

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND  
THE GOVERNMENT OF NEW ZEALAND IN RELATION TO MUTUAL  
RECOGNITION OF SECURITIES OFFERINGS  
(MELBOURNE, 22 FEBRUARY 2006)**

**[2006] ATNIF 5**

**Documents tabled on 28 March 2006**

**National Interest Analysis [2006] ATNIA 12  
with attachment on consultation**

**Text of the proposed treaty action**

**Regulation Impact Statement**

**Background Information:**

**New Zealand political brief and fact sheet**

**List of other treaties with New Zealand**

**List of treaties of the same type with other countries**

# **NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

## **SUMMARY PAGE**

### **Agreement between the Government of Australia and the Government of New Zealand in relation to mutual recognition of securities offerings (Melbourne, 22 February 2006)**

**[2006] ATNIF 5**

#### **Nature and timing of proposed treaty action**

1. The Agreement between the Government of Australia and the Government of New Zealand in relation to mutual recognition of securities offerings (the Agreement or the treaty) was signed on 22 February 2006.
2. The Agreement will enter into force on the date the parties exchange diplomatic notes confirming the completion of Australia's domestic procedures for the entry into force of the Agreement (Article 13). It is expected that legislation to give effect to the scheme will be introduced into the Parliament later in 2006.

#### **Overview and national interest summary**

3. Implementation of the scheme in the Agreement will allow the offer of securities and managed investment interests that can be lawfully made in one country to be lawfully made in the other country in the same manner and with the same offer documents, subject to certain entry and ongoing requirements. Securities include shares and debentures.
4. The Agreement is a further step towards a single trans-Tasman economic market, based on common regulatory frameworks.
5. Entering into the Agreement is a deregulatory move, which is intended to remove unnecessary regulatory barriers for business, thereby allowing for increased investment with New Zealand and increased choice for investors.

## **Reasons for Australia to take the proposed treaty action**

6. Australia and New Zealand share a close relationship which has been shaped by factors like migration, trade, tourism, defence ties, and strong people-to-people links. The two countries also maintain a close political relationship and cooperate closely in the international arena and in regional bodies, such as Pacific Islands Forum, Asia-Pacific Economic Forum (APEC) and the Association of Southeast Asian Nations (ASEAN) Regional (Security) Forum.

7. The economic and trade relationship between the two nations has been shaped by the 'Australia New Zealand Closer Economic Relations Trade Agreement' since 1983. Both the Australian and New Zealand governments are committed to working towards a trans-Tasman single economic market.

8. New Zealand is Australia's fifth largest merchandise export market and Australia is New Zealand's top merchandise export market. New Zealand is the sixth largest foreign investor in Australia and Australia is the largest investor in New Zealand. In 2004, two-way investment between the two nations was A\$61.8 billion.

9. The Australian Stock Exchange (ASX) has advised that according to a number of companies listed on the ASX, the average cost of providing offer documents to New Zealand investors may range from \$10,000 to \$30,000.

10. The objective of the Agreement is to remove unnecessary regulatory barriers to trans-Tasman securities offerings, and to thereby facilitate investment between the two countries, enhance competition in capital markets, reduce compliance costs for business, and increase choice for investors.

11. It is likely that the Agreement will be of more benefit to New Zealand than to Australia because of New Zealand's smaller economy and some evidence that issuers issuing into Australia do not currently issue into New Zealand due to the additional costs and requirements. However, the Agreement is important for Australia in promoting trans-Tasman investment. On a broader level, non adoption of the Agreement could be interpreted as Australia moving away from its commitment to a single economic market with New Zealand, under a framework of coordinated regulation.

## **Obligations**

12. The central obligation in the Agreement is that both parties must implement the mutual recognition scheme which allows an offer of securities which is a regulated offer in one country and can lawfully be made in that country to be lawfully made in the other country, in the same manner and with the same offer documents, provided that the entry requirements for the scheme are satisfied and the offeror complies with the ongoing requirements of the scheme (Article 3).

13. The parties cannot impose additional requirements in relation to the entry and ongoing requirements for the scheme in the implementing legislation unless the Australian and New Zealand Ministers mutually determine them in writing (Articles 4 and 5).

14. Under Article 7, Australia must provide the power to its securities regulator:

- where it is the home country (Australia is the home country where an Australian offeror makes an offer in New Zealand under the scheme), to take action in Australia in relation to any breach of its securities legislation that applies to an offer made in New Zealand as the host country (New Zealand is the host country where an Australian offeror makes an offer in New Zealand under the scheme)

- where it is the home country, to accord complaints from New Zealand as the host country no lesser priority than similar complaints from persons in Australia in respect of offers made in Australia
- where it is the host country, to take action in Australia in relation to breaches of the requirements of the implementing legislation
- to prohibit an offeror from making an offer under the scheme if the offeror has failed to comply with the ongoing requirements in relation to a previous offer made under the scheme, and
- to cooperate with enforcement action relating to offers made or purported to be made under the scheme.

