

WORLD TRADE ORGANIZATION

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Committee on Regional Trade Agreements

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AUSTRALIA-NEW ZEALAND PROTOCOL ON TRADE IN SERVICES

Questions and Replies

I. BACKGROUND INFORMATION ON THE AGREEMENT

3. Scope

1. Please identify all sectors excluded from the agreement

Article 2.3 of the Protocol on Trade in Services ("the Protocol") states that the Protocol applies to any measure, in existence or proposed, of a members state that relates to or affects the provision of a service by or on behalf of a person of the other Member State within or into the territory of the first member state. The Protocol therefore applies to all services not specifically excluded from its operations.

Article 2.4 states that the Protocol shall not apply to the provision of a service within or into the territory of a member state of the services inscribed by that member state in the Annex. Thus, it is the provision of individual services, rather than entire sectors of member states' services economies, that is excluded from the obligations of the Protocol. Furthermore, the Annex to the Protocol provides that where an activity is described further, the exemption in terms of Article 2.4 applies to the description only. In many cases, the member states have taken advantage of this provision and inscribed only particular policies or regulations which affect the provision of a service. In these cases it is only the particular policy or regulation which is excluded from the obligations of the agreement.

It should also be noted that Australia and New Zealand maintain separate lists of inscriptions in the Annex to the Protocol, and that only the provision of services within (or into) the member state that has inscribed the particular service/policy/regulation in the Annex is exempted from the Protocol's obligations.

As at 3 November 1997, the following services, policies and regulations were inscribed by Australia in the Annex to the Protocol:

Airport Services

Access to provision of airport services is in general subject to policies of the Commonwealth, the Federal Airports Corporation and local airports owned and operated by local state authorities and bodies.

Air Services

State governments hold powers to regulate intrastate aviation on economic and public interest grounds.

Scheduled passenger and freight services within and between Australia and New Zealand are governed by an air services agreement which has treaty status and by the Australia-New Zealand Single Aviation Market Arrangements of 1996.

Coastal Shipping
Cabotage policy.

Broadcasting and Television
Limits on foreign ownership as set out in the *Broadcasting Act 1942*.

Broadcasting and Television (Short-wave and Satellite Broadcasting)

Basic Health Insurance Services

Third-Party Insurance

Workers Compensation Insurance

Postal Services

The Australian Postal Corporation (Australia Post) has, under section 29 of the *Australian Postal Corporation Act 1989*, the exclusive right to carry letters for reward within Australia and between Australia and other places outside Australia, i.e. services reserved exclusively for Australia Post. Section 30 of the *Act* sets out a number of exceptions to the reserved services of Australia Post. Following amendments to the *Act* which took effect on 5 December 1994, the main exceptions to Australia Post's reserved services are letters weighing more than 250 grams; the carriage of letters in Australia or internationally where the charge or fee is at least four times the standard letter rate; the collection of mail in Australia for delivery to another country; the movement of documents within document exchange services; and the carriage of letters between offices of the same organisation by a third party.

As at 3 November 1997, the following services, policies and regulations were inscribed by New Zealand in the Annex to the Protocol.

Aviation

Airways Services: Under the *Civil Aviation Act 1990*, the Airways Corporation of New Zealand is the sole provider of area control services, approach control services, and flight information services. *The Civil Aviation Amendment Act 1992* repealed these provisions, but with effect from a date (or dates) to be specified by Order(s) in Council which may be made only on the recommendation of the Minister of Transport. Such recommendation(s) may be made only following consultation with the Civil Aviation Authority and if the Minister is satisfied that an appropriate safety regulatory regime is in place in respect of the services concerned.

Postal Services

New Zealand has a statutory monopoly on the carriage of letters weighing 200 grams or less. The main exemption to the monopoly is that anyone is able to carry letters 200 grams or less provided they charge a minimum fee of \$(NZ)80 per letter.

