# Submission No 4

**Australia's trade and investment relations under the Australia-New Zealand Closer Economic Relations Trade Agreement**


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Australian Government

The Treasury

OFFICE OF THE SECRETARY

19 April, 2006

The Hon Bruce Baird MP
Chairman
Trade Sub-Committee
Joint Standing Committee on Foreign Affairs, Defence and Trade
Parliament House
CANBERRA ACT 2600

Dear Mr Baird

**INQUIRY INTO AUSTRALIA AND NEW ZEALAND CLOSER ECONOMIC RELATIONS**

Thank you for your letter of 7 March 2006 seeking a Treasury submission to your Committee's inquiry into Australia and New Zealand Closer Economic Relations (CER). The inquiry's specific terms of reference are: the nature of Australia's existing trade and investment relationships; likely future trends in these relationships; the role of Government in identifying and assisting Australian companies to maximise opportunities under CER; and complementary policy approaches by the two governments.

A submission, focusing on the Australian and New Zealand bilateral investment relationship, and complementary policy approaches by the two governments in the areas of banking, business law, competition policy, consumer policy and taxation, is enclosed.

I trust this information will be of assistance to you.

Yours sincerely

Ken Henry
Secretary to the Treasury

enc.

# TREASURY SUBMISSION

# TO

# THE JOINT STANDING COMMITTEE ON FOREIGN AFFAIRS, DEFENCE AND TRADE

# INQUIRY INTO AUSTRALIA AND NEW ZEALAND CLOSER ECONOMIC RELATIONS (CER)

**APRIL 2006**

# PURPOSE

This submission focuses on Australia's existing trade and investment relationships with New Zealand and complementary policy approaches by the two governments, particularly in the areas of banking, business law, competition policy, consumer policy and taxation. It does not address the other terms of reference (that is, likely future trends in the Australia–New Zealand relationship, and the role of government in identifying and assisting companies to maximise opportunities under CER) as they are primarily of relevance to other portfolios.

## 1. INTRODUCTION

In January 2004, the Australian Treasurer and the New Zealand Minister of Finance articulated a long-term goal of achieving a single economic market based on common regulatory frameworks.[1] Expression of this goal reflected development of the trans-Tasman economic relationship beyond a free trade agreement (the CER Agreement) and into a single economic market relationship.

The focus of work in the Treasury portfolio has been on reducing barriers to a seamless regulatory environment for business, consumers and investors across the Tasman. A comprehensive work programme has been ongoing under the umbrella of the Memorandum of Understanding on Business Law Coordination. Progress has also been made, and work is continuing, in the areas of banking supervision, competition policy, consumer policy and taxation. In addition, steps are being taken to develop further the bilateral investment relationship between Australia and New Zealand.

This submission provides an overview of developments in these areas, which are consistent with, and complement, the objectives of the CER Agreement.

## 2. AUSTRALIAN AND NEW ZEALAND BILATERAL INVESTMENT RELATIONSHIP

Australia and New Zealand enjoy a healthy bilateral investment relationship. Australia is the largest foreign investor in New Zealand, with Australian investment representing approximately 25 per cent of the total foreign investment in New Zealand. Of this, over half is Foreign Direct Investment (FDI), reflecting the high level of economic integration. At the end of 2004, Australia had a stock of A$39.4 billion worth of total investment in New Zealand, with A$24.3 billion of this figure FDI.

New Zealand is the sixth-largest foreign investor in Australia behind the United States, United Kingdom, Japan, Netherlands and Hong Kong. New Zealand had a stock of A$22.4 billion worth of total investment in Australia at the end of 2004, with A$7.8 billion of this figure FDI.

Australia and New Zealand have agreed to commence negotiations on an investment protocol to form part of the Australia–New Zealand Closer Economic Relations Trade Agreement. The protocol will seek to improve the investment climate for Australian investors through improved investor protection provisions; the provision of a transparent, stable, and predictable regulatory

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[1] Costello, Peter and Cullen, Michael (2004), Ministers Enhance the Trans-Tasman Business Environment, joint media statement, 30 January 2004.

framework; and, importantly, improved access for Australian investors through more relaxed rules on takeovers and new business investment.

Officials are looking to make significant progress on the protocol in the coming year.

