The Hon Mark Vaile MP

Minister for Trade
Deputy Leader of the National Party of Australia

10 April 2003

Mr Tony Hinton
Commissioner
Review of Mutual Recognition
Productivity Commission
PO Box 80
BELCONNEN ACT 2616

Dear Mr Hinton

I am pleased to attach for the Commission's consideration a submission to the review of the Trans-Tasman Mutual Recognition Arrangement (TTMRA).

The TTMRA comes under the umbrella of the 1983 Australia New Zealand Closer Economic Relations Trade Agreement (CER). As a result of CER, the two economies have become integrated to a level attained by few others. CER is a model for bilateral free trade agreements and sub-regional arrangements in the Asia-Pacific, and is a benchmark for how the region liberalises trade and investment.

TTMRA has delivered to exporters on both sides of the Tasman greater flexibility, wider choice and lower business compliance costs through mutual recognition and harmonisation of product standards. The business activity generated by the CER, including through the TTMRA mechanism, has brought substantial wealth and employment to the people of both countries. TTMRA has also been instrumental in enhancing free movement of people in registered occupations across the Tasman. More than 450,000 New Zealanders reside in Australia and around 50,000 Australians now live in New Zealand.

TTMRA has been very successful in eliminating, as far as possible, regulatory impediments to trade to enable the benefits of trade liberalisation under CER to be realised more fully. In the special exemptions areas, important outcomes have been delivered including the proposed joint therapeutic products agency. The existence of a very small number of exemptions is

understandable and while their removal is preferable, I would not see the overall success of the TTMRA as being diminished if our commercial and trade interests require them to be retained.

Overall, TTMRA has been a contributing factor in the growth of a more integrated trans-Tasman economy and has resulted in Australian and New Zealand business, consumers and service providers benefiting from a simple, low cost and low maintenance mechanism for overcoming unnecessary regulatory impediments to trade between the two countries.

Yours sincerely



MARK VAILE

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SUBMISSION TO THE
PRODUCTIVITY COMMISSION STUDY INTO THE TRANS-TASMAN MUTUAL RECOGNITION ARRANGEMENT (TTMRA)

This submission consists of three parts - the Australian-New Zealand economic relationship, the bilateral issues associated with TTMRA, and the World Trade Organisation Services-related aspects of TTMRA.

1. AUSTRALIAN-NEW ZEALAND ECONOMIC RELATIONSHIP

Australia and New Zealand share a special relationship, including as close economic partners, with a mutual interest in promoting a dynamic relationship, one that is based on engaging a changing world from a position of economic prosperity. The Australia New Zealand Closer Economic Relations Trade Agreement of 1983 (CER) is the cornerstone of the trans-Tasman economic relationship. The CER typifies the common interest of both countries. A web of agreements and arrangements have developed under the auspices of CER including in reference to goods, services, taxation, the movement of people, welfare, product standards, qualifications, aviation, customs, quarantine, and food standards.

As a result, the Australian and New Zealand economies have become increasingly integrated, to a level attained by few others, and in a manner entirely consistent with our multilateral interests and objectives. What Australia and New Zealand have done in 20 years since the inception of CER is a benchmark for how the world can liberalise trade and investment, as well as being a benchmark for how two nations can work together.

The CER has been enormously beneficial to both partners not only through trade and investment facilitation but also in fostering genuinely competitive industries that may project into regional and global markets. The success of the agreement, and the commitment of both partners to it, enhances the credibility of the two countries in promoting trade liberalisation elsewhere. Indeed, the WTO has described CER as the "world's most comprehensive, effective and multilaterally compatible free trade agreement".

2. BILATERAL ISSUES ASSOCIATED WITH TTMRA

TTMRA represents a significant step in developing an integrated trans-Tasman economy, allowing goods to be traded freely between the two countries and enhancing the freedom of individuals to work in both countries.

Since commencing operations on 1 May 1998, TTMRA has furthered the objectives of the CER Agreement and significantly built on the economic cooperation between Australia and New Zealand. TTMRA is a key element of the CER with its principal objectives to:

- strengthen the broader relationship between Australia and New Zealand;
- develop closer economic relations between Australia and New Zealand through mutually beneficial expansion of free trade between the two countries;
- 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

- develop trade between New Zealand and Australia under conditions of fair competition.