These obligations are mutual and therefore apply equally to New Zealand.

15. The parties are also bound to consult promptly after the entry into force of the Agreement to ensure that the existing powers of their respective securities regulators in relation to information sharing is consistent with the objectives of the Agreement (Article 7(6)).

16. The parties are required to consult in relation to the implementing legislation and in relation to any amendments to that legislation to ensure that it is consistent with and gives effect to the Agreement. There is also a requirement for consultation in relation to proposals for material changes to the scope or requirements of each party's securities legislation (Article 8).

17. The parties are required to enter into consultations at the written request of either if the party that requested the consultation considers (a) an obligation under the Agreement has not been or may not be fulfilled or (b) the achievement of any of the objectives of the Agreement is being or may be frustrated (Article 9).

## **Implementation**

18. The Agreement will be implemented by way of amendments to the *Corporations Act 2001* (the Act).

19. The amendments will implement the scheme by inserting a new chapter in the Act in order to give effect to the scheme. The amendments will set up the scheme and allow offers that meet the entry and ongoing requirements to offer securities in Australia by way of the scheme. The legislation will offer issuers an alternative to fulfilling the requirements of various sections of the Act, such as Chapter 6D, Chapter 5C and Parts 7.6 to 7.9. These provisions will not apply to offers made under the scheme and relate to fundraising and disclosure (among other things) in relation to securities and interests in managed investment schemes.

20. The scheme will not have a direct effect on the States or Territories. However, in accordance with the Corporations Agreement 2002, the Commonwealth will consult the States and Territories about the proposed amendments and, if required by the Agreement, obtain the approval of the Ministerial Council for Corporations. The Council has already been advised about the proposal.

## **Costs**

21. The Agreement will reduce compliance costs associated with the need to adhere to the different regulatory requirements of Australia and New Zealand.

22. There may be some small additional costs for the Australian Securities and Investment Commission in relation to trans-Tasman enforcement. While there are no estimates as to how much this will be, the additional costs are likely to be negligible.

23. There will be no other financial costs to the Commonwealth or the States and Territories.

### **Regulation Impact Statement**

24. A Regulation Impact Statement is attached.

### **Future treaty action**

25. Article 10 provides for a review of the Agreement no later than five years after its entry into force.

26. Either party may request consultations with the other party with a view to amending the Agreement. Unless the parties agree otherwise, the consultations must begin promptly. Any agreed amendments enter into force when they have been confirmed by an exchange of diplomatic notes (Article 11).

27. Any amendment to the Agreement would be subject to Australia's domestic treaty process.

### **Withdrawal or denunciation**

28. Article 13 provides for termination of the Agreement by either party giving notice in writing through diplomatic channels to the other party of its decision to terminate the Agreement. The Agreement will then terminate on a date to be agreed by the parties in writing or, if no agreement can be reached, on the later of any date specified in the notice as the date on which termination is to be effective or one year after the date on which the notice was received.

29. Termination of the Agreement by Australia would be subject to Australia's domestic treaty process.

### **Contact Details**

Market Integrity Unit  
Corporations and Financial Services Division  
Markets Group  
Australian Government Treasury

**Agreement between the Government of Australia and the Government of New Zealand  
in relation to mutual recognition of securities offerings  
(Melbourne, 22 February 2006)**

**[2006] ATNIF 5**

**CONSULTATION**

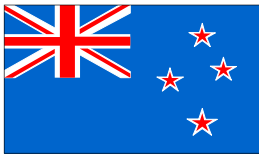
1. The States and Territories were consulted at the early stages of negotiations and were kept informed through the Ministerial Council for Corporations. In accordance with the Corporations Agreement 2002, the States and Territories will be consulted on the legislative amendments to the *Corporations Act 2001* and the approval of the Ministerial Council obtained prior to introduction.
2. Relevant Australian Government agencies have been kept informed at all stages of the development process and were consulted prior to commencing negotiations and before the finalisation of the Agreement. These agencies include the Attorney General's Department, the Department of Prime Minister and Cabinet, the Department of Foreign Affairs and Trade and the Australian Securities and Investments Commission (ASIC).
3. The Australian and New Zealand Governments prepared a discussion paper, which outlined three possible models and identified Australia and New Zealand's preferred model. The preferred model gained overwhelming support from the submissions received. As most of the submissions supported the proposed model and as many of the concerns that were raised were in relation to the proposals not going far enough, the model encompassed in the Agreement was not substantively changed from the model that was proposed in the discussion paper. The following organisations and individuals made submissions:
  - Australia and New Zealand Banking Group Ltd
  - Australian Shareholders' Association Ltd
  - Australian Stock Exchange
  - Challenger Financial Services Group
  - Clayton Utz-Simpson Grierson
  - Commonwealth Bank of Australia
  - Consumers' Institute
  - Dowler, Mr Rob W M
  - Employers & Manufacturers Association (Northern) Inc
  - Financial Services Federation
  - H R L Morrison & Co Ltd
  - Institute of Financial Professionals New Zealand Inc
  - International Banks and Securities Association of Australia
  - Investment Savings and Insurance Association

