described in Article 2) and the other in the south separating the EEZ and continental shelves between Macquarie and Campbell and Auckland Islands (described in Article 3). Three maps depicting the lines described below are annexed to the Treaty.

15. The northern line begins at a point midway between the intersection of the outer limit of the extended continental shelf as defined by Australia with an arc drawn 350 nm from Norfolk Island and the intersection of the same arc with the like limit as defined by New Zealand. It then runs south-westerly to the northernmost point of maximum change in gradient forming the western margin of the Three Kings Ridge, before running south to join a series of points of maximum change of gradient along that margin. Beyond the last of these points, the line continues without change of direction until it meets the equidistance line between Phillip Island (lying off Norfolk Island) and the Three Kings Islands, which it follows in a south-westerly direction to the point where the two EEZs diverge. It then turns westerly and north-westerly along the outer limit of the EEZ generated by Phillip Island until its intersection with the parallel of latitude 31° 30' S, from where it proceeds south-westerly to the intersection of the outer limit of the EEZ generated by Ball's Pyramid (lying off Lord Howe Island) with the parallel of latitude 32° 30' S. The line then follows that outer limit south-westerly to its intersection with the line of equidistance between the Australian and New Zealand mainlands giving half effect to Three Kings Island. Thence it proceeds south-easterly to the intersection of an arc drawn 350 nm from Ball's Pyramid with a line constructed so as to run halfway between the mainland equidistance line described above and the line of equidistance between the nearest points of all Australian and New Zealand land territory, before running south-westerly along that arc to its intersection with the mainland equidistance line described above; thence south-westerly along that line to a point beyond the furthest extent of continental shelves of both countries.

16. The southern line begins north of Macquarie Island on the outer limit of Australia's EEZ at a meridian of longitude slightly west of the furthest possible extent of the shelf, runs east along that outer limit and then south-east along lines of equidistance between the closest points of Australian and New Zealand territory where they are within 400 nm of each other. From the southernmost point of overlap it resumes a southerly course along the outer limit of Australia's EEZ, diverting lastly to the south-east for a short distance to divide equally a small overlap between areas of continental shelf beyond 200 nm from the baselines of either country.

17. The boundary described in the Treaty is a common maritime boundary dividing both the EEZ and continental shelf of the two countries. It is a fair and equitable outcome in accordance with the principles of international law. Because the boundary runs no closer than 200 nm to any Australian island, Lord Howe Island will continue to enjoy its full EEZ, as do Norfolk Island and Macquarie Island except where they are within 400 nm of the nearest New Zealand islands, these

areas ((a) and (b) in paragraph 11 above) being divided along the line of equidistance between the nearest points of Australian and New Zealand land territory. Where the boundary runs along the outer limit of Australia's EEZ, those parts of it divide Australia's EEZ from New Zealand's continental shelf.

18. Not all of the boundary, however, runs along the equidistance line. Where an isolated island of one country lies close to the much longer coastline of another country, it is consistent with international law and practice for the boundary to be located closer to the isolated island. This particularly affects Lord Howe and Norfolk Islands, the latter of which lies closer to New Zealand than to Australia. Thus area (e) in paragraph 11 is divided in such a way as to give some weight to Lord Howe Island, though significantly less than the full weight that a line of equidistance between the nearest points of Australian and New Zealand territory would have represented. Area (f) is delimited along a line drawn so as to leave Three Kings Ridge under New Zealand jurisdiction, the technical case for its connection with New Zealand's North Island being more straightforward to make to the CLCS than the case for connection to Norfolk Island would be.

19. In terms of the remaining areas listed in paragraph 11 above, the whole of area (c) is placed under New Zealand jurisdiction and area (d) is divided equally between the two countries.

### **Obligations**

20. Articles 2 and 3 of the Treaty establish the areas in which each country may exercise sovereign rights and jurisdiction. In the EEZ the coastal State exercises sovereign rights to explore and exploit, conserve and manage the living and non-living natural resources. It also has jurisdiction to protect and preserve the marine environment and to undertake marine scientific research. On the continental shelf extending beyond 200 nm from the respective baselines, these sovereign rights are confined to non-living resources and to sedentary living organisms, that is, those which at the harvestable stage of their life cycle are immobile on or under seabed or unable to move except in constant contact with the seabed. Australia and New Zealand would be bound to respect each other's sovereign rights and jurisdiction on their respective sides of the boundary.