## 3. COMPLEMENTARY POLICY APPROACHES BY THE TWO GOVERNMENTS

## Memorandum of Understanding on Business Law Coordination

The framework for the coordination of business law between Australia and New Zealand is provided by the Memorandum of Understanding between the Government of Australia and the Government of New Zealand on the Coordination of Business Law (the MOU).

The original MOU, signed in August 2000:

- reflected the desire of both governments to deepen the relationship between the two countries, creating a mutually beneficial trans-Tasman commercial environment; and
- specified a number of areas to consider for suitability for coordination, including cross-recognition of companies, financial product disclosure regimes, cross-border insolvency, stock market recognition, consumer issues, electronic transactions and competition law.

The 2000 MOU encouraged examination of the costs and benefits of coordination on a case-by-case basis. It also recognised the trend towards international convergence of financial market and other business regulation.

Review of the Memorandum of Understanding

A review of the MOU has taken place in accordance with the commitment included in the MOU to review it every five years.

The Hon Chris Pearce MP, announced the review in a press release of 25 July 2005. Individuals, representative groups and companies known to have an interest in Australia–New Zealand business relations were specifically invited to contribute. Members of the public were also welcome to make submissions.

In response, a total of 28 submissions were received.

The revised MOU, which was signed at a meeting of Australian and New Zealand ministers on 22 February 2006, reaffirms the principles espoused in the 2000 MOU while acknowledging the changes in the trans-Tasman environment in the last five years (such as both countries' commitment to the principle of a single economic market). The work programme, which forms an annex to the MOU, has also been updated in order to reflect the tasks that have been completed and to include new priorities for potential coordination.

A copy of the revised MOU is at Attachment A.

New items on the programme include exploring the desirability of mutual disqualification of persons from managing corporations, coordination of anti-money laundering supervisory frameworks and coordination of insurance regulation.

The current status of the following projects on the work programme under the MOU is outlined in this submission:

(i) accounting standards;

(ii) cross-recognition of companies;

(iii) mutual recognition of securities offerings;

(iv) cross-border insolvency.

*(i) Accounting standards*

On 30 January 2004, the Australian Treasurer, the Hon Peter Costello MP, and the New Zealand Minister of Finance, the Hon Dr Michael Cullen MP, announced the formation of the Trans-Tasman Accounting Standards Advisory Group (TTASAG). The purpose of TTASAG is to:

- progress work towards common accounting standards in Australia and New Zealand in order to reduce transaction costs for businesses operating in both countries; and
- enhance the influence of the two countries in the development of international accounting standards.

Membership of the Group includes representatives from the Australian Financial Reporting Council (FRC), Australian Accounting Standards Board (AASB), New Zealand's Financial Reporting Standards Board (FRSB) and Accounting Standards Review Board (ASRB), the professional accounting bodies and officials from the Australian Treasury and the New Zealand Ministry of Economic Development.

TTASAG has met seven times since it was created. It is anticipated that the Group will meet approximately quarterly. To date the Group has focused on:

- the alignment of Australian and New Zealand financial reporting standards and how this can be progressed in light of the adoption of international accounting standards;
- the extent to which Australia and New Zealand can influence the development of international accounting standards through their involvement with the International Accounting Standards Board (IASB) and related forums;
- the broader legal framework governing financial reporting requirements in Australia and New Zealand and how those requirements could be more closely aligned; and
- whether, in the longer term, there would be a move to joint institutions to ensure the maintenance of common standards in the two countries.

TTASAG has developed a protocol of cooperation between the AASB and FRSB. It is expected that the Chairs of the AASB and the FRSB will sign the proposed protocol in mid-2006. This protocol sets out processes that will assist in:

- the minimisation of differences between accounting standards issued in Australia and New Zealand;

- ensuring that Australia and New Zealand present similar positions at international forums;
- the sharing of staff resources to the extent practicable and possible; and
- the maximisation of the contribution and thus the influence of Australia and New Zealand upon the IASB and International Public Sector Accounting Standards Board (IPSASB).

A number of cross-appointments recommended by the Group have been made between Australian and New Zealand standard setters and oversight bodies. This has formalised some existing arrangements (the Chairs of the FRC and ASRB had already been observing the other body's meetings prior to their appointment) and extended them in other areas (for instance, between the AASB and the FRSB). TTASAG recognises that these cross-appointments have been useful in facilitating an understanding of the difference between the financial reporting frameworks between the countries.

