



Department of Foreign Affairs and Trade

# Closer Economic Relations

Background Guide to the Australia New Zealand Economic Relationship

February 1997

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## FOREWORD

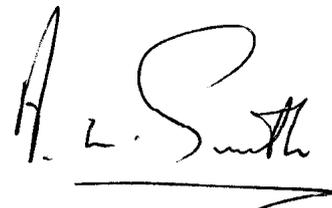
Since the Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) came into effect on 1 January 1983 our two economies have become increasingly integrated. We have learned much from each other about the benefits of competition, excellence in manufacturing and marketing, and working together.

CER is a dynamic free trade agreement which has been a source of great benefit to both countries. It has encouraged businesses to establish manufacturing and services operations on both sides of the Tasman. With expansion, CER has, over the years, strengthened the cooperation between New Zealand and Australia in areas such as business law and mutual recognition of product standards and professional credentials.

The CER Guide has been designed to assist exporters and manufacturers on both sides of the Tasman. It is hoped that it will give the reader a greater understanding of the CER Agreement and help ensure that the CER success story continues.



Tim Fischer MP  
Deputy Prime Minister and Minister for Trade  
Australia



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Minister for International Trade  
New Zealand

## **Introduction - What does CER seek to achieve?**

The Australia New Zealand Closer Economic Relations Trade Agreement (known as ANZCERTA or the CER Agreement) is the main instrument governing economic relations between the two countries. It entered into force in 1983 and was by design intended to be an outward-looking trade agreement. Its central provision is the creation of a World Trade Organization (WTO)-consistent Free Trade Area consisting of Australia and New Zealand.

2. The objectives of the CER Agreement, set out in Article 1 of the Treaty, are:

- to strengthen the broader relationship between Australia and New Zealand;
- to develop closer economic relations between Australia and New Zealand through a mutually beneficial expansion of free trade between the two countries;
- to eliminate barriers to trade between Australia and New Zealand in a gradual and progressive manner under an agreed timetable and with a minimum of disruption; and
- to develop trade between New Zealand and Australia under conditions of fair competition.

3. Since its inception in 1983, the CER Agreement has undergone three general reviews which:

- accelerated the achievement of free trade in goods meeting the CER rules of origin, so that by June 1990 all tariffs and quantitative restrictions on trade were eliminated;
- widened the scope of the 1983 Agreement to include trade in services; and,
- deepened the CER Agreement by seeking to harmonise a range of non-tariff measures that affect the free flow of goods and services, including in respect of quarantine and customs issues, standards and business law.

In addition, several aspects of the CER Agreement have, over the years, been amended, refined or simply become redundant. The more important of these changes include refinements to the rules of origin and the phasing out of margin of preference obligations.

4. The CER Agreement is now one of the most comprehensive bilateral free trade agreements in existence, and the first to include free trade in services. It fully conforms to the requirements of Article XXIV of the GATT, now superseded by the WTO Agreement. It is a complex agreement, often requiring reference to several different source documents.

5. This Guide is intended to provide a précis of the main operative provisions of the CER Agreement, together with pointers to the original documents which remain the only authoritative source. It is not intended to be exhaustive and comprehensive. The Australian Department of Foreign Affairs and Trade or the New Zealand Ministry of Foreign Affairs and Trade should be contacted for further advice if required.

## **Background - How has CER evolved?**

6. The CER Agreement was built on a series of preferential trade agreements between Australia and New Zealand, including the 1966 New Zealand Australia Free Trade Agreement (NAFTA). By the late 1970's, NAFTA and its predecessors had resulted in the removal of tariffs and quantitative restrictions on 80 per cent of trans-Tasman trade. Further advances under

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NAFTA were limited because it lacked a mechanism for compulsorily removing remaining restrictions. Of concern to Australia was the absence of a mechanism for removing New Zealand's import licensing restrictions. The existence of import licensing restrictions in many cases effectively negated the benefits derived from eliminating tariffs.

7. In March 1980 the concept of "closer economic relations" between Australia and New Zealand was introduced in a joint Prime Ministerial communique. The communique put forward the proposition that an appropriately structured closer economic relationship would benefit the international competitiveness of both countries and improve living standards. Both governments agreed that the development of closer economic relations between the two countries should not conflict with an outward-looking approach to trade; nor should it interfere with each country's obligations under the GATT and other multilateral and bilateral trade agreements.

8. The CER Agreement took effect on 1 January 1983. It provided for the establishment of free trade in goods (those meeting the CER rules of origin) between Australia and New Zealand. The two Governments envisaged that the development of other aspects of the economic relationship would be an evolutionary process. They agreed to consider ways of developing the economic relationship through comprehensive reviews of the Agreement in 1988 and 1992.

9. The first general review of CER in 1988 resulted in the signing of three protocols to the CER Agreement: the Protocol on Acceleration of Free Trade in Goods brought forward, from 1995 to 1990, the date for the final removal of remaining trans-Tasman tariffs and quantitative restrictions; the Protocol on the Harmonisation of Quarantine Administrative Procedures substantially aligned quarantine procedures between the two countries; and the Protocol on Trade in Services brought trade in services under the CER Agreement.

10. Agreements were also reached on industry assistance, technical barriers to trade, government purchasing, business-law harmonisation, export restrictions and harmonisation of customs policies and procedures.

11. At a meeting in July 1990 to mark the achievement of full free trade in goods, the two Prime Ministers outlined a process involving close consultation with business communities to set the agenda for the next scheduled general review in 1992. The agenda focused on advancing trade and investment facilitation issues such as mutual recognition, harmonisation of standards and harmonising the business environment.

12. The 1992 review resulted in an examination of the potential benefits that would flow from bringing New Zealand into the Australian mutual recognition scheme covering product standards and the registration of occupations. Other important outcomes included the updating of the list of services exempt from the CER Protocol on Trade in Services and the amendment and clarification of the CER Rules of Origin (ROO's). A renewed commitment was given to work on business law harmonisation. The two Governments also agreed to institute annual trade and economic talks at senior officials level, to precede annual Trade Ministers' meetings. The two Governments agreed to hold a further review of CER in 1995.