Shipping

Coastal Shipping: *The Maritime Transport Act 1994* allows cargo or passengers (coastal cargo) to be picked up from one port in New Zealand and carried to another by three categories of ship. These are:

- New Zealand ships;
- ships coming to New Zealand to load cargo for unloading overseas or to unload cargo which was loaded overseas;
- ships which the Minister of Transport authorises to trade on the coast when there are no ships from either of the above two categories available to carry coastal cargo. Authorisation to carry coastal cargo must be obtained from the Minister of Transport well in advance of the intended carriage.

Authorisation to carry coastal cargo is subject to compliance with other relevant provisions of the *Maritime Transport Act* and with other law, including the *Resource Management Act*, the *Immigration Act*, and border control legislation.

2. Why have these sectors been excluded?

Australia has included an inscription on airport services in the Annex to the Protocol because the policies of the Australian Government, the Federal Airports Corporation and other airport operators may not be consistent with the obligations of the Protocol.

Australia has included an inscription on air services in the Annex to the Protocol because state governments in Australia continue to hold powers to regulate intrastate aviation, and scheduled passenger and freight services within Australia and between Australia and New Zealand are governed by a separate Air Services Agreement and by the Australia-New Zealand Single Aviation Market Arrangements of 1996.

Australia has included an inscription on coastal shipping in the Annex because the Australian Government's policy on cabotage at the time that the Protocol was negotiated was inconsistent with the obligation to provide market access contained in Article 4 of the Protocol. In 1996 the Australian Government established the Shipping Reform Group to report on reform of Australian shipping. The Group's Report (known as the "Shipping Reform Group Report") recommends, among things, ending the cabotage policy. The Government is currently considering its response to the Report.

Australia has an inscription on broadcasting and television in the Annex to the Protocol because Australian broadcasting legislation limits foreign ownership and control of commercial television broadcasting licences and subscription television broadcasting licences. The legislation has, among its objectives, the aim of ensuring that Australians have effective control of the more influential broadcasting services and the promotion of the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity.

Australia has included an inscription on basic health insurance services in the Annex to the Protocol because the Australian Health Insurance Commission has a statutory monopoly on the provision of basic health insurance services.

Australia has included an inscription on third party insurance in the Annex to the Protocol because Australian states and territories continue to regulate the provision of third party insurance.

Australia has included an inscription on workers compensation insurance in the Annex to the Protocol because Australian states and territories continue to regulate the provisions of workers compensation insurance.

Australia has included an inscription on postal services in the Annex to the Protocol because the Australian Postal Corporation has, under section 29 of the *Australian Postal Corporation Act 1989*, the exclusive right to carry letters within Australia whether the letters originated within or outside Australia. Section 30 of the *Act* sets out a number of exceptions to the reserved service, including the carriage of letters weighing more than 250 grams; the carriage of letters where the charge or fee is at least four times the standard letter rate; the movement of documents within exchange services; and the carriage of letters between offices of the same organization.

The Australian National Competition Council has recently commenced a review of the Australian Postal Corporation which will include an examination of the remaining limits on competition. The review is expected to be finalised in early 1998 and at that time the Government will consider whether it is appropriate to reduce the level of the Corporation's reserved service.

Airway services and postal services are inscribed by New Zealand because there is a monopoly supplier in these areas. Coastal shipping is inscribed because current New Zealand Government policy in respect of cabotage does not provide for national treatment for foreign suppliers, including those from Australia.

3. What steps have been taken and what plans do the parties have, to expand sectoral coverage of the agreement?

Article 10.1 of the Protocol commits the Member States to reviewing (in accordance with Article 20) the status of services inscribed in the Annex with a view to the liberalization of trade in such services.

Since 1992 the Member States have reviewed the status of services inscribed in the Annex annually. This has resulted in the removal of many services, policies and regulations from the Annex (in accordance with the procedure laid out in Article 10.2) and a substantial expansion in the coverage of the Protocol. When the Protocol entered into force on 1 January 1989 Australia had some 25 services, policies and regulations inscribed in the Annex, however the regular review conducted by the Member States have seen this reduced to 10. Similarly, New Zealand has reduced the 10 services and policies that it had originally inscribed in the Annex to 3.

