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AUSTRALIA AND NEW ZEALAND CLOSER ECONOMIC RELATIONS TRADE AGREEMENT (ANZCERTA)

Biennial Report on the Operation of the Agreement

Communication from the Parties

The following communication, dated 8 May 2006, is being circulated at the request of the Delegations of Australia and New Zealand. It is organized in accordance to the Standard Format for Information on Regional Trade Agreements (WT/REG/W/6).

I. BACKGROUND INFORMATION ON THE AGREEMENT

1. Membership And Dates Of Signature, Ratification And Entry Into Force

The Parties to the Agreement are Australia and New Zealand. The Free Trade Agreement is defined in Article 2 of the Agreement to include the territory of Australia excluding its offshore territories, and territory of New Zealand, excluding the Cook Islands, Niue and Tokelau. The Agreement is commonly known as the CER Agreement.

The Free Trade Agreement was signed on 14 December 1982 and entered into force on 1 January 1983. (Annex 2 lists the amending documents to the CER Agreement).

2. Type Of Agreement

The Agreement creates a free-trade area in conformity with the definition set out in Article XXIV: 8(b) of GATT 1994.

3. Scope

The free trade area established by the Agreement provides the framework for trade relations between Australia and New Zealand.

The CER Agreement covers trade in all goods (HS Chapters 1-97). The products covered by the CER Agreement must originate in Australia or New Zealand according to the rules of origin laid out in Article 3 of the Agreement, and clarified in Exchange of Letters 1988, 1992, and the Joint Understanding on Harmonisation of Customs Procedures. Trade Ministers have agreed to adopt new rules of origin, based on the Change of Tariff Classification approach, which it is anticipated will come into effect from 1 January 2007.

The Agreement was expanded in 1988 with the signing of the Protocol on Trade in Services.

The Agreement also contains provisions, *inter alia*, on competition, government purchasing, and dumping.

4. Trade Data

Total trade coverage of the Agreement is as follows:

New Zealand: Imports from Australia
(NZ\$000)

Year	Total Trade	Trade Covered	% of Trade Covered
2003	6,818,549	6,818,549	100%
2004	7,415,445	7,415,445	100%
2005	7,289,323	7,289,323	100%

Australia: Imports from New Zealand
(A\$000)

Year	Total Trade	Trade Covered	% of Trade Covered
2003	5,006,161	5,006,161	100%
2004	5,191,004	5,191,004	100%
2005	5,405,346	5,405,346	100%

More detailed trade data can be found in Annex 1.

II. TRADE PROVISIONS

1. Import Restrictions

1.1 Duties and Charges

All tariffs and other duties and charges have been removed under the CER Agreement (with the exception of goods subject to excise and all goods subject to a goods and services tax (GST)). This provision is contained in Articles 4 and 5 of the 1983 CER Agreement and Articles 1 and 2 of the 1988 CER Protocol on the Acceleration of Free Trade in Goods under which all transitional arrangements and temporary exceptions to the basic free trade rule were eliminated as of 1 July 1990.

1.2 Quantitative Restrictions

All quantitative import restrictions are prohibited under the CER Agreement. This provision is contained in Article 5 of the 1983 CER Agreement and Article 2 of the 1988 CER Protocol on the Acceleration of Free Trade in Goods under which all transitional arrangements and temporary exceptions to the basic free trade rule were eliminated as of 1 July 1990.

1.3 Common External Tariff

Not applicable to the CER Agreement.

2. Export Restrictions

2.1 Duties and Charges

No export duties or charges are imposed on trade between parties to the CER Agreement.

2.2 Quantitative Restrictions

All quantitative export restrictions are prohibited under the CER Agreement. This provision is contained in Article 8 of the 1983 CER Agreement in conjunction with the 1988 CER Protocol on the Acceleration of Free Trade in Goods under which all transitional arrangements and temporary exceptions to the basic free trade rule were eliminated as of 1 July 1990.

