SUBMISSION

by

EMPLOYERS AND MANUFACTURERS' ASSOCIATION (N) INC.

Submission to Australian Government Productivity Commission

on

Bilateral and Regional Trade Agreements Issues Paper

Prepared on 28 January 2010

1. BACKGROUND

This submission is made by the Employers and Manufacturers Association (Northern) Inc. (EMA).

The EMA is made up of some 8500 member business units covering the New Zealand region north of Taupo. This membership includes approximately 1500 manufacturers ranging from large to SME.

Within our membership there are a significant number of companies and organisations involved in the manufacture, importation, supply, distribution and retail of most product types and the provision of services in a wide range of service sectors including governmental, contractual, tourism, IT, banking, insurance and business advisors.

As an organisation the EMA supports international best practice to be followed and compliance costs are fully addressed in any legislation.

As the leading voice of business in the upper North Island we actively participate in both the submission process and any development of regulatory proposals that may impact on our membership such as those discussed within these proposals

2. CONTACT

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3. Submission Summary Statement

The EMA has supported Free Trade Agreements through participation and contribution on issues whenever the New Zealand Government has sought to conclude agreements. In most cases this has resulted in comprehensive agreements being formed with New Zealand's trading partners.

New Zealand has had an Agreement with Australia in the form of CER for 26 years and subsequent to that agreement added the Mutual Recognition agreement and reviewed the Rules of Origin (ROO) to ensure that the original agreement could have the greatest benefits to business on either side of the Tasman.
Other benefits to movement of goods and passengers have also begun to become evident in the spirit of the agreement through strong cooperation.

More recently Australia has sought to enter the Tran Pacific Agreement (Transpac) which would encompass 7 nations including New Zealand who is already a partner in that agreement.

The EMA believes that CER with Australia has been highly beneficial for business in either direction however there remain a small number of thorns that should be ironed out for this agreement to reach its ultimate level of benefits. It should however be noted that these areas are not caused by the agreement but by the non tariff barriers behind the border for the most part although the enforcement may be carried out at the border in the case of Apples.

As agreements go the CER agreement is extremely clean with few exemptions and has been useful in contributing to other agreements that New Zealand has entered into and has proven of great value in terms of the WTO and the ability to demonstrate how free trade agreements can exist.

Subsequent negotiations with countries like Malaysia have also seen New Zealand and Australia cooperate in the negotiation process which also provided some strength for both parties in concluding cleaner high quality agreements.

Specific Comment

Not all questions raised in the issues paper have been responded to as some are more focused on Australian based companies experiences and not therefore relevant to the EMA Northern Inc membership.

Q.1. To what extent have agreements resulted in liberalisation of non-tariff barriers to trade, such as:

- **Quarantine and other health, safety and environmental measures and standards that can be utilised at the border to protect domestic industries; and**
- **Administrative procedures, various customs or other border requirements and clearance processes that can be used to delay import shipments and discourage competition by increasing transaction costs?**

It has been the New Zealand experience that such issues that might prevent or restrict Australian products entering New Zealand have been largely addressed with the exceptions of therapeutic products, medicines and some cosmetic products.
Produce coming into New Zealand does face strict quarantine rules governed by health standards and measures to ensure no produce contains unwanted pests.

The move to 100% screening for quarantine on all import shipments could have imposed both cost and untimely restrictions however this has been handled in a manner that facilitates trade and costs are still less than half of those imposed for the same shipments entering Australia.

The reverse for products and produce entering Australia still cannot be said with produce like Apples still unable to be sold in Australia, in spite of scientific evidence of no risk, due to unworkable import standards that would be imposed.

The issue of therapeutic products entering Australia has actually been worsening and this area as an exemption under the TTMRA continues to provide a thorn to industry on both sides of the Tasman. The failure to establish a Joint Therapeutic Agency has been blamed on New Zealand however the primary issues that industry opposed was the costs that it and the Australian regime imposed on the industry under the TGA registration system and mandatory audit to pharmaceutical level Good Manufacturing Practices.

The worsening effect is the difficulty in now getting any factory in New Zealand audited with the Therapeutic Goods Authority no longer accepting audits completed by their equivalent body in New Zealand Medsafe. This now means 6 month delays in audits and costs that now run to more than double that of the Medsafe audits. Most New Zealand companies have stopped exporting these products to Australia and resorted to contract manufacture of the same products in Australia.

Others have changed products to food type products without therapeutic claims in order to retain them in the Australian market.

In the reverse we see that New Zealand while trying to empower international alignment has picked up EU directives for many product types under Group Standards for Hazardous Substances. This means that any product sold in Europe and labelled for that market

providing it is in English is legal for New Zealand. Products that typically fall under group standards are paint, glues, cosmetics and storage of hazardous materials (Aerosols gas cylinders, fuel storage etc)
In most instances the group standards provide for Australian products to also be recognised and comply with the group standards and they even go so far as to provide exemptions for Australian labelled products.