21. Article 4 provides for the unitisation of any oil, gas or mineral deposit beneath the seabed that extends across the boundaries established by the Treaty, and the part of such accumulation or deposit that is situated one side of the line is recoverable in fluid form wholly or in part from the other side of the line. This is to ensure that the deposit is developed as a single co-ordinated project, obviating the unnecessary duplication of investment. In such a case Australia and New Zealand must seek to reach agreement on the manner in which the accumulation or deposit is to be exploited and on the equitable sharing of the benefits arising from such exploitation.

### **Implementation**

22. Adoption of these new boundaries between Australia and New Zealand will require amendment of the EEZ outer limit Proclamation under the *Seas and Submerged Lands Act 1973*. Consequential minor amendments to the adjacent area boundaries in the *Petroleum (Submerged Lands) Act 1967* would be desirable but not essential and need not have commenced before binding treaty action is taken.

## **Costs**

23. There would be unquantifiable hypothetical costs to Australia from the loss of Australian ocean industries of the ability to operate on New Zealand's side of the proposed boundary except in accordance with New Zealand law, to the extent that New Zealand law does not already apply there. In the case of the fishing industry, however, the available evidence is that fishing effort has been minuscule and catch rates poor. For its part, given the considerable sums required, the petroleum industry would only have invested in exploitation of areas in the vicinity of the boundary once they had been released for this purpose under the *Petroleum (Submerged Lands Act) 1967*. The Government would not in any event, however, have released an area where, as has been the case hitherto, there has been no delimited boundary with New Zealand.

## **Consultation**

24. This proposed action will have an impact on Norfolk Island, New South Wales (in respect of Lord Howe Island) and Tasmania (in respect of Macquarie Island). The impact will be on the economic activity generated in the area in the vicinity of the proposed boundary generated by persons and companies based either on the islands in question, or, in the case of Macquarie Island, on the main island of Tasmania. The effect on this activity of the settlement of the boundary can be expected to be overwhelmingly positive in the longer term. The interests of these jurisdictions were represented throughout the negotiations by the Solicitor-General of Tasmania and by the Chief Minister of Norfolk Island, who were both regular members of the Australian delegation.

25. Further information about the consultations on the Treaty is contained in Annex 1.

## **Regulation Impact Statement**

26. The Office of Regulation Review (Productivity Commission) has been consulted and confirms that a Regulation Impact Statement is not required.

## **Future Treaty Action**

27. The Treaty does not contain express provisions dealing with amendment or future protocols of any kind. Maritime delimitation agreements do not normally contain such provisions. The Treaty could however be amended at any time by the mutual consent of the Parties by means of a further instrument of treaty status, which would likewise be subject to the Australian treaty process.

## **Withdrawal or Denunciation**

28. The Treaty does not contain express provisions dealing with withdrawal or denunciation, which it is not usual for maritime delimitation agreements to contain. It would be possible, however, for one Party to withdraw from the Treaty at any time with the consent of the other Party (Vienna Convention on the Law of Treaties, Article 54).

## **Contact details**

Sea Law, Environmental Law and Antarctic Policy Section  
International Organisations and Legal Division  
Department of Foreign Affairs and Trade.

**Treaty between the Government of Australia and the Government of New Zealand  
Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf  
Boundaries, done at Adelaide on 25 July 2004  
[2004] ATNIF 01**

1. The Government consulted regularly throughout the negotiations that led to the Treaty with the States and a Territory likely to be affected by it:

- New South Wales (in respect of Lord Howe Island)
- Tasmania (in respect of Macquarie Island)  
and
- Norfolk Island.

The Solicitor-General of Tasmania and the Chief Minister of Norfolk Island were both regular members of the Australian delegation. The Government of New South Wales has also been represented on the delegation.

2. The Department of Industry, Tourism and Resources and the Department of Agriculture, Fisheries and Forestry brought to the delegation's attention matters relating to the petroleum and fisheries industries that arose in the negotiations, of which the delegation took due account.

3. The Treaty was included in the Treaties Schedule for the Commonwealth-State/Territory Standing Committee on Treaties.

## **AUSTRALIA-NEW ZEALAND BILATERAL RELATIONS**

Australia and New Zealand share a special relationship as neighbours and close economic partners, with unique inter-governmental structures, historic, cultural and people-to-people links. But we remain two sovereign nations with distinct national interests.

2. New Zealand is Australia's most important ally in the South Pacific and an important partner beyond. Over many decades, New Zealand has made valuable contributions in areas of high priority to Australia, most recently in East Timor, Bougainville and Solomon Islands and in responding to people smuggling.

3. Closer Economic Relations (CER) is more than a free trade agreement. It is one of the most successful examples of economic integration in the world and a model for others. CER and the web of arrangements and agreements which support it provide a seamless business environment through a common approach to many standards and regulatory issues.