13. The 1995 review focused on advancing "third generation" trade facilitation issues including eliminating remaining regulatory impediments to trade. The review highlighted the near-completion of negotiations for an Australia New Zealand food standards setting system based on a joint authority to set food standards. Harmonisation of trans-Tasman food standards is expected to minimise trade impediments, reduce transaction costs and provide more choice to

consumers. Significant progress was also made on the trans-Tasman mutual recognition arrangement.

14. A review of the CER Protocol on Trade in Services was completed. This review had a particular focus on inscribed services (i.e. those services exempt from the Protocol), with a view to liberalising further trade in such services. As a result, Australia amended its inscriptions for postal services and telecommunications, while New Zealand amended its inscriptions for aviation and shipping.

15. The 1995 review noted other positive developments such as the first meeting of the Joint Australia/New Zealand Working Group on ROO's, and progress on AFTA-CER cooperation.

16. After formal reviews of CER in 1988, 1992, and 1995 the Australian and New Zealand governments decided that subsequent reviews of CER would take place as part of annual Australia New Zealand Trade Ministers' meetings. The September 1996 meeting of Trade Ministers took note of considerable further progress which had been made in deepening and broadening closer economic relations, including through the mid-1996 conclusion of the Trans-Tasman Mutual Recognition Arrangement (TTMRA), the signing of an arrangement establishing a Single Aviation Market (SAM), the formal launching of the new trans-Tasman food standards body (the Australia New Zealand Food Authority), and the late-June finalisation of an Arrangement on Food Inspection Measures (AFIM) to reduce border inspection requirements for food products originating in either Australia or New Zealand. Trade Ministers also formally noted a mid-September exchange of letters between the New Zealand Minister of Finance and the Australian Treasurer on investment and taxation.

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## **TRADE IN GOODS**

### **THE CER AGREEMENT: PROVISIONS AND PRINCIPLES**

#### **Where does the CER Agreement Apply? Definition of the Free Trade Area**

17. The provisions of the CER Agreement apply in respect of goods traded in the Free Trade Area, which is defined in Article 2 of the CER Agreement to include the territory of Australia, excluding its offshore territories, and the territory of New Zealand, excluding the Cook Islands, Niue and Tokelau.

#### **Permitted Exceptions**

18. As is the case with most international trade agreements, the CER Agreement 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”. Some of the specified purposes include:

- protection of essential security interests
- protection of public morals and prevention of disorder or crime
- protection of human, animal or plant life or health
- protection of intellectual or industrial property rights or to prevent unfair, deceptive, or misleading practices
- the application of standards or of regulations for the classification, grading or marketing of goods.

#### **The Meaning of Free Trade : Prohibition on Tariffs and Quantitative Restrictions**

19. All tariffs and quantitative import or export restrictions on trade in goods originating in the Free Trade Area are prohibited under the CER Agreement.

20. 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.

#### **Defining “Goods Originating in the Free Trade Area” : the CER Rules of Origin**

21. Since under the CER Agreement only goods considered to originate in the Free Trade Area are exempt from any tariffs or quantitative restrictions, rules to determine the origin of particular goods are necessary. These rules are set out in Article 3 of the Agreement. The rules were amended by an Exchange of Letters of 6 October 1992. The provisions of Article 3 have

been clarified in a further Exchange of Letters also dated 6 October 1992 and in the 1988 Exchange of Letters and Joint Understanding on Harmonisation of Customs Policies and Procedures. These documents together constitute the CER rules of origin.

### **Basic Provisions**

22. 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 works costs of the goods should be made up from expenditure on any of:
  - materials originating in the Area;
  - labour and factory overheads incurred in the Area; and
  - inner containers originating in the Area.

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

23. More detailed guidance on the practical application of the CER rules of origin (including more detailed definitions of qualifying expenditure) is provided in two booklets produced jointly by Australian and New Zealand Customs:

- Rules Governing Entitlement to Preferential Rates of Duty for Trans-Tasman Trade, and
- Trans-Tasman Textile, Clothing & Footwear Rules of Origin Enquiries: Protocol on Customs Procedures.

The booklets outline the legislative provisions that are set out in Division 1A of Part VIII of the Customs Act and Regulations 107A and 107B.

24. Naturally, all unmanufactured raw products of Australia or New Zealand are considered to originate in the Free Trade Area, as are products wholly manufactured in either country from any of: unmanufactured raw products, materials wholly manufactured in the Area, or imported materials that have been deemed or “determined” to be of 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. Most of the recommendations for refining these procedures set out in the 1993 Joint Report on the Review of ANZCERTA System for Determining Manufactured Raw Materials, by Australian Customs and New Zealand Customs, have been adopted.

25. A joint booklet has been developed by the Australian and New Zealand Customs Services which will be designed to inform exporters and importers involved in trans-Tasman trade of the requirements for obtaining Determined Manufactured Raw Material status for material inputs of third country origin. This booklet will set out jointly agreed procedures: in those exceptional cases where procedures differ, separate comment will be provided.

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## **MEASURES TO MINIMISE MARKET DISTORTIONS IN TRADE IN GOODS**

### **Industry Assistance**

26. Following the 1988 General Review of CER, Australia and New Zealand reaffirmed that bounties and subsidies providing long-term protection for Australian and New Zealand industries from Trans-Tasman competition could no longer be regarded as viable instruments of industry policy. The two countries also set themselves the task of making their respective industry policies more responsive to CER objectives.

27. Under the 1988 Agreed Minute on Industry Assistance, therefore, Australia and New Zealand agreed not to pay (from 1 July 1990) production bounties or like measures on goods which are exported to the other country and undertook to try to avoid the adoption of industry-specific measures (bounties, subsidies and other financial support) which have adverse effects on competition between industries in the Free Trade Area.