However as the regulation of hazardous materials, products and ingredients to those products in New Zealand is governed under a single body and single legislation where this is not the case in Australia and this provides an area where alignment can fail in regulatory compliance. This was evidenced in 2009 when the new Cosmetic Group Standard amendments passed the prior year came into force and several containers of sunscreen products made in Australia had to be returned as they were no longer legal in New Zealand for sale due to one ingredient being restricted. They remain legal for sale in Australia due to the lack of similar alignment with the EU on that same ingredient.

Instances of rejected shipments are fortunately few but the instance highlighted the shortcomings of the Australian multiple bodies control of such products. The issue was raised with the TGA however NICNAS did not take an interest.

The lack of similar product alignment between the two countries can also pose an issue in that New Zealand treats sunscreens as a cosmetic product subject to wider laws in terms of claims and product safety but with mandatory requirements for ingredients and Australia regulates them as a medicine with separate and non aligned registration for ingredients.

A similar situation occurs for food type supplements which are generally treated in New Zealand as food with separate regulations but no registration requirement and in Australia as therapeutic products with a registration requirement. Again this broadly is due to the failure of the proposed Joint Therapeutic Agency to progress. This means that while some dietary supplements made in New Zealand can go to market in Australia as food therapeutic products with approved claims on their labels cannot be sold in New Zealand. This was historically overlooked but has since the failure been enforced causing re-labelling of Australian made products for New Zealand to remove any therapeutic claims.

The administrative processes between New Zealand and Australia have commenced a streamlining process to improve the time to market for goods and work already done has seen introduction already of systems for the faster movement of passengers between the two countries. This work is more about the relationship and confidence between the officials in their counterparts than that of the CER agreement however it fits within the spirit and intentions of the agreement.

Q.2. Have there been cases where the effects of an agreement to liberalise have not been fully realised because of:

- **the retention, or more stringent application of, non-tariff import barriers and behind-the-border measures that act as a barrier to trade; or**
- **other obstacles to the implementation of agreements in practice, for example, in relation to achieving agreed harmonisation of standards?**

Where there has been liberalisation of trade in goods, has it involved preferential arrangements or has it been non-discriminatory?

Have trade agreements encouraged further unilateral liberalisation or have they perversely discouraged such reform, so as, for example, to maintain 'negotiating coin' for future trade agreement negotiations?

We believe that in general the effects of the agreements across the tasman have been highly beneficial and that over 95% of traded finished goods move without issue in either direction and although individual state laws have been problematic most of these issues have been resolved with increasing federal take up.
The problem areas remain those already cited in Question 1 and in some unique areas such as differing levels of declared articles such as electrical goods and gas appliances. The latter is a state by state difference as well as a third party registration requirement and subject to a permanent exemption under TTMRA.

There is scope to fix these differences however historically there has been an apparent unwillingness by Australian regulators to simplify regulation in these areas and an insistence that New Zealand must increase or align to Australia when the safety evidence does not substantiate such additional costs.

Q3. What impact have rules of origin had on the liberalisation of merchandise trade actually achieved under different agreements?

This has made the benefits from the Free Trade Agreements clear however it is critical that consistency of the respective rules be applied across all agreements as it makes both compliance easier and ensures that border authorities are familiar with the rules that apply for each country.

CER commenced with a content rule and has progressed to an alternate Change of Tariff Heading which is the basis of most agreements that New Zealand has. Retaining content rules for specific product types has remained and that is clearly protection related and we question why that needs to be so when New Zealand is clearly the smaller partner to the agreement and potential harm is particularly small. Retention of such anomalies within what is essentially a comprehensive agreement adds to frustration and does little to protect the domestic industry in either country.

Q.4. Have there been any regulatory or administrative obstacles to the implementation of such agreements, for example, in relation to mutual recognition of professional services qualifications?
In what ways do the provisions in bilateral and regional trade agreements dealing with services go beyond existing GATS commitments under the WTO, to include market access and national treatment, or to cover services not scheduled by member countries?
What advantages and disadvantages have such beyond-WTO provisions provided?

This has not been a significant issue under CER and due to the Mutual Recognition agreement for services where most have been fully addressed. The establishment of this beyond GATS commitment has made the movement of professional people across the Tasman in both directions far easier although occasionally jurisdictional issues have occurred which appear to have been resolved between the professional bodies amicably.

Q5. How have such behind-the-border measures restricted trade and investment? To what extent have agreements resulted in liberalisation of non-tariff import barriers and behind-the-border measures?

Issues remain in a number of areas such as therapeutic products, Apples and Gas Appliances although this is mostly about products entering Australia and the non tariff barriers as opposed to Australian products entering New Zealand.

