Submission

By

Business|NZ

To

Australian Productivity Commission

On the

Review of the Trans Tasman Mutual Recognition Arrangement

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REVIEW OF THE TRANS TASMAN MUTUAL RECOGNITION ARRANGEMENT

SUBMISSION BY BUSINESS NEW ZEALAND

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1. Introduction

1.1 Encompassing five regional business organisations (Employers' & Manufacturers' Association (Northern), Employers' & Manufacturers' Association (Central), Canterbury Employers' Chamber of Commerce, Canterbury Manufacturers' Association, and the Otago-Southland Employers' Association), Business New Zealand is New Zealand's largest business advocacy body. Together with its 50-member Affiliated Industries Group (AIG), which comprises most of New Zealand's national industry associations, Business New Zealand is able to tap into the views of over 76,000 employers and businesses, ranging from the smallest to the largest and reflecting the make-up of the New Zealand economy.

1.2 In addition to advocacy on behalf of enterprise, Business New Zealand contributes to Governmental and tripartite working parties and international bodies including the ILO, the International Organisation of Employers and the Business and Industry Advisory Council to the OECD.

1.3 Business New Zealand's key goal is the implementation of policies that would see New Zealand retain a first world national income and regain a place in the top ten of the OECD (a high comparative OECD growth ranking is the most robust indicator of a country's ability to deliver quality health, education, superannuation and other social services). It is widely acknowledged that consistent, sustainable growth well in excess of 4% per capita per year would be required to achieve this goal in the medium term.

1.4 The free movement of goods and people is critical for fostering a dynamic economy and facilitating a higher rate of sustainable economic growth. The 1983 Closer Economic Relations (CER) Agreement, and its development over the ensuing years, has dramatically reduced barriers first to goods and then to services trade. Meanwhile, the longstanding visa free entry of citizens has in effect guaranteed the free movement of people between our two countries. However, while these factors are widely known and well understood, the 1998 Trans Tasman Mutual Recognition Arrangement (TTMRA) has also been a very important factor in further reducing barriers to both goods and services trade and the movement of people.

1.5 The requirement to review of the TTMRA after five years is set out in the Arrangement. Business New Zealand welcomes the opportunity the review provides to see where the TTMRA has worked well or poorly and the opportunity the review provides to improve it further. It is also significant and timely that the Review takes place during the 20th Anniversary of CER. Business New Zealand strongly supports the further development of the economic relationship between our two countries.

2. Setting the Scene – New Zealand and Australian Economies

2.1 Business New Zealand recognises the critical importance of Australia to the New Zealand economy. Australia is by a large margin New Zealand's most important trading partner, taking over 20% of our exports and being the source of nearly 23% of our imports in 2002[1]. Australia is also the largest source of short-term visitor arrivals (31%) and accounts for over 50% of all New Zealand resident short-term departures. It is by far the most popular destination for New Zealanders leaving permanently or long-term (43%) and is the third largest source of permanent and long-term arrivals behind the United Kingdom and China[2]. Australia is also New Zealand's largest source of foreign direct investment.

2.3 New Zealand is important in turn for the Australian economy. New Zealand was the destination of over 6% of Australian exports and the source of 4% of Australian imports in 2001/02. While this may seem quite modest compared to Australia's share of New Zealand exports and imports, it is important to note that until very recently New Zealand was Australia's largest market for manufactured exports. We also understand that New Zealand is the largest source of overseas visitors to Australia and is also the most popular destination for Australians leaving for short durations.[3]

2.4 There has also been a significant trend of integration of businesses in the two economies, which goes deeper than the headline data on trade and visitor numbers. One factor behind this trend is the inevitable result of globalisation, but it also stems from the complementarity of the two economies and the recognition that businesses need to participate in a larger combined market if they are to compete effectively both internally and externally. This in turn has driven a greater demand for a reduction in regulatory barriers to doing business and greater impetus for harmonisation and mutual recognition efforts. The TTMRA is but one manifestation of this process.

3. TTMRA – General Comment

3.1 Business New Zealand strongly supports the basic premise behind the TTMRA, i.e., that:

- A good that can be legally sold in New Zealand can be legally sold in Australia and visa versa, without the need for any further testing or certification; and
- A person registered to practice an occupation in New Zealand is entitled to register to practice an equivalent occupation in Australia and visa versa without the need to undergo further testing or examinations.