While the CER is the principal agreement that supports the trans-Tasman economic relationship, the TTMRA is an important one of several other agreements and arrangements introduced since 1983 which further the broad principles of the CER. Outlined below are the principle agreements currently operating to support the Australia-New Zealand economic and trading relationship.

- The *CER Agreement* (Australia New Zealand Closer Economic Relations Trade Agreement or *ANZCERTA*) formally signed on 28 March 1983, with effect from 1 January 1983, is a free trade agreement. A Protocol to the CER on the Acceleration of Free Trade in Goods in 1988 provided for the elimination of all remaining tariffs and quantitative restrictions by 1 July 1990.

- *"Trans-Tasman Travel Arrangement"*, a term applied to the collection of Ministerial understandings which allow Australians and New Zealanders to visit, live and work in the other country.

- The *Trade in Services Protocol to the CER,* signed in 1988, brought services into CER from January 1989. Almost all trans-Tasman trade in services is now open.

- *Agreed Minute on Industry Assistance*, signed by Trade Ministers in 1988, and amplified by later correspondence, provides for consultation between the Australian and New Zealand Governments on changes to industry assistance.

- *Protocol on the Harmonisation of Quarantine Procedures,* signed by the Prime Ministers in 1988, provided for work towards common administrative procedures for quarantine.

- *Joint Accreditation System Australia and New Zealand JAS-ANZ* (1991), established under the *Agreement on Standards, Accreditation and Quality* (1990), is the joint accreditation body for certification of management systems, products and personnel.

- *Government Procurement Agreement 1991*, New Zealand joined the Commonwealth/State National Preference Agreement.

- *Food Standards Australia New Zealand (*formerly ANZFA), is a bi-national statutory authority that develops common food standards to cover the whole of the food chain "from paddock to plate". FSANZ operates under the Food Standards Australia and New Zealand Act 1991.

- *Arrangement on Food Inspection Measures*, under the *Imported Food Control Act 1992* and following a 1996 exchange of letters between Trade Ministers, all food traded between Australia and New Zealand, with the exception of that identified as Risk Food, is exempt from import inspection.

- *Double Taxation Agreement 1995*, contains provisions for the avoidance of double taxation and the prevention of fiscal evasion in relation to income flowing between Australia and New Zealand.

- *Customs Cooperation* Arrangement (1996), provides for cooperation to harmonise customs policies and procedures, assist in the prevention investigation and repression of offences and resolve problems of customs administration and enforcement, particularly in the Asia Pacific Region.

- *The Trans Tasman Mutual Recognition Arrangement TTMRA* (1998) is an agreement between the Australian and New Zealand Governments and the Governments of the Australian States and Territories, which provides that goods that may legally be sold in either country may be sold in the other. A person who is registered to practise an occupation in either country is entitled to practise an equivalent occupation in the other.

- *Reciprocal Health Care Agreement 1998*, deals with access to health care by Australians and New Zealanders traveling in the other country.

- *MOU on Business Law Coordination 2000*, provides a framework for work on the alignment of business laws in order to increase the ease of capital flows and trans-Tasman business integration

- *The Open Skies Agreement*, Transport Ministers agreed in a Memorandum of Understanding in November 2000 to allow Australian and New Zealand international airlines to operate across the Tasman, and then beyond to third countries without restriction. (The MOU gave immediate effect to an Air Services Agreement, signed in August 2002.) In addition international airlines of both countries are able to operate dedicated freight services using what are known as "seventh freedom" rights. These rights, for example, allow a New Zealand dedicated freight carrier to operate services directly from Australia to third countries without operating out of New Zealand. Open Skies formalized the *Single Aviation Market* arrangements of 1996, which allowed all Australian and New Zealand owned airlines to operate trans-Tasman services and domestic services in either country subject to the necessary safety approvals.

- *The Joint Australia New Zealand Food Standards Code*, became the sole food standards code in operation in Australia and New Zealand on 20 December 2002.