28. In the event that either country nevertheless considers it must adopt such a measure, notification and consultation commitments apply. These 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 assistance measures may have on competition between industries in the Free Trade Area.

### **Export Subsidies and Incentives**

29. From the outset of CER it was recognised that the payment of export subsidies and export incentives on goods traded in the Free Trade Area was inconsistent with the objectives of the Agreement. Accordingly, Article 9 of the treaty calls for the elimination of all export incentives and subsidies in Trans-Tasman trade. And under 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.

### **Countervailing Provisions**

30. Under Article 16 of the CER Agreement, countervailing measures - that is, measures to remove injury to an industry caused by importation of goods benefiting from government subsidies - cannot be taken except:

- in accordance with the GATT, the GATT Subsidies and Countervailing Duties Code (now superseded by the WTO Agreement) and the provisions of Article 16 of CER; and
- when no other mutually acceptable alternative solution has been found.

31. For a countervailing action to be taken it is necessary to prove that there is:

- subsidisation;
- material injury, threat of material injury, or material retardation of the establishment of an industry; and
- a causal link between the two.

In considering countervailing actions both countries are required to have regard to the objectives of the CER Agreement.

31. In the course of investigating a countervailing complaint the country taking the action is required to keep the other country fully informed about the progress of the complaint, and offer full access to all relevant non-confidential evidence and full opportunity for consultations. Each country, likewise, is required to cooperate to expedite procedures, to give access to relevant non-confidential information to the fullest extent possible, and to facilitate investigations.

32. Third country countervailing actions are also permitted under Article 16, to address cases where subsidised imports in one Member State from a third country are causing or threatening material injury in the other Member State.

### **Anti-Dumping Actions**

33. Australia and New Zealand agreed in 1988 in Article 4 of the ANZCERTA Protocol on Acceleration of Free Trade in Goods that as of 1 July 1990 anti-dumping actions could no longer be taken in respect of trans-Tasman trade in goods to which ANZCERTA applied, as such actions were inappropriate once free trade in goods had been achieved under the accelerated implementation agreed in the Protocol. In the Protocol, both countries also agreed to extend the application as of 1 July 1990 of their respective competition law prohibitions on the misuse of market power to trans-Tasman markets. (See paragraph 70 below).

### **Third Country Dumping**

34. Article 15 of the CER Agreement provides for third-country anti-dumping actions to be taken in cases where dumped imports in Australia or New Zealand from a third country are causing or threatening to cause material injury to industry in the other country.

35. As with domestic anti-dumping cases, before third country anti-dumping measures can be put in place it is necessary to prove dumping, material injury or threat of material injury, and causation. In addition, however, it is necessary that the process conform to the requirements of the GATT. Under Article 12(4) of the Anti-Dumping Code it is necessary for the importing country to seek approval from the GATT Contracting Parties if it wishes to impose third country anti-dumping measures.

36. The procedures for handling third country anti-dumping (and countervailing) cases under CER were clarified in an exchange of letters on the subject in August 1992.

### **Intermediate Goods**

37. Prejudicial intermediate goods situations are defined in Article 14 of the CER Agreement. They arise where, as a result of government policies (such as differing external tariffs or other government assistance):

- a. industry in one country is able to obtain intermediate goods (that is, materials or inputs for final goods) at a more favourable price or on more favourable terms and conditions than industry in the other country; and
- b. as a result of this advantage, a trend in trade emerges that frustrates or threatens to frustrate the achievement of equal opportunities for industry in both countries.

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Where such a prejudicial intermediate goods situation exists, a Member State can request consultations under Article 14 with a view to reaching a mutually acceptable solution. Article 14 sets out a series of steps involved in seeking a solution and, failing agreement, allows for action by the aggrieved Member State to reduce the advantage.

## **MEASURES AND PROVISIONS TO MINIMISE POTENTIAL NON-TARIFF BARRIERS AND ACCESS RESTRICTIONS**

### **Standards Harmonisation**

38. The Governments of New Zealand and Australia recognise that the use of uniform standards in government regulations is beneficial to the efficiency and competitiveness of Australian and New Zealand industry. They also recognise that the harmonisation of standards will reduce market fragmentation and costs of production.

39. Under Article 12 of the CER Agreement, the two Governments undertook to “examine the scope for taking action to harmonise requirements relating to such matters as standards, technical specifications and testing procedures, domestic labeling and restrictive trade practices”. A number of agreements and arrangements have been negotiated pursuant to this Article.

40. As part of the 1988 Review of CER, the two countries 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. They also undertook, among other things, to endeavour to ensure that:

- relevant authorities of both countries cooperate in the determination and revision of standards;
- exporters have reasonable access to information regarding such matters as standards, technical specifications, testing procedures, certification requirements and domestic labelling standards;
- test results and conformity certification from the other country are accepted; and,
- test requirements are transparent and non-discriminatory.

41. Following Australia’s acceptance of the 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 Code. Both Governments in an Exchange of Letters dated 6 October 1992 agreed that the MOU on TBT would continue to have effect insofar as it is not inconsistent with the Standards Code.

42. 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.

43. ASAQ also encourages Australian and New Zealand standards, accreditation, product certification and quality practices to be as far as possible aligned with those recognised

internationally so as to improve industry efficiency and the export potential of both countries. A monitoring committee with Australian and New Zealand representation provides a forum in which the parties can address areas of non-conformity.

44. A further development was the formation of a trans-Tasman Joint Accreditation System (JAS-ANZ). Concluded on 30 October 1991, the agreement establishing JAS-ANZ provides for a harmonised approach to auditing and certification of quality management systems in accordance with international standards. The responsibilities of the JAS-ANZ Council include facilitation of:

- the harmonisation of conformity assessment structures, including quality management systems certification, product certification, laboratory accreditation and personnel certification in Australia and New Zealand;
- the adoption of uniform criteria, procedures and practices for carrying out conformity assessments in Australia and New Zealand to internationally accepted standards; and
- international acceptance of conformity assessment structures in Australia and New Zealand.

