

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

FREE TRADE AGREEMENT BETWEEN AUSTRALIA AND NEW ZEALAND

Biennial Report on the Operation of the Agreement

Communication from the Parties to the Agreement

The report below presents the information received from the Permanent Delegations of Australia and New Zealand, dated 9 October 2000. It is organized in accordance to the Standard Format for Information on Regional Trade Agreements (WT/REG/W/6).

I. BACKGROUND INFORMATION ON THE AGREEMENT

1. Membership and dates of signature, ratification and entry into force

The Parties to the Agreement are New Zealand and Australia. The Free Trade Agreement between Australia and New Zealand is defined in Article 2 of the Agreement to include the territory of Australia excluding its offshore territories, and territory of New Zealand, excluding the Cook Islands, Niue and Tokelau. The Agreement is commonly known as the CER Agreement.

The Free Trade Agreement was signed on 14 December 1982 and entered into force on 1 January 1983.

2. Type of Agreement

The Agreement creates a free-trade area in conformity with the definition set out in Article XXIV: 8(b) of GATT 1994.

3. Scope

The free-trade area established by the Agreement provides the framework for trade relations between Australia and New Zealand.

The CER Agreement covers trade in all goods (Chapters 1-97 of the Harmonized System, HS). The products covered by the CER Agreement must originate in Australia or New Zealand according to the rules of origin laid out in Article 3 of the Agreement, and clarified in Exchange of Letters 1988, 1992, and the Joint Understanding on Harmonisation of Customs Procedures.

The Agreement was expanded in 1988 with the signing of the Protocol on Trade in Services.¹

The Agreement also contains provisions, *inter alia*, on competition, government purchasing, and dumping.

4. Trade Data

Total trade coverage of the Agreement is as follows:

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

Year	Total Trade	Trade Covered	% of Trade Covered
1997	5,515,990	5,515,990	100%
1998	5,130,181	5,130,181	100%
1999	6,543,698	6,543,698	100%

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

Year	Total Trade	Trade Covered	% of Trade Covered
1997	4,108,854	4,108,854	100%
1998	4,393,806	4,393,806	100%
1999	4,765,720	4,765,720	100%

More detailed trade data can be found in Annex 1.

II. TRADE PROVISIONS

1. Import Restrictions

1.1 Duties and Charges

All tariffs and other duties and charges have been removed under the CER Agreement (with the exception of goods subject to excise). This provision is contained in Articles 4 and 5 of the 1983 CER Agreement and Articles 1 and 2 of the 1988 CER Protocol on the Acceleration of Free Trade in Goods under which all transitional arrangements and temporary exceptions to the basic free trade rule were eliminated as of 1 July 1990.

1.2 Quantitative Restrictions

All quantitative import restrictions are prohibited under the CER Agreement. This provision is contained in Article 5 of the 1983 CER Agreement and Article 2 of the 1988 CER Protocol on the Acceleration of Free Trade in Goods under which all transitional arrangements and temporary exceptions to the basic free trade rule were eliminated as of 1 July 1990.

1.3 Common External Tariff

Not applicable to the CER Agreement.

¹ Notified to the WTO on 21 October 1997 (WT/REG40/2). Documents relevant to this Protocol are distributed in the WT/REG40/- series.

2. Export Restrictions

2.1 Duties and Charges

No export duties or charges are imposed on trade between Parties to the CER Agreement.

2.2 Quantitative Restrictions

All quantitative export restrictions are prohibited under the CER Agreement. This provision is contained in Article 8 of the 1983 CER Agreement in conjunction with the 1988 CER Protocol on the Acceleration of Free Trade in Goods under which all transitional arrangements and temporary exceptions to the basic free trade rule were eliminated as of 1 July 1990.

3. Rules of Origin

The rules of origin are defined in a series of provisions/documents comprising Article 3 of ANZCERTA and subsequent clarification of, or amendment to, Article 3 in the 1988 Exchange of Letters and Joint Understanding on Harmonisation of Customs Policies and Procedures, and Exchanges of Letters dated 6 October 1992.