- *Social Security Agreement 2002*, a cost sharing arrangement covering aged pensions, disability support pensions and carer payments for partners of disabled persons and comparable New Zealand benefits for Australia and some parenting and partner allowances for Australian and New Zealand residents.

- *Extension of tax imputation*, in February 2003 the Treasurer and his New Zealand counterpart agreed to extend Australia's and New Zealand's imputation regimes to include certain companies resident in the other country. For example, a New Zealand company that has Australian operations and Australian shareholders will be able to keep an Australian franking account. The expected date of effect of the new legislation is 1 April 2003 for New Zealand companies maintaining a franking account and Australian companies maintaining an imputation credit account. Franked or imputed credits can be paid out from 1 October 2003 in Australia or New Zealand.

- *Joint Therapeutic Products Agency*, Australian and New Zealand Ministers for Health have agreed in principle to establish a joint Therapeutic Goods Agency *(TGA)* in mid-2005.

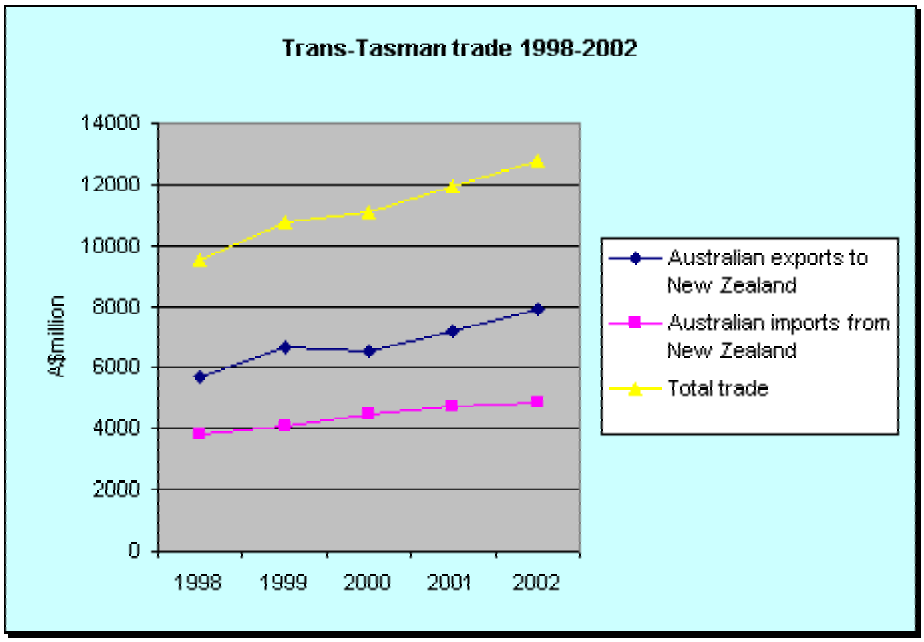
These agreements have provided economic and social benefits to both Australia and New Zealand. The establishment of manufacturing and services operations on both sides of the Tasman have been encouraged under the terms of these agreements and leading to a considerable degree of integration between the two economies. The economic activity generated by CER, including through TTMRA, has contributed substantially to employment and wealth in both countries.

TTMRA aims to deliver to exporters greater flexibility, wider choice and lower business compliance costs through mutual recognition and harmonisation of product standards. In addition it also aims to develop a more integrated trans-Tasman economy by removing regulatory impediments to trade.

Exporters have gained and continue to achieve clear benefits from the TTMRA. It has been an effective vehicle for increasing trans-Tasman economic integration including through a growing two-way trade. Since 1998 total bilateral trade in goods has grown from $9.5 billion in 1998 to $12.7 billion in 2002. Over this five-year period, an annual average increase of over seven per cent has been realised, faster than the growth in the trade of either country with the rest of the world. The growth in trade between Australia and New Zealand has been balanced and steady with both countries increasing their exports to the other.

