29 August 2003

Ms Sue Holmes
Productivity Commission
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ACT 2616
AUSTRALIA

Dear Ms Holmes

SUBMISSION TO THE AUSTRALIAN PRODUCTIVITY COMMISSION ON THE DRAFT REPORT ON THE TRANS-TASMAN MUTUAL RECOGNITION ARRANGEMENT REVIEW

PART ONE: INTRODUCTION

1 The New Zealand Government welcomes the opportunity to comment on the Australian Productivity Commission's Draft Report which assesses the effectiveness and efficiency of the Trans-Tasman Mutual Recognition Arrangement.

2 Before commenting on the substance of the Draft Report, the New Zealand government would like to commend the Commission on its excellent job in drafting this report. The discussion and preliminary findings reflect a thorough, insightful and balanced representation of many complex issues.

3 This submission is split into three parts: the introduction, the main body of the submission and conclusion. Part Two, which contains the main body of the submission, provides additional contextual information and clarification by addressing four distinct dimensions. These are:

- Section A: Strategic Overview;
- Section B: Discussion of findings relating to Special Exemption Co-operation Programmes;
- Section C: Discussion of findings relating to Occupations and Goods; and
- Section D: Discussion of other issues.

4 Specific technical comments (i.e. drafting and minor technical inaccuracies) on the Draft Report are provided in Appendix A, attached to this report.

PART TWO

SECTION A: STRATEGIC OVERVIEW

5 The primary objective of the TTMRA, to facilitate trade between Australia and New Zealand by removing regulatory barriers to the movement of goods and service providers between the two countries, remains as valid today as it was on signing the Arrangement in 1997. However, it is important to review how effective and efficient the Arrangement has been in meeting its objective. Taking stock of developments under the Arrangement also ensures that the powerful design of the TTMRA is maintained and enhanced where possible to reflect changing circumstances to continue to deliver benefits for stakeholders.

6 In this context, New Zealand would like to note the overall support for the Preliminary Findings outlined in the report. These provide a good overview of the effectiveness of the TTMRA and also raise some key issues that need to be addressed in order to further improve the ability of the Arrangement to deliver on its trade facilitation and regulatory co-ordination objectives. We would like to take this opportunity to provide broad comments on the most pertinent issues.

7 The report has clearly highlighted the need to disseminate information about the obligations and benefits of mutual recognition to policy makers, regulators, industries and professional associations in a consistent and co-ordinated manner. Promoting a better understanding of the TTMRA as a whole, and its legal overriding status in particular, throughout government is important to avoid future problems. In the past problems have arisen due to a failure to recognise the implications of the Arrangement and factor this into the cost benefit analysis at an early stage of the policy development process or due to an unresolved conflict between the objectives of the TTMRA and other policies in the area of social regulation. The Regulatory Impact Statement regimes in both countries provide a good mechanism to raise this awareness of the TTMRA and introduce some obligations on policy makers to incorporate the Arrangement in the policy development process.

8 Similarly the co-ordinated dissemination of information to the broader regulatory community as well as to industry, professional associations and other key stakeholders can be facilitated through a central TTMRA contact point in each jurisdiction. Co-ordination between jurisdictional contact points is also essential for the consistent and timely delivery of information on the implications of the TTMRA. This type of initiative would help minimise the risk issues, such as the recent expiry of the Queensland and Tasmania TTMRA legislation, from occurring in the future.

9 The issue of the sale and use of goods is one that warrants further consideration. Currently, the TTMRA only applies to requirements relating to the sale of goods, and not to regulatory requirements in relation to the use of goods. However, this limit on the scope of the TTMRA has raised concerns

that some regulatory requirements relating to the inspection of goods post-sale, and use of goods post-sale, are operating as barriers to trade between Australia and New Zealand. This has the effect of preventing or restricting the sale of goods that can lawfully be sold in another jurisdiction, in circumstances where the requirement may not be fully justified by health and safety or environmental factors. The operation of these regulatory requirements does not appear to be overridden by the mutual recognition legislation even though it is inconsistent with the objectives of the TTMRA. It is possible that one way to deal with this issue could be to implement a mechanism similar to that used in the EU mutual recognition regime for goods whereby, if a regulatory requirement impedes cross-border sales, it is invalid unless it is proportionate to the policy objectives. It would also be appropriate to include some provisions to account for the unique circumstances of the Australian and New Zealand economies. In order to explore this and other ideas further, it may be appropriate for a group to be established and tasked with defining the 'use' provisions in more detail. This will ensure that this important issue is given sufficient consideration.

10 Finally, we would like to reiterate the importance of the joint standards development process as a tool for promoting mutual recognition across the Tasman. The recent events involving Standards Australia's position that the Active Co-operation Agreement between Standards Australia and Standards New Zealand be replaced by a Memorandum of Understanding makes this issue even more pertinent. The importance of developing joint standards for Australia and New Zealand cannot be overlooked. There is a high degree of stakeholder and business interest in New Zealand in maintaining a joint standards process with Australia as this is seen to benefit manufacturers on both sides of the Tasman and facilitates trade across our borders.

11 The initiatives discussed above would also assist with any future review of the TTMRA especially in terms of identifying trends or business practices which may necessitate a change in the scope of the Arrangement. In order to do justice to its powerful design and the trade facilitation and regulatory co-ordination objectives, it is essential to maintain the currency of the TTMRA by responding to business developments within jurisdictions will. The obligation of a five yearly review is an integral part of any strategy to achieve this.

SECTION B: DISCUSSION OF FINDINGS RELATING TO SPECIAL EXEMPTION CO-OPERATION PROGRAMMES

12 There is strong support for the Preliminary Findings relating to Special Exemption Co-operation Programmes, particularly the concept of extending the need to formally renew the special exemption regulation from every year to every two to three years. This move would not only reduce administrative costs, but would also allow regulators the opportunity to address any outstanding issues and move towards concluding the co-operation programmes. However, this needs to be supplemented with annual formal reporting to responsible Ministers, to maintain discipline and improve focus on progress. There may also be a need to clarify that after the relevant period

has been completed and the co-operation programmes have been rolled-over, further options will remain open which will enable work to continue on any outstanding issues.

13 There is strong support for the view that a Special Exemption should move to a permanent exemption only on the basis of a reason grounded in unacceptable risks to health, safety or the environment. Where there are no such risks, mutual recognition should be sought with whatever harmonisation activity is necessary to achieve this. Difficulty in aligning regulatory systems should not be accepted as a good reason for permanent exemption.

Hazardous substances, industrial chemicals and dangerous goods

14 The Commission's discussion in this area is well informed and sets out the issues well. The New Zealand government supports each of the Preliminary Findings in respect of this Special Exemption.

15 A primary matter which needs better explanation is the status of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) and what the GHS actually is.

16 The GHS is the agreement of the broadest base of technical specialists globally for classifying the hazards of chemicals and communicating those hazards. As such, it is the vehicle for promoting mutual recognition and trade.

17 The Draft Report suggests that the GHS is yet to be finalised. This is incorrect as the GHS is final. Guidance material surrounding the system is still being developed, but the technical detail that comprises the GHS itself is final and agreed to.

18 The primary outstanding matter that remains in respect of the GHS is whether the large players in the global chemicals market elect to apply the GHS to chemicals or to substances. This debate is currently active and both New Zealand and Australia will need to align with whatever develops on this front, regardless of historical positions.

19 There are also other international harmonisation activities underway, based on the GHS. This reflects the size and global nature of the chemicals markets. In this context, trans-Tasman mutual recognition should be based on alignment with international systems where such exist or are being developed.

Gas Appliances

20 As recorded in a submission by Jim Green from the Energy Safety Service to the Commission dated 4 July 2003, there is an error in reported accident statistics. This error gives a misleading impression of the safety of the New Zealand gas appliance regime compared with that in Victoria. The main concern is that the error in the statistics has influenced the tenor of the Draft Report, and will have created perceptions of the effectiveness of the

New Zealand regime that will be very hard to dispel, particularly amongst the Australian industry.