#### **Harmonisation of Food Standards : the ANZFA Agreement**

45. The Agreement on Establishing a System for the Development of Joint Food Standards (the ANZFA Agreement), signed on 5 December 1995, is the first trans-Tasman agreement to create a single regulatory agency chartered with developing joint standards for both Australia and New Zealand. The agreement, which entered into force on 5 July 1996, sets out principles for the joint development of food standards through a process characterised by transparency, timeliness and accountability, including a commitment to consultation and public involvement. The joint regulatory agency, the Australia New Zealand Food Authority (ANZFA), maintains offices in both Australia and New Zealand.

46. Under the agreement, both countries are represented at all levels of the standards-setting process. New Zealand is a full member of the ministerial-level Australia New Zealand Food Standards Council, of the ANZFA Board, and of the Australia New Zealand Food Authority Advisory Committee.

47. Under the agreement a full review of the Australian Food Standards Code is being conducted with New Zealand, the outcomes of which are expected to permit transition to a complete joint Australia New Zealand Food Standards Code in 1999.

48. Until then, transition arrangements which entered into force on 5 July 1996 will operate for the duration of the review of the Australian Food Standards Code via a system of dual standards and mutual recognition. In New Zealand, two sets of requirements are in place - the Australian Food Standards Code and the New Zealand Food Regulations 1984 - and a food will have to comply with one or other of these. In Australia, a food imported from New Zealand which complies with New Zealand Food Regulations, and which complies with Australian requirements for agricultural and veterinary residues and the maximum permitted level of cadmium, can be sold in Australia. Dual standards also apply to a limited number of foods in Australia. At the end of the transition period, it is expected both countries will abolish any redundant food regulations in favour of the joint Australia New Zealand Food Standards Code.

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49. The benefits of the joint system are expected to come from lower compliance costs for industry, fewer regulatory barriers, and more consumer choice.

### **Revised Food Inspection : the Arrangement on Food Inspection Measures (AFIM)**

50. Australia and New Zealand also reached agreement in June 1996 on revised inspection arrangements for imported food originating from either country. Both countries will amend food inspection legislation so that the revised arrangements can start as soon as possible after 1 January 1997. In Australia's case these arrangements will be set in place through the Trans-Tasman Mutual Recognition Arrangement legislation. Under the revised arrangements, foods other than "risk classified" foods will be able to be exported without import and export certification and inspection requirements. Only risk classified foods will be inspected by AQIS, with all other foods being subject only to the same domestic surveillance arrangements which apply to locally-produced foods.

51. A food is risk classified if the scientific literature or experience identifies a particular risk for that food. Foods are risk classified, for example, if they have the potential to be contaminated by microorganisms which cause food poisoning. The purpose of import inspection for such foods is to ensure that they are safe to eat and comply with the same standards as apply to domestic food. Australia and New Zealand have agreed to develop a joint list of risk classified foods, and both countries will continue to inspect foods listed as "risk classified".

52. The revised food inspection arrangements will result in significant cost reductions to industry on both sides of the Tasman, and are expected to encourage the growing trans-Tasman food trade.

53. New Zealand has also agreed to join an Australian initiative to develop a coordinated domestic surveillance and compliance program for food. This means that domestic food surveillance in both countries will be comparable.

### **Trans-Tasman Mutual Recognition Arrangement (TTMRA)**

54. A less-than-treaty status Trans-Tasman Mutual Recognition Arrangement (TTMRA) was signed by the Australian Prime Minister, the State Premiers and Territory Chief Ministers on 14 June 1996, and subsequently by the New Zealand Prime Minister on 9 July 1996. The TTMRA was based on a pre-existing 1992 Australian domestic mutual recognition scheme, although a number of areas are specifically excluded or exempt from the TTMRA because of its trans-Tasman nature. The TTMRA does not extend to Australia's external territories.

55. Through implementing mutual recognition principles, the TTMRA aims to remove progressively regulatory barriers to the movement of goods and service providers between Australia and New Zealand, thereby facilitating trade between the two countries. It is intended to enhance the international competitiveness of Australian and New Zealand enterprises, increase the level of transparency in trading arrangements, encourage innovation and reduce compliance costs for business.

56. In principle, under the TTMRA a good which is legally able to be sold in one country will legally be able to be sold in the other, and a person who is registered to practise an occupation in

one country will be entitled to practise an equivalent occupation in the other country. Goods need only comply with the standards or regulations for the sale of goods applying in the jurisdiction in which they are produced or through which they are imported. Mutual recognition is intended to remove technical barriers to trade and impediments to the movement of skilled personnel between jurisdictions without the need for complete harmonisation of standards and professional qualifications.

57. The TTMRA is expected to enter into force during 1997 following the passage of Commonwealth, State, Territory and New Zealand enabling legislation.

### **Quarantine Harmonisation**

58. 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. Under this Article each country may 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.

59. Under the Protocol on the Harmonisation of Quarantine Administrative Procedures which was signed in 1988, New Zealand and Australia reaffirmed their commitment to the principle that quarantine requirements should not be deliberately used as a means of creating a technical barrier to trade where this is not scientifically justified. In the Protocol, the two countries, among other things, agreed:

- to use relevant international codes and standards where appropriate;
- to work towards arrangements to advance, among other things:
  - (a) the harmonisation of quarantine standards and procedures; and
  - (b) the adoption of common inspection standards and procedures;
- where appropriate, to apply any quarantine or related import restrictions on the basis of individual regions, rather than nationwide;
- to develop a consistent approach to pest risk assessment and quarantine requirements for imports from third countries; and,
- to establish a Consultative Group to help resolve outstanding technical differences and provide overall impetus and direction for harmonisation.

A Quarantine Consultative Group has since been established, and the quarantine relationship between the two countries has developed significantly through regular contact between officials.

