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## The Hon Mark Vaile MP

Minister for Trade  
Deputy Leader of The Nationals

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BY: LACA

The Hon Peter Slipper MP  
Chairman  
Standing Committee on Legal and Constitutional Affairs  
Parliament House  
CANBERRA ACT 2600

Dear Chairman

Further to my letter of 7 April 2005, I am pleased to attach for the Standing Committee's consideration, a submission to its inquiry into the lack of harmonisation between the Australian and New Zealand legal systems, with particular reference to those differences that have an impact on trade and commerce. This submission describes the bilateral economic relationship and the benefits of greater harmonisation, including of the two countries' legal systems.

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

Yours sincerely

MARK VAILE

## **Department of Foreign Affairs and Trade**

### **Submission to the House of Representatives Standing Committee on Legal and Constitutional Affairs' Inquiry into the Lack of Harmonisation between the Legal Systems of Australia and New Zealand May 2005**

#### **Introduction**

The Attorney General has requested the House of Representatives Standing Committee on Legal and Constitutional Affairs to conduct an inquiry into the lack of harmonisation within Australia's legal system and between the legal systems of Australia and New Zealand, with particular reference to those difficulties that have an impact on trade and commerce.

This submission seeks to provide the Committee with information on the bilateral economic relationship between Australia and New Zealand and the benefits of harmonisation, including of the two countries' legal systems, as they work jointly to develop a Single trans-Tasman Economic Market.

#### **Bilateral Relations**

Australia and New Zealand have traditionally been, and continue to be, natural allies with strong trans-Tasman ties. Migration, trade and defence ties, and strong people-to-people links have helped shape a close and co-operative relationship. Freedom of travel, facilitated through the Trans-Tasman Travel Arrangement, results in hundreds of thousands of Australians and New Zealanders crossing the Tasman each year as tourists, for business purposes, or to visit family members. Around 350,000 New Zealand citizens now live in Australia, and around 60,000 Australian citizens live in New Zealand. At the government-to-government level, Australia's relationship with New Zealand is more extensive than with any other country. New Zealand ministers and their senior officials participate, with their Australian Federal and State counterparts, in many of the Council of Australian Government (CoAG) meetings which span the domestic policy agenda.

Relations between the private sectors of Australia and New Zealand are also close. In addition to significant trans-Tasman investment, senior business leaders from Australia and New Zealand meet annually, together with Ministers and officials, at the Australia-New Zealand Leadership Forum. The Forum aims to ensure that the close and dynamic commercial relationship between the two countries continues to flourish. At the inaugural Forum, held in Wellington in May 2004, participants resolved to: accelerate the work already begun on a Single Economic Market with a view to creating a seamless trans-Tasman business environment; explore the scope for a common border for Australia and New Zealand; and enhance the skills base of both countries through joint efforts with respect to standards, training and reducing compliance costs.

The second Leadership Forum, held in Melbourne on 29-30 April 2005, further emphasised the benefits to both economies of closer cooperation and integration, including through joint regulation and harmonised standards-setting. The Forum concluded that, in an increasingly globalised world, where both countries face many of the same economic challenges, fewer barriers to trans-Tasman trade would enhance

Australia's and New Zealand's capacity to compete successfully in regional and international markets.

### *Trade relations*

The *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA or CER), which came into effect on 1 January 1983, created one of the world's most open and successful free trade agreements. It is the principal agreement that supports the trans-Tasman economic relationship, complemented by a range of related agreements and arrangements (see Attachment A). In the 20 years following its entry into force, two way trade in goods has expanded at an average annual growth rate of 10 per cent.

In 2004, trans-Tasman merchandise trade was valued at \$13.2 billion. Based on trade in goods and services, New Zealand is now Australia's fifth largest market, taking seven per cent of our exports and providing the seventh-largest source of imports. Key Australian exports to New Zealand include: office machines and equipment; passenger motor vehicles; refined petroleum; medicinal and pharmaceutical products; and paper and paperboard. Australia is New Zealand's largest single market. Imports from New Zealand amounted to \$5 billion, including: electrical machinery and appliances; paper and paperboard; wood (simply worked); crude petroleum; and non-monetary gold. Trade in services amounted to \$4.2 billion in 2002-03.

While no consecutive compatible investment data is available for the entire period, it is estimated that between 1983 and 2003, two way investment increased at an annual average rate close to 18 per cent. In 2003, total two-way investment was valued at \$56.7 billion, and it continues to trend upwards. The 1988 *CER Protocol on Trade in Services* has accelerated investment flows, and since 1991 total two-way investment has increased by 167.9 per cent. Over half of Australia's total investment in New Zealand is foreign direct investment, 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.

### *Co-ordination and progress towards a Single Economic Market*

With most of the trade goals of CER met, the way ahead is to create a more favourable climate for trans-Tasman business through regulatory harmonisation. Australian and New Zealand Treasurers launched the Single Economic Market (SEM) initiative in January 2004. The Australian and New Zealand Prime Ministers have jointly affirmed their commitment to the idea of a single trans-Tasman economic market.