21 The New Zealand regulator is working with the Victorian regulator to develop accident statistics for both Victoria and New Zealand that are agreed and, as far as practicable, relevant for making a comparison of the relative performance of the two appliance safety regimes. However, it must be cautioned that the ability to make such comparisons is clouded by many influences that cannot easily be factored in, such as statistical variability when dealing with relatively small numbers.

Electromagnetic Compatibility (EMC) and Radiocommunications

22 Since the drafting of the EMC and Radiocommunication section of the Draft Report, there have been further meetings between the Australian and New Zealand regulators which have resulted in some useful outcomes that should be incorporated in the final report. In this context, the wording of this section should be amended to reflect these outcomes. For suggested wording please refer to Appendix A.

Therapeutic goods

Dietary Supplements

23 The Draft Reports notes that the New Zealand legislation governing dietary supplements (the Dietary Supplements Regulations 1985) is not included in the special exemption. This statement is incorrect as the Therapeutic Goods Co-operation Programme lists the Medicines Act 1981, the Misuse of Drugs Act 1975 and the Dietary Supplements Regulations 1985 as the New Zealand legislation subject to the special exemption. In effect this means that a number of statements within the report are not accurate as discussed below.

24 The Draft Report discusses how under the TTMRA dietary supplements sold in New Zealand can legally be supplied in Australia even though they cannot be made in Australia. This is simply not the case for the vast majority of products sold in New Zealand as dietary supplements. Where a dietary supplement is in a dose form normally recognised as pharmaceutical, e.g. tablets. capsule, injection, suppository, ointment cream etc, the product cannot enter the Australian market without going through an approval process administered by the TGA. Products which containing substances listed as permitted substances will go through the approval system administered by the Office of Complementary Medicines at the TGA. Products containing substances which are not on the list of permitted substances go through another approval process at the TGA.

25 Where the issue arises is due to the regulatory gap at the food/drug interface. This occurs where products containing minerals, vitamins or substances of animal or plant origin are presented as either foods (e.g. Red Bull), or as food supplements (e.g. colostrum powder) and are marketed in

New Zealand as dietary supplements and in Australia the ingredients of these products are considered to be either listable substances under the complementary medicines sections of the TGA Act, or prohibited substances in terms of Australian food standards.

26 A number of initiatives are underway to resolve the regulatory mismatch and recent discussion papers from Medsafe and the Australia New Zealand Food Regulation Standing Committee (with the involvement of NZFSA) have included proposals to:

- include regulation of "therapeutic style" dietary supplements (i.e. products making therapeutic claims) within New Zealand legislation as part of the project to create a joint regulatory agency between NZ and Australia;

- repeal the Dietary Supplements Regulations and regulate "food style" dietary supplements i.e. minerals and vitamins under the NZFSA legislation; and

- require all foods containing herbal substances, minerals and vitamins to comply with the Food Standards Code.

27 In view of the comments above and the progress being made to resolve the regulatory gap, there appears to be no need or reason to amend the special exemption, or permanently exempt dietary supplements from the MRA, despite the requests to do so made by Australian manufacturers.

Consumer Goods

28 There appears to be some confusion in the Draft Report as to the application of the TTMRA legislation to fair trading legislation, and to the operation of the product safety provisions of fair trading legislation both in Australia and New Zealand. The current regime and recent developments are set out below to assist in clarifying this confusion.

Current regime

29 A Special Exemption was created under Schedule 3 of the Australian TTMR Act in relation to the 300 or more consumer product safety standards and product bans that were in place under Australian Commonwealth (TPA) and state and territory fair-trading legislation at the time of the signing of the TTMRA.

30 Between 1998 and 2003, under processes established by the Ministerial Council on Consumer Affairs (MCCA), the Australian (Commonwealth and State/Territory) and New Zealand fair trading agencies determined that, in almost all cases, the principles of mutual recognition could be applied to these standards and bans, without detriment to the safety of either Australian or New Zealand consumers.

31 By May 2003, the only product safety standard still subject to special exemption under the TTMRA is that relating to child car seat restraints. The special exemption under the TTMRA is narrowly focussed. It applies only to the specific standards and bans (and now only child car seat restraints). It does not apply to the Fair Trading Acts themselves or the provisions under which new product safety standards, product bans or product recalls are made.

32 Thus, under both the TTMRA and MRA, any new product safety standard or ban promulgated under fair trading legislation is subject to mutual recognition unless the jurisdiction introducing such an instrument seeks a temporary exemption. In most jurisdictions temporary exemptions can be made by the Governor (or equivalent) making a regulation under the individual jurisdiction's MRA/TTMR legislation. This exempts the application of mutual recognition for the product specified in the regulating jurisdiction for a period of 12 months. In this period the Ministerial Council is expected to consider and resolve the best way to deal with the particular product. Resolution may take the form of a uniform safety standard, a product ban, or, if the problem has been otherwise contained, no further intervention may be required.

Recent developments

33 The Ministerial Council on Consumer Affairs (MCCA) is currently considering a proposal to request COAG to place the banning provisions of product safety fair trading legislation in Schedule 2 of the MRA, thereby exempting these provisions from the application of mutual recognition principles. It is understood that MCCA has agreed to await the outcome of the Productivity Commission's report before making a final decision.

34 While the proposal at this stage is focussed only on the MRA, it could, if implemented, be then raised in the context of the TTMRA. The proposal impacts adversely on the broader MRA/TTMRA objectives to move to a consistent and uniform approach to product safety issues based on robust analysis, and for the benefit of consumers and traders.

35 New Zealand has serious reservations about the proposed exemption of product banning provisions from the MRA on the following grounds:

- the advisory committees supporting MCCA (SCOCA and CPAC) have processes that support the development of uniform and robust measures to inhibit the supply of unsafe goods. These processes do not appear to have been utilised by the ACT, the jurisdiction leading the Schedule 2 exemption proposal;

- the MRA and TTMRA <u>do not</u> prevent individual States and jurisdictions from taking prompt action against the supply of unsafe goods. Recall action and product bans can still be imposed under fair trading legislation and media publicity utilised to highlight this;

- a good, which is legally sold, can still be subject to a product recall if it is established that the product is unsafe;

- a trader supplying product into a market that had determined that the product was unsafe would be at severe risk under product liability laws;

- removal of consumer product safety legislation from the MRA or TTMRA runs counter to the intentions of the MRA and TTMRA. Both of these arrangements were introduced to address inefficiencies in the market place - inefficiencies created to a large degree by the varying standards and regulations (bans) that apply in the different jurisdictions. In practical terms it would mean a return to the regime where a supplier may have to meet six different rules for one product (e.g. toys that expand in water);

- the MRA supports the development of robust safety analysis, under which a safety issue can be handled consistently throughout Australia and New Zealand and acts as a deterrent to the proliferation of insupportable regulation;

- the MRA is overarching legislation – however the rights are not automatic and evidence would suggest that it is unlikely to be used as a defence against a charge of supplying an unsafe product; and

- currently many banning orders are written in the form of performance or specification requirements (more appropriately used for developing product safety standards). The ACT proposal could well see a proliferation of such banning orders to circumvent the MRA in relation to product safety standards.

Road vehicles

36 APEC economies have agreed to facilitate trade in automotive products by harmonising road vehicle technical regulations in the region based on the United Nations Economic Commission for Europe (UN-ECE) Regulations.

37 Since late 2001 Australian and New Zealand officials have recognised that the objective of trade of vehicles and automotive product would be better facilitated as a result of both countries having acceded to the 1958 UN-ECE Agreement rather than by continuing to pursue harmonisation through developing unique trans-Tasman standards.

