DEPARTMENT OF TRANSPORT AND REGIONAL SERVICES

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Dear Mr Hinton

Thank you for the opportunity to comment on the draft research report *Evaluation of the Mutual Recognition Schemes* that was released by the commission on 27 June 2003.

Our comments are confined to section 8.4 *Road Vehicles* of the draft report, and are made in the context of the Trans-Tasman Mutual Recognition Arrangement (TTMRA).

We have a number of comments on specific sections of text. These are mostly intended to clarify minor misunderstandings, but there are substantive issues that we believe need to be taken into consideration by the commission in its final report.

In particular, we are concerned with *Preliminary Finding 8.14*, which favours a continuation of the special exemption for motor vehicles, albeit without annual rollover requirements, until 2006. The finding seems to flow from an assertion under the *Future Directions* section on page 153 that it is in neither country's interests to pursue full permanent exemption (for road vehicles). After lengthy examination by officials in both countries, it is clear that the differences between Australia's and New Zealand's vehicle regulatory systems will not be resolved through the annual cooperation programme. It is our view that continuation would only perpetuate an unproductive process that generates unnecessary administrative cost and activity. We also consider that it would be both inappropriate and misleading to suggest to Heads of Government that there is potential for mutual recognition through further extension of the programs, when clearly that is not the case.

The proposal for a permanent exemption, as outlined in the 5th Joint Annual Cooperation Report for Road Vehicles, is supported by all Australian state and territory governments and relevant industry associations, as well as by New Zealand. We consider that the report should acknowledge this. The support for the proposal recognises the reality of the situation, but also that the objective for road vehicles that was to have been given effect through the TTMRA will be achieved more fruitfully, but over time, through the recent treaty accession by both countries to the United Nations ECE 1958 Agreement. This will provide the basis for unfettered trans-Tasman trade in automotive product, as well as with third parties. The position that has been reached should therefore not be seen as a failure of the cooperation programs, but of the bilateral process being made redundant through the ability to exploit the mutual recognition provisions available under a multilateral international agreement.

The following comments relate to specific sections of the draft report:

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Background

Reasons for the special exemption

There is an implication given in this section of the report that Australia has a robust vehicle regulatory system to protect its manufacturing industry. It should be made clear that Australian requirements addressing vehicle safety and emissions are for the protection of the community and do not serve as a technical barrier to trade.

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The Australian Approach

While Australia does have a low volume scheme - known as the Specialist and Enthusiast Vehicle Scheme - where there are relaxed requirements for demonstration of compliance with regulatory requirements, vehicles must still comply with the applicable Australian Design Rules (ADRs). In the case of new vehicles such as Ferrari and Lotus they must comply with the currently mandated ADRs. Used vehicles on the other hand are only required to comply with the ADRs applicable at the time the vehicle was originally built. This latter concession does not apply to trucks over 12 tonnes GVM or buses with more than 12 seating positions. It should be noted that since May 2003 new arrangements, known as the Registered Automotive Workshop Scheme, have been introduced to deal with used imported vehicles. The basic requirements of the former Low Volume Scheme relating to ADR compliance remain in place.

The statement that "All certification and test reports assessing compliance with ADR standards must be carried out in Australia" is incorrect. Testing may be conducted anywhere in the world. Test results are submitted to the Department in summary form for assessment using an internet based system. The Department does not witness or supervise the required tests. Test Facility Inspections are conducted after the approval has been granted to ensure that testing has been conducted according to mandated requirements. Likewise, conformity of production assessments are conducted after the approval has been granted to ensure that production vehicles are being manufactured to the type approved. There is no approval process covering individual components. The approval is for the whole vehicle only. Test facility inspections and conformity of production assessments are conducted at no cost to the laboratory and manufacturers concerned.

The New Zealand Approach

It is our understanding that the New Zealand/EU MRA on Conformity Assessment does not include road vehicles in its schedules. Further, New Zealand has advised that it operates a self certification system for new road vehicles, under which conformity assessment issues are <u>not</u> addressed before a particular vehicle model is allowed into the market.

The TTMRA Cooperation Program

It is incorrect to say that the National Road Transport Commission (NRTC) and the Land Transport Safety Authority (LTSA) prepared a number of draft trans-Tasman standards. A number of Trans-Tasman Vehicle Safety Standards (TTVSs) were prepared by the Vehicle Safety Standards Branch of the Department of Transport and Regional Services under the provisions of Annex 4 of the TTMRA. Draft TTVSs were circulated for comment to all stakeholders, including the Australian states and territories, Australian vehicle manufacturers, consumers associations, the LTSA and the NRTC. Following the preparation of the final TTVSs and the appropriate Regulatory Impact Statement, the NRTC submitted the proposed TTVSs to the Australian Transport Council for endorsement as required under the provisions of the NRTC Act. To ensure that New Zealand's interests were represented on the NRTC following commencement of the TTMRA, the NRTC Act was amended to provide for a New Zealand commissioner. New Zealand declined to nominate a commissioner to serve on the NRTC Board.