- IZARD WESTON LAWYERS
- MACQUARIE NEW ZEALAND LTD
- NEW ZEALAND BANKERS' ASSOCIATION
- NEW ZEALAND EXCHANGE LTD
- NEW ZEALAND LAW SOCIETY
- PRICEWATERHOUSECOOPERS
- PROMINA GROUP LTD
- SECURITIES AND DERIVATIVES INDUSTRY ASSOCIATION
- SECURITIES COMMISSION
- SECURITIES INSTITUTE OF AUSTRALIA
- TAKEOVERS PANEL
- TELECOM
- TRUSTEE CORPORATION ASSOCIATION OF NEW ZEALAND
- WALKER, PROF. GORDON - LA TROBE UNIVERSITY LAW SCHOOL

**Background information:  
Political Brief on New Zealand**

1. New Zealand is a parliamentary democracy in the Westminster tradition. The Prime Minister is the Head of Government and HM Queen Elizabeth II is the Head of State, represented by the Governor-General. Its executive arm of government is drawn from its unicameral legislature, which is elected using a mixed member proportional (MMP) system. The Labour Party, led by Prime Minister Helen Clark, governs in coalition with the Progressive Party and also has confidence and supply agreements with New Zealand First and United Future. The main opposition party is the National Party.
2. Australia's relations with New Zealand are the closest and most broad ranging that we have with any country. Together we bring considerable national assets to the bilateral relationship, including a shared history, similar geography, common democratic values and institutions, significant economic ties, substantial people-to-people links and generally close cooperation in international fora. Nevertheless, we remain two sovereign nations with distinct national interests.
3. New Zealand is a small, open economy with over 4.1 million people. 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 the Solomon Islands, Bougainville and East Timor.
4. The Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA, also referred to as Closer Economic Relations or CER) which came into effect in 1983, is still one of the world's most comprehensive bilateral free trade agreements, and is now the main instrument governing economic relations between the two countries. In addition, a web of agreements and arrangements negotiated under the umbrella of ANZCERTA support the economic relationship.
5. Bilateral trade in goods between the two countries has increased at an average of nearly 10 per cent per annum since the inception of ANZCERTA. New Zealand is Australia's fifth-largest trading partner, taking \$9.2 billion of Australian merchandise exports in 2004-05. Australia is New Zealand's largest trading partner, providing 23 per cent of its merchandise imports and taking 21 per cent of its exports. Total bilateral merchandise trade came to \$14.5 billion in 2004-05. In 2004, trade in services was valued at \$4.3 billion and bilateral investment stood at \$61.8 billion.
6. In addition to CER, both governments are progressing a range of initiatives to enhance trans-Tasman business integration, streamline border processing arrangements, and work towards a Single Economic Market (SEM) based on common regulatory frameworks.
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:

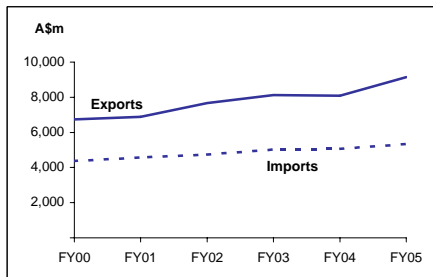
Fact sheets are updated biannually; May and September

<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\$ 1.0820 (Jun 2005)		

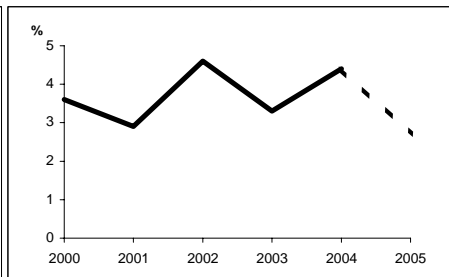
## Recent economic indicators:

	2000	2001	2002	2003	2004(a)	2005(b)
<b>GDP (US\$bn) (c):</b>	51.5	51.3	59.2	78.3	97.0	108.7
<b>GDP per capita (US\$):</b>	13,347	13,209	15,027	19,525	23,834	26,373
<b>Real GDP growth (% change YOY) (c):</b>	3.6	2.9	4.6	3.3	4.4	2.7
<b>Current account balance (US\$m):</b>	-2,462	-1,253	-2,235	-3,357	-6,184	-6,465
<b>Current account balance (% GDP):</b>	-4.8	-2.4	-3.8	-4.3	-6.4	-6.0
<b>Goods &amp; services exports (% GDP):</b>	34.8	35.9	33.4	29.7	29.3	28.5
<b>Inflation (% change YOY):</b>	2.6	2.6	2.7	1.8	2.3	2.8
<b>Unemployment rate (%):</b>	5.9	5.3	5.1	4.6	3.9	3.9

