Joint Submission by the ACTU and NZCTU

to the

Discussion Draft: "Strengthening trans-Tasman economic relations"

by the Australian and New Zealand Productivity Commissions

into

Impacts and Benefits of Further Economic Integration of the Australian and New Zealand Economies

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Foreword

The Australian Council of Trade Unions (ACTU) is the peak union council in Australia. Unions affiliated to the ACTU represent around 2 million workers.

The New Zealand Council of Trade Unions Te Kauae Kaimahi (NZCTU) is the peak union council in New Zealand. Unions affiliated to NZCTU represent around 350,000 workers.

This submission to the discussion draft of the joint study by the Australian and New Zealand Productivity Commissions is jointly made by NZCTU and ACTU. Both the NZCTU and the ACTU welcome further engagement with the study in consultations and public hearings, and reserve their right to put further joint and/or separate submissions to it.

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Introduction

The Australian and New Zealand Councils of Trade Unions (hereafter, the CTUs) again welcome this opportunity to make submissions to the discussion draft of the joint study by the Australian and New Zealand Productivity Commissions (hereafter, the PCs) into the impacts and benefits of further economic integration between our two countries.

In our initial CTU submission we addressed a number of high level issues arising from the PCs' Issues Paper "Strengthening economic relations between Australia and New Zealand", along with some that we considered were omitted. We continue to hold those views and this submission should be read in conjunction with our initial submission. The fact that we do not restate those views, which included some fundamental principles, should not be taken as lessening the importance with which we hold them.

This submission will firstly make some general comments on the discussion in the first three chapters of the discussion draft (hereafter, the Draft Report) to the degree it informs our subsequent comments, and then respond to those of the specific proposals in Chapter 4 on which we have a view.

In the time available we have not been able to go into detail in the arguments presented regarding these proposals, and so would welcome any further interaction with the PCs to clarify any matters that may be unclear.

General Comments

We note the research summarised regarding the impacts of CER to date: that the main effect may have been trade diversion from other markets rather than trade growth (p.4-5 and p.71ff). The Draft Report states that "the quantitative evidence on the benefits and costs of CER is not definitive" (p.82). This underlines the point that the returns to in some cases deep and disruptive change have been small. Some of them may well have had negative returns. When in addition, comments are made that one of the main effects may have been to spur domestic regulatory change (in most cases, deregulation), points in our previous submission are confirmed in that many of those changes remain highly controversial and debate continues as to whether they led to lasting improvement. In New Zealand they certainly contributed to the rapidly growing inequalities and stagnation of household incomes that occurred from the mid-1980s, despite the growth per capita in the economy, yet New Zealand's international competitiveness (presumably

a central objective of those changes) has continued to fall and remains a central issue in policy making.

With this in mind, further integration of the two economies must be taken with the utmost care. The message of the Draft Report is that the main areas for future action will be in services and investment. Both of these are highly sensitive. Services frequently and often deeply impinge on areas that involve cultural and social impacts that are at least as important as the economic impacts. Investment has areas of considerable sensitivity in both countries (overseas ownership of land and strategic assets being areas of common concern), but also is a fundamental issue in economic development. The experience is that not all overseas investment brings benefits of knowledge and technology transfer: there are too many examples of leveraged buyouts (such as through private equity fund managers) which in the end strip out human capital and leave firms indebted and fragile. Portfolio investment may be ephemeral and brings no spillover benefits such as technology and knowledge transfers.

The Draft Report also notes that many areas for future action will be "behind the border" (see for example Figure 4.1 and surrounding discussion p.101), or in other words directly affecting domestic policy. Again this is highly sensitive.

We therefore agree with the following principles outlined in the Draft Report that any future policy changes should

- provide net benefits overall and for each economy separately (p.5);

and analysis of proposed initiatives should (p.8)

- take into account the indirect as well as direct costs and benefits;
- be proportionate to the importance of the issue being addressed; and
- be publicly available.

We also support the concept arising from the experience with the Food Standards Authority of Australia and New Zealand (FSANZ) that "inclusion of provisions that allow some level of flexibility for countries to respond to domestic issues and preferences within a harmonised regime can help to reduce the costs associated with the loss of national autonomy" (p.90). This should be a design criterion of any proposal. Warnings against a "race to the bottom" are well made and careful consideration of harmonisation on a case by case basis (p.91) is essential.

We emphasise however that the domestic distributional impacts as well as cross-Tasman distributional impacts should be part of any analysis, given the negative distributional effects of many past policy changes. We disagree with the suggestion (e.g.p.20 and p.38) that "adjustment costs" are necessarily temporary. They can have profound and long lasting effects on society. For example Stillman, Le, Gibson, Hyslop and Mare (2012)[1] in their recent study, "The Relationship between Individual Labour Market Outcomes, Household Income and Expenditure, and Inequality and Poverty in New Zealand from 1983 to 2003" conclude:

> "controlling for changes in household composition, demographics, qualifications, and employment rates does not explain the increase in poverty that occurred in the 1980s. Taken in conjunction with previous work by Gibson and Harris (1996), Dalziel (2002) and Stillman et al. (2011), these results suggest that the structural reforms undertaken in the 1980s led to permanent changes in the distribution of resources across households in New Zealand, in particular a reduction in resources for the poorest households."

While by no means all of those structural changes were due to CER, it does indicate that the negative impacts of such changes can be permanent.