3. Rules Of Origin

The rules of origin are defined in a series of provisions/documents comprising Article 3 of ANZCERTA and subsequent clarification of, or amendment to, Article 3 in the 1988 Exchange of Letters and Joint Understanding on Harmonisation of Customs Polices and Procedures, and Exchanges of Letters dated 6 October 1992. The 1992 Joint Understanding was replaced by an Arrangement concluded on 23 December 2003 between the Australian and New Zealand Governments containing minor additions to ensure equity of treatment between integrated manufacturers and those that outsource production.

The minimum requirements for goods to be considered to originate in the Free Trade Area are:

- the last process of manufacture should have occurred in Australia or New Zealand; and
- at least one half of the factory or work costs of the goods should be made up from expenditure on any of:
 - materials originating in the Free Trade Area;
 - labour and factory overheads incurred in the Free Trade Area; and
 - inner containers originating in the Free Trade Area.

These elements have been defined in the 1992 Exchange of Letters referred to above.

At their annual CER Ministers' Meeting, held on 11 December 2004, Australia and New Zealand agreed to reform the Rules of Origin under ANZCERTA. On 3 February 2006, Ministers announced that final agreement had been reached to adopt a Change of Tariff Classification (CTC) approach for the rules. Negotiations have been finalised and it is anticipated that the changes will come into effect on 1 January 2007.

The new rules provide for a five year transition period during which importers will be able to claim origin under the existing rules should they prefer. A review of the revised rules is to be completed within three years of their coming into effect.

All unmanufactured raw products of Australia and New Zealand are considered to originate in the Free Trade Area. So too are products wholly manufactured in either country from any of: unmanufactured raw products, materials wholly manufactured in the Free Trade Area, or imported materials that have been deemed or "determined" to be of Free Trade Area origin. Procedures for

“determining” a raw material to be of local origin are set out in the 1988 Joint Understanding on Harmonisation of Customs Policies and Procedures.

4. Standards

Under Article 12 of CER, Australia and New Zealand undertook to “examine the scope for taking action to harmonise requirements relating to such matters as standards, technical specifications and testing procedures, domestic labelling and restrictive trade practices”. A number of agreements and arrangements have been negotiated pursuant to this Article. They are outlined below.

4.1 Technical Barriers to Trade

As part of the 1988 Review of CER, Australia and New Zealand concluded a Memorandum of Understanding on Technical Barriers to Trade (MOU on TBT). In the MOU, both Governments reaffirmed their commitment to work towards the harmonisation of standards, technical specifications and testing procedures. Following Australia’s acceptance of the plurilateral GATT Agreement on Technical Barriers to Trade (the Standards Code) (now superseded by the WTO Agreement), undertakings which New Zealand and Australia entered into in the MOU on TBT are governed by the provisions of the Agreement.

The MOU on TBT has been reinforced by the development of the Agreement on Standards, Accreditation and Quality (ASAQ), which was entered into by the Australian Commonwealth and State Governments and the New Zealand Government on 26 October 1990. ASAQ ties the participating parties firmly to the principles of standards harmonisation and mutual acceptance of certification and accreditation, goals specifically encouraged by the WTO and TBT Agreement.

The Joint Accreditation System (JAS-ANZ) was concluded on 30 October 1991. The agreement was established to accredit quality systems conformity assessment bodies in order to remove the need for multiple audits in the New Zealand/Australian market. It was also designed to assist exports of goods and services to third countries by gaining international recognition of certificates of conformity issued by the conformity assessment bodies. A revised JAS-ANZ Treaty concluded in 1998 provides for a modified governance structure and enhanced accountability and reporting procedures. This system meets the terms encouraged in Article 6.3 of the WTO TBT Agreement to conclude mutual recognition agreements on conformity assessment.

An Agreement Between the Government of New Zealand and the Government of Australia establishing a system for the development of joint food standards was established in 1995 to harmonise trans-Tasman food standards. The Agreement sets out principles for the development of food standards characterised by transparency, timeliness and accountability, including a commitment to consultation and public involvement. Both countries are represented at all levels of the standards setting process, including on the Board of the Australia New Zealand Food Authority and on the Australia and New Zealand Food Regulation Ministerial Council. In accordance with Article 9 of the Treaty, a review is underway to identify the extent to which the Treaty objectives have been met, identify (if possible) new measures to improve its operation and clarify its scope. A previous review was held in 2000 and led to substantial amendments to the Treaty which came into force on 1 July 2002.