38 On this basis New Zealand does not support the recommendation to extend the special exemption for road vehicles until 2006. Instead, it is proposed to seek a permanent exemption. The practical effect of a permanent exemption from the TTMRA will be that New Zealand will continue to accept Australian vehicles as we currently recognise Australian Design Rules (ADRs). In addition, New Zealand manufacturers currently exporting to

Australia on the basis of ADR certification will continue to do so. Once Australia harmonises its appropriate ADRs with the UN-ECE standards, it will be possible for Australian vehicles to be exported to New Zealand on the basis of UN-ECE standards and for New Zealand manufacturers to switch to UN-ECE certification. In this context, it would seem logical to pursue the exemption to coincide with the end of the fifth year of the Road Vehicle Co-operation Programme. The process of seeking a permanent exemption however would need to be carried out on the Australian side.

SECTION C: DISCUSSION OF FINDINGS RELATING TO OCCUPATIONS AND GOODS

Jurisdiction shopping issue

39 Concerns have been raised that the analysis presented in Chapter 5 overstates the issue of 'jurisdiction shopping'. It would be useful to place the highlighted submissions (e.g. the submission of the Optometrists Association of Australia) in context. While most of the highlighted submissions are speculative of the parameters of any 'jurisdictional shopping' problem, it would be helpful to contextualise this concern against statistical evidence. It would also be useful to include the comments of the New Zealand and Australian Governments on this issue.

40 Further, we note that the so-called 'back-door entry' concern may be largely an issue of domestic immigration policy. In this context it should be noted that as long as both countries are willing to accept the standards of the other, it is unclear why the origin of the registered practitioner should make a difference. If the practitioner can achieve the registration standards that are accepted under the TTMRA, then their prior history (eg. where they practised prior to residency in Australia or New Zealand) should be irrelevant. The more compelling issue is whether appropriate background checks (eg. whether they have lost their registration due to misconduct etc. in a non-TTMRA jurisdiction) can be carried out to the same degree as for those practitioners who have always lived in Australia or New Zealand.

Business Licensing

41 There are some concerns about the current wording of Preliminary Finding 9.10 and its potential implications. Alternative wording and justification for that is discussed below.

42 There is agreement that business licensing requirements should not circumvent the requirement for mutual recognition of occupational qualifications under the mutual recognition schemes. This could be prevented without prohibiting hybrid licensing entirely as is suggested in the text preceding preliminary finding 9.10. Prohibiting hybrid licensing entirely would represent an unacceptable loss of sovereignty (more than the New Zealand Government is likely to support at present, given at least one of its recent decisions).

43 The New Zealand Government recently, in considering what form the Lawyers and Conveyancers Bill should take, decided that only persons qualified to act as lawyers (or conveyancers) should be able to own or direct a business providing regulated legal services (or conveyancing services) to the public. However, the wording of the Lawyers and Conveyancers Bill is such that it does not circumvent the TTRMA.

44 The Lawyers and Conveyancers Bill (introduced on 24 June 2003):

- specifies that only lawyers can act as directors or shareholders of an incorporated law firm and only conveyancers can act as directors or shareholders of an incorporated conveyancing firm (see definition of incorporated law firm and incorporated conveyancing firm in clause 6); and
- defines it as misconduct if any lawyer shares with any person other than a lawyer, or a conveyancer shares with any person other than a conveyancer, the income from any business involving the provision of regulated services to the public (clauses 7(3) and (4)).

45 However, these provisions do **not** circumvent the requirement for mutual recognition of occupational qualifications under TTRMA. No person qualified to practice as a lawyer or conveyancer in New Zealand by virtue of qualifications recognised in an Australian jurisdiction is prevented from owning or acting as a director of, a business providing regulated legal services to the public.

46 In light of these comments, it may be appropriate to re-word Preliminary Finding 9.10 as follows:

> "Business licences should not be brought into the scope of the mutual recognition schemes as the additional complexity and conflict from mutually recognising licences are likely to outweigh the gains from freer movement. However, no business licence requirement should contain criteria that effectively circumvent the requirement under the mutual recognition schemes to mutually recognise occupational qualifications."

Permanent exemption of medical practitioners

47 The Medical Council of New Zealand and the Australian Medical Council (AMC) have raised concerns about the different standards for the registration of overseas-trained doctors and the different ongoing competence legislation between Australia and New Zealand. Based on these concerns there is support for retaining the exemption for medical practitioners. However, officials anticipate it could be possible to examine whether the exemption could be removed by the next review in 5 years time. The continuation of the exemption creates an anomaly since medical practitioners remain the only health occupation to be exempted.

48 As noted in the Draft Report, medical practitioners who have an Australian or New Zealand primary or post-graduate medical qualification are

in practice mutually recognised by the other country's authorities. This means that in reality there is already mutual recognition of doctors qualified in Australia or New Zealand. The outstanding concern is overseas-trained doctors registered in the respective jurisdictions.

49 Given the close collaborative arrangements between New Zealand and Australian medical registration authorities and professional colleges, and the equivalency of the medical profession, we consider it should be feasible for the AMC and the Medical Council of New Zealand to develop consistent entry requirements and standards for registration purposes in the near future.

Agricultural and Veterinary Products

50 Currently, agriculture compounds and veterinary medicines are considered a permanent exemption under the TTMRA. Preliminary finding 8.4 of the Draft Report proposes to move agriculture and veterinary products from the permanent exemption list to the Co-operation Programme on Hazardous Substances, Industrial Chemicals and Dangerous Goods (special exemptions section), to address their risks as hazardous substances chemicals. This reflects the fact that these substances are managed under the HSNO Act and that the Chemicals Co-operation Programme is addressing these issues for other hazardous substances.

51 The issues facing this permanent exemption are similar to those of the Chemicals Co-operation Programme and for the sake of consistency could be dealt with together. However, before any decision to change the status of agricultural and veterinary products can be made, consideration must be given to the reasons why they were permanently exempted in the first place and whether those reasons still hold true. This would involve significant work as there may well be wider policy issues in addition to trade and food safety standard complications. In this context, we would like to revisit this issue by April 2005.

SECTION D: DISCUSSION RELATING TO OTHER ISSUES

52 In your letter dated 31 July 2003, you requested some additional information on issues relating to food products, minimum energy performance standards (MEPS) and electrical appliances. Please find below comments on each of the areas.

Food products

53 You requested additional information on the following issues:

- comments on the FSANZ and DOHA submissions, in particular the inter-relationship between the TTMRA and the Joint Foods Standards Treaty;
- why New Zealand did not share Australia's concerns on hemp seed oil;

- New Zealand's different approach in relation to ethylene oxide (EtO);
- differences between the Australian and New Zealand standards for functional beverages; and
- Country of Origin Labelling (CoOL) issues.

FSANZ and the Commonwealth Department of Health and Ageing (DOHA)

54 The comments below focus on the options presented in the FSANZ and DOHA submissions as solutions to "public health and safety concerns" caused by TTMRA enabled trade and comment on the inter-relationship between the TTMRA and the Joint Food Standards Treaty.

FSANZ Option 1: The default option

55 This option recognised that the outstanding differences represented "a very small number of traded food items, compared with all products that are covered under the Code."[1] It was agreed that this option had merit in that it recognised a reasonably shared expectation between the Australian and New Zealand Governments that much progress had been made to harmonise food standards, and that harmonisation will continue.

56 The so-called 'anomalies' did in fact represent that progress and highlighted the fact that officials on both sides of the Tasman had worked hard to ensure minor issues did not create dysfunction in the entire joint food standards system. The creative solutions in operation on issues such as ethylene oxide were evidence of that.

FSANZ Option 2: Permanent exemption for all food items not compliant with the code

57 For the reasons listed above it was felt that there was little truth to the argument that the TTMRA "removed the incentive for further harmonisation."[2] Proof of this could be found in the negotiations between NZFSA, MFAT and Australian officials in the period prior to the Joint Food Code taking effect on December 22. New Zealand officials were acutely aware that the four residual issues (mutton birds, hemp seed oil, mountain dew, and fluoridated water) needed to be resolved from a TTMRA perspective. There was no expectation that the TTMRA had removed the need for continuing progress towards harmonisation, the opposite in fact – it created an impetus to incorporate the Australian perspective in working through to a mutually acceptable (and not overly trade restrictive) solution.