In the case of Therapeutics this is a two way barrier which means therapeutic products approved by the TGA for sale in Australia cannot be marketed in New Zealand without relabeling to remove TGA approved claims.

There are long standing issues in all of these cases which pit New Zealand's light handed industry lead regulatory systems in these areas against the costly tight regulation for them in Australia.

Q.6 Have the trade agreements' provisions dealing with IP been liberalising or have they increased barriers to competition in certain markets?
How do trade agreements' provisions dealing with IP interact with Australia's commitments and obligations under the WTO 'Trade-Related Aspects of Intellectual Property Rights' agreement and other multilateral agreements on IP?

Protection of IP is critical to good international business and generally New Zealand and Australian protections are similar and as both countries have signed up to the Madrid Protocol this continues that alignment. WTO commitments should not be impacted when individual IP rights are protected and are not related to the issue of free trade. This is more issues of ensuring that counterfeit products are not allowed to circulate and that trademarks, patents and copyright are given the weight of law with an adequate mechanism for redress by the IP holders. In the case of China New Zealand has found that this was critical but not unachievable.

Q.7 Are there examples where agreements have largely codified what is already in place, rather than achieved liberalisation? To what extent is a legal binding on current practice effective?
To what extent have regulations intended to enforce trade and investment preferences negotiated under trade agreements limited the liberalising potential of the agreements?
Is there any evidence that some provisions in trade agreements have in fact increased barriers to trade and commerce?

Codifying what is already in place does nothing to increase or improve trade but it does give surety to the market about that existing trade in terms of what to expect.

We have seen manufacturers of Men's suits made in New Zealand face tighter barriers than previously when ROO were reviewed under CER and we would argue this was not justified given the size of the manufacturing base in New Zealand and similarity of the cost structures faced by both manufacturing bases. There should not be any differential treatment for goods of any form made in New Zealand and meeting a reasonable content rule irrespective of product type to face more difficult sale conditions in Australia.

Q.8 What has happened to trade flows — both in goods and services — and investment flows between Australia and partner countries with which it has entered trade agreements?
To what extent have these trade agreements created new trade and investment, rather than diverted pre-existing trade and investment from third parties?

What impact have trade agreements had on competition in affected markets?

Which domestic industries, if any, have gained and which, if any, have been harmed?

Have agreements led to lower costs to consumers and other users? What impact has there been on the range and quality of goods and services available in Australia?

What have been the economic effects of 'third wave' provisions? The Commission is seeking information on the impacts on Australian businesses and consumers of provisions contained in recent agreements, including those dealing with intellectual property, government procurement and standards.

To what extent has the Australian Government assisted local businesses to take advantage of trade agreements? For example, has Austrade assistance been steered towards countries that are partners to trade agreements?

Since CER was first entered between Australia and New Zealand the trade flows have moved significantly in both directions with the early advantage to New Zealand however recent years have seen that trade flow more strongly in favour of Australia.

Evidence of the extent that trade has benefited Australian business can be seen in the proliferation of Australian owned and branded retail operations now in New Zealand while this is not the case to the same extent for New Zealand retail in Australia.

Many New Zealand businesses have found it easier to establish Australian operations as a separate business or in some case to purchase existing Australian operations to embed their products into the Australian market but it would be hard to say this is a direct outcome of CER but rather more one of pragmatic business approach to what can be a highly competitive market to enter.

We would suggest that the lowering of costs to consumers or other users has generally not been the effect of Free Trade Agreements but an increase in the diversity in the market through the increased market access has been the experience in New Zealand. New Zealand brands such as Fisher and Paykel certainly have been assisted into the Australian market under CER although not without considerable investment by the brand owners.

Government procurement is a natural progression under trade agreements and it can be clearly evidenced that procurement companies have succeeded in becoming suppliers to both Governments since CER in areas ranging from military to systems development for Government Departments. Cooperation between Governments to ensure that

procurements are open to either country is critical and just a Free Trade Agreement without that cooperation makes government procurement access difficult to achieve.

As Austrade and NZ Trade and Enterprise, its New Zealand equivalent are not permitted to provide direct assistance to business under CER their activity has been restricted to advice and information services only.

Q.9 What business compliance costs and government policy-development and administration costs are incurred as a consequence of Australia participation in trade agreements?

For merchandise trade, how do these administrative and compliance costs vary depending on the nature of the rules of origin — for example, whether they are based on the change-of-tariff classification method, the regional value of content method, technical tests, or some combination of these?

Are there other factors (for example, the size of the business, frequency of import or export, nature of production process) that have a significant impact on the level of compliance costs borne by business?

What are the implications for these costs of the growth of trade agreements and their different regulations?