A summary might be that changes should only be contemplated if there are clear advantages, side effects are understood, are minor, and are compensated where negative, and the difficulty of implementing change is proportional to the benefits.

We note the reference to the European Union "four freedoms" framework (p.8 and p.22). However it omits a discussion of the social programme that has been an at least partial balance to the social effects of these substantial economic changes in the EU. Such a social programme is not part of the PC's process, creating a high social risk if significant changes are recommended. Governments do have a role (refer p.20) in ensuring acceptable social outcomes. Criteria on p.8 also state that "CER initiatives should: continue to be outward looking; not impede opportunities for profitable exchange with other trading partners; take account of linkages with other agreements; and complement initiatives to enhance domestic policy." We do not believe the discussion has taken into account the point we raised that interaction with future agreements may be problematic where only one of New Zealand or Australia is a party. We wrote in our previous submission:

[1] "The Relationship between Individual Labour Market Outcomes, Household Income and Expenditure, and Inequality and Poverty in New Zealand from 1983 to 2003", Steven Stillman, Trinh Le, John Gibson, Dean Hyslop, and David C. Maré, Motu Working Paper 12-02, February 2012.

Both countries are active in negotiating wide-ranging commerce agreements with third countries. For example New Zealand, and not Australia, has a free trade and investment agreement with China; Australia and not New Zealand has one with the US. In all such treaties, agreement may be reached to adopt certain measures as part of a package which the New Zealand or Australia government of the time considers provides net benefits to the country. Any harmonisation arrangements between the two countries should not require one to adopt future measures committed to by the other with a third country. For example, harmonisation of intellectual property rules (as suggested on p.31 of the Issues Paper) or the various requirements around PBS in Australia and Pharmac in New Zealand prior to the signing of the Australia-US FTA could have required New Zealand to adopt the concessions Australia made to the US in those areas, but without any of the quid pro quo that the Australian government asserted it obtained in exchange for the concessions.

The complications for international agreements the two countries negotiate in future should be a consideration for the Study. Both Australia and NZ have signed and continue to negotiate a number of preferential trade agreements. Often these agreements include clauses that apply the most favoured nation principle. This allows liberalisation negotiated in one agreement to extend to other countries that Australia and NZ have already negotiated agreements with. The CTUs consider it essential that greater economic ties between Australia through the CER are not automatically extended to other trading partners. This is because the economic relationship between Australia and NZ reflects our two countries unique relationship and close history.

There are numerous other questions to be considered. To what extent will each country have remaining degrees of freedom in negotiating such agreements as integration between them increases? What are the implications for different arrangements for dispute settlement in two parts of an integrated economy? For example, Australia has set a firm policy against accepting Investor-State Dispute Settlement (ISDS) in its future international agreements while New Zealand has not. If a regulatory setting common to the two countries gives rise to an investment dispute and ISDS is available only against New Zealand, will New Zealand become the “soft underbelly” for investor actions which in fact are as much against Australia as they are against New Zealand?

We also need to be sure that such initiatives genuinely "complement" domestic policy, and do not drive it. This raises the issue of ongoing process. Domestic change should be (and usually is) through accountable and public mechanisms tied to our Parliamentary systems. The record of entering into international agreements has been by fiat of the executive. While we continue to believe this is dangerous for international agreements, it is even more so to the degree it impacts domestic policy. We appreciate the openness with which this inquiry has been conducted. The further development of initiatives, both inside and beyond the PCs' process should continue to be as open.

With regard to economic development of our two countries, we take issue with the statement (p.29) that "tariffs and other trade barriers unambiguously reduce efficiency and community wellbeing". Many policies which can be described as "trade barriers" (as in "technical barriers to trade") have a positive purpose and impact, such as to ensure safety of equipment or prevent entry of diseases or pests. We also strongly affirm the need for continuing active industry development policies to assist both countries in diversification of their industries and exports and while acknowledging that tariffs are no longer available for that purpose we would oppose any changes that raised further obstacles to industry development.

Regarding labour mobility (p.32-33) we note that while Trans-Tasman labour flows *may* be "seen as having helped to address short-term imbalances in the Australian and New Zealand labour markets", the flow has been highly imbalanced with a net flow towards Australia as shown on p.79. This is hardly a short-term effect and suggests long-term imbalances in the relationship. The discussion of "hollowing out" on p.39 suggests some of the drivers for this, and higher wages in Australia is the most obvious (p.80). On the positive side, labour mobility can enhance knowledge transfers, and should be added to the list on p.33. We note however that the fiscal costs of this unbalanced labour mobility are covered (p.37ff and p.86ff) but not addressed in recommendations. We reiterate the concerns we expressed in our previous submission that "any competition should be based on a level playing field of social and labour market institutions, so that it is not competition to force down the social wage." We described features that needed consideration such as a social protection floor including minimum wages, conditions of employment, and standards of social security provision, health services, and education.

We support the PCs' view that political union is not a live option. That in turn implies a need for caution with regard to policies that might compromise the sovereignty and autonomy of either country.

Opportunities for further integration

In this section we briefly respond to the specific proposals in Chapter 4 on which we have a view. With respect to all proposals for further integration, it is our strong view that any programs need to be adequately funded and the proposals carefully planned and analysed ahead of proceeding. In particular they:

- should not undermine existing standards of either work; health and safety; service or employment standards;

- must respect the public sector governance arrangements of each country;

- include clear lines of control; of accountability and of transparency.

