

NEW ZEALAND BUSINESS ROUNDTABLE

**SUPPLEMENTARY SUBMISSION TO THE
FOREIGN AFFAIRS, DEFENCE AND TRADE
COMMITTEE**

***INQUIRY INTO NEW ZEALAND'S ECONOMIC AND TRADE
RELATIONSHIP WITH AUSTRALIA***

NOVEMBER 2000

Introduction

When the New Zealand Business Roundtable (NZBR) met recently with the Foreign Affairs, Defence and Trade Committee, the Committee invited it to elaborate on the view that CER should be expanded to encompass investment. This paper responds to that request.

The significance of trans-Tasman investment

Australia is by far the most important destination for direct investment by New Zealanders. Balance of Payments statistics indicate that Australia accounted for 64 percent of total direct investment abroad by New Zealanders over the last five years (see the attached Appendix).

Similarly, Australia is the most important source of foreign direct investment (FDI) in New Zealand. Since 1996, Australia has accounted for 33 percent of total direct investment, with the United States and United Kingdom the other main sources (refer to the Appendix).

The current regime

While investment relationships between the two countries are relatively strong, New Zealand businesses wishing to invest in Australia still face regulatory hurdles that are not faced by resident Australians, and vice versa.

Approval by the Australian Foreign Investment Review Board (FIRB) is required for a non-Australian company to acquire 15 percent or more of existing Australian businesses with assets over A\$50m and to establish a new business in Australia involving investment of A\$10m or more. For investments into New Zealand, Overseas Investment Commission (OIC) approval is still required for non-New Zealanders to acquire more than 25 percent of an asset worth more than \$50m. Both countries also have several sectors where special, more restrictive provisions apply. In Australia, various ownership restrictions relate to foreign investment in shipping, media, telecommunications, aviation, airports, banking and residential real estate. In New Zealand, specific foreign investments in land and fishing quota require approval and foreign investment in dairy, apple and kiwifruit processing and exporting is effectively banned by the producer board legislation.

Such regulatory approval processes inevitably involve costs, delays and political risk for businesses wishing to invest.

There is currently no formal agreement between Australia and New Zealand on investment. This is an unusual omission from an otherwise fairly comprehensive set of arrangements. Indeed, Australia and New Zealand are unique among all regional trading arrangements in having achieved (virtual) free trade in goods and services and

free movement of labour but in not having a bilateral provision guaranteeing free investment in the area.¹

By contrast, the Treaty of Rome guarantees the 'four freedoms' of movement of goods, services, capital and labour. NAFTA also has a chapter relating to foreign investment.

The advantages of freeing up investment

The advantages of a formal investment agreement with Australia are well summarised in the government's submission to the select committee.² The submission notes that "the benefits ... include:

- the preservation of the current treatment of New Zealand investment into Australia and vice versa (ie 'binding');
- a reduction in compliance costs and an improvement in timeliness for New Zealand businesses investing in Australia;
- increased clarity of possible New Zealand investment into Australia's sensitive sectors;
- possible increased investment in New Zealand by Australian businesses and the associated benefits a higher level of investment would bring;
- the completion of a 'best practice' framework for a closer economic partnership and adding another dimension to an already close relationship with Australia;
- a step towards implementation of the Bogor goals of free trade and investment, which would also have a demonstrative effect for other APEC economies."

The Australia New Zealand Business Council has ranked the further liberalisation of investment as the highest priority for the two governments.

How to achieve open investment

There are several ways of achieving a bilateral agreement on investment. It could be handled administratively by amending the approval processes of FIRB and OIC so that New Zealand investors would be treated the same as Australian investors for investments in Australia and vice versa. There could be a separate ministerial-level agreement on investment. It could be achieved by merging the FIRB and OIC so that

¹ Source: Lloyd, P, "Foreign Investment, Competition Policy and Labour Issues", CEDA/APEC Studies Centres of Australia and New Zealand Roundtable Discussion of the CERTA, Melbourne, 30 April 1997.

² Refer to Government Submission to the Foreign Affairs, Defence and Trade Select Committee Inquiry into New Zealand's Economic and Trade Relationship with Australia, Annex J.

there was a single border for investments. Alternatively, an investment agreement could be incorporated into the CER treaty itself.