A regional policy forum on International Financial Reporting Standards (IFRS) was held on 24 October 2005 in Sydney. This was the first time that accounting representatives from 11 countries in the region and the IASB have been brought together to consider issues associated with the implementation of IFRS in the region and how the region could coordinate views to the IASB. Sixty delegates attended the forum including accounting standard setters, accounting oversight bodies, representatives from professional accounting bodies and senior financial reporting policy makers.

*(ii) Cross-recognition of company registration requirements*

As a matter of common law, the two countries each recognise the legal personality of companies incorporated in the other country without any special formalities or registration requirements. However, there are additional overseas company filing requirements.

The Australian Government has approved amendments to the *Corporations Act 2001* to eliminate duplication in the reporting requirements as a first stage in the cross-recognition of New Zealand companies.

The amendments will reduce compliance costs by exempting New Zealand companies from the requirement to submit information to ASIC that is already collected by the New Zealand Companies Office. The proposed exemption would be limited to circumstances where the same information is required by regulators in both jurisdictions.

- Currently, New Zealand companies wishing to operate in Australia must comply with the reporting requirements applicable to all foreign companies. These include the requirement to apply for registration with ASIC, appoint a local agent, normal annual report requirements, any other requirement ASIC deems necessary, to keep a share register in Australia on the request of a member and notify ASIC of any changes to company information.

This amendment will maintain the requirement for New Zealand companies to submit to ASIC information that is not required to be submitted to the New Zealand Companies Office (for example, information on the powers of local directors).

The legislative amendments are being developed. The consent of the States will be sought before the amendments are introduced, pursuant to the Corporations Agreement.

New Zealand officials have indicated that they will be in a position to reciprocate these changes in relation to Australian companies operating in New Zealand in the future.

At the operational level, the Australian Government has requested that ASIC update its Internet-based company information search function to direct interested parties to the New Zealand regulator's website so they can access the information it has collected on New Zealand companies (that is, the information that will no longer be collected by ASIC).

ASIC has been working with New Zealand on this issue and has made some initial progress in identifying practical options for change. The ultimate goal for the technical changes is to provide a secure link between ASIC and the New Zealand regulators' databases.

At this time, the legal and administrative differences between the Australian and New Zealand company law regimes prevent the full cross-recognition of companies.

*(iii) Mutual recognition of offer documents*

On 4 October 2001, the then Australian Minister for Financial Services and Regulation, the Hon Joe Hockey MP, wrote to the then New Zealand Minister of Commerce, the Hon Paul Swain MP, proposing that Australia and New Zealand consider formal processes of mutual recognition in financial services regulation. Officials were invited to consider arrangements for mutual recognition in the areas of fundraising and collective investment schemes.

The potential benefits of a trans-Tasman mutual recognition arrangement include:

- facilitating cross-border fundraising activity;
- reducing the compliance costs associated with multiple market participation;
- enhancing competition in domestic markets by facilitating market entry;
- significant potential to reduce the cost of capital to issuers by enabling them to access wider capital markets at lower cost than is currently available; and
- providing investors with more opportunities to manage risk through geographical diversification of their investments.

Officials agreed in 2002 on the following set of principles:

- an issuer should be able to offer securities in both countries using a single disclosure document that satisfies the requirements of the home jurisdiction;
- investors should be able to pursue statutory remedies in the courts of either jurisdiction; and
- both ASIC and the New Zealand Securities Commission (NZSC) should be able to take enforcement action in relation to an offer of securities under the mutual recognition arrangement.

Officials, in consultation with ASIC and the NZSC, developed further and refined the detailed proposal for an agreement based on these principles, which will provide for mutual recognition of regulated offers of securities and interests in managed investment schemes. The proposed regime would provide that an offer of securities that can lawfully be made in one country can lawfully be made in the other country in the same manner and with the same offer documents, provided that:

- the entry criteria for the recognition regime are satisfied; and
- the offeror complies with the ongoing requirements of the recognition regime.

A joint Australian–New Zealand discussion paper based on the above principles was released on 18 May 2004 for two months' public consultation. Twenty-nine submissions were received from Australian and New Zealand respondents. Subject to various comments, nearly all respondents strongly support putting in place a mutual recognition regime along the lines described in the paper. Account was taken of the submissions received in framing the treaty and will also be taken into account when framing the domestic legislation.

The treaty was signed on 22 February 2006. A copy of the treaty is expected to be put on the Department of Foreign Affairs and Trade website, www.dfat.gov.au.