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) came into effect on 1 May 1998. Under TTMRA, a good which is legally able to be sold in one CER country can be legally sold in the other and a person who is registered to practise an occupation in one CER country is entitled to practise an equivalent occupation in the other country. Goods need only comply with the standards or regulation for the sale of goods applying in the jurisdiction in which they are produced or

through which they are imported. Certain areas are excluded from trans-Tasman mutual recognition as they are not standards-related barriers to trade. These include the international obligations of each country's intellectual property laws, customs controls and taxation. There are also five product areas which are not currently covered by TTMRA and are currently the subject of cooperative work programs aimed at arriving at one of three possible outcomes; mutual recognition, harmonisation, or permanent exemption from the coverage of the TTMRA.

On 10 December 2003 a Treaty was signed by the Governments of Australia and New Zealand establishing a joint scheme for the regulation of the quality, safety and efficacy of therapeutic products to resolve the special exemption for therapeutic goods granted under the Trans-Tasman Mutual Recognition Arrangement in 1998. The Treaty provides a framework for this harmonised scheme and sets out the governance and accountability arrangements for the Australia New Zealand Therapeutic Products Authority, the body which will be established to administer the scheme in both countries. In December 2005 it was announced that Australia and New Zealand had agreed to defer the start date of the joint scheme to allow the resolution of some outstanding issues. It is envisaged that legislation to implement the joint scheme will be introduced into both parliaments by mid 2006.

4.2 Sanitary and Phytosanitary Measures

Article 18 of the CER Agreement specifically allows New Zealand and Australia to adopt measures necessary to protect human, animal or plant life or health, including the protection of indigenous or endangered animal or plant life. Article 18 allows each country to impose quarantine requirements on imports. But such requirements must not be used as a means of arbitrary or unjustified discrimination or a disguised restriction on trade. Under the 1988 Protocol on the Harmonisation of Quarantine Administrative Procedures, Australia and New Zealand 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.

In September 1999, under Article 18, Australia and New Zealand jointly established the Consultative Group on Biosecurity Cooperation. The Group meets annually to discuss sanitary and phytosanitary issues of mutual interest.

5. Safeguards

Article 17 contained provisions for temporary safeguards measures for goods covered by CER during a transition period, which ended in 1990. Thus, no safeguard measures are applicable for goods covered by CER. Both Australia and New Zealand have notified the Safeguard Committee of this.

However, paragraph 11 of Article 17 continues to allow a Member State to initiate consultations in the event of severe material injury or demonstrable threat thereof arising from the operation of CER in respect of goods. Such consultation would be held pursuant to paragraph 2 of Article 22, the General Consultation and Review Article.

6. Anti-Dumping And Countervailing Measures

Article 4 of the ANZCERTA Protocol on Acceleration of Free Trade in Goods eliminated, from 1 July 1990, the availability of anti-dumping actions on goods covered by CER. In parallel, Parties to the Agreement extended the application of their competition law prohibitions on the misuse of market power to trans-Tasman markets.

There is continuing provision under Article 15.8 of the ANZCERTA for a Member State to request the other to take action, consistent with its international obligations, against dumped imports from a third country. The procedures for handling third country anti-dumping (and countervailing) cases under CER were clarified in an Exchange of Letters in August 1992.

Article 16 of the Agreement provides that Parties to the Agreement shall only levy countervailing duties in accordance with the relevant provisions of the GATT.