4. An ambitious program of economic integration will continue, through increased regulatory coordination, harmonisation of customs and business laws, closer alignment of securities systems and further work on taxation. There are nonetheless political, economic and practical limits to further integration.

5. The flows of people across the Tasman are substantial. Neither Australia nor New Zealand wants to put at risk the entitlement of our citizens under the Trans-Tasman Travel Arrangement to free movement, residence and work in each other's country. Both countries have a common responsibility, however, to protect the integrity of our borders and immigration processes.

6. Australia continues to work closely with New Zealand on defence issues and encourages the New Zealand Government to see defence as an important tool of strategic diplomacy, even though our strategic visions and proportions of defence spending differ considerably.

7. The trans-Tasman relationship will necessarily evolve as differences in economic strength, political systems, ethnic composition and strategic outlook become more apparent. Australia has a strong and direct interest in a dynamic relationship with an outward-looking and economically strong New Zealand.





# NEW ZEALAND

Fact Sheet

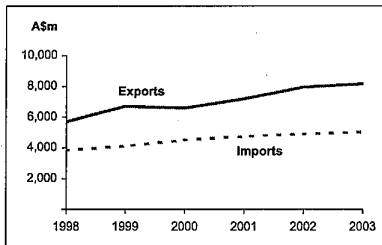
## General information:

<b>Capital:</b>	Wellington	<b>Head of State:</b>	H.M. Queen Elizabeth II, represented by Governor-General The Rt Hon Dame Silvia Cartwright
<b>Surface area:</b>	271 thousand sq km	<b>Head of Government:</b>	Prime Minister The Rt Hon Helen Clark MP
<b>Official language:</b>	English		
<b>Population:</b>	4.0 million (2003)		
<b>Exchange rate:</b>	A\$1 = NZ\$ 1.1617 (Apr 2004)		

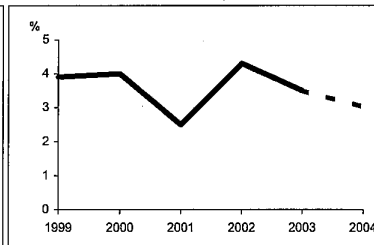
## Recent economic indicators:

	1999	2000	2001	2002	2003(a)	2004(b)
<b>GDP (US\$bn) (c):</b>	56.0	51.4	50.6	58.6	77.4	94.2
<b>GDP per capita (US\$):</b>	14,612	13,294	12,973	14,922	19,492	23,460
<b>Real GDP growth (% change YOY) (c):</b>	3.9	4.0	2.5	4.3	3.5	3.0
<b>Current account balance (US\$m):</b>	-3,515	-2,452	-1,307	-2,146	-3,490	-4,689
<b>Current account balance (% GDP):</b>	-6.3	-4.8	-2.6	-3.7	-4.5	-5.0
<b>Goods &amp; services exports (% GDP):</b>	30.5	35.3	36.1	33.4	28.9	27.3
<b>Inflation (% change YOY):</b>	1.1	2.7	2.7	2.7	1.8	2.3
<b>Unemployment rate (%):</b>	6.8	6.0	5.3	5.2	4.7	4.9

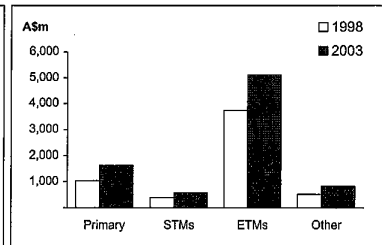
Australia's trade with New Zealand



Real GDP growth



Australia's exports to New Zealand



## Australia's trade relationship with New Zealand:

### Major Australian exports, 2003 (A\$m):

Office machines and equipment	543
Passenger motor vehicles	518
Refined petroleum	466
Medicinal and pharmaceutical products	389
Paper and paperboard	352

### Major Australian imports, 2003 (A\$m):

Electrical machinery and appliances	317
Paper and paperboard	311
Wood, simply worked	259
Crude petroleum	226
Non-monetary gold	198

### Australian merchandise trade with New Zealand, 2003:

		<u>Total share:</u>	<u>Rank:</u>	<u>Growth (yoy):</u>
Exports to New Zealand (A\$m):	8,148	7.6%	4th	2.7%
Imports from New Zealand (A\$m):	5,006	3.8%	6th	2.7%
Total trade (exports + imports) (A\$m):	13,153	5.5%	4th	2.7%
Merchandise trade surplus with New Zealand (A\$m):	3,142			

### Australia's trade in services with New Zealand, 2003:

		<u>Total share:</u>
Exports of services to New Zealand (A\$m):	2,370	7.3%
Imports of services from New Zealand (A\$m):	1,802	5.5%
Services trade surplus with New Zealand (A\$m):	568	

## New Zealand's global trade relationships:

### New Zealand's principal export destinations, 2003:

1	Australia	21.6%
2	United States	14.4%
3	Japan	11.0%
4	China	5.2%
5	United Kingdom	5.0%

### New Zealand's principal import sources, 2003:

1	Australia	23.1%
2	United States	12.0%
3	Japan	11.8%
4	China	7.8%
5	Germany	5.0%

Compiled by the Market Information and Analysis Section, DFAT, using the latest data from the ABS, the IMF and various international sources.