The amendments to Australian domestic legislation which will be needed to implement the arrangement are being drafted and are expected to be released for public consultation later this year. While New Zealand legislation already provides for such arrangements, implementing regulations will be needed in that jurisdiction.

*(v) Cross-border insolvency*

On 12 October 2005, the Parliamentary Secretary to the Treasurer, the Hon Chris Pearce MP, announced that the Government would be proceeding with an integrated package of reforms to improve the operation of Australia's insolvency laws. This package includes measures to enact the United Nations Commission on International Trade Law ('UNCITRAL') Model Law on Cross-Border Insolvency in Australia. The Model Law was developed in 1997, and provides mechanisms for dealing with cases of cross-border insolvencies. It is expected that a draft Bill will be released in the second half of 2006.

The purpose of the Model Law is to provide effective and efficient mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of:

- cooperation between the courts and other authorities involved in cases of cross-border insolvency;
- greater legal certainty for trade and investment;
- fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons;
- protection and maximisation of the value of assets; and
- facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

The UNCITRAL Model Law has been adopted in the USA, Japan, India, South Africa, Mexico, Montenegro and Eritrea. It is also being considered for adoption in the UK, Canada and Malaysia.

New Zealand is also in the process of developing draft legislation. New Zealand officials have raised the idea of information sharing at the drafting stage, and further cooperation in streamlining procedures under the Model Law.

## Banking Supervision

The Australian and New Zealand banking markets are among the most highly integrated in the world. Australian-owned banks have a market share of the New Zealand banking market that exceeds 85 per cent. In addition, New Zealand assets comprise more than 15 per cent of the total assets of Australian banking groups. Given this high degree of commercial integration, there is benefit in moving toward seamless banking regulation to minimise regulatory hurdles. The Australian and New Zealand governments are committed to maintaining momentum towards this goal while seeking to improve the quality and reduce the cost of regulation in both countries.

In February 2005, the Australian Treasurer, the Hon Peter Costello MP, and the New Zealand Minister of Finance, the Hon Michael Cullen MP, established the Joint Trans-Tasman Council on Banking Supervision as the next step towards a single economic market in banking services.[2] In particular, the Council was asked to promote a joint approach to banking supervision that delivers a seamless regulatory environment in banking services.

The Council is chaired by the Secretaries of the Australian and New Zealand Treasuries. Its membership also comprises senior representatives of the Australian Prudential Regulation Authority (APRA), the Reserve Bank of New Zealand (RBNZ) and the Reserve Bank of Australia (RBA).

In the first instance, the Council was asked to report on legislative changes that may be required to ensure that APRA and the RBNZ can support each other in the performance of their current regulatory responsibilities. The Council's terms of reference also require it to:

- enhance cooperation on the supervision of trans-Tasman banks and information sharing between respective supervisors;
- promote and review regular trans-Tasman crisis response preparedness relating to events that involve banks that are common to both countries; and
- guide the development of policy advice to both governments, underpinned by the principles of policy harmonisation, mutual recognition and trans-Tasman coordination.

At their annual bilateral meeting in February 2006, the Australian Treasurer and New Zealand Finance Minister announced that the Australian and New Zealand governments have agreed to legislate the changes recommended by the Joint Trans-Tasman Council on Banking Supervision.[3]

These legislative changes will ensure that our banking prudential supervisors, APRA and the RBNZ, can support each other in the performance of their statutory responsibilities and, wherever reasonably possible, avoid actions that could have a detrimental effect on financial system stability in the other country. APRA and the RBNZ will also be required to consult each other on these matters.

The legislative proposals reflect the high degree of commercial interdependence of the Australian and New Zealand banking markets and will facilitate the development of a joint approach to

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[2] Costello, Peter and Cullen, Michael (2005), Solid progress in Costello-Cullen bilateral, joint media statement, 17 February 2005.

[3] Costello, Peter and Cullen, Michael (2006), Ministers announce key achievements in the trans-Tasman single economic market agenda, joint media statement, 22 February 2006.

banking supervision. In addition, the regulators will be able to afford the banks greater flexibility in how they structure their businesses within the trans-Tasman market, which is expected to bring compliance cost reductions and efficiency benefits.

Consistent with the Council's terms of reference, the ministers also agreed that its future work programme will include looking at improved cooperation on crisis management, promoting seamless service provision for customers, and sharing experiences on improving the quality of insurance regulation.