In the Joint Statement released by the Australian and New Zealand Trade Ministers following the 1997 review of the Protocol, the Member States confirmed their intention to "press ahead with further liberalization of the \$1.8 billion annual bilateral trade in services". The two Trade Ministers also noted that the "15th anniversary of the signing of the CER agreement will be celebrated in 1998. This is a timely opportunity to take stock and to re-focus our shared vision for the further, practical advancement of the relationship.

4. Please confirm that no modes of supply are a priori excluded from the agreement.

The Protocol does not exclude a priori commercial presence (mode 3). Specifically, commercial presence is provided for under the following articles:

- Article 3(b)(ii) states that the provision of services includes rights of establishment; and

- Article 7 also specifically accords to persons of member states the right to select their preferred form of commercial presence in accordance with the applicable laws and regulations of the other member state.

The Protocol is therefore fully consistent with the requirements of Article V.1 of the GATS and is a benchmark for the liberalization of services trade internationally.

5. Are New Zealand services investments exempted from screening?

Under the Protocol, New Zealand services investments are not exempt from the Foreign Investment Review Board screening process in the same way that third parties are subject to the same in accordance with Australia's horizontal commitments under the GATS.

6. Based on the responses to previous question, please explain whether the agreement has substantial sectoral coverage.

Under the Protocol sectoral coverage is broad because negative list approach is used and both Australia and New Zealand maintain very few inscriptions. Those inscriptions that remain in the Annex to the Protocol are reviewed regularly with a view to their future elimination. The practical emphasis is placed on progressive market liberalization and contrary to the positive list approach, new services are automatically covered by the Protocol when they become tradeable. Australia and New Zealand are also prevented from adding unilaterally to the list of services exempted from the obligations of the Protocol.

4. Economic and Trade Data

7. Please provide available information on the volume of trade affected by the agreement.

Attached are data from the publication "Trade in Service Australia 1996-97" which analyses Australia's trade in services for the years 1993/94–1996/97. The data shows *inter alia* that Australia's exports of services to New Zealand in 1996/97 amounted to A\$1,039 million and that New Zealand's exports of services to Australia totalled A\$753 million.

II. PROVISIONS AFFECTING TRADE IN SERVICES

1. Provisions of the Agreement relating to the elimination of Article XVII inconsistent measures

8. Please explain the intention and effect of the provision in section 2.2 of the services protocol that its provisions "shall apply subject to the foreign investments policies of the Member States"?

Australia and New Zealand have non-discriminatory investments policies and both member states are parties to the OECD Code of Liberalization of Capital Movements which requires such policies. Article 2.2 of the Protocol is intended to ensure that the member states' investment policies are not affected by the Protocol.

The effect of Article 2.2 of the Protocol is not to exclude investment from the Protocol but to ensure that where the obligations of the Protocol are inconsistent with member states' investments policies, the member states' investment policies prevail. Australia and New Zealand have progressively liberalized their foreign investment policies since 1986 and there remain few impediments to trans-Tasman direct investment. The practical effect of Article 2.2 is therefore limited.

9. How does this provision relate to the obligation in Article V:1(b) to eliminate discrimination, in the sense of Article XVII, between or among the parties, in such of the sectors covered by the Agreement?

Article V:1(b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties through:

- (i) elimination of existing discriminatory measures; and/or
- (ii) the prohibition of new or more discriminatory measures.

Article 8 of the Protocol prohibits the member states from introducing measures that constitute a means of arbitrary or unjustifiable discrimination against persons of the other member state or that constitute a disguised restriction on trade in services between the member states. The Protocol therefore satisfies Article V:1(b) of the GATS.

In addition, in evaluating whether the conditions of sub-paragraph 1(b) of Article V is met, Article V:2 enables consideration to be given to the relationship between an agreement and a wider process of economic integration or trade liberalization among the countries concerned. Given the wider process of economic integration between Australia and New Zealand – including the removal of all tariffs and quantitative restrictions on trade in goods under the ANZCERTA agreement, the harmonization of standards under the Agreement Establishing the Joint Accreditation System of Australia and New Zealand, and the mutual recognition of standards under the Trans-Tasman Mutual Recognition Arrangement – it is clear that the Protocol meets the basic requirements of Article V:1(b).