Trans-Tasman trade 1998-2002 (A$million)

Year	*Australian exports to New Zealand*	*Australian imports from New Zealand*	*Total trade*
1998	5690	3820	9510
1999	6670	4110	10780
2000	6570	4490	11060
2001	7180	4740	11920
2002	7900	4870	12770



The broad agenda of TTMRA now focuses on third generation trade facilitation issues. On 20 December 2002, the Australia New Zealand Food Standards Code came into effect as the sole food code for Australia and New Zealand. It is an example of regulation at its best:

minimum regulation for the purpose, outcome-based and containing benefits for industry and consumers.

Australian and New Zealand governments have also agreed in-principle to establish a joint trans-Tasman agency to regulate therapeutic products which is expected to become operational in 2005. In delivering long-term benefits to both countries, a joint agency would resolve the special exemption and meet closer economic relations objectives under the TTMRA; create a single market and uniform regulatory outcomes for therapeutic goods, thereby facilitating and enhancing trans-Tasman trade; provide stronger regulatory capacity; lower compliance costs; and give Australia and New Zealand a stronger voice in international regulatory and trading forums.

The CER Agreement endorses specifically in its preamble the objective of freedom of travel within the free trade area including for labour market reasons. Likewise, enhancing free movement of people in registered occupations across the Tasman is also an objective of TTMRA. People-to-people links across the Tasman are very close, with around 450,000 New Zealand citizens living in Australia, and around 50,000 Australian citizens living in New Zealand. More than a million Australians and New Zealanders cross the Tasman each year, including for employment reasons. It is broadly agreed by occupational and professional groups that the provisions of TTMRA are working as intended. Almost all New Zealand and Australian occupational regulatory bodies observe these provisions under TTMRA resulting in a high degree of cooperation between most professional bodies across the Tasman.

Overall, during the first five-yearly review period, TTMRA has been highly successful in opening up trade in goods and services between Australia and New Zealand. Under TTMRA, there are Special Exemptions to products in a number of industry sectors with significant differences in regulations – including therapeutic goods, consumer products, radio communications, and industrial chemicals. The “cooperation programs” that have been established in these sectors have been embarked upon with a view to developing complementary regulatory arrangements. They involve consideration as to whether goods in these sectors are best dealt with by applying the mutual recognition principle, introducing harmonised standards, or else making permanent exemptions.

Under the current arrangements of TTMRA, which came into effect on 1 May 1998, Special Exemptions were to last for 12 months in each instance, but could be rolled over until each Cooperation Program had been completed. Regulatory requirements could be permanently exempted from the scheme at any time with the unanimous agreement of Heads of Governments of participating jurisdictions. However, if the vote were to be taken after 1 May 2003 (five years after the commencement of TTMRA), laws listed on the Special Exemptions could be converted into Permanent Exemptions on the agreement of not less than two-thirds of the Heads of Government.

Good progress has been made in most of the special exemption areas. Programs such as Electromagnetic Compatibility have achieved harmonisation and deemed mutual recognition. Other programs, including Hazardous Substances, Industrial Chemical and Dangerous Goods, anticipate mutual recognition in a number of product groups in 2003. Significant progress has also been achieved in Consumer Safety Standards, with only three outstanding product areas to be resolved. Differences remain between the two regimes on motor vehicles. These are likely to be resolved, in time, through harmonising Australian and New Zealand standards with UN-ECE regulations or other national or regional standards agreed by the parties.

Given the considerable progress that has been made under most cooperation programs and the level of trans-Tasman cooperation achieved between regulators, the programs would not necessarily need to be concluded in 2003, and could continue beyond that time as required. The possibility of the programs continuing beyond the initial five year period is contemplated by the Arrangement.

As outlined in the stocktake report on TTMRA provided to Trade Ministers in 2002, we recognise the benefits of streamlining, if possible, the administration of the co-operation program post-2003, while accepting the need within current obligations to roll-over exemptions until May 2004. We recommend that the following options be considered by the Productivity Commission:

- Moving the special exemptions to permanent exemptions, thus preventing the administrative burden of annual reviews to extend the cooperation programs by a further twelve months. However, we are cognisant of the positive incentives provided by an annual reporting requirement under the current arrangements.