In addition to the work of the Council, the regulators (the RBNZ, APRA and the RBA) have entered into arrangements to enhance further working relationships, information sharing and cooperation between the two countries. These arrangements include the following:

- Regular meetings are held between bank supervisors in both countries to share information on banks.
- In 2003, APRA and the RBNZ entered into a Memorandum of Understanding on information sharing and undertaking inspections in each other's jurisdiction.
- In March 2005, APRA and the RBNZ entered into Terms of Engagement on the Implementation of the New Basel Capital Framework (Basel II) for banks with operations in both Australia and New Zealand.
- In addition to the formal arrangements, close liaison is also occurring between APRA, the RBA and the RBNZ on crisis management preparedness and APRA and the RBNZ have made staff secondment arrangements.

## Competition Policy

Developments in relation to trans-Tasman competition law in recent times have flowed from the release of the Productivity Commission's final research report, *Australian and New Zealand Competition and Consumer Protection Regimes* (13 January 2005). The Productivity Commission considered that the competition and consumer law regimes in both countries are already highly integrated and made a number of recommendations involving further integration of the two regimes.

The Government provided in-principle support for the recommendations made by the Productivity Commission, and considers that progress can be made regarding:

(i) improving the information-sharing powers of the respective regulators;

(ii) formalising the existing policy dialogue between the governments and officials on competition policy; and

(iii) exploring options for greater dialogue and cooperation between the regulators, the Australian Competition and Consumer Commission and the New Zealand Commerce Commission.

*(i) Information sharing*

The Australian Government will be amending the *Trade Practices Act 1974* to remove statutory restrictions that limit the extent to which the Australian Competition and Consumer Commission (the ACCC) and the New Zealand Commerce Commission (the NZCC) can exchange information gathered under compulsory powers on competition and consumer protection matters.

These amendments will enable enhanced cooperation between the two regulatory agencies in the enforcement of the two countries' competition and consumer protection regimes.

Consistent with the recommendations of the Productivity Commission's report, the amendments will protect confidential or protected information from unauthorised use or disclosure.

*(ii) Meetings between regulators*

The ACCC and the NZCC have proposed formal annual meetings at commission level to discuss the strategic relationship and issues of mutual interest in the competition, consumer and regulatory areas.

*(iii) Trans-Tasman approvals protocol*

The agencies have agreed to develop a protocol to enhance cooperation in relation to the approval of merger applications involving trans-Tasman elements. It is envisaged that such a protocol would apply to the agencies of both countries to the extent consistent with their respective laws and enforcement responsibilities (for example, confidentiality requirements) when they simultaneously review the same merger transaction.

## Consumer Policy

Australia and New Zealand currently have strong links in consumer protection policy and enforcement areas. A report by the Productivity Commission, *Australian and New Zealand Competition and Consumer Protection Regimes* (13 January 2005), acknowledges the high degree of convergence in the competition and consumer protection regimes of Australia and New Zealand. It recognises that there is a significant level of cooperation and coordination between the relevant authorities in the two countries, including through:

(i) the Ministerial Council on Consumer Affairs (MCCA); and

(ii) the OECD Committee on Consumer Policy.

The legislative and regulatory regimes for the protection of consumers in Australia and New Zealand are also very similar. New Zealand's Fair Trading Act 1986 and Consumer Guarantees Act 1993 are comparable to Part V (Consumer Protection) of Australia's *Trade Practices Act 1974*. Furthermore, both Australia and New Zealand encourage the use of self-regulatory regimes as a first step in addressing sub-optimal markets.

*(i) Ministerial Council on Consumer Affairs (MCCA)*

Policy and administrative channels support cooperation and coordination between the two countries. Both Australia and New Zealand participate in the MCCA, the Standing Committee of Officials of Consumer Affairs (SCOCA) and their associated advisory committees.

MCCA provides a forum for members to discuss consumer affairs matters, agree on matters of national priority and, where possible, develop uniform approaches to regulation and supervision (including uniform legislation). MCCA's key objective is to provide the best and most consistent protection for consumers.

Under the auspices of MCCA, Australia and New Zealand are cooperating on several trans-Tasman issues, including the Review of Australia's Consumer Product Safety System and the Review of Australia's Trade Measurement System.

The Australian Consumer Product Safety Review seeks to adopt a uniform approach to achieving appropriate levels of safety for consumer products in Australia and New Zealand. Additionally, the review will focus on how the system can deal with potential safety hazards more swiftly, with a greater emphasis on the prevention of injury, rather than on reacting once consumers have suffered harm. Consideration will also be given to options to improve product safety information and research.