7. Subsidies And State-Aid

Article 11 of the ANZCERTA established that the Member States agreed to work towards the elimination of all export subsidies and export incentives on goods traded in the area. Performance-based export incentives specified in Annex D to the Agreement were phased out by 1987 in respect of goods traded in the area. In the 1988 Agreed Minute on Industry Assistance it was agreed that from 1 July 1990 neither country would pay export incentives or like measures aimed at stimulating exports to the other at the expense of industry in that country. Australia and New Zealand also agreed that from the same date they would not pay production bounties or like measures on goods which are exported to the other country. They further undertook to try to avoid adoption of industry specific measures (bounties, subsidies and other financial support) which have adverse effects on competition between industries in the free trade area. If either Party considers that such a measure must be adopted, notification and consultation commitments apply. These notification and consultation commitments were clarified as part of the 1992 Review of CER, during which it was also agreed that each Government would give due consideration to representations from the other on the effect industry-specific non-financial measures may have on competition between industries in the Free Trade Area.

8. Sector-Specific Provisions

The sector-specific provisions contained in the Agreement are no longer operative.

9. Other

Customs Cooperation

Article 21 of the Agreement and the Joint Understanding on Harmonisation of Customs Policies and Procedures (1988) establishes a framework for cooperation in customs administration. The main objective is that Customs Agencies will develop the closest possible working relationship by maintaining common approaches to the greatest extent possible and pursue harmonisation opportunities where possible.

The Joint Ministerial Statement on Rules of Origin by the Australian Minister for Trade, the Hon Mark Vaile, and the New Zealand Minister for Trade Negotiations, the Hon Jim Sutton, on 28 August 2003 established a Joint Customs Committee to ensure a harmonised approach in the way that rules of origin are administered.

The last Customs Ministerial meeting was held in Auckland in July 2005 between the Hon Senator Chris Ellison and the Hon Rick Barker (former Minister for Customs). Issues discussed included Customs regulatory issues associated with Trans-Tasman movement of freight, simplifying supply chain processes across the Tasman and the establishment of a Joint High Level Steering Group led by Deputy CEO/CE's to scope, drive and monitor an agreed program of bilateral reform. Other matters on the agenda include revising the existing New Zealand and Australian Customs Cooperative

Arrangement and undertaking an analysis of the Customs-related capacity building needs of members of the Oceania Customs Organisation.

Government Procurement

The Australia New Zealand Government Procurement Agreement (ANZGPA, revised in 1997) provides the framework for a single ANZ government procurement market. The Agreement is a mutual cooperation arrangement between the Australian Government, its State and Territory Governments and the New Zealand Government, that aligns with the principles of the CER. It articulates the commitments of the jurisdictions to ensure the absence of inter-state and trans-Tasman application of preference schemes and other forms of discrimination in government procurement, based on the place of origin of suppliers, goods and services. Each party is to provide, to suppliers, goods and services, including construction and related services, of the other party, equal opportunity and treatment no less favourable than that accorded to domestic suppliers. The parties also agree to promote opportunities for ANZ suppliers to compete for government business based on the principle of value for money.

The ANZGPA does not contain financial thresholds. It applies to procurement of all values. Exemptions include defence procurement of a strategic nature and urgent procurement in the event of emergencies.

Coordination of Business Law

The 2000 Memorandum of Understanding on Business Law Coordination between New Zealand and Australia reflects the two countries' common understanding of coordination in business law and provides a framework for future cooperation on business law integration. Objectives include lowering business costs through removing differences in laws and administrative systems, improving the effectiveness of the law, and reducing the cost of capital to business.

A revised Memorandum of Understanding was signed between Australia and New Zealand on 22 February 2006. The new work program is focused on streamlining business regulation, and includes consideration of mutual recognition and/or further coordination of the regulation of financial intermediaries, further coordination of disclosure regimes in securities law and coordination of competition law.

III. GENERAL PROVISIONS OF THE AGREEMENT

1. Exceptions And Reservations

CER, through Article 18, allows standard exceptions from its provisions, for specified purposes, *provided* they are not used "as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade". The specified purposes are:

- protection of essential security interests;
- protection of public morals and prevention of disorder or crime;
- protection of human, animal or plant life or health, including the protection of indigenous or endangered animal or plant life;
- protection of intellectual or industrial property rights or to prevent unfair, deceptive, or misleading practices;
- protection of national treasures or artistic, historical, anthropological, archaeological, palaeontological or geological value;
- to prevent or relieve critical shortages of foodstuffs or other essential goods;

- to conserve limited natural resources;
- in pursuance of obligations under international commodity agreements;
- to secure compliance with laws and regulations relating to customs enforcement, to tax avoidance or evasion and to foreign exchange control;
- to regulate the importation or exportation of gold or silver;
- the application of standards or regulations for the classification, grading or marketing of goods;
- in connection with the products of prison labour.