### **Customs Harmonisation**

60. The CER Agreement recognises, in Article 21, that the objectives of the Agreement may be promoted by harmonisation of customs policies and procedures.

61. The Joint Understanding on Harmonisation of Customs Policies and Procedures, agreed during the 1988 Review of CER, recognises that some elements of customs policies and procedures, such as rules of origin, are central to the operation of the CER Agreement. It recognises the benefits to be derived from the adoption of common approaches towards third

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countries, with due regard to the outward looking nature of CER and its trade promotion objectives. Both Customs agencies undertook to pursue harmonisation opportunities and maintain common approaches to the greatest extent possible, and endorsed as a primary objective the closest possible working relationship.

### **Revenue Duties**

62. Revenue duties such as GST, sales tax and excise tax are levied on goods, ingredients or components contained in those goods. Such charges may be levied by one Member State on goods imported from the other provided the amount levied is not in excess of that which would be applied to like domestic goods, ingredients or components.

### **Government Procurement**

63. Article 11 of the CER Agreement recognises that in government purchasing the maintenance of preferences for domestic suppliers over suppliers from the other Member State is inconsistent with the objectives of the Agreement.

64. Accordingly, in relation to purchasing undertaken by departments, authorities and other bodies subject to its purchasing policy, the Australian Commonwealth Government undertook to:

- continue to treat any New Zealand content in offers received from Australian or New Zealand tenderers as equivalent to Australian content;
- accord to New Zealand tenderers the benefits of any relevant tariff preference; and,
- not require offsets in relation to the New Zealand content of such purchases.

The Government of New Zealand, in relation to purchasing undertaken by departments, authorities and other bodies controlled by the Government, undertook to:

- accord to Australian tenderers the benefits of any relevant tariff preferences
- not require offsets in relation to the Australian content of such purchases.

65. The outstanding issue of the purchasing preferences maintained by Australian State Governments for Australian suppliers was addressed in the 1988 General Review of CER. As a result the Commonwealth Government supported New Zealand's case to join the (Australian) National Preference Agreement (NPA) under which the States had earlier agreed not to apply their preferences against each other. New Zealand became a signatory to the NPA in June 1989, thus securing non-application of the State preferences as against New Zealand content. In return, New Zealand made a commitment to continue its existing policy of not applying a preference margin to any purchases.

66. The NPA was retitled the Government Procurement Agreement (GPA) in 1991, reflecting a wider focus on equality of opportunity for Australian and New Zealand suppliers. As well as ending inter-state or trans-Tasman preference margins on Australian and New Zealand content in government purchasing, the GPA Parties undertook to accord each other's products and suppliers equal treatment and to promote opportunities for them to compete for government business on a value for money basis.

## **MEASURES TO CREATE A HARMONISED BUSINESS ENVIRONMENT**

### **Business Law Harmonisation**

67. The 1988 CER Memorandum of Understanding on Business Law Harmonisation requires Australia and New Zealand jointly to “examine the scope for harmonisation of business laws and regulatory practices including the removal of any impediments that are identified”. A significant degree of harmonisation and cooperation exists in a number of areas of business law. The process of business law harmonisation is not aimed at producing identical Australian and New Zealand business laws, but rather at identifying differences that increase the transaction and compliance costs faced by companies operating in both markets, and areas where harmonisation would significantly reduce those transaction costs.

68. A Steering Committee of Officials was established to coordinate the examination of the scope for harmonisation of trans-Tasman business law and regulatory practices, including the removal of impediments to trans-Tasman trade, and to monitor progress.

### **Harmonisation to Date**

69. The principal focus of the Steering Committee during 1988-1990 was the implementation of a 1988 Protocol to ANZCERTA on the Acceleration of Free Trade in Goods. Under the Protocol, both countries were to eliminate tariffs, quantitative import restrictions and tariff quotas on goods originating in the other country. It was considered that anti-dumping provisions were an anomaly in a free trade area and that anti-competitive business practices by firms operating across the Tasman should be subject to the appropriate competition laws of each country.

70. Pursuant to Article 4 of the 1988 ANZCERTA Protocol on Acceleration of Free Trade in Goods, on 1 July 1990 Australia and New Zealand eliminated the availability of anti-dumping actions on goods originating in each other's markets. In parallel, Australia and New Zealand simultaneously extended the application of their competition law prohibitions on the misuse of market power. The new provisions (s.46A of the Australian Trade Practices Act 1974 and s.36A of the New Zealand Commerce Act 1986) prohibit the use of substantial market power (Australian law) and dominant position (New Zealand law) in a “trans-Tasman market” for certain anti-competitive purposes. For the purposes of this legislation, a “trans-Tasman market” means a market in Australia, New Zealand or Australian and New Zealand for goods or services.

71. The 1990 Steering Committee report to Governments provided a list of recommended follow-up actions to progress harmonisation and a list of matters in respect of which future monitoring and review activity were recommended.

72. In July 1992 the Steering Committee reported to Governments on a number of substantial harmonising outcomes that had occurred since the signing of the MOU. These included initiatives relating to:

- company accounting standards;
- takeovers;
- consumer protection;

- 
- enforcing each country's judgments and orders in the other country;
  - the settlement of investment disputes;
  - patents;
  - circuit layouts; and,
  - mutual assistance in business regulation.

73. The Foreign Judgments Act 1991 in Australia and the Reciprocal Enforcement of Judgments Act 1992 in New Zealand provide for more extensive arrangements for enforcing each country's judgments and orders in the other country.

74. Consultation has taken place between Australia and New Zealand about ensuring the compatibility of Australian and New Zealand evidence law, especially in relation to business records and secondary evidence, in the context of enactment of new evidence legislation by Australia and examination of possible evidence reforms by the New Zealand Law Commission.

75. At the May 1995 meeting of the Steering Committee of Officials, focus groups were established to develop harmonisation outcomes in five areas including intellectual property, competition policy, civil procedure, companies and securities. At the December 1996 meeting of the Steering Committee of Officials, it was decided that the Committee would focus on key areas of business law rather than defined "focus group" areas. The business law harmonisation process is being coordinated by the Business Law Division of the Australian Treasury and the New Zealand Ministry of Commerce.

