

No. 26649

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**AUSTRALIA  
and  
NEW ZEALAND**

**Protocol on trade in services to the Australia–New Zealand  
Closer Economic Relations Trade Agreement (with  
annex). Signed at Canberra on 18 August 1988**

*Authentic text: English.*

*Registered by Australia on 8 June 1989.*

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**AUSTRALIE  
et  
NOUVELLE-ZÉLANDE**

**Protocole à l'Accord commercial dans le cadre de relations  
économiques plus étroites, relatif au commerce des  
services (avec annexe). Signé à Canberra le 18 août  
1988**

*Texte authentique : anglais.*

*Enregistré par l'Australie le 8 juin 1989.*

## PROTOCOL<sup>1</sup> ON TRADE IN SERVICES TO THE AUSTRALIA–NEW ZEALAND CLOSER ECONOMIC RELATIONS TRADE AGREEMENT<sup>2</sup>

Australia and New Zealand (called “the Member States”),

Conscious of their longstanding friendship and close historic, political, economic and geographic relationship;

Recognising the development of a closer economic relationship since the commencement of the Australia–New Zealand Closer Economic Relations Trade Agreement, done in Canberra on 28 March 1983<sup>3</sup> (called “the Agreement”) and the benefits of free trade in goods;

Aware that this relationship will be strengthened and enhanced by expanding trade in services between the two countries through a widening of the Agreement;

Mindful that expanded and liberalised trade in services will assist the expansion of trade in goods;

Believing in the advantages of a clearly established and secure liberal trading framework for trade in services to govern exchange of services and provide confidence to their industries to take investment and planning decisions;

Desirous of improving the efficiency and competitiveness of their service industry sector;

Recognising their commitment to securing trade liberalisation and an outward looking approach to trade;

Believing that a framework of rules for trade in services will lead to a more effective use of resources and an increased capacity to contribute to economic development through international exchanges and the promotion of closer links with other countries;

Conscious of their rights and obligations under the General Agreement on Tariffs and Trade<sup>3</sup> and other multilateral and bilateral agreements and arrangements;

Desiring to conclude a Protocol to the Agreement to provide for the widening of the closer economic relationship to cover trade in services;

Have agreed as follows:

### *Article 1. OBJECTIVES*

The objectives of the Member States in concluding this Protocol to the Agreement are:

- (a) To strengthen the relationship between Australia and New Zealand;
- (b) To liberalise barriers to trade in services between the Member States;
- (c) To improve the efficiency and competitiveness of their service industry sectors and expand trade in services between the Member States;

<sup>1</sup> Came into force on 1 January 1989, in accordance with article 23.

<sup>2</sup> United Nations, *Treaty Series*, vol. 1329, p. 175.

<sup>3</sup> *Ibid.*, vol. 55, p. 187.

- (d) To establish a framework of transparent rules to govern trade in services between the Member States;
- (e) To facilitate competition in trade in services.

#### Article 2. SCOPE OF PROTOCOL

1. This Protocol shall apply to the provision of services in the Free Trade Area referred to in Article 2 of the Agreement.

2. The provisions of this Protocol shall apply subject to the foreign investment policies of the Member States.

3. This Protocol shall apply to any measure, in existence or proposed, of a Member 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.

4. Except as otherwise provided in particular Articles, this Protocol shall not apply to the provision within or into the territory of one Member State of the services inscribed by that Member State in the Annex until such time as such services inscribed by it have been removed from the Annex in accordance with Article 10 of this Protocol.

#### Article 3. DEFINITIONS

*Provision of services* includes:

- (a) The production, distribution, marketing, sale and delivery of a service; and
- (b) For the purpose of the activities referred to in the previous sub-paragraph of this paragraph:
  - (i) Access to and use of domestic distribution systems; and
  - (ii) Rights of establishment.

*Measure* includes any law, regulation, or administrative practice.

*Person of a Member State* means:

- (a) A natural person who is a citizen of, or ordinarily resident in, that State;
- (b) A body corporate established under the law of that State;
- (c) An association comprising or controlled by:
  - (i) Persons described in one or both of sub-paragraphs (a) or (b); or
  - (ii) Persons described in one or both of sub-paragraphs (a) or (b) and persons so described in relation to the other Member State.