2. Accession

Article 24 of CER enables Australia and New Zealand to agree to the association of any other State. To this point in time Australia and New Zealand are the only acceding parties and no other State has sought association with the Agreement.

3. Dispute Settlement Procedures

There are no specific dispute settlement procedures under the CER Agreement. However, Article 22 of the CER Agreement sets out the consultation and review mechanism that is aimed at ensuring that both New Zealand and Australia are happy with the functioning of the Agreement. If either New Zealand or Australia has a grievance concerning adherence to any part of the Agreement, the other country is obliged to enter into consultations to seek an equitable and mutually satisfactory solution.

4. Relations With Other Trade Agreements

The Agreement is the main instrument governing economic relations between Australia and New Zealand. Supporting the Agreement is a comprehensive framework of instruments that focuses on removal of administrative impediments to trade (MOU on Business Law Coordination and Double Taxation Agreement), and standards harmonisation to minimise non-tariff and access restrictions to trade (Joint Food Standards Agreement and the Trans Tasman Mutual Recognition Arrangement). As well, the Agreement was expanded in 1988 with the signing of the Protocol on Trade in Services being examined in the Committee on Regional Trade Agreements. The Air Services Agreement, which entered into force on 25 August 2003, also forms part of the supporting framework of CER instruments.

New Zealand and Australia are willing to consider free trade agreements with other significant individual economies or regional groupings, where they would deliver faster and deeper liberalisation than the multilateral process, with the objective of gaining better market access for our exporters, faster economic growth and stronger employment growth. Such arrangements would need to demonstrate comprehensive sectoral coverage and reflect the principles underpinning CER, including WTO consistency.

5. Institutional Framework

Article 22 of the Agreement commits Ministers of both countries to meet annually or otherwise as appropriate to review the operation of the Agreement. Australia and New Zealand hold annual trade and economic talks at senior official levels, to precede annual Trade Ministers' meetings.

ANNEX 1

Australia's top ten imports from New Zealand

	CY2003	CY2004	CY2005
	A\$'000	A\$'000	A\$'000
2709 Petroleum oils and oils obtained from bituminous minerals, crude	225,921	247,993	282,664
7108 Gold (including gold plated with platinum) unwrought or in semi-manufactured forms, or in powder form	197,752	216,357	229,729
4801 Newsprint, in rolls or sheets	161,423	178,462	191,377
4407 Wood sawn or chipped lengthwise, sliced or peeled, whether or not planed, sanded or finger-jointed, of a thickness exceeding 6 mm	212,915	202,493	177,595
0406 Cheese and curd	117,147	135,829	164,673
2106 Food preparations not elsewhere specified or included	84,424	92,453	107,459
8418 Refrigerators, freezers and other refrigerating or freezing equipment, electric or other; heat pumps other than air conditioning machines	87,698	98,087	97,218
2204 Wine of fresh grapes, including fortified wines; grape must other than that of 2009	45,009	69,668	96,242
5703 Carpets and other textile floor coverings, tufted, whether or not made up	49,378	63,798	89,193
3923 Articles for the conveyance or packing of goods, of plastics; stoppers, lids, caps and other closures, of plastics	74,925	77,694	85,489
9988 Combined miscellaneous items of trade nes and confidential items: from Jul 91 on, excl HS Ch 29 codes confidentialised with Broad Commodity Details restrictions, likewise Ch 28 BCDs excepting that these ceased after Dec 94 (imports on	69,986	77,788	144,138
Total Merchandise Imports	5,006,161	5,191,004	5,405,346

