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No. 20 New Zealand - Trade in Services

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations - Trade Agreement

(Canberra, 18 August 1988)

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PROTOCOL ON TRADE IN SERVICES TO THE AUSTRALIA NEW ZEALAND CLOSER ECONOMIC RELATIONS - TRADE AGREEMENT

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[1]1 (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[2]2 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;

(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: FOR NEW ZEALAND:

[Signed:] [Signed:]
B. HAWKE D. LANGE