The minimum requirements for goods to be considered to originate in the free-trade area are:

- the last process of manufacture should have occurred in Australia or New Zealand; and
- at least one half of the factory or work costs of the goods should be made up from expenditure on any of:
 - materials originating in the free-trade area;
 - labour and factory overheads incurred in the free-trade area; and
 - inner containers originating in the free-trade area.

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

All unmanufactured raw products of Australia and New Zealand are considered to originate in the free-trade area, as are products wholly manufactured in either country from any of: unmanufactured raw products, materials wholly manufactured in the free-trade area, or imported materials that have been deemed or "determined" to be of free-trade area origin. Procedures for "determining" a raw material to be of local origin are set out in the 1988 Joint Understanding on Harmonisation of Customs Policies and Procedures.

4. Standards

Under Article 12 of CER, Australia and New Zealand undertook to "examine the scope for taking action to harmonise requirements relating to such matters as standards, technical specifications and testing procedures, domestic labelling and restrictive trade practices". A number of agreements and arrangements have been negotiated pursuant to this Article. They are outlined below.

4.1 Technical barriers to trade

As part of the 1988 Review of CER, Australia and New Zealand concluded a Memorandum of Understanding on Technical Barriers to Trade (MOU on TBT). In the MOU, both Governments reaffirmed their commitment to work towards the harmonization of standards, technical specifications and testing procedures. Following Australia's acceptance of the plurilateral GATT Agreement on Technical Barriers to Trade (the Standards Code),² undertakings which New Zealand and Australia entered into in the MOU on TBT are governed by the provisions of the Agreement.

The MOU on TBT has been reinforced by the development of the Agreement on Standards, Accreditation and Quality (ASAQ), which was entered into by the Australian Commonwealth and State Governments and the New Zealand Government on 26 October 1990. The ASAQ ties the participating Parties firmly to the principles of standards harmonization and mutual acceptance of certification and accreditation, goals specifically encouraged by the WTO and TBT Agreement.

The Joint Accreditation System (JAS-ANZ) was concluded on 30 October 1991. The agreement was established to accredit quality systems conformity assessment bodies in order to remove the need for multiple audits in the New Zealand/Australian market. It was also designed to assist exports of goods and services to third countries by gaining international recognition of certificates of conformity issued by the conformity assessment bodies. A revised JAS-ANZ Treaty concluded in 1998 provides for a modified governance structure and enhanced accountability and reporting procedures. This system meets the terms encouraged in Article 6.3 of the WTO TBT Agreement to conclude mutual recognition agreements on conformity assessment.

The Agreement Between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards was established in 1995 to harmonise trans-Tasman food standards. The objective is to develop a Joint Food Standards Code by end 2000. The Agreement sets out principles for the development of food standards characterised by transparency, timeliness and accountability, including a commitment to consultation and public involvement. Both countries are represented at all levels of the standards setting process, including on the Board of the Australia New Zealand Food Authority and on the Ministerial Australia New Zealand Food Standards Council.

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

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) came into effect on 1 May 1998. Under TTMRA, a good which is legally able to be sold in one CER country can be legally sold in the other and a person who is registered to practise an occupation in one CER country is entitled to practise an equivalent occupation in the other country. Goods need only comply with the standards or regulation for the sale of goods applying in the jurisdiction in which they are produced or through which they are imported. Certain areas are excluded from trans-Tasman mutual recognition as they are not standards-related barriers to trade. These include the international obligations of each country's intellectual property laws, customs controls and taxation. There are also five product areas which are not currently covered by TTMRA and are currently the subject of work programmes aimed

² Now superseded by the WTO Agreement on Technical Barriers to Trade.

at arriving at one of three possible outcomes; mutual recognition, harmonization, or permanent exemption from the coverage of the TTMRA.

4.2 Sanitary and phytosanitary measures

Article 18 of the CER Agreement specifically allows New Zealand and Australia to adopt measures necessary to protect human, animal or plant life or health, including the protection of indigenous or endangered animal or plant life. Article 18 allows each country to impose quarantine requirements on imports. But such requirements must not be used as a means of arbitrary or unjustified discrimination or a disguised restriction on trade. Under the 1988 Protocol on the Harmonisation of Quarantine Administrative Procedures, Australia and New Zealand reaffirmed their commitment to the principle that quarantine requirements should not be deliberately used as a means of creating a technical barrier to trade where this is not scientifically justified.