58 One might argue that part of the motivation in working through these issues was the need to ensure that the Joint Food Code took effect. However, the effort made in working through post-Code issues such as ethylene oxide and the scope of the GM labelling review indicate the continued commitment to harmonise or find mutually acceptable solutions.

[1] FSANZ, 7.
[2] FSANZ, 8.

FSANZ Option 3: Temporary exemption mechanisms

59 This option recommends changes to the TTMRA temporary exemption in order to enable the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) to grant temporary exemptions for as long as "is reasonably required to complete the process."[3] Although this appears at first sight to be a pragmatic solution to the difficulties created by differing standards, New Zealand is hesitant to see temporary exemptions stretched indefinitely, thereby removing the discipline which a 12 month window of opportunity instills. Moreover, although the exemption process is unwieldy, any change which meant that a differing position in standards acted as a trigger to set off an automatic indefinite temporary exemption could result in overly trade restrictive measures being taken.

DOHA Option 1: The Imported Food Control Act as exemption mechanism

60 Although this could be viewed as a 'back door' mechanism to exemption (ie. doesn't require the same rigor that the temporary and permanent exemption process necessitates), it requires that exempted products meet a high standard of health risk before trade is restricted. It would also be more compliant with WTO obligations if the need for exemption were based on scientific assessments.

DOHA Option 2: Blanket permanent exemption from TTMRA for all food standards

61 This is New Zealand's least favoured option. A blanket permanent exemption for all food standards represents a drastic step. In removing the discipline of the TTMRA from the entire joint standards system, a strong impetus for working together to create trade facilitative standards is removed. The inter-disciplinary group approach to food issues, which balances the Government's domestic food safety concerns with its trade and economic objectives, is an essential part of the joint food standards setting system. Such a change would mean that only the food portfolios would decide on exemptions, without requiring whole of Government machinery to engage.

DOHA Option 3: A mechanism for temporary exemption integrated into the joint standards setting process.

62 The evaluation for this option is the same as discussed for FSANZ's option 3. Again, DOHA's wording is couched in a reluctance to see 'TTMRA problems' threatening the health and safety of the community, creating the need for easily accessible exemption mechanisms. We can see no need for a food specific change to the temporary exemption process. If health and safety is threatened by trans-Tasman trade, then that risk could be scientifically established through the Imported Food Control Act classification system or through the TTMRA exemption process as it stands.

[3] FSANZ, 9.

63 The issues highlighted in each paper, and detailed below, would seem to be transitional ones that are being resolved through a cooperative approach which is facilitated by regular Ministerial Council meetings and a commitment by both Governments to make the Code work. We doubt the necessity of changing the exemption process specifically for food issues and would see such a step as creating a potentially unhelpful precedent and a weakening of the TTMRA. One of the strengths of the TTMRA is that the exemption process requires a whole of Government approach. Restricting this approach to the sector concerned removes the discipline of needing to convince other departments. Therefore, although there may be a need to revise structures of cumbersome processes, the New Zealand Government has an interest in maintaining the TTMRA's present underpinning of the joint food standards system.

Why New Zealand did not share Australia's concerns on hemp seed oil

64 The New Zealand Australia Food Regulation Ministerial Council rejected a draft standard proposing hemp be used as a food under conditional arrangements. New Zealand joined in this rejection on the basis that the standard was so broad as to have been in conflict with New Zealand laws on drugs as reflected in the Medicines Act. However, hemp seed, (which is a part of the hemp plant that does not naturally contain the cannabionoid element tetra-hydro-cannabinol (THC)), has been used to produce hemp seed oil for sale in New Zealand for many years. It is this product that is permitted for sale in New Zealand. Over time if Australia chose to re-examine its position on hemp products the sale of hemp seed oil in Australia might be reconsidered.

New Zealand's different approach in relation to ethylene oxide (EtO)

65 This issue is transitional and resolution is likely in the next six to nine months. The New Zealand Food Safety Authority (NZFSA) has commenced a review of EtO use in New Zealand.

66 The New Zealand review includes a survey to reassess the current use of EtO, including occurrence of EtO residues and breakdown products in New Zealand herbs and spices. The review is focussing on the availability and suitability of alternative methods for use by New Zealand importers and industry. Part of the review process is to monitor the implementation of the prohibition in Australia. In particular, the impacts on low volume shipments of herbs and spices, cost and time delays with steam sterilisation and the impact on small businesses and food diversity.

67 The New Zealand review will not be complete before 30 September 2003 as proposed by Australia. NZFSA will work as expeditiously as possible, but the review is unlikely to be finished until the first half of 2004.

Differences between the Australian and New Zealand standards for functional beverages

68 This is not a food safety issue but a commercial one that has two components. First, New Zealand manufacturers have the ability to make beverages under the New Zealand Dietary Supplements Regulations 1985 (which have differing provisions to those permitted in foods under the joint Australia New Zealand Food Standards Code) and to export those to Australia under TTMRA provisions. Second, Australian manufacturers are not able to legally make such beverages under existing Australian food law and so are not able to compete with the New Zealand imports.

69 As a result the solution potentially has two elements – change the law in Australia to allow competing products to be made and change the New Zealand law to shift these products from Dietary Supplements Regulations into the Food Standards Code so that manufacturers in both countries can manufacture them. Action is underway on both fronts and resolution can be seen as simply a matter of time.

70 In relation to changing Australian law, policy guidance is being developed by the Food Regulation Standing Committee (FRSC) to provide the framework for the development of a 'food-type dietary supplements' standard in the joint Food Standards Code. This development is having to ensure a clear interface with other closely related FRSC work particularly that of fortification (the addition of vitamins and minerals to foods) and health claims (claims about the levels or presence of vitamins and minerals and what impact these might have for the individual). Once guidelines are finalised, agreed by a Council of Ministers responsible for food in all Australian jurisdictions and in New Zealand, and issued to Food Standards Australia New Zealand, preparation of an appropriate standard can commence.

71 In relation to changing New Zealand law, New Zealand is preparing to consult on the appropriateness of food-type dietary supplements remaining under the Dietary Supplements Regulations. This is seen as a precursor to potential inclusion of dietary supplements (complementary medicines) in a joint Australia-New Zealand Therapeutics Agency.

Country of Origin Labelling (CoOL) issues

72 New Zealand has a policy position on this issue that has not changed in many years. This position is that country of origin labelling is a trade issue as opposed to a food safety issue and that issues concerning such labelling are best dealt with by fair trading/trade practices law.

73 New Zealand has been consistent in its position on this both domestically and internationally. New Zealand, along with Australia and other Cairns Group members, has strongly opposed US country of origin labelling requirements. It would be difficult to reconcile one position internationally and another domestically.

74 New Zealand favours no mandatory Country of Origin Labelling of Food in the Australia New Zealand Food Standards Code. There are several reasons for this and each is discussed below:

- Protection of public health and safety;
- Provision of consumer information;
- Prevention of misleading claims;
- Facilitation of trade; and
- Cost.

Protection of public health and safety

75 As stated above, New Zealand is of the view that country of origin labelling is a trade issue and not a food safety issue. New Zealand does not use country of origin labelling for any product recalls or assurances about the safety of food entering the New Zealand food supply – there are more sophisticated and efficient tools for this. These include details about:

- the manufacturer/importer/retailer;
- product/batch code;
- use by date;
- product description and, where necessary; and
- access to the importation documentation and assurances from competent authorities in the country of export.

76 A 'buy Australia' or 'brand New Zealand' programme is a commercial marketing programme that should not be enshrined in law – it should operate on its commercial merit.

Provision of consumer information

77 New Zealand imports around 40% of all food consumed in New Zealand. This is more imported food per capita than any other OECD country. New Zealand consumers are therefore quite accustomed to buying imported foods. The Fair Trading Act in New Zealand provides that where the omission of the country of origin would be misleading then it should be provided. The New Zealand Commerce Commission has provided ample guidance for New Zealand manufacturers and importers on this point.