3.2 We note that 'permanent exemptions' apply generally to quarantine and endangered species, and specifically to goods such as firearms, fireworks,

[1] Statistics NZ, Overseas Merchandise Exports and Imports, year ended December 2002
[2] Statistics NZ, External Migration, February 2003
[3] Australian Bureau of Statistics, Australian Economic Indicators, March 2003

gaming machines, indecent material, ozone protection, and agricultural and veterinary chemicals. With regard to occupations, only medical practitioners are exempt from the TTMRA. These exclusions are clearly the result of policy decisions and we assume that they are not envisaged to be included any time soon under the scope of the TTMRA.

3.3 On the other hand, there are a number of 'special exemptions' of goods from the intent of the TTMRA, namely therapeutic goods, hazardous substances, electromagnetic compatibility and radiocommunications equipment, road vehicles, and gas appliance standards. These were 'difficult issues' that were put to one side when the TTMRA was negotiated and are each the subject of separate ongoing 'co-operation programmes', where the intention is to work through the difficult issues and eventually bring them into the fold of the TTMRA.

4. Issues Around Goods Cooperation Programmes

4.1 Business New Zealand welcomes the cooperation programme approach but understands that progress with some of the cooperation programmes has been slow. This has particularly been the case for therapeutic goods, hazardous substances, road vehicles, and gas appliance standards. The New Zealand perception is that the lack of progress in addressing exemptions and exclusions maintains a situation where some New Zealand products are being excluded from the Australian market for dubious reasons.

4.2 With regard to therapeutic goods, we understand that the special exemption stems from consideration by the Australian and New Zealand Governments for a proposed joint agency for therapeutic goods. While the concept behind such a joint agency might be desirable, we have been advised that additional regulatory costs (largely the regime applied currently in Australia) are likely to be heavy, particularly for what are often low risk products. The submission of the Cosmetic Toiletry and Fragrance Association discusses this in greater detail.

4.3 Turning to hazardous substances, New Zealand's current HSNO regime is particularly onerous and imposes significant compliance costs for little perceivable benefit. Even officials agree that it is difficult to administer and is capturing far more products than was ever envisaged. The submission of the Cosmetic Toiletry and Fragrance Association discusses this in greater detail. We agree that there is potential for significant cost savings for businesses operating on both sides of the Tasman from addressing the issues that are holding up the hazardous substances cooperation programme. If this means New Zealand having to take action to bring its HSNO regime more into line with Australia's NICNAS, then so be it.

4.4 Road vehicles have been difficult due mainly to the differing approaches Australia and New Zealand have with respect to imported used vehicles and a value judgement on whether it is important to encourage a domestic motor vehicle assembly industry. We understand that the preferred approach will be for both countries to agree to differ on used imports, but both accede to the

UN-ECE Agreement, which is in any event becoming a de facto suite of global vehicle standards. This is a sensible approach.

4.5 In contrast to the situation with respect to hazardous substances, gas appliance standards appears to be an area where it is the Australian regime that imposes unreasonable costs, with particular problems around differences at the State level. The submission of the Gas Appliance Suppliers Association discusses these concerns in greater detail.

4.6 In summary, Business New Zealand accepts that there are often complex issues that have genuinely impeded progress on the cooperation programmes. However, we consider it to be worthwhile and timely for the Productivity Commission to use its report to governments to push for greater urgency in addressing the outstanding issues that would enable speedy resolution of the cooperation programmes. This should include encouraging the respective parties to consider the most business friendly regulatory approach, with a particular focus on minimising compliance costs. It should not matter whether it is an Australian or New Zealand approach that is adopted.

4.7 *Recommendation: Business New Zealand recommends that the Productivity Commission should push for speedy resolution of the outstanding issues delaying resolution of the five cooperation programmes, with a particular emphasis on taking regulatory approaches that would minimise business compliance costs.*

4.8 While not the subject of a TTMRA cooperation programme, we consider that there are also important issues around food products. Business New Zealand is concerned that restrictions around the importation of New Zealand products such as apples, meat pies, and salmon into Australia seem to be in place more as a protectionist tool than for any sound policy reasons. In contrast, we understand that there are very few restrictions on Australian food products entering New Zealand (with the exception of some fumigation requirements). Business New Zealand therefore submits that anomalies around the importation of food products into Australia should be addressed as a high priority.