### **Trans - Tasman Taxation**

76. With the exception of Article 7 relating to revenue duties, taxation is not the subject of specific provisions in the ANZCERTA Agreement. However, Australia and New Zealand have negotiated three successive Double Taxation Agreements (DTA's) allocating taxing rights over trans-Tasman income.

77. The earliest of these DTA's was entered into in 1960. This was replaced by a revised treaty signed on 1972, with the most recent revision being the DTA that was signed on 27 January 1995. It generally entered into effect concerning the New Zealand taxes that it covers from 1 April 1995. In Australia it generally entered into effect concerning income taxes from 1 July 1995 and concerning withholding taxes and fringe benefits tax from 1 April 1995.

78. The most recent DTA takes into account a number of shortcomings identified with the 1972 DTA. These shortcomings resulted from amendments to the taxation laws of both countries and changes in commercial dealings over time. It also reflects the extensive taxation reforms undertaken by both countries from the late 1980's onwards.



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## TRADE IN SERVICES

### CER PROTOCOL ON TRADE IN SERVICES

#### The Protocol

79. The 1988 CER Trade in Services Protocol provides for free trans-Tasman trade in all services, with the exception of a number of services which were subject to existing government regulations when the Protocol was signed and which are inscribed in the Annex to the Protocol. The basic provisions of the Protocol are national treatment, market access, rights of commercial presence and most favoured nation treatment. The Protocol operates subject to both countries' foreign investment policies.

80. As the Annex to the Protocol is closed, all new services are automatically subject to the provisions of the Protocol. Both countries have already reduced or removed some of their inscriptions in the Annex. The Protocol was reviewed in 1994 and advice on modification to each country's respective list of inscriptions was provided by an exchange of letters in September 1995.

81. Australia currently has inscribed telecommunications, airport services, domestic air services, international aviation (passenger and freight services), coastal shipping, broadcasting and television (limits on foreign ownership), broadcasting and television (short-wave and satellite broadcasting), basic health insurance services, third party insurance, workers' compensation insurance and postal services.

82. New Zealand currently has inscribed airways services, international carriers flying cabotage, telecommunications, postal services, and coastal shipping.

83. In many cases, inscriptions only exclude certain aspects of a service industry from the operation of Protocol.



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# MANAGING THE TRADE RELATIONSHIP

## REVIEW, CONSULTATION AND DISPUTE SETTLEMENT

### **Article 22 and Other Review and Consultation Provisions**

84. Article 22 of the 1983 CER Agreement sets out the review and consultation mechanism to ensure the Agreement's satisfactory implementation. The Article commits Ministers of both countries to meet annually or otherwise as appropriate to review the operation of the Agreement.

85. General reviews of the CER Agreement were held in 1988, 1992, and 1995. As noted earlier, at the 1992 review, Australian and New Zealand Trade Ministers agreed to meet at least annually to review the operation of the Agreement. They also agreed to institute annual senior officials talks, which would, among other matters, advise on the agenda and timing of the next general review of CER.

86. In the event that either country 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. A grievance may arise if:

- an obligation has not been fulfilled;
- a benefit under the Agreement has been denied;
- an objective of the Agreement has been or may be frustrated; or,
- other difficulties occur or may occur.

87. Prior written notice requesting these consultations is to be given.

88. There are no specific dispute settlement procedures under the CER Agreement. Because consultations are non-binding, successful settlement relies on the goodwill of both parties to work out amicable and practicable solutions.

89. The 1988 Protocol on Trade in Services (Articles 19 and 20) also contains provisions for review and consultation - which essentially mirror those in Article 22 in the 1983 CER Agreement.



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## OTHER CER - RELEVANT ISSUES

90. Trans-Tasman cooperation in the spirit of CER is evident in a broad range of additional bilateral arrangements. At the multilateral level, both countries in general have similar obligations pursuant to the same multilateral agreements, and pursue a number of objectives supportive of CER in that context. The items noted in this section are indicative of the contribution made by these supplementary strands of the CER relationship, including in those cases where the CER Agreement and related understandings do not specifically refer to, or explicitly do not cover, the issue concerned. It should be noted that like CER itself, these supplementary arrangements do not necessarily cover country's extended territories.

### **Defence Industry Cooperation**

91. Defence cooperation with New Zealand in general proceeds pursuant to the bilateral commitment to ANZUS and the Closer Defence Relations (CDR) arrangement, the latter running parallel with CER. The trans-Tasman economic relationship is significantly strengthened and enhanced by the resultant defence industry cooperation, which is close and wide-ranging. The ANZAC Ship Project is the largest single example of such bilateral industry cooperation, delivering significant industrial benefits on both sides of the Tasman. As of 1 July 1996, sub-contracts had been written amounting to almost A\$2.4 billion of orders on Australian and New Zealand industry (including A\$2 billion for Australia and A\$360 million for New Zealand). The prime contractor alone has raised over 110 sub-contracts and 7,500 procurement orders with Australian and New Zealand companies. Over 700 Australian and 400 New Zealand companies are participating in the industry program either as suppliers to the prime contractor or as suppliers to local or overseas companies sub-contractors. The project is expected to employ over 7,000 Australians and 2,000 New Zealanders at its peak in 1997.

92. Under CER, Australia and New Zealand already share a common market for government tendering, and both countries also work to make the defence sector of that market as accessible as possible to trans-Tasman industry. Both countries maintain a common defence industry database and defence industry committees have been established to enhance trans-Tasman cooperation.