Differing tariff classification or content methods are the single area where trade agreements can be problematic and potentially costly for business. This is principally due to differences between agreements meaning that different rules can apply to different agreements. In this regard wider multi-lateral agreements can make this issue less of a problem for business.

Having met the criteria for one country and then finding this is different for another coutnry or worse still different in the same country for a different classification of essentially similar products can cause significant costs in ensuring compliance and monitoring processes for this purpose.

Q10. What role should trade agreements play in supporting the international trading system and the WTO?

Are trade agreements useful as 'test beds' for liberalisation strategies in areas not now covered by the WTO? What are the priority areas for such testing and how may they prepare the WTO membership for an eventually expanded agenda?

To what extent are trade agreements suited to tackling trade and investment barriers? How is this affected by the growth in the number of such agreements, many with different provisions, between other countries?

Does the evolving web of trade agreements, entered into by trading partners, mean that Australian businesses would effectively face significant trade discrimination in many other markets if the Australian Government were not to pursue trade agreements? What would the consequences of such discrimination be for Australia's trade and economic performance?

The optimum trade agreement is the WTO however in the absence of a comprehensive Doha round agreement then it is important to maintain growth in free trade through bi-lateral or and multi-lateral trade agreements that are conducive to where the WTO may eventually reach. Significant multi-lateral agreements such as the suggested Tran-Pacific agreement will establish clear benchmarks for the WTO to pick up providing they remain clean and transparent of nature. Significant exemptions damage the value of agreements and harm the arguments under the WTO for a comprehensive round to be concluded.

If Australia is not conducting the same agreements as its neighbours then it does miss out on the opportunity that arises from those agreements.. For Example New Zealand has seen a fourfold increase in trade with China since the agreement to the net benefit of New Zealand exporters as both doors were opened and barriers reduced. This continues to advantage New Zealand exporters over Australian exporters in that market.

There has been some comment that the US-Australia Free Trade Agreement would have the same effect for Australian business however this is a more mature market and similar growth may have been unrealistic whereas other initiatives undertaken by the New Zealand government such as the Secure Partnership Scheme to ensure New Zealand goods access to the US has been generally as productive for existing exporters.

Q.11 Are comprehensive trade agreements the most appropriate vehicle for handling complex service sector market access issues and for addressing behind-the-border barriers to trade and investment?

What role should comprehensive trade agreements play in achieving Australia's foreign policy objectives and other non-trade related objectives such as influencing labour and environmental standards in partner countries? What are the advantages and disadvantages of using trade agreements as the vehicle for achieving such objectives? Would alternative mechanisms achieve these objectives more effectively and efficiently?

These agreements are a critical step in addressing issues however they cannot fully deal with behind the border barriers to trade and investment. That must be addressed through the willingness of both governments to take proactive steps to tackle the issues as we have seen under CER. We would point out however that in the case of the China - New Zealand Free Trade Agreement many of these barriers were addressed, and where they were not, they were placed in an area for future agreement to be reached.

In terms of other objectives such as Labour and environmental standards these do not have any place in such trade agreements and would be better served in memorandums of understanding between nations and within the bounds of international agreements such as the ILO, GHS and the Kyoto agreement. Requiring recognition of what are effectively domestic policies on international free trade partners has no recognisable benefits in the agreement and may have negative impacts on the negotiation processes.

Free Trade Agreements should be clean of other influences and cover the core issues required as far as is achievable with clear direction for any areas not covered.

Q.12 Are comprehensive agreements the best way forward?
What are the pros and cons of comprehensive trade agreements?

- **To what extent are non-trade issues included in more comprehensive agreements? What are the implications for domestic policy of such inclusions?**
- **Do the costs of negotiating broad agreements vary significantly from those of negotiating narrower agreements?**
- **How do broader agreements interact with domestic reform efforts and national efforts to liberalise trade and investment policies on a non-discriminatory basis?**

Would there be benefits if Australia adopted a different, lower ambition, template for its negotiations with some countries? Could agreements be issue or sector specific instead of attempting to be comprehensive?

Should Australia adopt a phased approach to negotiating trade agreements instead of attempting to finalise a comprehensive agreement as a pre-condition for it entering into force?

The short answer on this question is that comprehensive agreements are the best option for the trade agreement to be beneficial.
Lesser agreements are not truly free trade and still leave business in the mode of having to negotiate their way through the areas not covered. Our view is an agreement should be all or nothing and while that may include areas where a prescribed direction forward is agreed that coverage still needs to be in place.

The Trans Pacific Agreement in its first round agreed all but investment but set a clear timeframe and pathway to include that for the future. Once it is included, this agreement will be not only a very clean but a highly comprehensive agreement which all Free Trade Agreements could be modelled on.
Sector exclusions harm the perceived value of agreement as do failure to negotiate all areas of the agreement eg Good, Services, Agriculture, and Investment.