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

FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND NEW ZEALAND

Biennial Report on the Operation of the Agreement

Communication from the Parties

The report below presents the information received from the Permanent Delegations of Australia and New Zealand, dated 23 April 2002. 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 New Zealand and Australia. 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.

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
1999	6,540,410	6,540,410	100%
2000	6,809,586	6,809,586	100%
2001	6,943,176	6,943,176	100%

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

Year	Total Trade	Trade Covered	% of Trade Covered
1999	4,107,574	4,107,574	100%
2000	4,486,450	4,486,450	100%
2001	4,741,419	4,741,419	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). 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 Policies and Procedures, and Exchanges of Letters dated 6 October 1992.

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.

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 Ministerial Australia New Zealand Food Standards Council. A new Joint Food Standards Code is expected to take full effect in December 2002 and this will replace existing food standards.

Complementing the Joint Food Standards Agreement is the Arrangement on Food Inspection Measures (AFIM) which came into operation on 1 December 1997, following an Exchange of Letters on 27 June 1996 by New Zealand and Australian Trade Ministers. Under AFIM, non-risk categorised food (low risk foods) produced or manufactured in New Zealand can enter Australia without the need to be re-examined other than for quarantine reasons, and vice versa, as a result of both countries having agreed not to inspect non-risk classified foods at the border.

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 work programmes aimed at arriving at one of three possible outcomes; mutual recognition, harmonisation, or permanent exemption from the coverage of the TTMRA.

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.

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.

Government Procurement

The Australia (Commonwealth and State Governments) and New Zealand Government Procurement Agreement (revised in 1997) provides the framework for a single ANZ government procurement market. The Agreement seeks 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 goods and services. Each party is to provide, to services, goods and suppliers of the other party, equal opportunity and treatment no less favourable than that accorded to domestic services, goods and suppliers. The parties also agree to promote opportunities for ANZ suppliers to compete for government business on the basis of value for money and avoid purchasing practices which are biased in favour of foreign goods and suppliers.

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. A work programme has been agreed.

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.

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, Arrangement on Food Inspection Measures 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, given interim effect by a Memorandum of Understanding signed in November 2000, 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**

1997		2001	
Product	(A\$000)	Product	(A\$000)
Crude petroleum	313,092	Crude petroleum	400,665
Non-monetary gold	206,318	Paper and paperboard	271,688
Wood (simply worked)	166,772	Non-monetary gold	194,346
Paper and paperboard	152,810	Wood (simply worked)	185,121
Household type equipment	118,598	Other food products	167,927
Other articles of plastic	96,070	Household type equipment	154,208
Fish (fresh, chilled or frozen)	78,558	Cheese and curd	135,653
Aluminium	77,623	Other articles of plastic	128,039
Other manufactures of base metal	76,943	Fish (fresh, chilled or frozen)	115,488
Cheese and curd	68,424	Pulp and waste paper	11,687
Total Australian Imports from NZ	3,701,086	Total Australian Imports from NZ	4,741,419

New Zealand's top ten imports from Australia

1997		2001	
Product	(NZ\$000)	Product	(NZ\$000)
Vessels nes, incl warships/lifeboats	563,415	Petroleum oils	671,954
Petroleum oils	380,558	Motor cars/vehicles for transporting persons	403,200
Crude oils	248,885	Aluminium oxide	295,785
Motor cars/vehicles for transporting persons	246,226	Crude oils	266,992
Aluminium oxide	210,495	Medicaments nes	201,620
Medicaments nes	189,737	Cane or beet sugar	105,231
Cane or beet sugar	88,998	Wine of fresh grapes	103,943
Records, tapes and other recorded sound media	73,955	Toilet paper etc	86,846
Bread, pastry, cakes etc	70,512	Bread, pastry,cakes etc	82,500
Toilet paper etc	69,245	Records, tapes and other recorded sound media	82,194,
Total NZ Imports from Australia	5,516,806	Total NZ Imports from Australia	6,943,176

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)
- Exchange of Letters on Direct Shipment Rule (1992)

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)
-