78 A recent pilot survey of members of the New Zealand Consumers Institute did not rate country of origin as a significant factor in purchasing decisions (this factor rated 4th to last out of 14 factors). This was not a representative demographic group in New Zealand but it is perhaps indicative. The top 5 factors were use by/best before date, taste, nutrition information, ingredients and price.

Prevention of misleading claims

79 The New Zealand Commerce Commission has been active in this area in the past and enforces the New Zealand Fair Trading Act in relation to country of origin labelling. This has tended to be more about the omission of

an indication that product or ingredients are imported. The position of the Commerce Commission is clear in two booklets – one on Country of Origin Labelling and one on Food Labelling.

Facilitation of Trade

80 New Zealand exports over 80% of all the food produced in New Zealand. Facilitation of trade in food and agriculture is therefore a very important factor for New Zealand's position on country of origin labelling.

81 New Zealand has strenuously objected to other countries imposing country of origin labelling requirements that must be met by New Zealand exporters (as has Australia) and we would not want to compromise this position by supporting what might be considered a trade barrier to imports. It is also the case that different countries want different statements on their imports and adding a requirement in New Zealand simply reduces marketing flexibility.

Cost

82 Every labelling change adds cost and ultimately these are passed on to the consumer. New Zealand has operated historically without mandatory country of origin labelling for food. Changing that situation would add costs for no real benefit that cannot be satisfied by other mechanisms or tools.

Minimum Energy Performance Standards (MEPS)

83 You requested information on the following issues:

- cost differentials between water heaters manufactured to NZ Standards compared to those manufactured to Australian Standard;
- cost to NZ industry of up-grading production plant to comply with NZ standard;
- anticipated energy savings for both water heaters and ballasts manufactured to NZ standards;
- confirmation that ballasts are not made in NZ; and
- NZ's assessment of likelihood of the move to electronic ballasts and the potential timeframes for this.

Cost differentials between water heaters manufactured to the NZ standard compared to those manufactured to the Australian Standard

84 It is difficult to provide an accurate assessment of cost differentials to manufacturers producing Australian as compared to New Zealand MEPS compliant cylinders. Estimates however suggest that the range of cost differentials is likely to be between $10-$50, assuming no economies of scale.

Cost to New Zealand industry to upgrade plant to produce the higher standard

85 There is considerable flexibility in the manufacturing process for low pressure water heaters (i.e. manufacturers predominantly use small batch production processes) which suggests that no general retooling or upgrading of production plants was necessary to manufacture to the NZ MEPS standard. Further most low pressure water heater manufacturers have the capability of making one-off cylinders for clients and do so regularly. For mains pressure water heaters, manufacturers tend to use a more standard assembly line production process, however they have not indicated the cost implications of producing to the NZ MEPS requirement.

The energy savings anticipated for both water heaters and lighting ballasts with the higher New Zealand MEPS

86 The information below is based on the 2001 base year and anticipated energy savings are based on assumptions about the movement of the market in response to the different MEPS levels.

Water heaters

87 Australia currently does not have a standard for low pressure water heaters. The assumptions below depend on the likelihood of importation of low pressure water heaters from Australia (for sake of convenience these are labelled NZ B grade). Energy savings could be considerably low if all low pressure water heaters sold were at the NZ B grade or lower and the percentage of forgone energy savings could be around 60%.

88 If the MEPS level were to be set at the current Australian standard for mains pressure water heaters, we will see some energy savings when compared to the 2001 base level. The percentage of energy savings lost would also be approximately half that of the scenario above but still a third of the energy savings that could be achieved were all water heaters produced to the current NZ MEPS level. Based on market information, these calculations assume that approximately 20% of mains pressure water heaters will be NZ MEPS compliant.

Assumption	**Energy saving above 2001 level GWh**	**Energy saving forgone GWh**	**Percent energy saving forgone**
All cylinders NZ A	940	-	-
All low pressure NZ B or worse, mains pressure are all AUS MEPS compliant	400	540	60%
80% mains pressure are AUS MEPS compliant, no change to low pressure (i.e are NZ MEPS compliant)	630	310	33%

Fluorescent lighting ballasts

89 Ballasts for fluorescent lamps are not manufactured in New Zealand. The estimates below assume that the proportion of the market which was already producing electronic ballasts will not change.

90 It is estimated that approximately 50% of the energy savings achieved under the base case would be lost if the market were to revert to B2 standard (Australian MEPS) with 20% of the market moving to electronic ballasts. However, under the base case, should the move to electronic ballasts be around 60% rather then 40%, then there would be an increase of 84% in the energy savings (i.e. savings would be 3.5 times more than the energy savings if the market reverts to B2).

Assumption	**Energy saving above 2001 level GWh**	**Energy saving forgone GWh**	**Percent energy saving forgone**
Base case: All Ballasts B1 or better and 40% move to electronic	2105	-	-
Super-normal savings: All Ballasts B1 or better and 60% move to electronic	3885	1780 increase	84% increase
All Ballasts B2 or better and 20% move to electronic	1115	990	47%

The likelihood of electronic ballasts replacing conventional ballasts and if so by when.

91 It is possible that without a B1 or similar MEPS level, the industry will revert to the B2 level and will maintain this level for up to 10 years. However, it could be possible that the industry will begin to move to electronic ballasts in the next 5 – 10 years. We anticipate that during this time period there could be a small trend towards electronic ballasts.

92 There is some indication that the industry would like to move to electronic ballasts sooner rather then later as long as they can preserve or enhance their market position. For instance, with the announcement of the NZ B1 standard, one large supplier went straight to electronic ballasts as these ballasts are cost competitive for multiple lamp luminaries.

Electrical Products

93 You requested information on the following issues:

- the seven types of electrical appliances for which NZ requires pre-market conformity assessment;
- an outline of the NZ conformity assessment regime and how it operates;
- the relative efficacy of post- and pre- market surveillance strategies; and
- the possibility of NZ issuing approvals based on conformity assessments to A/NZ standards and recognising conformity assessments made by either NATA or IANZ accredited conformity assessments bodies.

94 The seven types of electrical appliances for which NZ requires pre-market conformity assessment are:

- Luminaires - portable type (large production runs 50+)
- Room heaters
- Outlet devices
- Residual current devices
- Luminaires - child appealing type
- Plugs
- Supply Flexible cords

95 The detailed definition of each of these seven types of appliances which require pre-market approval prior to sale is identical to that contained in AS/NZS 4417 which is the list of electrical appliances agreed to apply in all states and territories of Australia and New Zealand. Any party who sells these electrical appliances in New Zealand must have obtained a valid approval (certification) prior to their sale. Since the introduction of this regime in 1989, approval of an Australian state or territory is accepted as an equal alternative to the approval issued by the New Zealand Government regulatory agency (Energy Safety Service, ESS). New Zealand also recognises certifications issued under its other MRA arrangements including the Singapore CEP.

96 Once an approval has been issued, or obtained, the product may be immediately placed on the market. No further documentation is required to be submitted in New Zealand even for approvals issued from an Australian agency. The arrangement does not require assessment against a NZ Standard nor compliance with New Zealand conditions excepting for residual current devices (RCDs) where a particular New Zealand variation is required for their use in electrical installations.

97 The system is therefore entirely market-to-market.

98 For a second range of products a supplier declaration is required prior to the product being lawfully saleable in NZ. The list of these products is available on our website - www.ess.govt.nz. The supplier declaration has to be completed by a New Zealand organisation. The technical definition of these products is also drawn from AS/NZS 4417 and together with the products requiring approval, duplicates the list of products requiring pre-market conformity assessment in the states and territories of Australia that have implemented the reduced list of items consulted and agreed with Australian and New Zealand stakeholders more than 3 years ago. The supplier declaration regime does not have a requirement for a central register of items in the marketplace nor a website. It only requires a supplier to maintain a file accessible to them within a reasonable time in the event of an audit. In the case of Australian suppliers, this documentation could be kept in Australia if required.