### **Shipping**

93. Both the Australian and New Zealand Governments are committed to open competition in the trans-Tasman shipping trade. The Australian Government is pursuing initiatives which will help remove cabotage from trans-Tasman shipping and allow foreign flag ships to enter Australia's coastal waters. This policy of the Australian Government facilitated a landmark agreement between BHP, the unions and ANL in September 1996 which will allow BHP to operate some foreign-crewed vessels to carry cargoes across the Tasman as part of their schedules to and from the United States. Australia retains coastal shipping on its list of inscriptions with the stipulation that ships trading in coastal waters must comply with the requirements applied to coastal ships by the Shipping and Seaman Act 1952.

### **Aviation Services**

94. Aviation relations between Australia and New Zealand are governed by a bilateral agreement and related understandings. Consequently, the CER Services Protocol does not provide for national treatment of aviation services. However, on 19 September 1996, both countries signed an arrangement establishing a Single Aviation Market (SAM). The arrangements allow each country's airlines to operate domestic services in the other country and to fly without restrictions across the Tasman (subject to safety and other operational regulatory requirements). It entered into force on 1 November 1996, bringing domestic and trans-Tasman aviation services within the liberalising spirit of the original CER agreement. The question of an exchange of further beyond rights between Australia and New Zealand is being handled separately.

### **Investment**

95. The CER Agreement contains no specific provisions on investment. Investors of each country are subject to the general foreign investment policies and requirements of the other country. CER is a national interest criterion in Australia's assessment of New Zealand investment proposals and vice versa. Australia's foreign investment policy is non-discriminatory, and Australia's bilateral investment agreements provide that investment by all treaty partners shall be accorded MFN treatment. Consequently, the benefits of any special investment agreement with New Zealand under CER arrangements would necessarily extend to all those countries with which Australia has entered into a bilateral investment arrangement. Nevertheless, in the spirit of CER Australia and New Zealand have agreed to avoid to the fullest possible extent the imposition of new restrictions on investors and have confirmed that trans-Tasman investment should be subject to minimum constraint.

96. The national foreign investment review agencies (for Australia, the Foreign Investment Review Board, and for New Zealand, the Overseas Investment Commission) are well aware of the bilateral importance of trans-Tasman investment and of governments' commitment to ensuring that investment review procedures remain at least as liberal as existing practice. Both sides have committed themselves to asking their respective review bodies to identify streamlined procedures to reduce compliance costs.

### **Intellectual Property Rights**

97. Intellectual property rights are not covered formally within the CER family of agreements: indeed, domestic legislation relating to intellectual property is explicitly excluded from the operation of the Trans-Tasman Mutual Recognition Arrangement (TTMRA). Instead, Australia and New Zealand are members of the World Trade Organisation and rely for protection of their intellectual property rights on the World Intellectual Property Organization's (WIPO) multilateral Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). These multilateral Agreements encourage business and investor confidence, innovation, technology transfer and export activity, particularly for elaborately transformed manufactures with a high intellectual property content.

### **Environmental Protection**

98. While CER does not contain any specific provisions on environmental protection, Australia and New Zealand cooperate closely in this field bilaterally and at the multilateral level.

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Preservation of a favourable regional environment (on land, in the atmosphere, in the oceans, and with regard to plant and animal life) is recognised as important to the economic and trading future of both countries, including with regard to fisheries, as well as to their social well-being. Both countries have ratified or acceded to a wide range of international environmental agreements, including:

- the Convention for the Conservation of Southern Bluefin Tuna;
- the United Nations Framework Convention on Climate Change;
- the Convention on Biological Diversity;
- the Montreal Protocol on Substances that Deplete the Ozone Layer;
- the Vienna Convention for the Protection of the Ozone Layer;
- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal;
- the Antarctic Treaty;
- the Convention on the Conservation of Antarctic Marine Living Resources;
- the Madrid Protocol on Environmental Protection to the Antarctic Treaty;
- the International Convention on Civil Liability for Oil Pollution Damage;
- the International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties;
- the International Whaling Convention;
- the International Tropical Timber Agreement;
- the Convention on Wetlands of International Importance;
- the Convention for the Protection of the World Cultural and Natural Heritage; and,
- the Convention on International Trade in Endangered Species of Wild Fauna and Flora.



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## FACILITATING HUMAN CONTACTS

99. A number of important bilateral initiatives have been taken to facilitate and encourage a high level of human contact. These contacts have traditionally characterised the trans-Tasman relationship, and facilitating them provides significant social underpinning to both countries' ability to achieve the full benefits of CER.

### **Trans-Tasman Travel Arrangement (TTTA)**

100. A series of Ministerial-level agreements and understandings, dating from 1973 onwards, established a Trans-Tasman Travel Arrangement (TTTA), facilitating the entry of Australian and New Zealand citizens into each other's country to visit, to take up residence, and to work without the need to obtain visas or permits. The CER Agreement was later to endorse specifically in its preamble the objective of freedom of travel within the free-trade area, for both labour market and social reasons.

### **Reciprocal Agreement on Social Security**

101. In light of the traditionally high levels of trans-Tasman human contacts, both governments have found it desirable to coordinate the operation of social security systems in Australia and New Zealand by means of a treaty-level agreement. The current 7 September 1995 agreement, like its predecessors, seeks to enhance equitable access to social security benefits for citizens residing in the territory of the other country.

### **Reciprocal Agreement on Medical Treatment**

102. This 1 July 1986 Agreement prescribes that national treatment will be afforded in respect of immediate medical attention required by Australian and New Zealand residents temporarily in the territory of the other country (ie. short-term visitors or travellers).



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## **CLOSER ECONOMIC AND TRADING LINKS WITH OTHER COUNTRIES**

103. As noted in its preamble, the CER Agreement was conceived as an outward-looking and open rather than an inward-looking and closed trading agreement. It envisaged that a closer trans-Tasman economic relationship would increase the capacity of both partners to contribute to the development of closer economic and trading links with other countries, particularly those of the South Pacific and South-East Asia. In this spirit, in addition to nurturing trade outside the free trade area, the CER partners have actively encouraged the establishment of informal linkages with parallel bodies for economic cooperation from other regions.