DR p.95.

We support the sharing of confidential information between competition and consumer law regulators in both countries, with appropriate safeguards for personal privacy, and urge that it should proceed.

Mutual recognition of occupational licensing

DR4.2 *Australian and New Zealand occupational regulators should share knowledge and lessons in developing efficient and effective occupational licensing systems. Relevant Australian and New Zealand regulators should be included in consultations around the development of national licensing systems in the other country.*

This type of change requires both countries to have fully integrated and well-functioning national systems before any attempt should be made at cross-Tasman integration. The nature of the licensing arrangements will vary considerably depending on the type of occupation being regulated. This will also impact on the process by which people obtain qualifications, so any changes need to aligned with relevant occupational and professional education in the respective university and technical and vocational education systems.

The Australian COAG process around developing national licensing systems has been messy; essentially the Commonwealth has sought to bring together all the state bodies and then nut out the problems. (A recent example has been through the establishment of the Australian Health Practitioner Regulation Agency; this entails both the move to a commonwealth system and bringing together a number of occupationally specific licensing bodies - see http://www.ahpra.gov.au/)

We reiterate from our previous submission that either country may have specific requirements in qualifications which are specific to their cultural, social or geographic context, reflecting needs in their society. These could cover a broad range of sensitive considerations as diverse as providing tangible recognition to different cultural groups present in a country, and the competencies expected of engineers in an earthquake or drought prone country. Harmonisation should not undermine that by insisting that citizens from the other country can practice without acquiring those competencies.

We believe cross-Tasman licensing should only apply for those who seek to have their license recognised in the other country. This will potentially apply to a very broad range on occupations from electricians and plumbers to teachers, nurses, certified practising accountants and child care workers and others.

A better option with greater prospect of achieving early results may be work on the process in each country for recognising the qualifications of the other to be better documented and streamlined. This would require detailed work on both sides of the Tasman.

Portability of retirement savings

DR4.3 *The implementation of the trans-Tasman agreement on the portability of retirement savings has been impeded by slow progress in Australia. The Australian Government should proceed to complete these reforms.*

We support in principle the greater portability of retirement savings to recognise the large number of New Zealanders who work in Australia and may want to return to New Zealand, but consequences for New Zealand funds as a result of the high net migration from New Zealand to Australia also needs to be considered. Neither government should obstruct movement of savings through tax measures which in effect punish mobility.

The Australia-New Zealand Therapeutic Products Agency (ANZTPA)

DR4.4 *Given the long time it is taking to set up the Australia-New Zealand Therapeutic Products Agency, the Australian and New Zealand Governments should:*

- *publish regular progress reports*

- *once the Agency has been established, review the lessons from establishing it for other potential regulatory harmonisation initiatives.*

We note that this body will create a precedent for such trans-Tasman agencies.

Legislation introduced into the New Zealand Parliament in 2007 which did not proceed had the following features: From the New Zealand point of view, it was to be established under Australian law, with a Director appointed under Australian law, accountable to a Ministerial Council consisting of the two countries' health ministers rather than to the New Zealand Minister of Health and through him/her to the New Zealand parliament, subject to parliamentary accountability of a type akin to a New Zealand Crown Entity, but not a Crown Entity, and having significant powers of search and seizure over New Zealand citizens. Its employees under the 2007 bill were not going to be public servants subject to such provisions as public service Codes of Conduct and would not receive a range of statutory employment benefits and protections. Arguably, under this model, New Zealand did not have equal status.

Similar jurisdictional problems have arisen in Australia under the COAG processes. For example the recently established National Rail Safety Regulator brought together what were previously state bodies. This was quite a constitutional and legislative labyrinth and far more complicated than initially anticipated.

The proposed Agency's role in relation to other government departments and agencies on either side of the Tasman will also need careful consideration. Across-government integration of policy will be difficult. .

While the final model may differ from the 2007 proposal, whatever form it takes raises important issues of accountability and public management, and difficult transitional issues for existing employees.

As part of the review of the agency proposed in this recommendation, there should be consideration of what a "trans-Tasman public service" should look like and its relationship to each country's public services and the various institutions that underpin them.

CER Investment Protocol

DR4.5 *The CER Investment Protocol should be enacted as soon as practicable.*

We oppose the protocol. Investment between the two countries has grown very substantially without it. Some such as leveraged buyouts by private equity funds has been damaging. Reducing the ability of either country to manage its foreign investment is a backward step.

We are also concerned at the prospect of making the ownership of water rights subject to the protocol as contemplated in the letter from the New Zealand Prime Minister to the Australian Prime Minister accompanying the protocol. Water is not only important economically but also vital in daily life, and may have considerable environmental and cultural significance. In Resolution 64/292 in July 2010, the United Nations General Assembly explicitly recognised the human right to water[2]. It should therefore not be subject to an agreement which has a commercial and financial focus and rules out a range of measures, and changes to them as circumstances change, that may be required for its sustainable use and to ensure sufficient is conserved for local use and to preserve local environments and waterways.

We describe other concerns in more detail below under Foreign Direct Investment (DR4.14).

Tariffs and rules of origin

DR4.6 *Closer Economic Relations Rules of Origin should be waived for all items for which tariffs in Australia and New Zealand are at 5 percent or less. Australia and New Zealand could also reduce any tariffs that exceed 5 percent down to that level (by say 2015), allowing the trans-Tasman Rules of Origin to be abolished.*

We reject proposals to reduce all tariffs to 5% or less without a full public inquiry into the impact such a move would have on specific industries and employment.