99 Under the TTMRA products imported into New Zealand having an Australian approval could be sold lawfully without a supplier declaration being required.

100 New Zealand also, under its sector legislation, accepts Australian approvals as equivalent to those of New Zealand approvals and therefore products bearing Australian certification may be imported directly into the New Zealand market without passing through Australia. In this way, New Zealand implements the TTMRA at certification level rather than at the product origin level thus recognising in its entirety the Australian regulatory system's ability to achieve a satisfactory outcome. (New Zealand notes that this is not the case in all states and territories in Australia but is the case in the majority of states and territories for products approved in New Zealand).

101 All other electrical and electronic goods are required to meet essential safety requirements contained in the joint Standard AS/NZS 3820 which is recognised by all states and territories of Australia excepting one which recognises the essential contents of that Standard and Regulation.

102 New Zealand also recognises the use of the regulatory compliance mark as determined in AS/NZS 4417 in an equivalent way to the Australian states and territories.

103 Therefore, with the exception of the differing number of products requiring pre-market conformity assessment in New Zealand and the specific requirement applying to RCDs, the two regimes are completely harmonised through the joint standards process. Further, through regulatory co-ordination the administrative implementation and enforcement regimes are also co-ordinated and essentially identical.

104 With respect to the use of pre-market surveillance, we consider that for the most part, post-market surveillance is the most effective strategy for New Zealand. Pre-market surveillance is necessary only for a range of products for which particular market behavioural or technical issues exist which create a higher than normal risk. The determination of those products is an issue on which New Zealand co-ordinates with its Australian counterparts in order to obtain optimal market safety outcomes in both market places.

105 Statistical analysis carried out to compare the New Zealand/Australian/Singaporean and European environments indicates that the New Zealand system is relatively similar to those of like nations and very similar to that of Australia as a whole. Information on these analyses is available on our website www.ess.govt.nz.

106 The Australian regulatory system currently recognises New Zealand conformity assessments directly through the common conformity assessment and Standards arrangements that exist between the two countries. It is not unusual for Australian manufacturers to use New Zealand conformity assessment processes for their products where these are competitive on

either price or speed. Furthermore, the system already recognises one set of conformity assessments made by either New Zealand or Australian accredited assessment bodies for similar or identical products manufactured in either or both markets. This also extends well beyond Australia and New Zealand for products manufactured in other markets for sale in New Zealand or Australia.

107 With regard to market access, ESS has received feedback from several New Zealand manufacturers that they have encountered difficulties when they have marketed products in Australia under the TTMRA provisions. The difficulties come about when auditing is carried out by a state or territory regulator who interprets the TTMRA to apply as a "defence provision" against an enforcement action rather than a market access equivalence.

108 In one particular example, the audit inspector advised the Australian retailer that a product offered for sale did not have an Australian approval marking and that although it carried a NZ certification, this could only be taken into account if an enforcement action was begun against the retailer. Feeling insecure, the retailer removed the product from sale and insisted that the New Zealand supplier obtained an Australian approval before the products were placed back on sale.

109 The problem becomes worse for products that do not require certification in New Zealand and where no labelling or documentation exists that might be equivalent to an Australian approval. In these cases, the retailer is again reluctant to sell the product as surveillance activities cause too much embarrassment and stress for the retailer.

110 As the TTMRA clearly entitle product from New Zealand to be sold in Australia without the need for any further testing, certification or approvals, this situation illustrates the need for better information about the principles and provisions of the Arrangement. This needs to be targeted not only at the regulators but also retailers need to have a better understanding of their rights and obligations under the TTMRA.

PART THREE: CONCLUSIONS

111 The Draft Report provides a clear picture of the TTMRA's ability to meet its objective of reducing regulatory barriers to the movement of goods and services across the Tasman.

112 There is strong support for the majority of the Commission's Preliminary Findings, in particular the need to simplify the administrative process associated with the roll-over of the Special Exemption Co-operation Programmes while retaining the discipline on regulators to focus their efforts on resolving any outstanding issues. The exception to this with regard to the Road Vehicle Co-operation Programme where an extended roll-over period does not seem to be appropriate in light of the developments under the Co-operation Programme.

113 It is also important to promote a better understanding of the TTMRA both throughout the wider bureaucracy as well as industry and consumers. Vehicles for achieving this include the Regulatory Impact Statement regimes already established within both Australia and New Zealand and the provision of a central contact point within each jurisdiction. This need is reinforced by differences in interpretation of the implications and obligations of the TTMRA as illustrated in the electrical products sector. While the regulatory regimes for electrical products in Australia and New Zealand are harmonised through the use of the common conformity assessment and joint standards processes, some manufacturers face market assess difficulties when they have marketed their products under the TTMRA provisions. These have arisen as a result of state or territory regulator audits whereby the regulator has interpreted the TTMRA as providing a defence provision against an enforcement action rather than market access equivalence.

114 In terms of enhancing the TTMRA, further consideration should be given to the issue of the sale and use of goods. Currently the TTMRA does applies to regulatory requirements in relation to the sale of goods but not the use of goods. This situation has raised concerns that some use requirements are acting as barriers to trans-Tasman trade. To ensure that this important issue is given sufficient consideration, it may be appropriate to set up a project team to explore this issue in more detail.

115 It is also important to stress the need to maintain the joint standards development process as a fundamental vehicle for trans-Tasman mutual recognition. Any move away for the development of joint standards would be a retrograde step and would be contrary to the spirit of both the TTMRA and CER. New Zealand stakeholders have expressed strong support for the continuation of the joint standards process as many consider this process delivers significant benefits to both sides of the Tasman.

116 There are number of technical issues throughout the report that need to be amended to reflect the current situation and recent developments. These include the status of the GHS, accident statistics for gas appliances and initiatives to address the regulatory gap at the food/drug interface. Other points of clarification include:

- the application of the TTMRA to fair trading legislation and product safety provisions and product bans. The Consumer Products Safety Standard Co-operation Programme now applies only to the specific standards and bans related to child car seat restraints. It does not apply to the fair trading acts themselves or the provisions under which new products safety standards, recalls and bans are made. This means that any new product safety standard or ban promulgated under fair trading legislation is subject to mutual recognition unless a temporary exemption is applied. The Ministerial Council of Consumer Affairs is currently considering a proposal to exempt banning provisions of fair trading legislation from mutual recognition and New Zealand has serious reservations about this proposal;

- the so called “back door entry” concern may be more accurately described as a concern around whether appropriate background checks for third country practitioners can be carried out to the same degree as for practitioners who have always lived in either Australia or New Zealand;

- it does not seem appropriate to prohibit hybrid licensing where this does not restrict the ability of people with Australian qualifications registering under the TTMRA to practise in New Zealand. The Lawyers and Conveyancers Bill is a recent example of a licensing system that restricts business ownership without circumventing the TTMRA;

- given the close collaboration between Australian and New Zealand medical registration authorities, professional colleges and the equivalence of medical profession, officials anticipate it could be possible to explore removing the permanent exemption for medical practitioners over the next 5 years;

- the issues around mutual recognition are similar for agricultural and veterinary products and the Chemicals Co-operation Programme and it may be more efficient to address these two areas together. However before this decision can be made, it is necessary to examine the reasons why agricultural and veterinary products were permanently exempted in the first place and whether the reasons still hold true. In this context, it would be appropriate to revisit this issue in April 2005; and

- the food issues raised in the submission by FSANZ and DOHA are predominantly transitional in nature and are being resolved through co-operative actions between the two countries. However, New Zealand believes that it is important to maintain the TTMRA as underpinning the joint food standards system and does not agree with any move to change the exemption process specifically for food issues. Any such move could have the effect of weakening the TTMRA.

117 Thank you again for the opportunity to provide comment on the Draft Report and we look forward to the release of the final report on 8 October 2003.