5. Safeguards

Article 17 contained provisions for temporary safeguards measures for goods covered by CER during a transition period, which ended in 1990. Thus, no safeguard measures are applicable for goods covered by CER. Both Australia and New Zealand have notified the Safeguard Committee of this.

However, paragraph 11 of Article 17 continues to allow a Member State to initiate consultations in the event of severe material injury or demonstrable threat thereof arising from the operation of CER in respect of goods. Such consultation would be held pursuant to paragraph 2 of Article 22, the General Consultation and Review Article.

6. Anti-dumping and Countervailing Measures

Article 4 of the ANZCERTA Protocol on Acceleration of Free Trade in Goods eliminated, from 1 July 1990, the availability of anti-dumping actions on goods covered by CER. In parallel, Parties to the Agreement extended the application of their competition law prohibitions on the misuse of market power to trans-Tasman markets.

There is continuing provision under Article 15.8 of the ANZCERTA for a Member State to request the other to take action, consistent with its international obligations, against dumped imports from a third country. The procedures for handling third country anti-dumping (and countervailing) cases under CER were clarified in an Exchange of Letters in August 1992.

Article 16 of the Agreement provides that Parties to the Agreement shall only levy countervailing duties in accordance with the relevant provisions of the GATT.

7. Subsidies and State-aid

Article 11 of the ANZCERTA established that the Member States agreed to work towards the elimination of all export subsidies and export incentives on goods traded in the area. Performance-based export incentives specified in Annex D to the Agreement were phased out by 1987 in respect of goods traded in the area. In the 1988 Agreed Minute on Industry Assistance it was agreed that from 1 July 1990 neither country would pay export incentives or like measures aimed at stimulating exports to the other at the expense of industry in that country. Australia and New Zealand also agreed that from the same date they would not pay production bounties or like measures on goods which are exported to the other country. They further undertook to try to avoid adoption of industry specific measures (bounties, subsidies and other financial support) which have adverse effects on competition

between industries in the free-trade area. If either Party considers that such a measure must be adopted, notification and consultation commitments apply. These notification and consultation commitments were clarified as part of the 1992 Review of CER, during which it was also agreed that each Government would give due consideration to representations from the other on the effect industry-specific non-financial measures may have on competition between industries in the free-trade area.

8. Sector-specific Provisions

The sector-specific provisions contained in the Agreement are no longer operative.

9. Other

Customs Cooperation

Article 21 of the Agreement and the Joint Understanding on Harmonisation of Customs Policies and Procedures (1988) establishes a framework for cooperation in customs administration. The main objective is that Customs Agencies will develop the closest possible working relationship by maintaining common approaches to the greatest extent possible and pursue harmonisation opportunities where possible.

Government Procurement

The Australia (Commonwealth and State Governments) and New Zealand Government Procurement Agreement (revised in 1997) provides the framework for a single ANZ government procurement market. The Agreement seeks to ensure the absence of inter-state and trans-Tasman application of preference schemes and other forms of discrimination in government procurement, based on the place of origin of goods and services. Each party is to provide, to services, goods and suppliers of the other party, equal opportunity and treatment no less favourable than that accorded to domestic services, goods and suppliers. The Parties also agree to promote opportunities for ANZ suppliers to compete for government business on the basis of value for money and avoid purchasing practices which are biased in favour of foreign goods and suppliers.

Exemptions include defense procurement of a strategic nature and urgent procurement in the event of emergencies.

Coordination of Business Law

The 2000 Memorandum of Understanding on Business Law Coordination between New Zealand and Australia reflects the two countries' common understanding of coordination in business law and provides a framework for future cooperation on business law integration. A work programme has been agreed.

Objectives include driving business costs down through removing differences in laws and administrative systems, improving the effectiveness of the law, and reducing the cost of capital to business.