#### Article 4. MARKET ACCESS

Each Member State shall grant to persons of the other Member State and services provided by them access rights in its market no less favourable than those allowed to its own persons and services provided by them.

#### Article 5. NATIONAL TREATMENT

1. Each Member State shall accord to persons of the other Member State and services provided by them treatment no less favourable than that accorded in like circumstances to its persons and services provided by them.

2. Notwithstanding paragraph 1 of this Article, the treatment a Member State accords to persons of the other Member State may be different from the treatment the Member State accords to its persons, provided that:

- (a) The difference in treatment is no greater than that necessary for prudential, fiduciary, health and safety or consumer protection reasons; and
- (b) Such different treatment is equivalent in effect to the treatment accorded by the Member State to its ordinary residents for such reasons.

3. The Member State proposing or according different treatment under paragraph 2 of this Article shall have the burden of establishing that such treatment is consistent with that paragraph.

4. No provision of this Article shall be construed as imposing obligations or conferring rights upon either Member State with respect to Government procurement or subsidies.

#### *Article 6. MOST FAVOURED NATION TREATMENT*

In relation to the provision of services inscribed by it in the Annex, each Member State shall accord to persons of the other Member State and services provided by them treatment no less favourable than that accorded in like circumstances to persons of third States.

#### *Article 7. COMMERCIAL PRESENCE*

Each Member State shall accord to persons of the other Member State the right to select their preferred form of commercial presence, which shall be in accordance with the applicable laws and regulations of that Member State.

#### *Article 8. DISCRIMINATORY OR RESTRICTIVE MEASURES*

Notwithstanding that such measures may be consistent with Articles 4, 5, 6 and 7 of this Protocol, neither Member State shall introduce any measure, including a measure requiring the establishment or commercial presence by a person of the other Member State in its territory as a condition for the provision of a service, that constitutes a means of arbitrary or unjustifiable discrimination against persons of the other Member State or a disguised restriction on trade between them in services.

#### *Article 9. LICENSING AND CERTIFICATION*

1. Each Member State shall endeavour to ensure that licensing and certification measures shall not have the purpose or effect of impairing or restraining, in a discriminatory manner, access of persons of the other Member State to such licensing or certification.

2. Each Member State shall encourage the recognition of the qualifications obtained in the other Member State, for the purpose of licensing and certification requirements for the provision of services.

#### *Article 10. LIBERALISATION OF TRADE*

1. The Member States agree to review in accordance with Article 20 of this Protocol the status of services inscribed in the Annex with a view to the liberalisation of trade in such services and whether, and if so how, removal from the Annex could be achieved.

2. A Member State may, at any time, either upon request of the other Member State or unilaterally, remove in whole or in part services inscribed by it from the Annex by notifying the other Member State in writing of its intention to do so.

*Article 11. EXPORT SUBSIDIES  
AND OTHER DIRECT GOVERNMENT ASSISTANCE*

The Member States shall not introduce new, or expand existing, export subsidies, export incentives and other assistance measures having a direct distorting effect on trade between them in services and shall work towards the elimination of any such measures by 30 June 1990.

*Article 12. MONOPOLIES*

1. Where a Member State maintains a monopoly for the provision of a service inscribed by it in the Annex, the services of such monopoly shall be made available to persons of the other Member State for normal business activities in respect of price, quality and quantity under transparent and non-discriminatory conditions.

2. Member States shall endeavour to prevent monopoly service providers under their direct control from using revenues deriving from their monopoly activities for the purpose of subsidising services they may provide in competition with persons of the Member States.

*Article 13. TRANSPARENCY*

1. Each Member State shall make public promptly all laws, regulations, judicial decisions and administrative rulings pertaining to trade in services.

2. Each Member State shall, to the extent possible, provide maximum possible opportunity for comment by interested parties on proposed laws, regulations, procedures and administrative rulings affecting trade in services.

3. The provisions of paragraphs 1 and 2 of this Article are to be interpreted as widely as possible consistent with not requiring a Member State to disclose confidential information contrary to national security, the public interest or prejudice legitimate commercial interests.