In order to better inform the MCCA review process, the Productivity Commission was requested to undertake a research study on the Australian product safety system. The Commission recently released its final report, *Review of the Australian Consumer Product Safety System* (February 2006). The report is currently being considered by MCCA.

The Review of Australia's Trade Measurement System will assess the national arrangement for administering trade measurement legislation in Australia. The review will identify and evaluate viable options for the future administration of trade measurement in Australia. Consideration will also be given to trans-Tasman harmonisation of trade measurement frameworks. It is recognised

that a uniform trans-Tasman trade measurement regime would lower compliance costs and promote the trading of goods. The review is anticipated to be completed by the end of 2006.

*(ii) OECD Committee on Consumer Policy*

Australia and New Zealand also work closely together in international consumer policy forums. Australia and New Zealand often collaborate on policy areas handled in the OECD Committee on Consumer Policy (CCP). For example, both countries actively sought agreement within the CCP on the *Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices across Borders* (the Guidelines).

The cross-border nature of many fraudulent and deceptive commercial practices led the OECD to develop the Guidelines, which were adopted by OECD member countries in April 2003. The Guidelines set forth broad principles for international cooperation and specific provisions covering notification, information sharing, and assistance with investigations. They also address issues regarding the authority of consumer protection enforcement agencies, invite private sector cooperation, and set the stage for future work on the issue of consumer redress.

The Guidelines do not represent a binding legal commitment on OECD member countries. Rather, they denote an international consensus on the common elements for cross-border consumer protection, and act to encourage closer cooperation between consumer protection agencies in member countries.

## Taxation

The approach to harmonisation of Australia's and New Zealand's taxation regimes has focused on:

(i) joint negotiation of tax information exchange agreements;

(ii) triangular taxation reforms;

(iii) the Australia-New Zealand tax treaty.

This reflects not only the rate differences between the two countries but also structural differences in the tax systems, which are sourced in significant differences in economic policies.

*(i) Tax Information Exchange Agreements*

In January 2004, Australia and New Zealand agreed to negotiate tax information exchange agreements jointly wherever practicable.[4] Joint negotiation reflects Australia's and New Zealand's common interests in the principles of transparency and effective exchanges of information, which underlie the OECD's Harmful Tax Practices Initiative and work on bank secrecy.

These Tax Information Exchange Agreements (TIEA) facilitate the exchange of tax information between countries, enabling Australia and New Zealand to obtain tax information which will help protect the integrity of the two tax systems, protect businesses from unfair competition and contribute to efforts to counter drug trafficking, money laundering and the financing of terrorism. Australia and New Zealand intend to negotiate a network of such agreements, including in the Pacific region.

To date, Australia has signed one TIEA (with Bermuda), and negotiations are under way with a number of other countries.

*(ii) Triangular taxation reforms*

In 2003, Australia and New Zealand legislated to allow businesses in each country to participate in the imputation systems of the other. The objective of these reforms was to reduce a distortion in the capital market of each country where the company tax treatment of an entity investing directly in that country was different from an entity that invested indirectly through the other country. The reform gave some relief from double taxation of dividends but continued to maintain the separation of the two tax systems. For example, an Australian entity that invested in a New Zealand entity that in turn invested in an Australian company, could now receive some Australian franking credits to recognise the company tax paid in Australia.

*(iii) Australia–New Zealand Taxation Treaty*

In November 2005 Australia and New Zealand signed an amending Protocol to the Australian–New Zealand tax treaty. The protocol updates the tax information exchange provisions

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[4] *op. cit.* Costello and Cullen (2004).

to the new OECD standard and provides for mutual assistance in collection of taxes. It also ensures Australia will have access to lower withholding taxes on dividends, interest and royalties should New Zealand reduce these taxes in a treaty with another country to levels below those in our current treaty.

Earlier in 2005, the Government decided that in future tax treaties, Australia would seek to exchange information on all federal taxes administered by the Commissioner of Taxation. Australian tax treaties currently in force (with the exception of the Timor Sea treaty) only cover income tax. The New Zealand Protocol represents the first of Australia's comprehensive tax treaties that contain the broader exchange of information provision.