[2] See for example https://www.un.org/waterforlifedecade/human_right_to_water.shtml.

We further reject the recommendation to abolish trans-Tasman Rules of Origin for the following reasons:

- It would be contrary to the interests of local producers and employees, particularly in light of the consumer preference for clear labelling on the country of origin of their purchases;

- It would reduce the capacity of various levels of government to implement the local content provisions of their procurement policies around goods and services, including manufactured items;

- It would reduce the capacity to regulate quarantine and biosecurity issues between the two countries in the protection of local producers and our capacity to ensure that goods and services meet local health and safety, quality and consumer standards.

Proposals to remove Rules of Origin are further complicated by the various bilateral and multilateral trade agreements being negotiated which may result in Rule of Origin exemptions being extended to third parties not envisaged in the original proposal.

Quarantine and biosecurity

DR4.7 *Where it is cost effective, quarantine and biosecurity agencies in Australia and New Zealand should continue to develop common systems and processes and enhance their current joint approach to risk analysis.*

Both countries depend on high biosecurity standards to protect their primary industries. New Zealand's high export dependence on its primary industries means maintaining and enhancing its recognised position as a world leader in biosecurity is particularly vital. The move to a more Customs-focussed, intelligence-led electronic border system (the Joint Border Management System or JBMS) places less emphasis on physical examination of cargo, luggage and passengers. We recognise the importance of intelligence and profiling, but it is not sufficient and biosecurity examination at the border must continue to be a priority activity for New Zealand. For example, it is entirely possible that the recent Queensland fruit fly incursion into New Zealand entered with a low-risk airline passenger from Australia, where the JBMS intelligence approach would not have indicated the need to inspect. While intelligence and profiling may be effective for some threats such as detecting drugs and criminals, a strong border presence is still essential for biosecurity. This suggests that New Zealand and Australia do not have identical biosecurity needs, which in turn implies that we cannot assume that common systems and processes are

necessarily the best approach. In any case, we understand that there have been some issues in implementing the new cross-border systems, which highlights the need for caution in committing too far to the new approach.

However there are examples of successful sharing of practice, such as the Sea Container Hygiene System which meets biosecurity needs by working with importers to set standards of container cleaning, backed up by inspection as needed. A New Zealand development, it has also been adopted by the Australian Department of Agriculture, Fisheries and Forestry. So while the Draft Report asserts (p.105) that "as the smaller partner, New Zealand stands to gain significantly from working with Australia's biosecurity agencies", it is likely that there will be a reasonable balance of benefits in both directions. While Australia has greater scale and capacity, New Zealand has advantages of flexibility and smaller scale to test initiatives and do research.

Given this, we suggest that the recommendation should put the needs for protection of borders first and recognise existing good practice, but encourage joint approaches where it is cost effective. The recommendation might then read: New Zealand and Australian biosecurity agencies should continue to focus on improving their effectiveness in protecting their borders, and where it is proven to be cost effective, develop common systems and approaches and enhance joint risk analysis.

Air services

DR4.8 *The Australian and New Zealand Governments should work towards removing the remaining restrictions on the single trans-Tasman aviation market, to maintain competitive pressure on airfares and potentially improve the range and quality of services.*

DR4.9 *Further liberalisation of air services would be expected to benefit Australians and New Zealanders through enhanced competition, lower airfares, and an expanded range of services. Accordingly, the Australian and New Zealand Governments should:*

- ensure that the objective of air services policy and legislation is explicitly directed at promoting net benefits for the community

- pursue reciprocal open skies agreements, including the granting of all air freedoms and cabotage where appropriate

- where open skies agreements are not possible, ensure that agreements provide for capacity well in advance of demand

- revise designation and ownership requirements

- remove *any remaining restrictions on airlines' access to secondary/regional airports.*

We oppose open skies agreements, including abolition of cabotage and removing ownership requirements, because we believe that it is important that the countries have their own national carriers in order to ensure good national and international freight connections, take an active role in marketing the countries for tourism, and maintain services off the main domestic air routes. The chronically unstable nature of the airline industry with large fixed costs and small marginal costs of seats results in competitive pressures creating either collusion or instability which is not good for access, quality services or reliable timetables.

Understanding that the Single Aviation Market promotes one of the most liberal airways in the world over the Tasman Sea already, we believe maintaining that reciprocal freedom is sufficient to ensure consumer interests continue to be met.

The low cost carriers of Jetstar and Virgin Blue provide consumers of both countries with cost effective options, which in turn has already pressured the full service carriers of Qantas and Air New Zealand to engage in alternative pricing structures. This is evident especially in Air NZ with their 'Grabaseat' deals.

By removing further restrictions by allowing seventh freedom rights and full cabotage to airlines of other countries will threaten NZ and Australian jobs should external carriers increase their capacity. Such a move would undoubtedly reduce market share for the home based airlines. With two airlines competing domestically in NZ, there is no room for a third competitor as Pacific Blue found out.

As the Draft Report observes (p.107), "Some third-country carriers, such as Emirates, provide trans-Tasman services because of separate bilateral agreements with their home countries, and extensive code sharing arrangements also exist on flights across the Tasman." The current trend of airlines undergoing consolidation through the growth of alliances, ownership, and code-sharing appears to be effective under the current model and is likely to grow. As there is little scope to secure additional benefits we believe extension of seventh freedom rights is not warranted and we oppose it.