10. Please identify all provisions in the agreement that allow for discrimination, in the sense of Article XVII, between or among the parties, in each of the sectors covered by the agreement.

Article 2.2 of the Protocol only allows for discrimination in the sense of Article XVII of the GATS, in relation to the services, policies and regulations inscribed in the Annex to the Protocol.

11. Provide an estimate of the volume of trade affected.

It is extremely difficult to estimate the volume of trade affected by Article 2.2 as statistics collected on services trade between Australia and New Zealand do not separately identify trade covered by the inscriptions in the Annex to the Protocol.

Attached is a table showing the trade in services between Australia and selected countries in 1995-96, breaking down the trade by type of service.

12. What plans do the parties have to eliminate this discrimination?

Please refer to the answer given to question 3 above.

Table 1. Services Credits by Type of Service and Selected Countries – 1995-96^(a)
(\$ million)

	Canada	Germany	Japan	New Zealand	Papua New Guinea	United Kingdom	United States of America	Other Countries	Other ^(b)	Total
Shipment										
Freight on exports	-	4	459	57	np	np	np	(e)566	135	1,221
Insurance on exports	-	-	6	-	-	6	-	-	-	12
Total	-	4	465	57	-	6	-	566	135	1,233
Other transportation										
Passenger services	np	np	np	np	np	np	np	np	np	np
Port services etc.	np	np	np	np	np	np	np	np	np	np
Total	109	164	1,060	-	51	600	656	2,506	745	5,891
Travel										
Students' expenditure	13	7	263	53	25	25	31	2,226	108	2,791
Other	131	315	1,841	646	75	604	679	3,913	12	8,216
Total	144	322	2,104	699	100	629	710	6,179	120	11,007
Other services -										
Official	1	-	2	-	46	2	58	181	10	300
Non-official -										
Expenditure of foreign governments and foreign government employees	np	np	np	np	np	np	np	(e)249	4	253
Expenditure of resident entity employees	6	12	76	57	4	32	28	158	-	373
Financial services	1	5	15	13	-	155	139	73	10	411
Insurance services nes	-	-	65	14	-	172	261	^(c) 74	32	618
Miscellaneous services ^(c)										
Communication services ^(d)	np	np	np	np	np	np	np	np	(e)896	896
Computer and information services	np	np	26	17	1	20	36	55	(e)14	218
Research and development services	np	np	np	np	np	30	42	44	^(c) 8	105
Construction services	np	np	np	np	np	np	np	np	(e)67	67
Professional services	np	np	17	13	12	35	86	109	^(c) 73	345
Rental and operational leasing services	np	np	np	np	np	np	np	np	(a)7	7
Technical services	np	np	4	12	6	16	35	188	(e)55	316
Management fees between affiliated companies	np	np	4	87	7	34	237	73	(e)15	457
Agricultural, mining and on-site processing services	np	np	np	np	np	np	np	np	(e)49	49
Trade-related services	np	np	np	np	np	np	24	27	(e)240	290

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(\$ million)

	Canada	Germany	Japan	New Zealand	Papua New Guinea	United Kingdom	United States of America	Other Countries	Other ^(b)	Total
Personal, cultural and recreational services	np	np	np	np	np	-	18	66	(e)43	128
Confidential items	23	23	72	71	17	115	259	326	-908	..
Total miscellaneous services	23	23	123	199	43	230	787	890	560	2,878
Total non-official	30	40	279	283	47	589	1,215	1,444	606	4,533
Total	31	40	281	283	93	591	1,273	1,625	616	4,833
Total services credits	284	530	3,910	1,039	244	1,826	2,639	10,376	1,616	22,964

- (a) Care should be exercised in interpreting country data when residual categories for country groupings either "nes" or "unallocated" and significant. See footnote (a) on Table 33 for an explanation of the issue and refer to Table 34 and 35 for an indication to the significant of the residual categories.
- (b) Includes international institutions, international capital markets and unallocated.
- (c) Relative standard errors for these terms are given in Table 66.
- (d) Communication services includes other services.
- (e) Includes confidential items

Table 2. Services Debits by Type of Service and Selected Countries – 1995-96^(a)
(\$ million)