The New Zealand tax treaty, by virtue of the amending Protocol, is also the first tax treaty whereby Australia has agreed to assist the other jurisdiction in the collection of outstanding tax debts. This provision will help both countries to pursue those people who leave the country without settling their tax liabilities.

During the negotiations that resulted in the Protocol, Australia suggested lowering the current rates of dividend, interest and royalty withholding tax between the two countries. New Zealand advised that the relevant policy is under review and is likely to be finalised in the near future. The amending protocol includes a most favoured nation clause which entitles Australia to a lower rate of withholding taxes should New Zealand agree to such a rate in any of its future tax treaties.

# The Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on Coordination of Business Law

**This Memorandum:**

- replaces the Memorandum of Understanding between the Government of New Zealand and the Government of Australia on Coordination of Business Law signed on 31 August 2000.

- records the following understandings reached in discussions between the Government of New Zealand and the Government of Australia regarding promotion of closer economic relations between New Zealand and Australia.

**Mutual benefits to be obtained by the two countries**

1. The Governments of New Zealand and Australia recognise the importance of accelerating, deepening and widening the relationship that has developed through the growth of trans-Tasman trade, particularly since the commencement of the Australia New Zealand Closer Economic Relations Trade Agreement in 1983. Both Governments consider that further coordination of significant areas of business law (including consumer law but not taxation) can facilitate the achievement of this goal.

2. Both Governments also acknowledge the importance of a global approach to business law issues (particularly in light of the increasing prevalence of electronic commerce) and the significance of the trans-Tasman relationship in that approach.

3. Both Governments have committed to the objective of a single economic market, defined by the Productivity Commission as a geographic area comprising two or more countries in which there is no significant discrimination in the markets of each country arising from differences in the policies and regulations of both countries.

4. Both Governments are aware that some existing laws and regulatory practices relating to business within each economy may impede the development of trans-Tasman business activity. Through the development of increased coordination and dialogue, both parties will endeavour to minimise such impediments.

5. An array of approaches exists to achieve the goal of increased coordination in business law. Both Governments recognise that one single approach would not be suitable for every area, that coordination is multi-faceted and does not necessarily mean the adoption of identical laws, but rather finding a way to deal with any differences so they do not create barriers to trade and investment. In working towards greater coordination, the efforts of both Governments will focus on reducing transaction costs, lessening compliance costs and uncertainty, and increasing competition.

6. This Memorandum of Understanding reflects our desire to deepen the trans-Tasman relationship within a global market, through increased coordination of business law, thereby creating a mutually beneficial trans-Tasman commercial environment. Such an environment will allow New Zealand and Australia to share a common outward focus in commercial activities within the greater global market.

7. Both Governments recognise the trend towards increasing international convergence of financial market and business regulation and the need to comply with international standards. Both parties acknowledge the benefit of coordination in efforts to influence evolving international regulatory standards and regimes.

**Existing business law coordination**

8. Starting from their similar legal and commercial backgrounds, New Zealand and Australia have already achieved a significant degree of coordination and cooperation in a number of areas of business law, including:

   a. competition laws enforced by the Commerce Commission in New Zealand and Australian Competition and Consumer Commission;

   b. consumer protection laws, including fair trading laws;

   c. 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 ASX and NZSX;

   d. mutual recognition of registered occupations, as provided for under the Trans-Tasman Mutual Recognition Arrangement; and

   e. New Zealand reforms regarding takeovers and securities law, and the adoption by both countries of IFRS.

**Maintaining existing business law coordination**

9. Both Governments recognise that, having achieved a significant degree of coordination, the challenge is to maintain alignment in the areas where there are coordinated regimes.

10. Both parties also recognise that effective law coordination requires a coordinated underlying legal infrastructure. Work on one aspect of this is proceeding through the Trans-Tasman Working Group on Enforceability of Court Proceedings and Regulatory Enforcement, established in 2003.

11. The administration of coordinated regimes is an important feature of the trans-Tasman market. Both Governments will seek to encourage cooperation between the relevant regulators and will seek to ensure that any opportunities for cooperation are maximised.

**Further development of business law coordination**

12. Attached in the Annex is a list of areas identified by both Governments as possible issues for coordination. Both Governments will examine further the scope for coordination of business laws and regulatory practices in each of these areas.