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The UN-ECE Standards on Vehicle Safety and Emissions

The 1998 Agreement on Global Technical Regulations is an agreement between sovereign states not between vehicle manufacturers. It would be more correct to say that the EU, and the governments of USA and Japan were instrumental in reaching agreement on the treaty.

It would be more accurate to say that APEC economies have agreed that the UN-ECE is the forum for the development of internationally harmonised vehicle technical regulations. APEC has not agreed to harmonise standards regionally based on UN-ECE standards.

The latest information published by the UN-ECE indicates that New Zealand has applied 37 of the 114 UN-ECE Regulations. It is understood that New Zealand will accept into its market automotive product that complies with any of the 114 UN-ECE Regulations.

Australia has not applied any UN-ECE Regulations under the 1958 Agreement. Although a considerable number of the ADRs are aligned with the UN-ECE Regulations, a number of process related issues need to be resolved including notifying Parliament through the Joint Standing Committee on Treaties and seeking approval through the Executive Council. It is important that this information is included in the commission's report to make it clear that these requirements have not been breached.

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Review of the Australian Motor Vehicle Standards Act

The review commenced in 1997, not 1998. The comments in the first paragraph of this section misrepresent the analysis of the issues examined by the task force that was set up to review the Act. In particular, it is incorrect to assert that the task force was concerned that Australian consumers might prefer to purchase lower cost vehicles offshore and in so doing would destabilise the Australian manufacturing industry. The industry policy aspects of the

issue were certainly noted, but the dominant consideration was whether the operation of the concessional low volume arrangements compromised the integrity of the Act. The review noted the wide range of views of stakeholders. It considered that, on the one hand the scheme may have been restrictive in that it placed limits on vehicle numbers, but on the other, it was pro competitive because it allowed vehicles to be supplied to the market that might otherwise be excluded because they had not demonstrated compliance with Australian technical regulations. The task force recommended that the scheme be continued, but in a different form, and this was accepted by the Government (with minor amendments to the final form of the scheme). This was a quite separate and different consideration to the issue discussed at page 32 of the Task Force report, which was addressing whether an alternative regulatory system, along the lines of the New Zealand approach, could be applicable for Australia. The two issues should not be linked.

Issues

Problems in adopting the Australian approach

Under a harmonised regulatory system envisaged in the TTMRA the certification of vehicles that could be legally sold in both Australia and New Zealand would not require vehicles imported into New Zealand to be retested. Australia currently imports over 70 per cent of its new vehicles and, in the main, are the same vehicles that are imported into New Zealand. If these vehicles were certified under a trans-Tasman arrangement they would be able to be supplied new to the market in both countries. We do not accept that the cost to New Zealand consumers would increase considerably and such a contention would need to be supported by credible research.

The point made in the third paragraph in the section (second para page 150) is precisely the reason why mutual recognition through the 1958 Agreement is seen as a preferable approach to continuing with the annual cooperation programs under the TTMRA.

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We do not believe that the lack of national safety standards in New Zealand necessarily results in lower costs to New Zealand consumers. In order to supply to markets in other countries it is necessary for exporters to comply with the safety and emission requirements of the countries concerned. Within the TTMRA context where a New Zealand manufacturer chooses to design a product that complies only with US requirements that product would be acceptable in New Zealand but not in Australia, the EU, Japan or, for that matter any of the countries that have unilaterally aligned with UN-ECE Regulations. Manufacturers' normal practice is to amortise product development and certification costs over all markets. Under these circumstances New Zealand consumers would be meeting the development and certification costs for product sold in other markets.

Taking the example given above, the effect of Australia and New Zealand recognising only joint standards that are internationally harmonised as envisioned in Annex 4 of the TTMRA would provide a competitive advantage to both countries and would not create disadvantage.

Problems with the New Zealand approach

It would be appropriate to recognise the terminology in the WTO Agreement on Technical Barrier to Trade to ensure there is clarity in the definitions related to standards. “Standards” for the purposes of the TBT are voluntary instruments that are normally used by organisations independent of government. “Technical regulations” on the other hand are mandatory requirements that affect the trade in goods and services. Equally important is to recognise that “International standards/technical regulations” are those developed in bodies that are open to all members of the WTO. International standards are not overseas standards developed by national or regional governments. The UN-ECE Regulations are examples of international technical regulations.

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Divergence from international standards

The examples given to illustrate the divergence from international standards are inappropriate. Mass and dimensions limits are a matter for individual countries to determine to take account of the physical infrastructure and any other matters it sees fit. These issues are not the subject of UN-ECE Regulations.

Similarly, it is legitimate to manufacture and supply vehicles under the provisions of UN-ECE Regulation approvals in either left hand or right hand drive configuration. The restriction of the use (registration) of left hand drive vehicles in countries that require vehicles to be configured in right hand drive is not inconsistent with international protocols.

Where a Contracting Party to the 1958 Agreement applies a UN-ECE Regulation it is obliged to accept product that has been approved to that Regulation. If a particular country wishes to impose requirements additional to those specified in the Regulation it is necessary for the Contracting Party concerned to notify its intention to cease applying the Regulation.