III. GENERAL PROVISIONS OF THE AGREEMENT

1. Exceptions and Reservations

CER, through Article 18, allows standard exceptions from its provisions, for specified purposes, *provided* they are not used "as a means of arbitrary or unjustified discrimination or as a disguised restriction on trade". The specified purposes are:

- protection of essential security interests;
- protection of public morals and prevention of disorder or crime;
- protection of human, animal or plant life or health, including the protection of indigenous or endangered animal or plant life;
- protection of intellectual or industrial property rights or to prevent unfair, deceptive, or misleading practices;
- protection of national treasures or artistic, historical, anthropological, archaeological, palaeontological or geological value;
- to prevent or relieve critical shortages of foodstuffs or other essential goods;
- to conserve limited natural resources;
- in pursuance of obligations under international commodity agreements;
- to secure compliance with laws and regulations relating to customs enforcement, to tax avoidance or evasion and to foreign exchange control;
- to regulate the importation or exportation of gold or silver;
- the application of standards or regulations for the classification, grading or marketing of goods; and
- in connection with the products of prison labour.

2. Accession

Article 24 of CER enables Australia and New Zealand to agree to the association of any other State. To this point in time Australia and New Zealand are the only acceding Parties and no other State has sought association to the Agreement.

3. Dispute Settlement Procedures

There are no specific dispute settlement procedures under the CER Agreement. However, Article 22 of the CER Agreement sets out the consultation and review mechanism which is aimed at ensuring that both New Zealand and Australia are happy with the functioning of the Agreement. If either New Zealand or Australia has a grievance concerning adherence to any part of the Agreement, the other country is obliged to enter into consultations to seek an equitable and mutually satisfactory solution.

4. Relations with Other Trade Agreements

The Agreement is the main instrument governing economic relations between Australia and New Zealand. Supporting the Agreement is a comprehensive framework of instruments that focuses on removal of administrative impediments to trade (MOU on Business Law Coordination and Double

Taxation Agreement), and standards harmonization to minimise non-tariff and access restrictions to trade (Joint Food Standards Agreement, Arrangement on Food Inspection Measures and the Trans Tasman Mutual Recognition Arrangement). As well the Agreement was expanded in 1988 with the signing of the Protocol on Trade in Services.³ The Single Aviation Market Arrangements (1996) also form part of the supporting framework of CER instruments.

New Zealand and Australia are willing to consider free trade agreements with other significant individual economies or regional groupings, where they would deliver faster and deeper liberalization than the multilateral process, with the objective of gaining better market access for our exporters, faster economic growth and stronger employment growth. Such arrangements would need to demonstrate comprehensive sectoral coverage and reflect the principles underpinning CER, including WTO consistency.

Annex 2 lists the amending documents to the CER Agreement.

5. Institutional Framework

Article 22 of the Agreement commits Ministers of both countries to meet annually or otherwise as appropriate to review the operation of the Agreement. Australia and New Zealand hold annual trade and economic talks at senior official levels, to precede annual Trade Ministers' meetings.

³ Currently being examined in the Committee on Regional Trade Agreements.

ANNEX 1Top Ten New Zealand Exports to Australia

HS Code	1994	(NZ\$)
4407	Timber	258,218,166
7108	Gold	238,359,109
2709	Crude oil	221,192,351
4801	Newsprint	149,719,276
0101	Horses, asses, mules and hinnies; live	70,786,556
4703	Chemical wood pulp	65,216,040
8418	Refrigerators, freezers	64,882,561
0406	Cheese and curd	64,684,043
4104	Leather of bovine or equine animals	62,599,611
4411	Fibreboard	62,500,304
	Top 10 NZ Exports to Australia	1,258,158,017
	Total NZ Exports to Australia	4,064,188,764
	Total NZ Exports	19,820,796,423
	1999	
2709	Crude oil	308,072,000
4407	Timber	201,594,000
7108	Gold	156,228,000
406	Cheese and Curd	122,741,000
101	Horses, asses, mules and hinnies; live	155,732,000
4801	Newsprint	111,368,000
3808	Insecticides, pesticides etc	108,788,000
4703	Chemical wood pulp	70,261,000
3402	Organic surface-active agents	68,019,000
5703	Carpets	66,969,000
	Top 10 NZ Exports to Australia	1,369,772,000
	Total NZ Exports to Australia	4,765,720,000
	Total NZ Exports	22,495,557,000