Ministry of Economic Development
(on behalf of the New Zealand Government)
August 2003

APPENDIX A: TECHNICAL COMMENTS ON THE DRAFT REPORT

Hazardous substances, industrial chemicals and dangerous goods

1 We note that some of the descriptions regarding the Australian system are incorrect. However this is a matter best addressed by our Australian colleagues.

The New Zealand Framework (pg 130)

2 The second to last sentence of the first paragraph incorrectly asserts that the Environmental Risk Management Authority (ERMA) imposes conditions on "… all substances except those with toxicity levels below 500 mgs per kg." The sentence is incorrect in a number of ways and the situation is not as simple as the sentence suggests. To clarify:

- "all *substances*" should read "all *hazardous substances*"
- *hazardous substance* means any substance—
  (a) With one or more of the following intrinsic properties (in excess of the minimum degree of hazard thresholds):
    (i) Explosiveness:
    (ii) Flammability:
    (iii) A capacity to oxidise:
    (iv) Corrosiveness:
    (v) Toxicity (including chronic toxicity):
    (vi) Ecotoxicity, with or without bioaccumulation; or
  (b) Which on contact with air or water (other than air or water where the temperature or pressure has been artificially increased or decreased) generates a substance with any one or more of the properties specified in paragraph (a) of this definition.

- The minimum degree of hazard threshold for each of the above hazardous properties above is consistent with the GHS in each case and is established in the Minimum Degree of Hazard Regulations made under the HSNO Act.

- The threshold for acutely toxic substances is an LD_{50} of less than 5,000 mg/kg rather than that presented (this is the correct phraseology and number for what is incorrectly presented in the sentence).

3 As a suggested replacement, the entire sentence could be replaced with:

> *"It grants approvals and imposes requirements for imports, manufacture, sale, transport, storage, use, handling and disposal for all hazardous substances." with a footnote providing a definition for hazardous substances – as provided above.*

4 We note that this issue is also within the first sentence of the section on *Thresholds requiring approval* on page 135.

5 The ERMAs consideration of approvals is broader than presented, particularly in relation to “Maori taonga”, and must take account of the following matters:

(a) The sustainability of all native and valued introduced flora and fauna:
(b) The intrinsic value of ecosystems:
(c) Public health:
(d) The relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, valued flora and fauna, and other taonga:
(e) The economic and related benefits to be derived from the use of a particular hazardous substance or new organism:
(f) New Zealand's international obligations.

6 We suggest that it is acceptable to present all criteria as you have except the last one on your list, which is most simply communicated as we provide above.

Substances versus chemicals (pg 135)

7 The impact of applying the GHS to chemicals or substances is not as large as the Draft Report conveys. The Draft Report claims that New Zealand's substances approach (as opposed to chemicals) comes at a "considerable cost to industry". This statement is a misrepresentation of the situation. Regulating substances does indeed require a greater number of approvals than regulating chemicals. Further, the approach to regulating substances makes it clear what the regulatory requirements are in respect of any given product and avoids the need to account for all the controls for its hazardous components, as would be the case in a chemicals based system. However, under HSNO Act, the industry has some flexibility and can decide on the number of new substances approvals that are required. This is because substances may be defined quite broadly thus minimising the number of applications and approvals required. This approach allows entire product ranges to be covered by one approval.

8 Despite this, industry seems to have adopted a narrow definition of substances in an attempt to achieve pseudo-market protection. For example, ERMA has tried to encourage the domestic spray insecticides industry to make a joint application which would cover all foreseeable products in this area. The industry failed to co-ordinate and since then ERMA have processed at least 5 individual fly spray applications at a cost to the individual companies and the industry collectively.

9 Presently there are around 80,000 existing hazardous substances in NZ based on approvals and notifications received under the predecessor management systems (Explosives Act, Pesticides Act etc). Looking at overseas jurisdictions, it seems that regulating chemicals might require

something like 30,000 approvals. Since the HSNO Act came into force, around 60 applications to introduce new substances have been received and processed. The industry contribution to this process has been by assessment by way of the information provided with applications and attendant fees. The transfer (approval) of the other 99.94% of hazardous substances in NZ is tax-payer funded.

10 It would therefore be more correct to say that there is a cost to the economy in the substances approach as more approvals are required and that industry have considerable influence over how much this approach will affect them.

Thresholds for requiring approvals (pg 135)

11 The first sentence in this section is subject to the error raised under *The New Zealand framework* above.

12 The paragraph representing the thresholds requiring approval contains some technical errors that have then been misinterpreted in the discussion.

13 The paragraph incorrectly asserts what NZ regulates (see specific comment earlier on *The New Zealand framework* regarding hazardous substances and minimum degrees of hazard). Specifically, NZ regulates hazardous substances with hazards in excess of the minimum degree of hazard thresholds. We doubt that this can be communicated to include the numerical value of the thresholds for each of the hazardous properties in one sentence. The passage misrepresents the toxic threshold and presents the wrong number (500 mg/kg *cf* 5,000mg/kg).

14 Following the incorrect assertion of what NZ regulates, a comparison is then attempted to be drawn to the standard used by NOHSC, which happens to be expressed in the same units (mg/kg), but is quite a different measure (concentration of chemicals). The NDPSC standard is then presented, which is actually a more conservative standard than NZ uses (all chemicals destined for domestic use or transportation).

15 The passage that follows seems to be based on a comparative interpretation of the values presented. These simply cannot be compared other than to say that they are entirely different measures.

16 The following passage implies that NZ regulation is more conservative than Australia when the standards presented are not the same measure, they are incorrectly interpreted, and indeed, one Australian regulator is more conservative.

17 NZ has adopted the GHS minimum degree of hazard threshold for acute toxicity as per the GHS oral exposure acute toxicity Category 5, being an LD_{50} of 5,000 mg/kg.

18 The incorporation of the comment from The Cosmetic Toiletry and Fragrance Association is fine, if a little ill-informed, so long as it is presented within the context of a GHS compliant system.

19 Given the ultimate conclusion reached is that implementation of the GHS will resolve these issues, perhaps it is best to say something like "Some issues exist regarding differences in standards as to what should be regulated and what information must be supplied with products of lower hazard. As the GHS includes such thresholds, these issues should disappear when both NZ and Australia are harmonised with the GHS."

Gas Appliances

Preliminary finding 8.15 (pg xxxv)

20 It is proposed that the first bullet point be extended as follows: "*assess the effectiveness of the new New Zealand compliance regime, **and review whether it gives sufficient confidence to move forward with mutual recognition of some or all gas appliances**."* Having assessed the effectiveness of the new regime, such a review is a logical follow-on.

21 The third bullet point identifies one of the purposes of the extension as to "*explore options to eliminate or reduce duplicate conformity assessment requirements between Australia and New Zealand*". In fact, there are no duplicate conformity assessment requirements; Australian conformity assessments are acceptable in New Zealand. In addition, acceptance by Australia of New Zealand conformity assessments is addressed in the next bullet point, so the third bullet point could be deleted.

Section 8.5: Gas Appliances (pg154)

22 Page 154, paragraph commencing "New Zealand has less stringent requirements": This paragraph mixes legislative provisions and industry arrangements. In the second sentence, the inference is that use of the Gasafe logo is authorised by regulations, but the development and use of the logo is entirely an industry initiative. Further the point being made is that New Zealand does not mandate explicit efficiency and fitness for purpose requirements. The opening sentence should therefore read "*New Zealand has less **comprehensive** requirements...*".

23 Page 155, paragraph beginning "New Zealand developed these standards without consulting Australia". The basis for this first sentence, or where it will have come from, is unclear. The New Zealand regime was developed with extensive discussion with the GTRC and many Australian industry representatives, and Australian views were considered. Although Australian regulators did not support the New Zealand regime, consultation should not be confused with agreement. The converse for all of the above points in relation to the Australian regime is equally true. This first sentence should be deleted.