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Conformity assessment

It is incorrect to say that imports from New Zealand are required to be conformity assessed in Australia. As explained in the comment under *The Australian approach* heading, testing may be conducted at facilities anywhere in the world, including New Zealand.

The acceptance by Australia of conformity assessments carried out by New Zealand conformity assessment bodies accredited by IANZ or JAS ANZ has not been canvassed by New Zealand in any discussions with Australia. It should be noted, however, that Australia does not accept conformity assessments by JAS ANZ even for its domestic manufacturers. NATA accredited laboratories are recognised under the Australian system because departmental officials are directly involved in the NATA accreditation process of laboratories testing to the ADRs. This arrangement provides the necessary confidence that mandatory requirements are being met.

New Zealand has already applied a number of UNECE Regulations under the 1958 Agreement. This entitles New Zealand to issue approvals against those regulations that it has applied, and in doing so it must guarantee conformity of production assessment. Any approvals issued on this basis by New Zealand would, in accordance with the 1958 Agreement, be recognised by Australia.

It is inappropriate to link the concerns raised by Victoria about the MRA to issues related to the TTMRA, and the distinction should be made clear. The concern in Victoria relates to the acceptance of certificates approving vehicle modifications that are made to vehicles already in use whereas the TTMRA is concerned with the safety and emissions requirements for vehicles when first supplied to the market. In fact, the issue raised by Victoria may not be a matter that is currently covered by the MRA where the product has already been supplied to the market. In the event that the MRA and TTMRA are extended to the use of goods there may be an issue to be resolved, but this is not the current situation.

As mentioned previously, Australia does not require all vehicle components to be tested to all ADRs. Only those components that are used in the manufacture of complete vehicles, and to which ADRs specifically apply, need to be tested to ADR requirements. Suppliers of "after market" vehicle components are not subject to certification requirements, but if the components are covered by an ADR they are subject to the prescribed consumer product safety provisions of the *Trade Practices Act 1974.*

The example given concerning seat belts is not relevant. ADR 4/03 (seatbelts) deems AS/NZS 2596 to be equivalent to the technical requirements of the Rule. Seat belts manufactured in New Zealand to AS/NZS 2596 would not be subject to further conformity assessment measures to be able to be supplied in Australia.

We contend that there is sufficient information available to all manufacturers to obtain copies of the ADRs. They can be purchased from the Department on CD-ROM. The issues raised in submission 118 should be referred to the Australian Department of Foreign Affairs and Trade as the contention appears to be that an official in the Australian Consulate had suggested that the Department of Transport and Communications (DOTC) was the responsible agency. DOTC was abolished in 1996. It is noted on the Airplex website that the company claims to be an original equipment supplier to Holden, an Australian company, and would therefore be fully aware of any regulatory requirements related to its products. There are, in fact, no ADR requirements for weather shields. The weight given to this issue in the draft report is not commensurate with its importance.

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Future directions

The issues raised by the mutual recognition of vehicle and components conforming to UN-ECE Regulations under TTMRA needs further elaboration to allow proper consideration by stakeholders. The 5th Joint Annual Cooperation Report advised that with both Australia and New Zealand acceding to the 1958 Agreement trade could be facilitated between the two countries by accepting product that is approved to the respective UN-ECE Regulations. By this process the intentions of the TTMRA could be achieved but to preserve both Australia and New Zealand's diverse domestic regulatory arrangements it would be necessary to seek a

permanent exemption for road vehicles under TTMRA. Both jurisdictions agree with this course of action.

It is not acceptable to Australia that vehicles that do not comply with important safety and emissions requirements having unrestricted entry into Australia on the basis that they can be legally sold in New Zealand. Such a situation would result in vehicles being allowed to be sold in Australia but being refused registration as they do not meet regulatory requirements for use under the provisions of State and Territory law. These constitutional issues need to be taken into account in any decision related to TTMRA.

Other issues arise with respect to the exemption provisions in the TTMRA. In Australia's case the Motor Vehicle Standards Act 1989 is listed under the Special Exemption provisions. This is particularly relevant where Australia certifies, under the provisions of the Act, whole vehicles and not individual components. The inherent difficulties in identifying individual determinations for mutual recognition may or may not be possible and legal advice would need to be obtained before such a course could be considered. As mentioned earlier, the most efficient and administratively simple way to ensure automotive product is freely traded across the Tasman is to permanently exempt this sector and utilise the provisions of the international treaty, the 1958 Agreement.

We consider that the report should acknowledge that, in their submissions to the Review, several bodies (New Zealand, Queensland and the Victorian governments the National Road Transport Commission and the National Environmental Protection Council), supported the permanent exemption of road vehicles from the provisions of the TTMRA.

Information has also been provided to the commission that a draft Regulatory Impact Statement (RIS) has been circulated to stakeholders. The RIS recommended that the Motor Vehicle Standards Act 1989 should be permanently exempted form the provisions of the TTMRA. As well as the bodies identified above, the RIS recommendation was supported by the Australian Federation of Automotive Industries representing both domestic vehicle manufacturers and importers, all Australian State and Territory governments and consumers represented by the Australian Automobile Association and the Australian Trucking Association. It is considered that this information should also be recognised in the commission's report.

Yours sincerely

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