Source: DFAT, STARS database

New Zealand's top ten imports from Australia

	2003	2004	2005
	NZ\$'000	NZ\$'000	NZ\$'000
2710 Oil (Not Crude) From Petrol & Bitum Mineral Etc.	484,752	525,845	629,093
8703 Motor Cars & Vehicles For Transporting Persons	588,058	619,266	571,767
2709 Crude Oil From Petroleum And Bituminous Minerals	171,447	518,169	264,215
2818 Artfl Corundum W/Nt Chem Defnd Alum Oxid/Hydroxide	206,249	228,021	221,845
3004 Medicaments Nesoi, Mixed Or Not, In Dosage Etc. Fm	209,462	179,358	211,474
8704 Motor Vehicles For Transport Of Goods	125,715	126,723	128,913
8524 Records, Tapes & Other Recorded Sound Media Etc.	94,348	111,601	128,176
8471 Automatic Data Process Machines; Magn Reader Etc.	142,067	157,532	102,582
2204 Wine Of Fresh Grapes; Grape Must Nesoi	113,759	106,875	101,779
1905 Bread, Pastry, Cakes Etc.; Comm Wafrs, Emp Caps Etc.	80,867	83,700	88,833
Total Merchandise Imports	6,818,549	7,415,445	7,289,323

Source: Statistics New Zealand

ANNEX 2

AUSTRALIA NEW ZEALAND CLOSER ECONOMIC RELATIONS TRADE AGREEMENT (CER) AND AMENDING DOCUMENTS

AUSTRALIA NEW ZEALAND CLOSER ECONOMIC RELATIONS TRADE AGREEMENT (1983)

- Annexes A- F and attachments (no longer operative)
- Exchange of Letters on Fruit Juice Products (no longer operative)

TRADE IN GOODS

- Protocol on Acceleration of Free Trade in Goods (1988)
(Fully implemented on 1 July 1990)
- Exchange of Letters on Trans Tasman Trade in Dairy Products (1988)
(No longer operative)
- Mutual Determination on Quantitative Export Restrictions (1988)
(Fully implemented on 1 July 1990)
- Exchange of Letters on Annex F (1992)
- Mutual Determination on Liberalisation Under Specific Industry Plans (1988)
(No longer operative)
- Exchange of Letters and Joint Understanding on Harmonisation of Customs Policies and Procedures (1988)
- Protocol and Agree Minutes on Harmonisation of Quarantine Administrative Procedures (1988)
- Amendments to Article 3 - Rules of Origin
- Exchange of Letters on Rules of Origin (1992) (no longer operative)
- Exchange of Letters on Direct Shipment Rule (1992)
- Exchange of Letters on Rules of Origin (2003)

TRADE IN SERVICES

- Protocol on Trade in Services (1988)
 - Annex: Services Inscribed by New Zealand and Australia
 - As of 1988
 - 1992 Review (Exchange of Letters)
 - Annex as of 1992
 - 1995 Review (Exchange of Letters)
 - Annex as of 1995
 - Exchange of Letters 1997, 1998, 1999
 - Annex as of 1999

THE REGULATORY ENVIRONMENT FOR BUSINESS

- Memorandum of Understanding on Harmonisation of Business Law (1988)
- Memorandum of Understanding on the Coordination of Business Law (2000)
- Memorandum of Understanding on Technical Barriers to Trade (1988)
 - Exchange of Letters Amending the Memorandum of Understanding on Technical Barriers to Trade (1992)
- Exchange of Letters on Third Country Dumping
 - Agreed Procedures for Handling Third Country Anti-Dumping Complaints

GOVERNMENT ASSISTANCE

- Agreed Minute on Industry Assistance (1988)
 - Letters amending the Agreed Minute on Industry Assistance (1989)
 - Notification and Consultation Provisions
 - Letters on the Agreed Minute on Industry Assistance (1992)

GOVERNMENT PURCHASING

- Agreed Minute on State Government Purchasing Preferences
(New Zealand is now a party to the Commonwealth/State Government Procurement Agreement)

AVIATION

- Australia – New Zealand Single Aviation Market Arrangements (1996)
 - Memorandum of Understanding on Open Skies between Australia and New Zealand (2000)
-