Whatever the method, the aim of any such agreement should be the free flow of investment between the two countries, just as we largely have a common labour market.

The obstacles to freer investment

Two principal concerns may be raised with allowing open investment between New Zealand and Australia. We do not, however, consider either to be compelling.

Firstly, concern may be expressed that the exemption would permit a backdoor mechanism for non-New Zealand investment in Australia and non-Australian investment in New Zealand. This concern, however, is more emotive than analytical. No greater problem than already exists in defining 'New Zealand' as opposed to 'non-New Zealand' investors would be created.

One approach would be to use the standard IMF classifications for definition purposes. The IMF's Balance of Payments Manual (BPM5) is used by both the New Zealand Department of Statistics and the Australian Bureau of Statistics. The BoP Statistics define New Zealand residents as those individuals and enterprises physically located in New Zealand. A similar approach is used in Australia.

The second concern is unique to Australia and involves the concern that any bilateral freeing of the movement of capital is ruled out by the non-discrimination clause of the Basic Treaty of Friendship and Cooperation with Japan. "This (NARA) Treaty, when read with the Protocol and the Agreed Minutes, requires Australia, subject to specified exceptions, to treat Japanese companies in Australia no less favourably than those of any third country."³

This view is highly questionable, however, and has been described by a leading Australian academic as "unsustainable"⁴. The CER already discriminates against Japan and other countries in terms of trade in goods and services. The Trans-Tasman Travel Arrangements discriminate against Japan and other countries for immigration approvals. Further, a bilateral liberalisation of capital would breach no binding multilateral rules: the key is to ensure that investment barriers are not raised against third countries and indeed to extend, perhaps over time, the regional preferences to third countries.

Ultimately, the simplest way to test the issue would be for Australia (or New Zealand) to ask the Japanese government if it would be concerned if Australia extended its special relationship with New Zealand on goods, services and labour to cover investment.

³ APEC Guide to the Investment Regimes of the APEC Member Countries, 1996, p 34.

⁴ Lloyd, P, *op cit*, p 4.

Conclusions

Extending CER to cover investment is a logical step in enhancing New Zealand-Australian economic relationships. Indeed, the exclusion of investment from CER is a major omission in an otherwise wide-ranging and mutually beneficial agreement.

The objective of any investment agreement should be the free flow of investment between the two countries. Such an agreement is practical and achievable and would provide benefits to both countries.

Appendix

Total New Zealand Direct Investment Abroad

NZ\$m						
Year Ended March						
	1996	1997	1998	1999	2000	Average 1996 to 2000
Australia	6,037	5,774	7,146	9,438	10,404	
Canada	2,671	2,446	1,959	2,917	2,833	
Hong Kong	-112	-678	-1,086	-1,632	-583	
Japan	84	90	88	116	167	
Netherlands	1,403	-2,704	-2,612	-4,163	-3,851	
Singapore	175	176	301	288	193	
United Kingdom	2,285	1,911	355	1,260	1,318	
United States	283	279	327	457	590	
Total All Countries	13,163	9,707	10,421	13,458	13,778	
Australia as percent of Total	46 percent	59 percent	69 percent	70 percent	76 percent	64 percent

Total Foreign Direct Investment in NZ by Country

NZ\$m						
Year ended March						
	1996	1997	1998	1999	2000	Average 1996 to 2000
Australia	14,717	15,713	19,626	23,074	24,571	
Canada	1,894	965	1,600	968	995	
Germany	250	243	265	241	590	
Hong Kong	1,439	1,355	1,117	875	1,067	
Japan	1,598	1,690	1,227	2,327	2,025	
Netherlands	1,345	1,371	1,345	3,622	3,353	
Singapore	3,277	2,547	2,162	1,177	1,023	
United Kingdom	5,894	6,894	8,509	8,586	9,242	
United States	14,407	14,955	15,809	12,452	11,601	
Total All Countries	49,534	54,164	62,992	63,149	63,829	
Australia as percent of Total	30 percent	29 percent	31 percent	37 percent	38 percent	33 percent

Source: Statistics NZ, Balance of Payments Statistics