Ownership restrictions are a separate issue and should not be conflated with seventh freedom arguments. We believe there is a strong case for both countries to maintain their National Carriers.

In view of the rapid transit nature of the aviation sector, the CTUs consider that any moves to establish an economic region in aviation should be accompanied by establishment of a common floor in wages and conditions for workers in the industry. Otherwise it is not fanciful to envisage that all Australian and New Zealand aviation sector employees will be resident exclusively in NZ. Already Qantas has a call centre as well as pilots and flight attendants operating out of NZ, all on wage rates and under conditions at significant discount to Australian comparators. On this view, the so-called liberalisation of Australian air services has just created an Australian 'Special Economic Zone' called New Zealand! Some insurance against such developments would be provided by establishment of the same safety net for aviation jobs in both countries.

Sea freight

DR4.11 *To enhance competition and lower the price of services, the Australian and New Zealand Governments should remove — preferably on a coordinated basis — the exemption for international shipping ratemaking agreements from legislation governing restrictive trade practices.*

We are strongly opposed to this draft recommendation.

While the NZCTU has opposed operation of shipping cartels in the case of New Zealand, based on a position of principle and in the light of the dominating position shipping companies have played in New Zealand's international freight logistics chain, we note that it is still widespread practice internationally for liner shipping to have exemptions from competition laws.

The Discussion Draft report has provided no evidence of any analysis of the costs or benefits of removing exemptions from competition laws in relation to liner shipping. Small volume markets including Australia which are at the end of global liner shipping routes have in fact benefited substantially from the collaboration and schedule sharing permitted under the exemptions, which has maintained services to outbound markets and scheduling that has been beneficial for end users. Although container freight rates have climbed steadily since the GFC, rates at March 2012 were still 33% lower than July 2010 when freight rates last peaked.

The fact is that there has been 4 years of price volatility:

- In 2009 (the collapse of volumes and prices)
- In 2010 (volumes and General Rate Increases (GRIs) are back)
- In 2011 (price war among shipping lines)
- In 2012 (return of GRIs despite weak volumes – end of price war).

There is still about 5% of global capacity inactive, following the suspension of previous container services. A delicate truce is in place between shipping lines, but how long it stays in place is the key to container market stability. Hapag-Lloyd CEO Michael Behrendt said in 2011 that "There was an unnecessary, silly and ruinous level of competition between individual market participants. We resisted it as best we could."

The trend in the Asia-Pacific region has been to introduce or retain these exemptions. The regional trend is not to move to a free market approach. In the Asian Pacific region, this exemption for international liner shipping is common and laws relating to competition policy remain in place. Both Japan and Singapore have extended their exemption to 2015 when they will be reviewed. In the USA, the Federal Maritime Commission undertook a detailed study into the possible effects of the withdrawal of the exemption in the European Union which found that there were no clear advantages from doing so, finding instead that on a preliminary analysis it would appear that greater volatility in relation to rates and services had occurred in trades to and from Europe compared to other trades, where the exemption applies.

The Australian Productivity Commission report of 2005 which recommended relatively minor amendments to Part X of the Australian Trade Practices Act 1974 (TP Act) was accepted by the Government. This is not referred to in the Draft Report, nor is the fact that a 1999 Australian Productivity Commission report recommended a continuation of the exemptions under Part X of the TP Act.

In the last 20 years there has been the need for only 2 investigations, suggesting that both importers and exporters are highly satisfied with the liner agreements.

DR4.12 *In order to ensure benefits for the wider economy, when reviewing the restrictions on competition for coastal shipping, the Australian Government should adopt a broad cost-benefit framework and draw on the experience of New Zealand with its different regulatory approach.*

We are strongly opposed to this draft recommendation.

The Australian Government committed in 2008 to undertake a review of Australian shipping, commencing with a Parliamentary Inquiry which issued a bi-partisan report in October 2008 thus commencing a process of wide and detailed consultation among all sectors of the Australian shipping industry, culminating in a major reform package comprising 5 Acts passing the Parliament in June 2012 and commencing on 1 July 2012.

The Australian Government reform package contains a complex and interdependent set of measures, including regulatory, fiscal, labour relations and workforce development which aim to stimulate growth in the Australian shipping industry and deliver significant benefits to the economy, including increased competition including in markets where there is currently a monopoly situation. The Regulation Impact Statement which accompanied the reform Bills and which was subject to a separate Senate Economics Committee review, included a cost-benefit analysis of the Australia Government's proposed shipping reform package undertaken by the Australian Bureau of Infrastructure, Transport and Regional Economics (BITRE). The costed package included the proposed regulatory and taxation measures and incorporated productivity improvements to be achieved through the Compact between industry and unions, which was signed on 30 May 2012. The CBA in the RIS showed that on 3 of 4 scenarios modelled, there was a net present value benefit from the reform package.

The package includes four important tax incentives to help stimulate investment in Australian shipping. These are:

- An income tax exemption (ITE) for operators of Australian registered eligible vessels on qualifying shipping income;

- Accelerated Depreciation and rollover relief for owners of Australian registered eligible vessels;
- A refundable tax offset for employers who employ eligible Australian seafarers; and

- An exemption from royalty withholding tax for foreign owners of eligible vessels leased under a bareboat or demise charter to an Australian operator.

