18 March 2015

Mr Jonathan Coppel
Presiding Commissioner
Productivity Commission Study of the MRA and TTMRA
Level 12, 530 Collins Street
Melbourne VIC 3000

Dear Mr Coppel

Thank you for inviting the Department of Foreign Affairs and Trade (DFAT) to make a submission to the Commission's study of the Mutual Recognition Agreement (MRA) and the Trans-Tasman Mutual Recognition Arrangement (TTMRA). This submission focuses on the mutual benefits of the TTMRA for Australia New Zealand political and economic relations and your questions in the issue paper about the interaction between the TTMRA and trade agreements. The Department of Industry and Science administers the TTMR Act as it relates to goods and the Department of Education and Training administers it as it relates to occupations and skills. They are best placed to comment on matters relating to the TTMRA's operation. We do, however, respond to questions 13 and 14 about the operation of the special exemption process for the TTMRA.

Place of TTMRA in Australia-New Zealand Relations

The Trans-Tasman Mutual Recognition Arrangement (TTMRA) is a less-than-treaty-status arrangement that promotes economic integration and increased trade between Australia and New Zealand. Through the mutual recognition and harmonisation of product and occupation standards the TTMRA reduces regulatory impediments to the movement of goods and people in registered occupations across the Tasman, delivering greater choice for consumers, enhancing the international competitiveness of Australian and New Zealand enterprises and lowering compliance costs for exporters in both countries.

DFAT supports the Commission's assessment in 2009 that the TTMRA has been effective in increasing the mobility of goods and labour across the Tasman. It has promoted efficiency by allowing people and products to move to those uses that contribute more to community wellbeing. It has enabled transaction costs to be reduced on a broad front and has been a 'low maintenance' system that does not establish a new bureaucracy or require repeated updating.

The TTMRA has driven deeper levels of regulatory policy coordination and integration between Australia and New Zealand. In this way it has been a central instrument for both governments to advance the long-standing shared aim of a seamless regulatory environment and a Single Economic Market for business, consumers and investors on both sides of the Tasman.

The TTMRA has helped underpin political relations between Australia and New Zealand as it thrives in an environment of strong government to government links.

The TTMRA has also benefited both countries' relations in the region. It is part of the suite of arrangements and agreements that make up closer economic relations (CER) between

Australia and New Zealand. By promoting competitiveness and innovation in our enterprises CER has helped them win markets in Asia. CER provided impetus for negotiating AANZFTA, reflecting recognition by ASEAN of the close integration between Australia and New Zealand. For all these reasons the TTMRA will continue to play an important role in Australia's trade and economic relations. This is particularly the case as both Australia and New Zealand continue to negotiate free trade agreements separately, though often with the same trading partners, or as we seek mutual membership of plurilateral or regional agreements beyond the AANZFTA.

Mutual Recognition – as it applies to services

Recognition of qualifications has been a focus of numerous submissions and consultations with peak bodies on services trade negotiations. Increasing numbers of professional services suppliers are seeking to work in countries other than where they obtained their initial qualifications and experience; however, non-tariff barriers often limit their ability to do so. Some of the most significant of these barriers are onerous or opaque requirements for recognition of qualifications, accreditation, registration and/or licensing.

Dealing with these issues in services chapters of Free Trade Agreements (FTAs) can be complex due to the differences in how professional services are regulated from one country to another and one profession to another. Some countries rely on self-regulation by industry, others regulate at the central level or the sub-central level or combine elements of self-regulation and government regulation. Where industries self-regulate, it is not usually possible for governments to make hard commitments on mutual recognition as it is outside of their power to implement and enforce.

Any real progress towards MRAs must, in these cases, be driven by professional bodies. Substantial divergence between countries in terms of the assessment methods and benchmarks for accreditation, licensing and registration, is also a factor.

The WTO General Agreement on Trade in Services (GATS) (Article VII) provides a basis for recognition which "may be achieved through harmonisation or otherwise, may be based upon agreement or arrangement with the country concerned or may be accorded autonomously." Similarly, while Article V (Economic Integration) of GATS serves as the basis for negotiating preferential agreements and arrangements covering trade in services, its intersection with Article V (Labour Market Integration) and Article VI (Domestic Regulation) also offers a way forward, particularly for professional services.