	Canada	Germany	Japan	New Zealand	Papua New Guinea	United Kingdom	United States of America	Other Countries	Other ^(b)	Total
Shipment										
Freight on imports	-24	-225	-354	-160	-13	-1,051	-487	-1,894	-197	-4,405
Insurance on imports	-	-	-12	-	-	-12	-	-	-	-24
Total	-24	-225	-366	-160	-13	1,063	-487	1,894	-197	-1,429
Other transportation										
Passenger services	np	np	np	np	np	np	np	np	np	np
Port services etc.	np	np	np	np	np	np	np	np	np	np
Total	-87	np	-789	np	-17	-595	-626	(f)-3,099	-396	-5,609
Travel										
Students' expenditure	-12	-18	-35	-40	-7	-45	69	-242	-1	-469
Other	-208	-118	-127	-373	-50	-1,020	-648	-3,240	-181	-5,965
Total	-220	-136	-162	-413	-37	-1,065	-717	-3,482	-182	-6,434
Other services										
Official										
Defense services	-	-	-	-1	-1	-11	-65	-12	-5	-95
Financial services	-	-	-	-	-	-	-	-	-	-
Miscellaneous services	-3	-6	-21	-4	-26	-11	-21	-244	-16	-352
Total official	-3	-6	-21	-5	-27	-22	-36	-256	-21	-447
Non official										
Expenditure of Australian government employees	-2	-2	-3	-2	-4	-15	-34	-53	-7	-122
Expenditure of non-resident entry employees	-7	-7	-9	-84	-8	-59	-69	-303	-6	-554
Financial services	-4	-8	-58	-1	-1	-38	-80	-71	-15	-276
Insurance services nes-	-1	-30	-4	-np	-	-177	-191	-200	(f)-293	-896
Miscellaneous services ^(d)										
Communications services	np	np	np	np	np	np	np	np	(f)-1,081	-1,081
Computer and information services ^(e)	-4	np	-5	-4	-np	-52	-108	-29	(f)-2	-204

Table 2. Services Debits by Type of Service and Selected Countries – 1995-96^(a)
(\$ million)

	Canada	Germany	Japan	New Zealand	Papua New Guinea	United Kingdom	United States of America	Other Countries	Other ^(b)	Total
Research and development services	-2	(e)-14	-8	-1	-	-19	-48	-71	(f)-6	-169
Construction services	^(c) -5	-	-	-	-	-	^(c) -16	np	^(c) -7	^(c) -28
Professional services	np	np	^(c) -21	np	^(c) -3	-117	-78	-47	(f)-51	-317
Rental and operational leasing services	np	np	-1	-	-	-1	-41	-13	(f)-2	-58
Technical services	np	-30	-8	-	np	-46	-96	-51	(f)-14	-245
Management fees between affiliated companies	-9	-6	-27	-10	-	-102	-215	-128	(f)-2	-499
Agricultural mining and on-site processing services	-	-	-	np	-	^(c) -1	-7	-7	-2	-17
Trade and services	-1	np	np	np	np	np	-17	np	(f)-255	-273
Personal, cultural & recreational services	2	np	-	-2	np	-6	-29	-7	(f)-19	-65
Confidential items	-30	-19	-42	-71	-7	-160	-144	-569	1041	..
Total miscellaneous services	-53	-69	-113	-88	-10	-504	-799	-923	-398	-2,957
Total non-official	-69	-116	-187	-175	-23	-793	-1,173	15,50	-719	4,805
Total	-72	-122	-208	-180	-50	-815	-1,259	-1,806	-740	-5,252
Total services credits	-403	-483	1,525	-753	-137	-3,538	-3,089	-10,281	-1,515	-21,724

- (a) Care should be exercised in groups designated either "nes" or "unallocated" and significant. See footnote (a) to Table 33 for an explanation of the issues, and refer to Tables 34 and 35 for an indication to the significance of the residual categories.
- (b) Includes international institutions, international capital markets and unallocated.
- (c) Cells with relative standard errors greater than 25 per cent.
- (d) Relative standard errors for these items are given in Table 66.
- (e) Communication services includes other services.
- (f) Includes confidential items.