4.9 *Recommendation: Business New Zealand recommends that anomalies around the importation of food products into Australia should be addressed as a high priority.*

5. Issues Around Occupation Registration

5.1 Business New Zealand considers that the TTMRA has worked well in further facilitating freedom of movement between our two countries. We have not received any advice from our members of any problems around occupational registration.

5.2 We are aware though of arguments some have made about mutual recognition having accelerated the ‘brain drain’ and that it has also caused a

'race to the bottom'. We do not accept either argument as being a TTMRA issue. We will comment on each in turn.

5.3 With regard to the 'brain drain', it is true that New Zealand experienced a large outflow of people to Australia during the late 1990s. For example, a net migration outflow of almost 25,000 was recorded for the 1999 calendar year, rising to nearly 32,000 for the 12 months ended May 2001[4]. However, in our view it is highly unlikely that the TTMRA was a significant factor in this large outflow.

5.4 Of far greater importance to migration flows between Australia and New Zealand is the relative performance of the two economies. Over recent history New Zealand has always lost more people than it has gained from Australia across almost all age and occupational groups – to the extent that there are over 400,000 New Zealand born people living in Australia (around 10% of New Zealand's resident population). This is only to be expected when Australia's GDP per capita is over 30% higher than New Zealand's[5]. Furthermore, whereas Australia has grown consistently strongly since the mid 1990s, New Zealand suffered 2-3 years of significantly lower growth in the late 1990s, which at the time made Australia an even more attractive place to live and work. Now that the two economies are growing at similar rates the net outflow eased to around 12,000 for the 2002 calendar year[6].

5.5 It should also be pointed out that while mutual recognition might make it easier for people to leave, it also makes it easier for those wishing to come and thereby help fill skills and labour shortages.

5.6 The perception that mutual recognition causes a 'race to the bottom' stems from a view that the jurisdiction with the lowest registration threshold effectively becomes the de facto benchmark for all jurisdictions. Business New Zealand is yet to see evidence that this perception has any foundation in practice. If there are concerns around the integrity of the regimes some jurisdictions have in place for occupational registration, then we submit that they should be addressed by that jurisdiction at a policy level (preferably in coordination with other jurisdictions) rather than taking the blunt and retrograde step of excluding the occupation from the scope of the TTMRA.

5.7 Business New Zealand also notes that while registration may set a 'minimum benchmark', the employer will choose to fill vacancies taking account of applicants' experience, qualifications, and other attributes, which in many cases will be well above the standard for registration.

5.8 *Business New Zealand recommends that occupations should not as a matter of principle be excluded or exempted from the TTMRA.*

5.9 Business New Zealand notes that the terms of reference of the Commission's review includes a requirement to examine ways to broaden the scope and objectives of the TTMRA. In this context we see much potential in Australia

[4] Statistics NZ, External Migration statistics, May 2001
[5] OECD
[6] Statistics NZ, External Migration statistics, December 2002

and New Zealand taking a more coordinated and concerted approach to global mutual recognition and harmonisation of professional qualifications.

5.10 An excellent example of such a global initiative is that of the hospitality industry, where mutual recognition of qualifications between New Zealand and Australian jurisdictions has been achieved. The New Zealand Hospitality Standards Institute has gone a step further by taking a leading role in encouraging the globalisation of hospitality qualifications, an initiative which should be of huge benefit for young Australians and New Zealanders wishing to gain valuable experience in the hospitality trade while on their 'OE'. This proactive approach of using the TTMRA as a basis for 'going global' should be possible for other occupations and we submit that such an approach should be encouraged.

5.11 *Business New Zealand recommends that the Commission should encourage occupational organisations to make a more concerted and coordinated effort to achieve globalisation of professional qualifications.*

6. Harmonisation of Business Law

6.1 Although a development independent of TTMRA, there has been a trend over recent years towards the harmonisation of business law. For example, in the realm of competition law, New Zealand has amended section 36 of the Commerce Act 1986 (regarding 'market power') to make it consistent with section 46 of Australia's Trade Practices Act 1974.