*Article 14. DENIAL OF BENEFITS*

Subject to prior notification and consultation in accordance with Articles 16 and 19 of this Protocol, a Member State may deny the benefits of this Protocol to persons of the other Member State providing a service if the Member State establishes that the service is indirectly provided by a person, not being a person of either Member State.

*Article 15. TAXATION*

The provisions of this Protocol shall not apply to any taxation measure.

*Article 16. NOTIFICATION*

1. A Member State shall provide written notice to the other of any proposed or actual measure that it considers might materially affect the operation of this Protocol. The notice shall include the reasons for the measure.

2. The written notice shall be given as far in advance as possible of implementation of the measure. If prior notice is not possible, the Member State

implementing the measure shall provide written notice to the other Member State as soon as possible after implementation.

3. Upon request of the other Member State, information and response to questions pertaining to any actual or proposed measure, whether or not previously notified, shall be promptly provided.

4. The provision of written advice shall be without prejudice as to whether the measure is consistent with this Protocol.

#### *Article 17. INCLUSIONS IN THE ANNEX UNTIL 31 MARCH 1989*

A Member State may inscribe a service in the Annex until 31 March 1989. Before doing so, it shall provide written reasons for the proposed inscription to the other Member State and undertake consultations with a view to establishing whether any problems arising from the non-inscription of a service could be resolved by other means.

#### *Article 18. EXCEPTIONS*

Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Member State or as a disguised restriction on trade in services, nothing in this Protocol shall preclude the adoption by either Member State of measures necessary:

- (a) To protect its essential security interests;
- (b) To protect public morals and to prevent disorder or crime;
- (c) To protect human, animal or plant life or health;
- (d) To prevent unfair, deceptive, or misleading practices;
- (e) In pursuance of obligations under international agreements; or
- (f) To secure compliance with laws and regulations relating to customs enforcement, to tax avoidance or evasion, or to foreign exchange control.

#### *Article 19. CONSULTATION*

1. The Member States shall, at the written request of either, promptly enter into consultations with a view to seeking an early, equitable and mutually satisfactory solution, if the Member State which requested the consultations considers that:

- (a) An obligation under this Protocol has not been, is not being, or may not be fulfilled; or
- (b) The achievement of any objective of this Protocol is being or may be frustrated.

2. For the purpose of this Protocol, consultations between the Member States shall be considered to have commenced on the day on which written notice requesting the consultations is given.

#### *Article 20. REVIEW*

The Member States agree to meet before 31 December 1990, and regularly thereafter, to review the operation of this Protocol.

*Article 21. STATUS OF ANNEX*

The Annex to this Protocol is an integral part of this Protocol.

*Article 22. ASSOCIATION WITH THE PROTOCOL*

1. The Member States may agree to the association of any other State with this Protocol.

2. The terms of such association shall be negotiated jointly between the Member States and the other State.

*Article 23. ENTRY INTO FORCE*

This Protocol shall enter into force on 1 January 1989.

IN WITNESS WHEREOF the undersigned, duly authorised, have signed this Protocol.

DONE in duplicate at Canberra on the eighteenth day of August one thousand nine hundred and eighty-eight.

For Australia:  
[Signed — Signé]<sup>1</sup>

For New Zealand:  
[Signed — Signé]<sup>2</sup>

## ANNEX

## SERVICES INSCRIBED BY NEW ZEALAND

(Where an activity is described further, the exemption in terms of Article 2.4 of this Protocol applies to the description only.)

*Aviation*

*Airways Services.* Airways Corporation has a monopoly on: control of en route control; approach and departure; flight information services; aerodrome control service; aerodrome flight information service.

*International Carriers Flying Cabotage.* This is a world-wide restriction and no country in the world has granted cabotage uplift rights to another country. Were the New Zealand Government to decide to do this it would be illegal, by way of treaty, to grant that right exclusively to Australia (this would be counter to the Convention on International Civil Aviation, Chicago 1944).<sup>3</sup>

*Communications*

*Radio and Television Broadcasting.* Access problem as broadcasting, including "narrowcasting" (broadcasts to sections of the public, usually involving encryption), is not permitted without a warrant issued by the Broadcasting Tribunal and, in the case of television, without express approval of the Minister of Broadcasting. Foreign ownership of television and radio stations is restricted (refer to the Broadcasting Act 1976). In April 1988 the Government announced its intention to deregulate the provision of broadcasting services but to retain restrictions (as yet undefined) on overseas ownership.