### **CER - AFTA Linkages**

104. Australian and New Zealand Trade Ministers met with ASEAN Economic Ministers in Jakarta on 13 September 1996. This second Ministerial-level meeting was aimed at strengthening ties between the ASEAN Free Trade Area (AFTA) and the CER partners. The broad objective is to promote economic and trade cooperation between Australia, New Zealand and South-East Asia through practical trade- and business-facilitation activities. Ministers have also invited the respective business communities to play an active role in the development of linkages. The first ASEAN-CER Business Forum was held in the margins of the Ministerial meeting, with a second forum planned for March 1997.

105. In their first year of collaboration, CER and ASEAN completed four cooperative activities: the creation of a customs compendium; the development of a trade and investment database; publication of Australian and New Zealand articles in the ASEAN Standards and Quality Bulletin; and exchange of information on ISO 14000 (environmental management systems). The CER-AFTA work program for 1996-97 will concentrate on practical trade facilitation activities in the areas of standards and conformance, and customs.

### **CER / MERCOSUR**

106. Australia and New Zealand have also commenced a dialogue with the members of the South American Southern Cone Customs Union, MERCOSUR<sup>1</sup>. MERCOSUR - which includes Argentina, Brazil, Uruguay and Paraguay - has emerged as the most significant trade grouping in South America.

107. At a first meeting in Auckland in April 1996, senior officials agreed to a forward work program consisting of a number of joint activities to facilitate trade and investment (including the compilation of a customs compendium, and the exchange of information on the recognition of standards). Senior officials will meet again in the second half of 1997.



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## TRANS - TASMAN TRADE AND INVESTMENT

108. In the 10 years to 30 June 1996 the growth in traded goods across the Tasman averaged 11.65% per annum, greater than Australia and New Zealand have experienced with their non-CER trading partners. By way of comparison, Australia's trade with the rest of the world grew at 8.35% per annum over the same 10-year period. New Zealand is now Australia's third largest trading partner and its third largest export market. Australia is New Zealand's largest trading partner. Over the twelve months ending 30 June 1996 trans-Tasman trade in goods increased by 9.74%, and reached a total value of A\$9.157 billion.

109. Bilateral trade is diverse, but dominated by manufactures, which account for over three-quarters of Australia's exports to New Zealand and about 60 percent of New Zealand's exports to Australia. Over the 10 years to 30 June 1996, Australian exports to New Zealand of manufactured goods increased by an average of 13.5% per annum. In the financial year 1995-96 Australia's exports of manufactured goods were valued at \$4.260 billion, and of these elaborately transformed manufactures made up 92.9%, or A\$3.958 billion by value. In 1995-96 the value of trade in services across the Tasman was A\$2.296 billion. The stock of Australian foreign direct investment in New Zealand to the year ending 30 June 1995 was \$8.374 billion. Conversely, New Zealand's foreign direct investment in Australia was valued at A\$4.945 billion.



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## WHERE TO GO FOR ADVICE

### **The Department of Foreign Affairs and Trade**

109. The Department of Foreign Affairs and Trade conducts the Government's business with foreign governments, and with international and regional organisations. It provides a range of services to the Government, and to other clients including the business sector, the Commonwealth Parliament and individual members of the Australian public. The Department is headquartered in Canberra, and operates state offices in most Australian capital cities. The Department's global network of 127 overseas missions (Embassies, High Commissions, Consulates and Honorary Consulates) represents Australia in 84 countries.

110. The Department's role and activities include coordination and promotion of Australia's uniquely close bilateral relationship with New Zealand across a broad range of areas. This relationship encompasses the economic partnership, governed by the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) and related understandings. It also engages the defence and security relationship, trans-Tasman travel and migration, transport and communication, official exchanges and visits, and the many intergovernmental agreements of various kinds which underpin the diverse elements of our common interests.

### **The Department's Structure**

111. The Department is responsible to both the Minister for Foreign Affairs and the Minister for Trade. Its executive management is headed the Secretary of the Department, who is supported by a team of four deputy secretaries. The Department's operational units consist of a series of geographical and functional divisions, each comprising a number of branches and sections. The New Zealand Section - situated within the New Zealand and Papua New Guinea Branch of the South Pacific, Africa and Middle East Division - is responsible for maintaining an overview of the central elements of the bilateral relationship with New Zealand.

### **Contacting the Department**

112. The Department's New Zealand Section can be contacted direct on:

Telephone: (06) 261 3769

Facsimile: (06) 261 2248

or by mail via the following address:

The Director  
New Zealand Section  
New Zealand and Papua New Guinea Branch  
Department of Foreign Affairs and Trade  
CANBERRA ACT 0221

### **Australian Representation Overseas**

113. The Department of Foreign Affairs and Trade staff at Australia's overseas posts are the on-the-spot representatives of the Australian Government in the country and to any other country to which they are accredited. They work to promote Australia's political and economic interests with the overseas government. They also maintain links with Australian companies active in their countries of accreditation and provide up-to-date information on the local economic and political situation. Together with the Austrade representative based in Auckland, the Australian High Commission in Wellington provides an integrated service for business people, drawing together trade relations/access and trade promotion work.

### **Addresses for Australian Posts in New Zealand**

Wellington

Australian High Commission, 72-78 Hobson Street, Thorndon, WELLINGTON,  
NEW ZEALAND

(Postal address: PO Box 4036, WELLINGTON, NEW ZEALAND)

Telephone: 64 - 4 - 473 6411

Facsimile: 64 - 4 - 498 7118

Auckland (also Austrade Representative)

Australian Consulate-General, 8th Floor, Union House, 32-38 Quay Street,  
AUCKLAND, NEW ZEALAND

(Postal address: Private Bag 92023, AUCKLAND, NEW ZEALAND)

Telephone: 64 - 9 - 3032429, 3795725

Facsimile: 64 - 9 - 3770798, 3032431

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1MERCOSUR is the Spanish acronym. It is referred to as MERCOSUL in Portuguese.