Good progress was made on the SEM agenda in February when the Treasurer met with New Zealand Finance Minister, Michael Cullen, at their annual bilateral meeting in Wellington. Key outcomes of the meeting included: the establishment of a Joint Trans-Tasman Council on Banking Supervision; endorsement of the Australian Productivity Commission's recommended work programme on integrating Australia's and New Zealand's competition and consumer frameworks; and agreement to investigate the possibility of adding an investment component to the Closer Economic Relations Agreement (CER).

In recent years, coordination between Australia and New Zealand has been enhanced on a range of issues, including:

- establishment in July 1996 of a system for the development of joint food standards (now known as Food Standards Australia and New Zealand);
- the Trans-Tasman Mutual Recognition Arrangement (TTMRA) (see Attachment A); and
- the signing of a Treaty in December 2003 to establish a trans-Tasman Joint Therapeutics Agency to regulate therapeutic products in both countries under a harmonised regulatory scheme (see more detail below).

Based on their similar legal and commercial backgrounds, New Zealand and Australia have also achieved a significant degree of coordination and cooperation in a number of areas impacting on trans-Tasman businesses, including:

- endorsement of the work programme to achieve closer co-ordination of competition and consumer protection laws (including fair trading laws) enforced by the Australian Competition and Consumer Commission and the New Zealand Commerce Commission;
- cross investment activity including the offer of securities between Australia and New Zealand, in particular, equities and interests in managed funds; cross border listings on the Australian and New Zealand Stock Exchanges; and the cross border operations of the two futures markets, Sydney Futures Exchange and New Zealand Futures Exchange
  - : including an agreement to finalise a treaty to establish a regime for the mutual recognition of securities offerings and interests in managed investment schemes;
- establishment of a trans-Tasman Accounting Standards Advisory Group to consider pathways to align Australian and New Zealand financial reporting standards;
- announcement of a joint work programme on intellectual property coordination covering patents, trademarks and plant breeders; and
- establishment of a working group (chaired by the Attorney-General's Department) to consider streamlining court proceedings and regulatory enforcement between the two countries.

### **Importance of legal harmonisation**

The substantial and continuing growth in trans-Tasman business activity has driven the demand for greater harmonisation between Australia and New Zealand. Although our legal systems are generally similar and good progress has been made in harmonising regulatory systems between Australia and New Zealand, significant differences remain, for example in corporate law, privacy laws and in the application of trade practices law.

Of particular concern to the market is the fact that differences in business law add to compliance costs for companies trading or investing across the Tasman. Enhanced legal and regulatory harmonisation has the potential to lower these costs.

Greater harmonisation will not, however, always be easy to achieve. Difficulties in establishing a trans-Tasman Joint Therapeutics Agency, which have required the Agency's start-up date to be delayed by one year, demonstrate the complexity of bringing together in one scheme established operations of sovereign nations with similar but by no means identical approaches and expectations. The Joint Therapeutics Agency Treaty provides for the Agency to deliver the same degree and kind of accountability that applies both to Australian Commonwealth authorities and New Zealand crown entities. This has proved difficult to achieve in practice, although recent negotiations appear likely to lead to resolution.

Two principal approaches have been adopted in efforts to harmonise Australian and New Zealand systems. Under the first approach, there is mutual recognition of each jurisdiction's processes and standards. This is often linked to the harmonisation of laws, standards and regulations to the greatest extent possible. The trans-Tasman Mutual Recognition Arrangement is a key example of this approach. The second approach is to create a single body which regulates both jurisdictions and which has essentially the same rules and regulations applying in both Australia and New Zealand. The Therapeutic Goods Agency, discussed above, is an example of this approach. While the second approach is in many ways more complex and difficult to negotiate initially, it should result in greater harmonisation and fewer barriers to trade over time.

In its report on the Australian and New Zealand Competition and Consumer Protection Regimes, the Productivity Commission took the first approach, recognising that the two countries' regimes were similar in many ways and cooperated closely to achieve good outcomes. The Productivity Commission opted for a 'transitional integration' approach, rather than full or partial integration.

The trans-Tasman Council on Banking Supervision will review banking regulation in both countries with the objective of either setting up a joint regulator or having two regulators with the same standards.

Existing informal links between Australian and New Zealand regulatory bodies are also of great importance in increasing harmonisation. Both countries are frequently closely involved in the development of regional and global standards. Inter-agency contact, discussion and cooperation are often close, leading to the informal development of harmonised, or at least broadly similar, approaches.

However, it is important to note that there are philosophical and cultural differences in approach between Australia and New Zealand, particularly in the area of financial regulation. Historically, New Zealand has adopted a 'lighter' approach to regulation than Australia. In many ways both systems have worked well and both have merit; however the different approaches do make it more complicated to increase harmonisation. The issue of national sovereignty is pervasive.

Cognisant of these difficulties, DFAT welcomes the Committee's efforts to identify opportunities for greater harmonisation of laws, regulations and other procedures wherever there is a net benefit.