<sup>1</sup> Signed by Bob Hawke — Signé par Bob Hawke.

<sup>2</sup> Signed by David Lange — Signé par David Lange.

<sup>3</sup> United Nations, *Treaty Series*, vol. 15, p. 295. For the texts of the Protocols amending this Convention, see vol. 320, pp. 209 and 217; vol. 418, p. 161; vol. 514, p. 209; vol. 740, p. 21; vol. 893, p. 11; vol. 958, p. 217; vol. 1008, p. 213, and vol. 1175, p. 297.

*Shortwave and Satellite Broadcasting.* Access problems. The operation of Shortwave radio services is restricted to the Broadcasting Corporation of New Zealand under the Broadcasting Act 1976. With satellite broadcasting the restrictions on the provision of broadcasting/narrowcasting services using satellite apply as above.

*Telecommunications.* Telecom has a statutory monopoly on the provision and operation of telecommunications networks. However the provision of value added services using circuits leased from Telecom is generally permitted. The network monopoly will be removed on 1 April 1989.

#### *Postal Services*

New Zealand Post Limited has a statutory monopoly on the carriage of letters weighing 500 grams or less. The main exemption to the monopoly is that anyone is able to carry letters of 500 grams or less provided they charge a minimum fee of \$(NZ) 1.75 per letter. The monopoly is subject to review.

#### *Shipping*

*Coastal Shipping.* Ships trading in coastal waters must comply with the requirements applied to coastal ships by the Shipping and Seamen Act 1952. In the absence of suitable New Zealand tonnage employment of foreign ships may be authorised provided convention certificates are in order, the equivalent of local wages is paid to the crew and manning complies with flag state requirements.

*Stevedoring.* Industrial negotiations to liberalise the 1970 FOL guidelines and an amendment to the Waterfront Industry Act 1976 would be required to enable LCL containers to be handled off wharf by other than port union members.

### SERVICES INSCRIBED BY AUSTRALIA

(Where an activity is described further, the exemption in terms of Article 2.4 of this Protocol applies to the description only.)

#### *Telecommunications*

Provision of the basic public switched telecommunications networks within Australia and internationally.

Provision of basic international network facilities.

The shared use and resale of simple carriage of all traffic over private telecommunications networks.

Provision of the following services:

- Public switched data,
- Public switched text and video,
- Public switched Integrated Services Digital Networks (ISDN),
- Leased circuits,
- Mobile telephones.

Provision of payphone services.

Provision and maintenance of public telephones.

Provision of the first standard telephone instrument in customers' premises.

#### *Banking*

Establishment of foreign-owned branch or subsidiary operations or of representative offices.

Legislative limits on shareholdings in Australian banks.



*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.

*Domestic Air Services*

Two airlines policy in force until October 1990. Thereafter, foreign investment in established Australian domestic airlines or new domestic airline business will generally be permitted (subject to normal FIRB guidelines except where the applicant is a foreign international airline operating services to Australia, in which case the level of investment will be limited to less than 15 per cent in any one domestic operator). State Governments hold powers to regulate intrastate aviation on economic and public interest grounds.

*International Aviation: Passenger and Freight Services*

Scheduled passenger and freight services between Australia and New Zealand are governed by the provisions of an intergovernmental air services agreement which has treaty status. It requires both sides to designate and license their airlines operating such services.

Applications for non-scheduled (charter) passenger and freight services from New Zealand to Australia are approved where compatible with published policy criteria.

*Coastal Shipping*

Cabotage policy.

*Construction, Engineering and General Consultancy*

Government preferences for Australian companies.

*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 Commission has a statutory monopoly on the carriage of letters weighing 500 grams or less. The main exemption to the monopoly is that anyone is able to carry letters of 500 grams or less within Australia provided that they charge at least ten times the standard postal article rate.