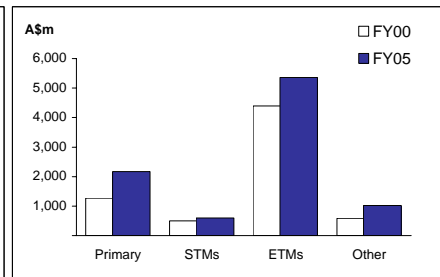
Australia's merchandise trade with New Zealand



Real GDP growth



Australia's merchandise exports to New Zealand



## Australia's trade relationship with New Zealand:

### Major Australian exports, 2004-05 (A\$m):

Refined petroleum	641
Crude petroleum	458
Passenger motor vehicles	445
Medicaments (incl. veterinary)	391
Computers	358

### Major Australian imports, 2004-05 (A\$m):

Crude petroleum	276
Paper & paperboard	267
Wood, simply worked	237
Non-monetary gold	235
Household type equipment	164

### Australian merchandise trade with New Zealand, 2004-05:

		<b>Total share:</b>	<b>Rank:</b>	<b>Growth (yoy):</b>
Exports to New Zealand (A\$m):	9,151	7.2%	5th	13.1%
Imports from New Zealand (A\$m):	5,340	3.6%	8th	5.6%
Total trade (exports + imports) (A\$m):	14,491	5.2%	5th	10.2%
Merchandise trade surplus with New Zealand (A\$m):	3,812			

### Australia's trade in services with New Zealand, 2004-05:

		<b>Total share:</b>
Exports of services to New Zealand (A\$m):	2,655	7.3%
Imports of services from New Zealand (A\$m):	2,118	5.6%
Services trade surplus with New Zealand (A\$m):	537	

## 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.

## **List of other treaties with New Zealand**

- Australia- New Zealand Agreement [ANZAC Pact]  
**[1944] ATS 2**
- Australia New Zealand Closer Economic Relations Trade Agreement [ANZCERTA]  
**[1983] ATS 2**
- Agreement with the Government of New Zealand 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 constituting an Agreement to amend ANZCERTA of 28 March  
1983  
**[1988] ATS 27**
- Agreement with the Government of New Zealand for the Reciprocal Protection of  
Classified Information of Defence Interest  
**[1989] ATS 3**
- Agreement with New Zealand concerning the Collaboration in the Acquisition of  
Surface Combatants for the Royal Australian Navy and the Royal New Zealand  
Navy  
**[1989] ATS 32**
- Agreement between the Government of Australia and the Government of New  
Zealand 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 with New Zealand 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 with the Government of New Zealand 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 amending the Agreement between with New Zealand concerning the Collaboration in the Acquisition of Surface Combatants for the Royal Australian Navy and the Royal New Zealand Navy of 14 December 1989  
**[1997] ATS 24**
- Agreement between Australia New Zealand concerning the Establishment of the Governing Board, Technical Advisory council and Accreditation Review Board of the Joint Accreditation System of Australia and New Zealand.  
**[1998] ATS 16**
- Agreement on Medical Treatment for Temporary Visitors with New Zealand  
**[1999] ATS 15**
- Agreement with the Government of New Zealand concerning the Transfer of Uranium  
**[2000] ATS 16**
- Agreement with the Government of New Zealand on Child and Spousal Maintenance  
**[2000] ATS 20**
- Agreement on Social Security with New Zealand  
**[2002] ATS 12**
- Exchange of Notes Amending the Agreement on Social Security with New Zealand of 28 March 2001  
**[2002] ATS 12**
- Agreement with New Zealand concerning a Joint Food Standards System  
**[2002] ATS 13**
- Agreement with the Government of New Zealand relating to Air Services  
**[2003] ATS 18**
- Agreement with the Government of New Zealand concerning the Status of their Forces  
**[2005] ATS 12**

- Treaty with the Government of New Zealand Establishing Certain Exclusive Economic Zone Boundaries and Continental Shelf Boundaries  
**[2006] ATS 4**
  - Agreement between the Government of Australia and the Government of New Zealand for the Establishment of a Joint Scheme for the Regulation of Therapeutic Products  
**[2003] ATNIF 22**
  - Protocol amending the Agreement with the Government of New Zealand for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income of 27 January 1995  
**[2005] ATNIF 26**
- 

### **List of treaties of the same type with other countries**

There are no treaties of this type with other countries.

March 2006