The Australian shipping industry has been operating at a substantial disadvantage compared to international operators who have had for some time, access to beneficial tax arrangements. These reforms will level the playing field for the Australian shipping industry.

Furthermore, the taxation incentives that form an integral part of the package provide for a lock out period of 10 years (see s9 of the Shipping Reform (Tax Incentives) Act 2012.) which assumes that having established the shipping reform arrangements that investors will expect taxation certainty for 10 years.

In all the circumstances, it would be extremely unwise for Australia to embark on a new evaluation within a cost-benefit framework. Such a course of action would be severely disruptive to the Australian shipping industry and those involved in the entire global freight transport chain involving imports, exports and trading on the Australian coast.

The regulatory approach in New Zealand has led to locally based coastal shipping finding it hard to maintain viability. As a consequence regular coastal shipping schedules are very thin, discouraging use of shipping and rendering it very difficult for a viable local scheduled coastal service to be sustained. This is not good for sustaining industry freight requirements, and has been a factor in decimating work opportunities for New Zealand seafarers.

We agree that there could be benefits in assisting Trans-Tasman integration in shipping, but in light of the Australian policy and legislative reform, this integration should and can be developed through collaboration and partnerships, to explore opportunities for all sectors of New Zealand and Australian shipping to extract national benefits for their dependence on shipping for economic activity, having regard to the current national policy settings.

For both our countries –a continent in which 85 per cent of the population lives within 50 kilometres of the coast and an island nation – it is essential that a viable and attractive coastal shipping capacity is maintained for economic, transport efficiency and environmental reasons.

Ports

DR4.13 *Given the importance of port efficiency for each economy, there would be benefits from systematic monitoring, data collection and benchmarking of ports' performance between Australia and New Zealand.*

We welcome the Draft Report finding that the performance of Australian and NZ container ports has improved significantly over the past decade, and that there remains room for further improvements in productivity.

The CTUs do not shy away from any examination of efficiency and productivity in sectors of the economy. We have nothing to fear from any rigorous analysis of port performance in both NZ and Australia, provided all aspects of port operations and all aspects of ports that impact on productivity and efficient are examined. The Draft Report has already demonstrated that it is selective in its analysis by focusing on so-called work practices and behaviours, without referring to monopoly behaviour by port owners, investment strikes by port service providers, barriers to improved port performance by poor public investment in roads and rail links to and from ports, approaches to introduction of new technologies, urban congestion, and poor port planning. These and other factors all impact on port performance, and put the spotlight on the failure in application of purist competition policy which has thus far delivered less than optimal port performance, and in some cases led to disaggregation of market shares to less than optimum levels to sustain capital investment strategies.

No evidence is provided in the Draft report to demonstrate that labour relations and work practices are impeding productivity and innovation.

It is our strong view that lack of investment in workforce development, attacks on workers' rights, serious weaknesses in middle management training and capability, poor investment strategies and poor public policy on ports have been major barriers to the extraction of better performance in Australian and NZ ports.

We suggest that both Commissions should be examining the Australian National Ports Strategy and the Australian response to automation as more productive strategies to improve port performance than simplistic and failed doctrinaire strategies which appear to be no more than a thinly veiled attack on the workforce, labour relations and work practices, which have no place in modern management or in a high technology, high performance economy.

Telecommunications

Q4.3 What deficiencies in telecommunications regulation or differences between New Zealand and Australia impede further trans-Tasman integration? How significant are these costs or impediments and how might they be reduced?

The CTUs consider the central telecommunications challenge is to ensure cooperation in developing, establishing and maintaining the modern communication infrastructure and skills essential to connecting both countries with the world.

Foreign direct investment

DR4.14 *In order to further reduce the cost and uncertainty of trans-Tasman investment and more fully realise the benefits from the free movement of capital, the Australian and New Zealand Governments should consider expanding the scope of the Investment Protocol by lessening the remaining restrictions on bilateral foreign direct investment. The policy rationale and the costs and benefits of any restrictions left in place should be made clear.*

We do not support lessening remaining restrictions on foreign investment, and note that investment between the two countries has grown very substantially in the presence of them. On the contrary, we believe tightening of the conditions is appropriate to ensure that spill-over benefits such as technology and knowledge accrue, particularly given that the remittance of income from this investment is a major drain on both countries' current accounts. As we stated earlier, some FDI such as leveraged buyouts by private equity funds has been damaging. Reducing the ability of either country to manage its foreign investment would be a backward step. Both countries have understandable sensitivities in areas which they have the right to maintain. The screening in New Zealand of the most significant applications in economic terms, business investment which does not involve sensitive land or fishing quota, is very light and no rejections have ever been made. It is difficult to believe this is a significant impediment to investment. We agree that the methodology of the OECD FDI Regulatory Restrictiveness Index is seriously flawed.

Further, while FDI is not as subject to rapid movements which would be destabilising as short term debt and portfolio investment to the exchange rate, the financial system or the economy, movement of funds controlled by foreign direct investments in either country can be destabilising, particularly where that FDI is part of the financial system. Remittance of profits, reserves or the proceeds of borrowing for example can have significant impacts. While the power to control some of these movements is protected in the Investment Protocol when it is clearly for prudential purposes, and there is provision for temporary measures in times of Balance of Payments difficulties, other economic reasons for wishing to manage such flows, such as to reduce the likelihood of balance of payments difficulties arising or to manage the exchange rate, do not appear to be protected. The Draft Report's section on Banking notes that "Prudential regulation is a constantly evolving process". So is the management of international capital more generally. This is an area in which international practice is changing and the views of authorities such as the IMF are being significantly revised in the light of the global financial crisis along with other experience and research. We can provide references to some of these on request. It is

most unwise to lock out particular policy possibilities simply on the basis of the current orthodoxy.