- Introducing a longer roll-over period which reflects the likely timeframes for the resolution of outstanding matters.

Possible downsides may, however, result in moving to permanent exemptions, as this could have the effect of undermining the spirit of TTMRA and the broader mutual recognition process. The existence of a very small number of exemptions is understandable and while their removal would be desirable it would not be a failure of policy or process if at the end of the day Australia's commercial and trade interests required their retention.

We note that progress towards joint standards and their adoption in regulations, has been made in some areas (eg electromagnetic compatibility and radiocommunications equipment), and will be interested to see the findings of the Productivity Commission's assessment of the scope for amendments or additions to the laws in the Schedules.

WTO -RELATED ASPECTS OF TTMRA

Since the inception of CER in 1983, there has been free trade in goods between Australia and New Zealand, and progressively free trade in services. Addressing non-tariff barriers between the two countries was a natural next step. TTMRA has provided such a mechanism.

Consistent with the WTO objective of the reduction of barriers to international trade, TTMRA has further strengthened market integration across the Tasman. In the process, it has led to improvements in the competitiveness of Australian and New Zealand business.

TTMRA and the WTO Technical Barriers to Trade Agreement

TTMRA essentially results in an equivalence of regulations and conformity assessment arrangements across the Tasman. As such, it is fully consistent with the spirit and objectives of the WTO Technical Barriers to Trade Agreement (TBT):

- Article 2.7 of the Agreement calls on Members to give positive consideration to accepting as equivalent technical regulations of other Members, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

- Article 6.1 states that Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.

- Article 6.3 goes on to state that Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures.

- In line with Article 2.4, TTMRA requires Ministerial Councils, in determining standards, to align them, wherever possible, with those commonly accepted in international trade.

- TTMRA must comply with the *Principles and Guidelines for Standard Setting and Regulatory Action by Ministerial Councils and National Standard Setting Bodies*, which represent best-practice requirements for developing regulatory proposals.

Another approach to addressing such non-tariff barriers to trade is to harmonise standards, regulations and conformity assessment procedures across countries.

Implicit in the TBT Agreement is the ultimate objective of international harmonisation of standards, regulations and conformity assessment procedures. There have been significant moves towards harmonisation under TTMRA:

- In certain areas, notably food standards under the Australia New Zealand Food Standards Code, there has been progressive adoption of harmonised regulations.

- The Commonwealth recognises the objective of common standards for Australia and New Zealand, and their development on an equitable basis. Standards Australia and Standards New Zealand cooperate closely, and the development of joint standards is an important aspect of their work, although many joint standards stem from the harmonisation of standards with international standards and there are a number of sectors where separate standards remain.

- Similarly, there is a very close relationship between the National Association of Testing Authorities – Australia (NATA) and its New Zealand counterpart International Accreditation New Zealand (IANZ), which is recognised in the Commonwealth's MOU with NATA.

- JAS-ANZ, as the joint accreditation body for Australia and New Zealand for the certification of management systems, products and personnel, also serves a role in enhancing trans-Tasman trade.

TTMRA is also of benefit to other countries which trade with Australia and New Zealand, in that two sets of requirements are replaced by just one.

TTMRA also arguably serves a helpful purpose in our efforts to reduce trade barriers internationally:

- The TTMRA itself states that its intention is to provide a possible model of cooperation with other economies, including those in the South Pacific and APEC.

- TTMRA serves a demonstration effect of what can be achieved through the removal of regulatory barriers to trade. MRAs are becoming an increasingly important focus in FTA negotiations, and TTMRA can be held up as a model arrangement - just as CER remains a model trade agreement, given the breadth of its coverage.

TTMRA and the WTO General Agreement on Trade in Services

While TTMRA might be a model for mutual recognition on services-related issues including qualifications recognition, its intent is really well beyond the scope of the WTO General Agreement on Trade in Services (GATS) which is not a standards setting agreement per se. In fact the GATS encourages the growing array of services standards and qualifications arrangements, such as those between Australia and New Zealand which TTMRA has spawned, to be agreed between WTO Members on a bilateral basis, so in that sense TTMRA can be folded comfortably into the GATS framework.