The importance of the services sector to our economy and the benefits achievable through better regulatory coherence cannot be understated (given it accounts for around 80 per cent of GDP). It is therefore important that we explore new ways to address mutual recognition of professional services suppliers in FTAs and other international agreements.

Australia has included provisions related to mutual recognition in a number of our FTAs including ANZCERTA, AANZFTA, SAFTA, AUSFTA, TAFTA, ClAFTA, JAEPA, KAFTA and CHAFTA. A number of FTAs currently under negotiation also seek to include provisions related to mutual recognition including, TPP and TiSA.

Questions in the Issues Paper

Question 13 Is the special exemption process for goods unnecessarily onerous, thereby creating unwarranted costs and discouraging efforts to expand the TTMRA's coverage? How could it be improved and what would be the costs and benefits of doing so?

Question 14 Did the 2010 decision to remove all remaining special exemptions significantly reduce the impetus to expand coverage of the TTMRA? What other mechanisms or initiatives could provide an impetus for such reform?

The special exemption process for goods is unnecessarily onerous and the 2010 decision does reduce the impetus to expand coverage of the TTMRA. Once a special exemption becomes a permanent exemption it is difficult to reverse.

The lack of a formal process for goods to be moved from a permanent to a special exemption if circumstances change and mutual recognition becomes possible adds rigidity to the current arrangements and prevents further integration where it may be warranted or beneficial. Under current arrangements it is difficult to see how an Australia investor in a New Zealand manufacturer of any of the permanently exempted goods (i.e. Schedule 2 part 2 products such as agriculture or veterinary chemicals, beverage containers etc.) would be able to benefit either from the TTMRA or the CER Agreement more generally.

Question 63 (a) *Have there been implications for the TTMRA from Australia or New Zealand entering bilateral, regional or multilateral trade agreements in recent years?*

Mutual recognition provisions in free trade agreements (FTAs) do not create mutual recognition in themselves but facilitate and encourage standard-setting and conformity assessment bodies to pursue mutual recognition agreements. This is then pursued on a case-by-case basis in individual sectors. Mutual recognition provisions do not alter standards, regulations or conformity assessment procedures in the FTA parties.

Provisions on standards, regulations and conformity assessment procedures in FTAs are consistent with existing obligations in the WTO Agreement on Technical Barriers. The primary objective in FTA provisions is to improve transparency around development of standards, regulations and conformity assessment procedures, including by enabling parties to be made aware of potential changes earlier in the development process and to facilitate consultation.

Question 63 (b) *Are there examples of inferior quality goods or less qualified persons entering either country as a result of the interaction between the TTMRA and the trade agreements?*

Australia has pursued recognition provisions in a number of our free trade agreements to facilitate interaction between professional bodies to create opportunities for mutual recognition in services.

Australia tends to seek these facilitative provisions in order to provide opportunities for Australian professionals abroad. While Australian professional bodies have established quality standards for accreditation, there is not an incentive for them to lower standards for partners in an MRA context. The objective is to create confidence in the standards professional bodies maintain.

Mutual recognition agreements are designed to address "behind-the-border" barriers for professional service suppliers. However, there are other requirements which professionals must meet if they are travelling to Australia to provide services. Permanent entry, residency and immigration requirements are outside the scope of FTAs. Even if mutual recognition agreements are in place, these other requirements must be met.

DFAT notes the 2009 review of the TTMRA and the MRA concluded the TTMRA reflects that New Zealand and Australia have similar objectives for their regulatory regimes. The risk that either partner would accept persons to carry on occupations in their own country that the

other country would reject would, therefore, have been judged to be extremely low when the TTMRA was agreed.

FTAs or the TTMRA do not alter Australia's existing right to implement quarantine measures to protect human, animal and plant health. Quarantine laws are exempt from mutual recognition see Schedule 2, Part 1 of the TTMRA Act. FTAs or the TTMRA do not alter the fact that most food sold in Australia must bear a country of origin statement and that statement cannot be false or misleading.

Finally, DFAT notes that mutual recognition schemes generally help to lift the integrity of standards and conformance assessment regimes in MRA partner countries. By their nature the development of mutual recognition agreements require a partner to demonstrate equivalency in their standard setting and conformity assessment regimes. This ensures that Australia's high standards for quality are recognised and replicated in a partner country.

Thank you for the opportunity to contribute to the Commissions' study. I hope this information is useful.

Yours sincerely

Jenny Da Rin
Assistant Secretary
Pacific Bilateral and New Zealand Branch