Top Ten Australian Exports to New Zealand

HS Code	1994	(A\$)
9999	Commodities not classified	304,309,000
8473	Parts and accessories suitable for office machines	296,463,000
8703	Motor cars and other motor vehicles	271,785,000
3004	Medicaments	159,225,000
2710	Petroleum oils and oils obtained from bituminous minerals, other than crude	135,666,000
2709	Crude oil	70,893,000
8708	Parts and accessories of motor vehicles	68,450,000
8803	Parts of aircraft balloons or gliders	67,770,000
7606	Aluminium plates, sheets and strips	51,317,000
7210	Flat rolled products of iron or non-alloy steel	46,041,000
	Top 10 Australian Exports to NZ	1,471,919,000
	Total Australian Exports to NZ	4,389,587,000
	Total Australian Exports	64,775,683,000
	1999	
8906	War ships and life boats	501,453,000
2710	Petroleum oils and oils obtained from bituminous minerals, other than crude	373,203,000
8703	Motor cars and other motor vehicles	345,496,000
9999	Commodities not classified	329,014,000
8473	Parts and accessories suitable for office machines	261,290,000
3004	Medicaments	195,900,000
9809	Special transactions and commodities	195,283,000
8471	Automatic data processing machines	89,056,000
2709	Crude oil	74,356,000
9018	Instruments and appliances used in medical, surgical, dental or veterinary sciences	73,194,000
	Top 10 Australian Exports to NZ	2,438,245,000
	Total Australian Exports to NZ	6,674,004,000
	Total Australian Exports	86,889,830,000

ANNEX 2

Australia-New Zealand CER and Amending Documents

Australia-New Zealand Closer Economic Relations Trade Agreement (1983)

Annexes A-F and attachments (no longer operative)

Exchange of Letters on Fruit Juice Products (no longer operative)

Trade in Goods

Protocol on Acceleration of Free Trade in Goods (1988) (fully implemented on 1.7.1990)

Exchange of Letters on Trans Tasman Trade in Dairy Products (1988) (no longer operative)

Mutual Determination on Quantitative Export Restrictions (1988) (fully implemented on 1.7.90)

Exchange of Letters on Annex F (1992)

Mutual Determination on Liberalisation Under Specific Industry Plans (1988) (no longer operative)

Exchange of Letters and Joint Understanding on Harmonisation of Customs

Policies and Procedures (1988)

Protocol and Agree Minutes on Harmonisation of Quarantine Administrative Procedures (1988)

Amendments to Article 3 - Rules of Origin

Exchange of Letters on Rules of Origin (1992)

Exchange of Letters on Direct Shipment Rule (1992)

Trade in Services

Protocol on Trade in Services (1988)

- Annex: Services Inscribed by New Zealand and Australia
 - As of 1988
 - 1992 Review (Exchange of Letters)
 - Annex as of 1992
 - 1995 Review (Exchange of Letters)
 - Annex as of 1995

The Regulatory Environment for Business

Memorandum of Understanding on Harmonisation of Business Law (1988)

Memorandum of Understanding on Technical Barriers to Trade (1988)

- Exchange of Letters Amending the Memorandum of Understanding on Technical Barriers to Trade (1992)

Exchange of Letters on Third Country Dumping

- Agreed Procedures for Handling Third Country Anti-Dumping Complaints

Government Assistance

Agreed Minute on Industry Assistance (1988)

- Letters amending the Agreed Minute on Industry Assistance (1989)
 - Notification and Consultation Provisions
- Letters on the Agreed Minute on Industry Assistance (1992)

Government Purchasing

Agreed Minute on State Government Purchasing Preferences

(New Zealand is now a Party to the Commonwealth /State Government Procurement Agreement)
