

Amendment to the Annex to the Protocol on Trade in Services in the Australia New Zealand Closer Economic Relations Trade Agreement

Introduction

- 2.1 The *Australian New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA), which came into force in 1983, is a comprehensive bilateral free trade agreement covering nearly all goods and services traded between Australia and New Zealand.¹
- 2.2 The *Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* liberalises the trade in services between the signatories.²
- 2.3 The obligations in the protocol can be subject to limitation by the signatories. The NIA states:

Article 2(4) states that subject to certain limited exceptions, the obligations of the protocol do not apply to services inscribed in the Annex, within the territory of the Member State responsible for the inscription. In other words, Australia and New Zealand may

1 Department of Foreign Affairs and Trade, *Australia-New Zealand Closer Economic Relations Trade Agreement snapshot*, <<http://www.dfat.gov.au/fta/anzcerta/>>, accessed 9 September 2014.

2 National Interest Analysis [2014] ATNIA 13 with attachment consultation, *Amendment to the Annex to the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* (Canberra, unsigned to date) [2014] ATNIF 6, (hereafter referred to as 'NIA'), para 3.

continue to maintain restrictions on services they have respectively inscribed in the Annex...³

- 2.4 Australian exclusions include air services; coastal shipping; broadcasting (foreign ownership); broadcasting and television (short wave and satellite broadcasting); third party insurance; and postal services. New Zealand has exclusions for coastal shipping and air services.⁴

Background

- 2.5 Article 10(2) of the protocol provides that:
- ...a Member State may, at any time, either upon request of the other Member State or unilaterally, remove in whole or in part services inscribed by it from the Annex by notifying the other Member State in writing of its intention to do so.⁵
- 2.6 Article 10 further provides for the review of the protocol to increase trade liberalisation by reducing the number of exclusions contained in the annex. The protocol was reviewed in 1991, 1992, 1995, 1997 and 1999.⁶
- 2.7 The review that resulted in the amendment being considered here, the *Amendment to the Annex to the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* (the proposed amendment), commenced in 2009.⁷
- 2.8 The proposed amendment will remove the listing “Broadcasting and Television: Limits on foreign ownership as set out in the *Broadcasting Services Act 1992*” from the Australian exclusions in the annex.⁸
- 2.9 Presently, the annex indicates that the limits on foreign ownership of commercial broadcasting and television services contained in the *Broadcasting Services Act 1992* take precedence over the ANZCERTA protocol on trade in services.⁹

3 NIA, para 9.

4 NIA, para 3.

5 Article 10(2), *Protocol on Trades and Services to the Australia New Zealand Closer Economic Relations Trade Agreement*.

6 NIA, para 3.

7 Ms Robyn Stern, Director, New Zealand and Associated Countries Section, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, Canberra, 1 September 2014, p. 3.

8 NIA, para 1.

9 ANNEX: Services Inscribed by Australia and New Zealand, as at 9 March 1999, *Protocol on Trades and Services to the Australia New Zealand Closer Economic Relations Trade Agreement*, <http://www.dfat.gov.au/fta/anzcerta/annex_990309.html>, accessed 9 September 2014.

- 2.10 Commercial broadcasting and television services foreign ownership limits were removed from the *Broadcasting Services Act in 2007*, making the listing in the annex unnecessary.¹⁰ According to the National Interest Analysis (NIA):
- Removing this inscription from the Annex would align Australia's commitments under the Protocol with existing legislation.¹¹
- 2.11 The NIA goes on to point out that all foreign persons wishing to invest in commercial broadcasting and television services in Australia, including New Zealanders, continue to be subject to the requirements of Australia's Foreign Investment Policy and the *Foreign Investments and Takeovers Act 1975*.
- 2.12 The Foreign Investment Policy requires that all foreign investment of five per cent or more in the media sector¹² requires prior notification and approval regardless of the value of the investment. The Treasurer has the power to prohibit, or approve with conditions, proposed investments that are not considered to be in Australia's national interest.¹³
- 2.13 The NIA makes the following arguments in favour of removing the listing:
- it brings ANZCERTA into line with trade liberalisation amendments already made to the Broadcasting Services Act; and
 - it clarifies that the limitations to foreign investment removed from the Broadcasting Services Act will not be reintroduced.¹⁴

Obligations

- 2.14 The protocol on trade in services grants a range of concessions to individuals and corporations from Australia wishing to access New Zealand markets and individuals and corporations from New Zealand wishing to access Australian markets, including:
- market access rights no less favourable than those that apply to national participants;

10 NIA, para 4.

11 NIA, para 4.

12 According to *Australia's Foreign Investment Policy*, "The media sector refers to daily newspapers, television and radio (including internet sites that broadcast or represent these forms of media)," Foreign Investment Review Board, p 16, <http://www.firb.gov.au/content/_downloads/AFIP_2013.pdf>, accessed 9 September 2014.

13 NIA, para 4.

14 NIA, para 7.

- rights to treatment no less favourable than those provided to national participants;
 - an entitlement for service providers from Australia or New Zealand to establish their preferred form of commercial presence in the other country;
 - a prohibition on Australia or New Zealand introducing measures that unjustifiably discriminate against service providers from the other country; and
 - an assurance that licencing and certification requirements do not limit market access.¹⁵
- 2.15 The protocol also sets out rules governing export subsidies, monopolies and transparency; and specifies the circumstances in which a country may deny the benefits of the protocol to individuals or corporations from the other country.¹⁶
- 2.16 Finally, the protocol recognises that these provisions are subject to the foreign investment policies of the signatories.¹⁷

Conclusion

- 2.17 As the foreign investment limitations in the Broadcasting Services Act were removed in 2007, the proposed amendment will not change the existing rules for New Zealand investors wishing to expand into Australian broadcasting and television.
- 2.18 Rather, the proposed amendment better aligns the text of the protocol with the prevailing investment regime.¹⁸ In evidence, the Department of Foreign Affairs and Trade referred to the proposed amendment as “...really akin to housekeeping.”¹⁹
- 2.19 No legislative amendments are required to implement the proposed amendment, and no costs will be involved in the process.²⁰

15 NIA, para 8.

16 NIA, para 8.

17 NIA, para 8.

18 NIA, para 10.

19 Ms Stern, DFAT, *Committee Hansard*, Canberra, 1 September 2014, p. 3.

20 NIA, paras 11 - 12.

2.20 The Committee supports this straightforward proposed amendment.

Recommendation 1

The Committee supports the *Amendment to the Annex to the Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement* and recommends that binding treaty action be taken.