As noted above in our comments on the CER Investment Protocol (DR4.5) we are also concerned at the prospect of making the ownership of water rights subject to the protocol.

We are therefore very concerned at the current state of the Investment Protocol, let alone any further liberalisation.

Taxation

We note the issues raised by trans-Tasman investors regarding the lack of recognition of imputation credits across the Tasman. While acknowledging this may lead to some distortions in behaviour we would strongly oppose the windfall gains identified in the Draft Report being delivered to investors, particularly in the light of falling company taxes in recent years. We also note the lack of clarity around benefits of the proposal.

It is also worth considering whether Australia and New Zealand will continue to stand out forever as almost unique in the world in granting imputation credits. The more the two systems become integrated, the more difficult it will become for either to change their systems.

We oppose any changes which reduce the sustainability of the taxation base in either country.

Banking

We agree that there is an absolute necessity for each country to maintain a high level of autonomy in protecting the security of its banking system. The Reserve Bank of New Zealand's view that "With respect to bank failure management, it [is] necessary to ensure that there is a clear capacity for New Zealand to manage crises affecting banks with large scale operations in New Zealand. This is so that the interests of the New Zealand economy and New Zealand customers of banks can be adequately protected in a crisis, when the interests and judgments of New Zealand and Australia, and the respective governments, may differ" (p.128) goes to the heart of the matter, but this need is not limited to the extreme of bank failure. Harmonisation should not go too far. As noted above, the observation that "Prudential regulation is a constantly evolving process" is also critical: authorities in both countries must be given policy space to change with circumstances and as policies prove or disprove themselves.

Q4.5 How might further integration of trans-Tasman financial services take place? What are the likely gains from such integration?

For the reasons given above regarding banking, we would be cautious about significantly deepening financial integration. There is a risk of spreading crisis contagion rather than good practice.

Neither is it clear whether the problems that need to be faced in regulating the financial system in one country are necessarily the same in the other. The incidence and nature of loan sharking and low financial literacy may differ between the countries for example, requiring different regulatory (or other) measures.

Short term travel and visitors across the Tasman

DR4.15 The Australian and New Zealand Governments should progress the further roll out of SmartGate and associated systems where it is cost effective to do so, focusing on departures from Australia and on regional airports.

We support this initiative

DR4.16 To improve the attractiveness of Australia and New Zealand as a joint tourist destination, the Governments should explore a 'trans-Tasman tourist visa' for citizens from other relevant countries who wish to travel here. The charges for this visa should be based on a cost-recovery model, with agreed sharing of revenue and costs.

We support further work on this recommendation

Long term trans-Tasman residents

There is increasing recognition in New Zealand that some New Zealanders resident and working in Australia may find themselves without any social security support there. This was probably first highlighted by the plight of some of the New Zealanders caught up in the Queensland floods. We consider this an iniquitous situation in which two people with the same work and residence record have two different entitlements. It also creates unfair stress for families of the workers affected. Provision of information to New Zealand citizens before they arrive in Australia (DR4.17) would be useful, but doesn't actually resolve the problem.

One way is to speed up permanent residence and citizenship applications. We support recommendation DR4.18: *Given its significance to New Zealand citizens living long term in Australia and the long term operation of the trans-Tasman labour market, the Australian Government should finalise its consideration of alternative potential pathways to Australian permanent residence and citizenship.*

Another is to recognise that, as the Draft Report puts it as one of a number of possible alternative principles for the treatment of long term New Zealand citizen residents in Australia:

> *Equal Treatment — subject to the relevant waiting periods or other initial conditions, individuals should have the same rights and obligations as citizens or permanent residents in the host country.*
>
> *Q4.7 How significant a risk is 'back door' immigration?*
>
> *Given its significance to the evolution of the trans-Tasman labour market, would there be net benefits from closer alignment of the two countries' migration policies?*
>
> *What would be the difficulties/issues in seeking to achieve this?*
>
> *Would there be value in developing a framework of principles to guide access to social security under the Trans-Tasman Travel Arrangement?*
>
> *What changes to Australian Government social security limits could promote a better balance between prevention of government transfer shopping and equal treatment?*

We recognise that this may require changes for other migrants, though we do not consider that it would be a major contributor to the problem of "back-door entry" – migrants from other countries using entry to New Zealand to eventually gain entry to Australia (or vice versa). There is already a substantial wage gap between the two countries which encourages such movements. The prospect of better social security payments is unlikely to be more than a marginal factor.

While there is obviously a fiscal cost to this policy, the figures provided by the PCs (p.137) indicate that on average government revenue benefits from having these migrants in Australia due to the tax on their earnings.

The Draft Report also notes (p.139ff.) that there may be a fiscal cost to New Zealand in having increasing numbers of New Zealanders return to New Zealand to retire and claim New Zealand Superannuation as a result of changes to state pensions in Australia.

All of this suggests that, as we submitted previously, there is a growing need for a more systematic look at the social protection floor including minimum wages, conditions of employment, and standards of social security provision, health services, and education across the two countries.