24 Page 155, first bullet point *"Australian industry is geared to produce unflued heaters that meet Australian standards. It is not economic for Australian manufacturers to produce lower quality merchandise exclusively for the New Zealand market"*: Appliances for the New Zealand market are, in effect, required to meet one of a number of international Standards, from Canada, United States, Europe, or Australia, or any other standard that meets equivalent levels of safety. To say that New Zealand has "lower quality merchandise" is to imply that these other economies also have lower quality merchandise.

25 The following bullet points and text reinforce a view that New Zealand sets lower safety standards than Australia, that is generally not correct. The one significant exception is that Australia is looking at making NOx emission requirements significantly more stringent than those in other economies.

26 Page 156, bullet point starting "95 per cent of heaters". This wrongly quotes the GTRC submission, which states "95% of the mass produced models of gas appliances". There are many other types of appliance than heaters.

27 Further, although seismic risks are a consideration for New Zealand, recent work has concluded that there is no need to address seismic risk in appliance standards other than for very large appliances. This is therefore much less of an issue than implied in the report.

28 Page 158, paragraph starting "Conformity assessment". This paragraph states that a first step to mutual recognition would be for New Zealand gas appliance laboratories to apply for IANZ accreditation. This would however be an expensive process so some surety of outcome is necessary. We suggest replacing this sentence by a comment that a first step would be for Australia to indicate it's willingness to accept conformity assessment by an IANZ accredited New Zealand laboratory.

29 The major difference between the Australian and New Zealand approaches is not in the standards adopted as the New Zealand regime is based on Australian Standards plus some other similar standards from other major overseas regimes; the major difference is in the method of assuring conformity.

30 Australia requires type approval of each appliance type, through the AGA approval regime, whereas New Zealand requires a public declaration of compliance by the supplier, for all appliances supplied, and that the supplier produce on demand documentation that demonstrates compliance with essential safety requirements, based on recognised "means of compliance" standards or alternative standards that do not compromise safety.

31 The New Zealand regime has a clearly defined rationale, to:

- clearly assign responsibility to the supplier;
- be transparent and auditable;

- be flexible in accommodating appliances from many overseas sources; and
- minimise compliance costs.

32 It is broadly similar to the supplier declaration regime adopted for electrical appliances (noting that most gas appliances are now electrical appliances).

33 The focus of the discussion of differences between the regimes should therefore be shifted from the standards required in each country to the efficiency and effectiveness of the methods of assuring conformance.

Electromagnetic Compatibility (EMC) and Radiocommunications

34 Suggested wording for Section 8.6, paragraph 4 (pg160):

"ACA and MED plan to initiate mechanisms to control trade in non harmonised RC products and to have in place a co-ordination process for product standard maintenance by April 2004. The ultimate phase of the program, identification of radiocommunication frequencies that will require a special exemption and implementation of all harmonised arrangements, is expected to be completed by December 2004. Recently, preliminary agreement has been reached between the ACA and MED in regard to mutual recognition for the following nine RC product categories:

- UHF Citizen Band (UHF-CB)
- VHF-FM Land Mobile
- MF/HF Land Mobile
- MF/HF Maritime
- VHF Maritime
- VHF Aeronautical
- Radiopaging
- Emergency Position Indicating Beacons (EPIRB's)
- Satellite Distress Beacons (SDB's)

Agreement has not been reached in regard to five RC product categories:

- HF Citizen Band (HF-CB)
- HF Inshore Boating
- Cordless Telephones
- Low Interference Potential Devices (LIPD's) / Short Range Devices (SRD's)
- Spread Spectrum Devices (SRD/SSD)."

35 It is also worth noting that, notwithstanding market-to-market mutual recognition is unlikely in the foreseeable future for these products, work

continues on the alignment of various frequency bands within the latter three categories.

Therapeutic goods

Preliminary Finding 8.5 (pg xxxiii)

36 This finding identifies a number of problems with the current Australian system where substances may be subject to oversight and regulation by a range of regulatory bodies. The finding would tend to support the concept of the creation of a "super-regulator" that could provide a one-stop shop for regulatory assessment and decision-making. This concept has already been canvassed by the TGA some 2-3 years ago and a report on the viability of such an approach has been written but never published. In making this finding it is not clear whether the Commission took the Galbally report and the TGA's commitment to implement key parts of the report into consideration. Pointing the Commission towards the key documents on the concept of a super regulator and the Galbally report and the TGA response to the Galbally report would allow the Commission to further consider the implications of finding 8.5.

Consumer Goods

Consumer products and bans (pg xxiv)

37 Generally jurisdictions have the ability to impose interim bans, and these can then be made permanent. It is perhaps not so much the differences in these provisions as the variation in the readiness to put them to use that the tension resides.

Preliminary Finding 6.4(pg xxix)

38 Jurisdictions need to be able, and to be seen to be able, to respond quickly in the face of a proven unsafe product. It would be politically unacceptable to require Ministers to act in committee before taking such action. However, the process after putting up the ban, whether temporary exemption has been sought or not, to determine whether it needs to be imposed nationally or can be allowed to lapse after a specified period would benefit from consideration by the Ministerial Council or under its delegated authority.

Chapter 2 Mutual recognition framework: Special exemptions (paragraph 2) (pg 21)

39 It is the product safety standards and product bans relating to specific goods that are subject to the special exemption, not the product safety laws.

Chapter 6 Governance of the MRA schemes : Temporary Exemptions (pg 90)

40 Product bans are not exempt from mutual recognition obligations. See comment above. It is perhaps not so much the differences in the banning

provisions as the variation in the readiness to put them to use that the tension resides.

Chapter 8 Special Exemptions: Consumer goods – recall and bans (pg 163)

41 The Consumer Protection Acts are not exempted from the TTMRA. Only the Australian safety standards for child car seat restraints are now exempted.

42 New Zealand also has the provision for an interim ban. In practice this is always invoked before a permanent ban is considered. Again, the variation in processes (bans, RIS's etc) may not be as significant as the variation in readiness to use these instruments – comment applies equally to all states and jurisdictions and New Zealand.

Temporary Exemptions (pg 89-92)

43 It would appear that the process for obtaining a temporary exemption in New Zealand is less cumbersome than in Australia. For instance, in New Zealand there is no requirement to consult with the Ministerial Council on Energy when seeking a temporary exemption. Instead the Minister of Commerce has the power to recommend regulations implementing a temporary exemption, which are then enacted subject to Cabinet approval. It is possible for this process to be completed in approximately 6-8 weeks.

44 We would like to note that the correct situation with regards to the air conditioning standard is that the test method proposed did not take full account of operating the units in cold conditions. This is the sort of issue which routinely arises during the process of developing a joint standard, and the committee has moved on past this specific issue now. At the meeting mentioned in the submission, New Zealand officials did not confirm (and could not have confirmed) that significant changes were under consideration, as those present had not seen any proposals to this effect. In this context, we request that this section should be withdrawn or amended accordingly.

45 With regard to Box 6.1, it should be noted that for both water heaters and lighting ballasts, the Ministerial Council on Energy has not been asked to consider any proposals at present. The AGO in collaboration with the New Zealand Ministries for the Environment, Economic Development and Foreign Affairs and Trade and the Energy Efficiency and Conservation Agency (EECA) are managing the process of finding an agreed solution to the issues around water heaters and lighting ballasts. Should the solution include an extension of the current temporary exemptions or permanent exemptions, the MCE will be then asked to consider these and seek the endorsement of participating jurisdictions.

Appendix E – Interstate Mobility by Occupations

46 New Zealand is not identified as a destination state in the current statistical breakdown with information in this appendix drawn from the 1991,

1996 and 2001 Australian Bureau of Statistics Cenuses. The Productivity Commission has suggested that “decomposition analysis is not possible for inter-country mobility in particular occupations between Australia and New Zealand.” (p.216). Nevertheless, it would be useful to include whatever New Zealand information is available. One source is New Zealand (1991, 1996, 2001) Census data on country of birth and occupation. Cross-referencing this data may indicate the percentage change over time in the number of Australians working in various occupations in New Zealand, thereby offering some indication of the impact of the TTMRA on labour transfers from Australia to New Zealand.