6.2 Further harmonisation should reduce the need for businesses operating on both sides of the Tasman to go to great lengths to identify and comply with different legislation and regulation. For this reason, Business New Zealand supports greater harmonisation of business law with Australia, providing that doing so does not disadvantage New Zealand.

6.3 *Recommendation: Business New Zealand recommends that further harmonisation of business law should be pursued.*

7. Improved Quality of Regulation

7.1 Business New Zealand agrees wholeheartedly with the comments of Gary Banks, Chairman of the Productivity Commission in a recent address:

"How well these [mutual recognition] arrangements have worked in practice is currently under review by the Productivity Commission, at the request of heads of Government. *However, such arrangements clearly do not obviate the need for all governments to be vigilant in ensuring that new regulations are well designed in the first place* (our emphasis).

"In particular, it is critical that compliance costs, as well as other costs and benefits associated with regulatory proposals, are identified and analysed as early as possible in the policy development process. In most jurisdictions

there are systems in place to facilitate this, but their potential has yet to be realised." [7]

7.2 In New Zealand there is a requirement for Regulatory Impact and Compliance Cost Statements to accompany policy proposals and legislation. However, although this is a positive development our experience in practice is that too many statements still seem as though they have been included as an afterthought and lack rigorous analysis. Some of the least impressive examples we have seen to date have been the statements that accompanied the recently passed Local Government and Health & Safety in Employment legislation. More generally, we have been very concerned about the lack of detailed analysis in many statements, particularly a lack of quantitative estimates of the costs and benefits of proposals. The Ministry of Economic Development is aware of our concerns and has indicated that it is looking at ways to improve the process.

7.3 It would be unfair though to single out New Zealand. We are aware of high compliance costs imposed by a number of Australian jurisdictions. For example, Business New Zealand's Auckland-based regional association, Employers' and Manufacturers' Association (Northern) has advised us that it has been in contact with a company in Australia that faces costs of around $120,000 per annum to satisfy the requirements of the Australian Therapeutic Goods Agency for only a very limited range of products (due to high costs of putting new product through the system particularly where there are new ingredients).

7.4 Business New Zealand considers that more work needs to be done to ensure that Mr Banks' comments above are realised. This should continue to be a high priority for the Commission (and the New Zealand Ministry of Economic Development).

7.5 *Recommendation: Business New Zealand recommends that governments must do more to ensure that compliance costs, as well as other costs and benefits associated with regulatory proposals, are identified and analysed as early as possible in the policy development process.*

8. Conclusion

8.1 Business New Zealand considers that the TTMRA has generally worked well in its five years of existence to date. While progress with some of the goods cooperation programmes has been slow, we consider that they are well worth pursuing and that the governments should put a high priority on resolving the outstanding issues as soon as possible. On the occupation side, we do not consider that the TTMRA has had any significant detrimental impacts on either the 'brain drain' or the quality of practitioners. On the contrary, we consider that taking a global approach to mutual recognition has significant potential benefits and should be pursued more actively.

[7] Extract from address to the Small Business Coalition, Brassey House, Canberra, 20 March 2003.

8.2 Business New Zealand also sees potential for further harmonisation of business law and urges governments to do more to identify and analyse compliance cost implications in developing policy.

9. Recommendations

9.1 Business New Zealand recommends that

(a) The Productivity Commission should push for speedy resolution of the outstanding issues delaying resolution of the five cooperation programmes, with a particular emphasis on taking regulatory approaches that would minimise business compliance costs;

(b) Anomalies around the importation of food products into Australia should be addressed as a high priority.

(c) Occupations should not as a matter of principle be excluded or exempted from the TTMRA;

(d) The Commission should actively encourage and assist occupational organisations to make a more concerted and coordinated effort to achieve globalisation of professional qualifications; and

(e) Further harmonisation of business law should be pursued; and

(f) Governments must do more to ensure that compliance costs, as well as other costs and benefits associated with regulatory proposals, are identified and analysed as early as possible in the policy development process.