Government services: Opportunities for coordination

DR4.19 *In order to improve regulatory outcomes and potentially reduce the cost of public services, the Australian and New Zealand Governments should encourage government agencies to consider opportunities for trans-Tasman coordination on a case-by-case basis*.

We agree with this, although a critical question is how far "co-ordination" can go without a degree of integration of agencies. At that point, issues arise like those raised by the Australia-New Zealand Therapeutic Products Agency as we have outlined above. These include important matters of accountability, sovereignty and effectiveness.

We are not clear from where the suggestion of "greater use of private delivery of government services" arises. This is entirely unconnected to the need (or not) for greater coordination. We are concerned at the increasing privatisation (by a variety of means) of public services and would not welcome a further stretching of accountability that is a risk in trans-Tasman agencies in any case, by running them privately. The increasingly narrow group of multi-nationals who are contracted to provide public services is especially worrying. Private delivery arrangements rarely generate the savings claimed for them in advance. Rather, they remove the capacity of governments to directly control the delivery of tax-payer funded services, reduce standards and often cost more in the long run with tax-payer funded profits going offshore and employment conditions being reduced. The taxpayer doesn't win from these arrangements, multi-nationals do. This suggestion should be removed from the final Report.

The capacity for collaboration and joint projects should not be used as a pathway to privatisation or integration to the lowest common denominator.

Joint action in multilateral fora

We agree there can be benefits to this, the value varying on a case by case basis.

Performance benchmarking

DR4.20 *The New Zealand and Australian Governments should consider development of joint performance benchmarking initiatives. As an initial step, Australia and New Zealand should investigate opportunities for increased involvement by New Zealand in the Report on Government Services, produced under the auspices of COAG.*

There may well be value in this, but the validity of the performance indicators is crucial as we have noted regarding port benchmarking above. The validity depends not only on choice and design of indicators but on the complexity and nature of the services involved and government priorities (including specific targets) for the development of agencies and services. For example, crude benchmarking of school academic results could be highly misleading and damaging to many schools.

Options that should not proceed

We agree that political union should be excluded as an option and that that rules out common monetary, fiscal and tax policies, and a common currency (monetary union). The plight of Greece, Ireland, Portugal, Spain (and others) in the European Union make clear the extreme dangers of monetary union without thorough political and fiscal union. A customs union becomes less and less relevant as tariffs vanish.

"Making it happen": Governance

DR5.1 *The Australian and New Zealand Governments should create a clearer leadership and oversight role for CER, building on existing governance arrangements and the annual meeting of Prime Ministers.*

The Draft Report's proposal for leadership and oversight appears to be built largely on an officials group broadening the Trans-Tasman Outcomes Implementation Group (TTOIG) which itself is a senior officials group.

This is too narrow, particularly as it is leading an inherently political project, not in the party-political sense but in the sense that decisions (or recommendations) it makes affect different groups of people in different ways. Many of those people (workers in closed factories for example) have historically had little if any say in decisions made. Their only voice has been through politicians, many of whom had little knowledge of or interest in the process; and in the face of cross-Parliamentary support for CER which is likely to have led to much less intensive questioning of decisions along the way that would be desirable.

In our previous submission we included a section on these matters:

> Oversight
>
> The Trans-Tasman Outcomes Implementation Group is too narrowly constituted to oversight changes affecting the welfare of citizens of both countries. Measures directed to securing further economic integration carry implications for citizens as workers; an oversight body concerned only with the interests of business, investors, and citizens as consumers is deficient and defective.
>
> We call for establishment of a broadly representative oversight body in which unions and non-government organisations are recognised with a place at the table.

We re-iterate these points.

Regulatory proposals should consider trans-Tasman implications

DR5.2 *When significant new regulatory proposals or modifications arise at the national level, the responsible government agencies should examine opportunities for trans-Tasman and/or broader collaboration that would lower costs and deliver net benefits.*

We would be very concerned if trans-Tasman implications became one of the dominating factors in assessing regulatory and other change. There are frequently much more important social, environmental and domestic economic issues that should be pre-eminent.

Facilitating joint action

DR5.3 The Australian and New Zealand Governments should undertake further work on how to facilitate joint action to achieve successful regional and multilateral integration, and greater leverage in international rule making and standard setting.

An area in which caution should be taken is in our relationships with the Pacific Island Countries. Australia and New Zealand are frequently seen as bullying in their relationship with these countries. Acting jointly would compound the problem even further.

More regular reviews

DR5.4 *The Australian and New Zealand Governments should undertake five-yearly public reviews of CER to take stock of what has been achieved and learnt, and ensure that the agenda remains relevant and forward looking.*

If so, the reviews should include social, cultural and environmental criteria and as we have submitted regarding an oversight group, review groups should include wider representation than officials and business, and should include unions and other non-government organisations.

Concluding remarks

We thank the PCs for the opportunity to submit on this process. While we have disagreed with many of the directions proposed, we congratulate the Commissions for conducting an open process in which many cards have been laid on the table for scrutiny and comment. This is a refreshing approach to the development of an economic integration ("trade") agreement, which is largely lacking in other cases apart from, perhaps, behind closed doors.

We urge the PCs to recommend that the process of negotiation of the agreements and amendments to agreements required by any further development of CER should be conducted similarly and with public access to any draft text under discussion.