(a): all recent data subject to revision; (b): IMF forecast; (c): Year beginning April 1st.

Fact sheets are updated biannually; next update: September 2004

## Treaties between Australia and New Zealand

- Australia-New Zealand Agreement [ANZAC Pact]  
[1944] ATS 02
- Australia New Zealand Closer Economic Relations Trade Agreement [ANZCERTA]  
[1983] ATS 02
- Agreement on Seismic Monitoring Cooperation  
[1987] ATS 10
- Protocol on Harmonisation of Quarantine Administrative Procedures to ANZCERTA  
of 28 March 1983  
[1988] ATS 17
- Protocol on Acceleration of Free Trade in Goods to ANZCERTA of 28 March 1983  
[1988] ATS 18
- Protocol on Trade in Services to ANZCERTA of 28 March 1983  
[1988] ATS 20
- Exchange of Letters to amend ANZCERTA of 28 March 1983  
[1988] ATS 27
- Agreement for the Reciprocal Protection of Classified Information of Defence  
Interest  
[1989] ATS 03
- Agreement concerning the Collaboration in the Acquisition of Surface Combatants  
for the Royal Australian Navy and the Royal New Zealand Navy [ANZAC Frigates  
Agreement]  
[1989] ATS 32
- Agreement concerning Cooperation in Defence Logistics Support  
[1991] ATS 14
- Exchange of Letters constituting an Agreement to delete Article 20.3 and Annex F  
from ANZCERTA of 28 March 1983  
[1992] ATS 27
- Exchange of Letters constituting an Agreement relating to Nauru  
[1994] ATS 17
- Exchange of Letters constituting an Agreement to amend Article 3.1 of ANZCERTA  
of 28 March 1983  
[1994] ATS 39
- Agreement Establishing a System for Joint Food Standards  
[1996] ATS 12

- Agreement for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income  
**[1997] ATS 23**
- Exchange of Letters constituting an Agreement to amend the ANZAC Frigates Agreement of 14 December 1989  
**[1997] ATS 24**
- Agreement concerning the Establishment of the Governing Board, Technical Advisory Council and Accreditation Review Board of the Joint Accreditation System of Australia and New Zealand [JAS-ANZ II]  
**[1998] ATS 16**
- Agreement on Medical Treatment for Temporary Visitors  
**[1999] ATS 15**
- Agreement concerning the Transfer of Uranium  
**[2000] ATS 16**
- Agreement on Child and Spousal Maintenance  
**[2000] ATS 20**
- Agreement on Social Security  
**[2002] ATS 12**
- Exchange of Notes Amending the Agreement on Social Security of 28 March 2001  
**[2002] ATS 12**
- Agreement concerning a Joint Food Standards System  
**[2002] ATS 13**
- Agreement relating to Air Services  
**[2003] ATS 18**
- Agreement concerning the Status of Forces  
**[1998] ATNIF 14**
- Agreement for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products  
**[2003] ATNIF 22**

### **Treaties on Maritime Boundaries**

- Agreement between Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries  
**[1973] ATS 31**
- Agreement between the Government of the Commonwealth of Australia and the Government of the Republic of Indonesia Establishing Certain Seabed Boundaries in the Area of the Timor and Arafura Seas, supplementary to the Agreement of 18 May 1971  
**[1973] ATS 32**
- Agreement on Maritime Delimitation between the Government of Australia and the Government of the French Republic  
**[1983] ATS 03**
- Treaty between Australia and the Independent State of Papua New Guinea concerning Sovereignty and Maritime Boundaries in the Area between the Two Countries, including the Area Known as Torres Strait, and Related Matters [Torres Strait Treaty]  
**[1985] ATS 04**
- Agreement between the Government of Australia and the Government of the Solomon Islands Establishing Certain Sea and Seabed Boundaries  
**[1989] ATS 12**
- Treaty between the Government of Australia and the Government of the Republic of Indonesia establishing an Exclusive Economic Zone Boundary and Certain Seabed Boundaries  
**[1997] ATNIF 04**