13. In order to determine the suitability of each of these issues for coordination, regard will be given to:

a. The desirability of ensuring for each particular situation, that a firm, ideally, will only have to comply with one set of rules, and have certainty as to the application of those rules in the other jurisdiction, and with which regulator (ie Australian or New Zealand) it needs to deal;

b. Whether the situation should be regulated solely through domestic rules or whether a bilateral, or multilateral solution would be more appropriate; and

c. Whether a good reason exists for the law in this area to be different between Australia and New Zealand.

14. Having taken these principles into consideration, both Governments will still need to ensure that realistic goals are set and that the benefits of coordination outweigh the costs. Globalising and localising factors also need to be considered by both Governments in this respect.
(Globalising and localising factors are forces that would push law makers to take either a more multilateral or a more domestic approach to the formation of business law. An example of a globalising factor could be the reduction of compliance costs and uncertainty to businesses trading across borders. An example of a localising factor could be a unique local condition).

**Consultation**

15. In addition to the items specified in the work programme (see Annex), when either Government considers that a difference between their respective business laws or regulatory practices gives rise to an impediment to the development of the trans-Tasman relationship, the two Governments will consult with a view to resolving the impediment, whether or not the area of law is already included in the programme and regardless of the priority accorded to the matter at the time.

16. Each Government will keep the other Government informed of proposed reforms in the business law area. Further, each Government will give the other the opportunity to be involved in the other's reform process at an early stage. Early consultation is particularly important where a policy proposal has extra-territorial application that impacts on the other country or would have the potential to result in the removal of any right or benefit that the other country currently enjoys.

17. Each Government will take the necessary steps to facilitate early examination of the areas of business law and regulatory practices contained in the programme.

18. Both countries also place great value on cooperation between regulators, and between regulators and policy officers. The work programme has been varied to reflect this and it is hoped that Australian and New Zealand officers and regulators in each sphere will meet together annually to discuss issues of mutual interest.

**Report back to Ministers**

**19.** Officials will report annually to their respective Ministers responsible for business law as to the status of the work highlighted for action in the Annex to this Memorandum of Understanding.

**Review of the Memorandum of Understanding**

**20.** Both Governments mutually determine that they will review this Memorandum of Understanding five years from the date of its signature, and every five years following that date.

**Outcome**

21. The understandings set out in this Memorandum are not intended to preclude the possibility of earlier coordination in any area of business law or regulatory practice where, for example, the Australia-New Zealand Leadership Forum has pointed to particular difficulties.

**Commencement and implementation**

22. The Minister of Commerce of New Zealand and the Treasurer of the Commonwealth of Australia will have responsibility on behalf of their respective Governments for the implementation of this Memorandum of Understanding including the establishment, and any variation, of the work programme.

23. This Memorandum of Understanding will come into effect on the date of its signature.

**Signed in Australia on 22 February 2006 by:**

**Hon Peter Costello,** Treasurer, for the Government of Australia

**Hon Lianne Dalziel,** Minister for Commerce, for the Government of New Zeland.

Annex

## Work Programme for Coordination of Business Law

a) Managing cross-border insolvency including through implementation of the UNCITRAL Model Law on Cross-Border Insolvency;

b) Consideration of mutual recognition and/or further coordination of the regulation of financial intermediaries, including consideration of the desirability of adopting a mechanism which would allow for the disqualification of financial intermediaries in one jurisdiction to apply in the other jurisdiction;

c) Further coordination of disclosure regimes in securities law through mutual recognition/coordination of disclosure requirements;

d) Coordination of insurance regulation and the implementation and enforcement of insurance regulation;

e) Information sharing amongst regulators;

f) In relation to financial reporting:

- Consideration of the respective financial reporting frameworks in both countries and how these may potentially be better aligned;
- Working towards consistency of financial reporting standard setting arrangements; and
- Working towards continued convergence of financial reporting standards;

g) Managing cross-border recognition of companies;

h) Explore the desirability of adopting a mechanism which would allow for the disqualification of persons from managing corporations in one jurisdiction to apply in the other jurisdiction;

i) Coordination of anti money laundering supervisory frameworks to minimise compliance costs for financial institutions;

j) Development of a seamless processing regime for the granting of patents and the registration of trade marks, plant variety (or breeder's) rights and patent attorneys;

k) Coordination of competition law in the following areas:

- Consideration of cross appointments between competition regulators;
- Other cooperative arrangements such as a single track procedure for business acquisition applications;

l) Where appropriate, joint participation in policy, research, compliance and education programmes on consumer issues relating to business law and explore the potential for sharing work and coordination of work on enhancing financial literacy.