**Attachment A****ANZCERTA-RELATED AGREEMENTS AND ARRANGEMENTS**

The *Trade in Services Protocol to the CER*, signed in 1988, brought services into CER from January 1989. Almost all trans-Tasman trade in services is now open.

*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, that may legally be sold in either country may 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 then 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 by the Prime Ministers 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 2000** provides a framework for work on the alignment of business laws in order to increase the ease of capital flows and trans-Tasman business integration. The MoU is due for review in 2005 and negotiations will commence in late-May.

**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 and coming into effect on 1 July 1986). 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, to be operational by 1 July 2006, will replace Australia's Therapeutic Goods Administration (TGA) and the New Zealand Medicines and Medical Devices Safety Authority (Medsafe).

**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 January 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.



# NEW ZEALAND

Fact Sheet

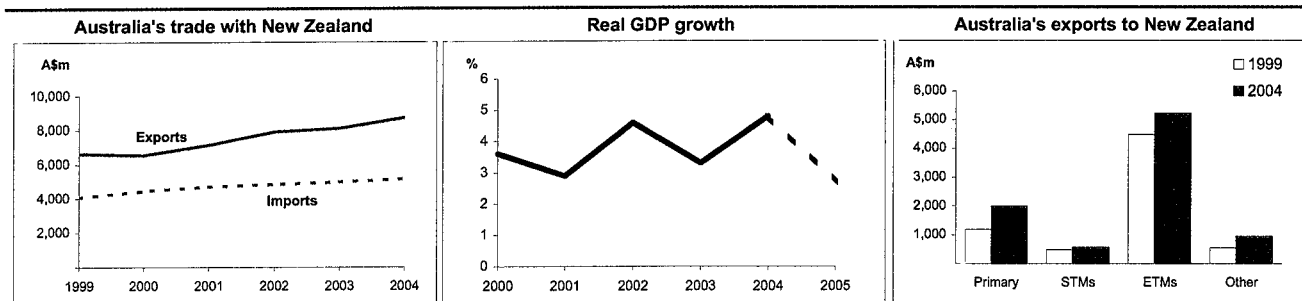
## General information:

Fact sheets are updated biannually; May and September 2005

<b>Capital:</b>	Wellington	<b>Head of State:</b>	H.M. Queen Elizabeth II, represented by Governor-General The 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>	4.1 million (2004)		
<b>Exchange rate:</b>	A\$1 = NZ\$ 1.0931 (Feb 2005)		

## Recent economic indicators:

	2000	2001	2002	2003	2004(a)	2005(b)
<b>GDP (US\$bn) (c):</b>	51.5	51.3	59.2	78.4	95.7	106.5
<b>GDP per capita (US\$):</b>	13,347	13,210	15,027	19,548	23,502	25,850
<b>Real GDP growth (% change YOY) (c):</b>	3.6	2.9	4.6	3.3	4.8	2.7
<b>Current account balance (US\$m):</b>	-2,462	-1,253	-1,938	-3,339	-6,235	-7,317
<b>Current account balance (% GDP):</b>	-4.8	-2.4	-3.3	-4.3	-6.5	-6.9
<b>Goods &amp; services exports (% GDP):</b>	34.8	35.7	33.2	29.7	28.6	27.9
<b>Inflation (% change YOY):</b>	2.6	2.6	2.7	1.8	2.3	3.0
<b>Unemployment rate (%):</b>	5.9	5.3	5.1	4.6	4.0	4.2



## Australia's trade relationship with New Zealand:

### Major Australian exports, 2004 (A\$m):

Office machines and equipment	510
Refined petroleum	496
Passenger motor vehicles	492
Crude Petroleum	473
Medicaments (incl veterinary)	352

### Major Australian imports, 2004 (A\$m):

Electrical machinery and appliances	349
Paper & paperboard	329
Crude petroleum	249
Wood, simply worked	242
Non-monetary gold	216

### Australian merchandise trade with New Zealand, 2004:

Exports to New Zealand (A\$m):	8,755
Imports from New Zealand (A\$m):	5,193
Total trade (exports + imports) (A\$m):	13,948
Merchandise trade surplus with New Zealand (A\$m):	3,563

	Total share:	Rank:	Growth (yoy):
	7.4%	5th	7.5%
	3.7%	8th	3.7%
	5.4%	5th	6.0%

### Australia's trade in services with New Zealand, 2004:

Exports of services to New Zealand (A\$m):	2,597
Imports of services from New Zealand (A\$m):	1,749
Services trade surplus with New Zealand (A\$m):	848

Total share:
7.5%
4.9%

## New Zealand's global merchandise trade relationships:

### New Zealand's principal export destinations, 2004:

1	Australia	20.9%
2	United States	14.4%
3	Japan	11.2%
4	China	5.7%
5	United Kingdom	4.7%

### New Zealand's principal import sources, 2004:

1	Australia	22.7%
2	United States	11.3%
3	Japan	10.9%
4	China	9.7%
5	Germany	5.3%

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) EIU forecast; (c) Year beginning April 1st.