GENERAL AGREEMENT ON TARIFFS AND TRADE

RESTRICTED

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Australia/New Zealand Closer Economic Relations - Trade Agreement (ANZCERT)

REPORT OF THE WORKING PARTY

DRAFT

1. The Working Party was established by the Council on 20 April 1983 "to examine the Australia/New Zealand Closer Economic Relations - Trade Agreement (ANZCERT) concluded on 28 March 1983, in the light of the relevant provisions of the General Agreement, and to report to the Council".

2. The Working Party met on 4 and 19 June, and on 9 July 1984 under the chairmanship of Ambassador P. Nogueira Batista (Brazil). It had available the text of the Agreement referred to in L/5475 containing a communication on behalf of the Governments of Australia and New Zealand, as well as the replies to questions which had been asked by contracting parties (L/5619).

I. General statements

3. The Chairman, in his opening remarks, stated that in undertaking the examination of the material before the Working Party which comprised not only the Closer Economic Relations Agreement between Australia and New Zealand in force since January 1983 but also the quite comprehensive list of questions addressed to the members of the Agreement and the answers given to them, it would be of use to have as ample a debate as possible so that one would have a clear picture of the different aspects of the Agreement. He went on to say that after a detailed analysis of the Agreement, it might be appropriate for the Working Party to address the issue of the legal conformity of the Agreement, which was being notified as a "free-trade area agreement", with the relevant and specific provisions of the General Agreement as contained in Article XXIV. This should enable the Working Party to include in its final report to the Council a clear assessment of the extent to which the integration between the two economies was conducive to facilitating trade between the constituent parties without raising barriers to the trade of other contracting parties with such territories. If necessary, the secretariat could be called upon, as appropriate, to provide the Working Party with figures on the evolution of trade between parties to the Agreement or with third parties, as appropriate.

4. The representative of Australia said that since the Australia/New Zealand Closer Economic Relations - Trade Agreement entered into force on 1 January 1983, the two countries had been proceeding with the necessary arrangements for its operation and administration. In that time, the contracting parties had had the opportunity to study the Agreement and had in fact directed a number of questions to Australia and New Zealand. The

decision to implement the new trading arrangements embodied in the Agreement reflected what was seen as a natural step in the evolution of the special and long-standing relationship between Australia and New Zealand. The Agreement represented a tangible expression of the trade liberalization attitude of the two governments in a world climate of increasing protectionism. The central trade objective of the Agreement was the elimination of the remaining barriers to trade between Australia and New Zealand. This applied to all goods traded between the two countries and was to take place in a gradual and progressive manner, under an agreed time-table and with a minimum of disruption to industries in the two countries. Another major aim was to ensure that trade between Australia and New Zealand took place under conditions of fair competition. The Agreement which replaced the New Zealand/Australia Free Trade Agreement (NAFTA) established in 1966 further developed the free trade area initiated by this earlier Agreement. It was worth emphasizing that the New Zealand/Australia Free Trade Agreement had made a significant contribution to the removal of trading barriers across the Tasman. However, it no longer provided a comprehensive framework for future growth in mutual trade and did not adequately provide for the security of market access which was essential to enable industries in both countries to plan and implement successful investment and marketing strategies. The current Agreement was designed to complete the process towards free trade which was commenced in 1966 under the NAFTA. The Agreement was expected to lead to a sustained and mutually beneficial expansion in trade between the two countries. It would inevitably lead to structural changes in production patterns, more efficient use of resources and desirable industry rationalization. The expansion of trade would strengthen the economies of the two countries. Both countries had expressed a commitment to an outward looking approach to trade and that the Agreement should not foster the expansion of inefficient industries. The Agreement would therefore give both countries an increased capacity to contribute to the growth of world trade and a strengthening of the economies of their trading partners. Both Australia and New Zealand were conscious of their obligations under the GATT and the preamble to the Agreement drew attention to these obligations. In particular, the parties to the Agreement had in mind the provisions of Article XXIV of the General Agreement. The Closer Economic Relations - Trade Agreement was fully comprehensive and covered all goods produced in either country. The commitment to eliminate barriers to trade applied to all goods which satisfied the rules of origin requirements. The parties submitted that the Agreement met the requirements set down in Article XXIV of the General Agreement.

5. The representative of New Zealand stated that the NAFTA that had come into force in 1966 had subsumed the imperial preference system. It also had had regard to the multilateral trading system established under the GATT. A substantial proportion of the trade between Australia and New Zealand had become duty-free under the NAFTA which undoubtedly had stimulated the growth of trans-Tasman trade, especially in wood-based products and in manufacturers. The NAFTA did look ahead to the establishment of a full free trade agreement in that it had contained a procedure for regular six-monthly additions to the schedule of tariff-free goods. But the requirement to consult industries in both countries, the lack of automaticity had frustrated the desire to maintain the pace of free-trade expansion. The ANZCERT Trade Agreement was the outcome of three years of intensive negotiations and had entered into force on 1 January 1983. The preamble and Article I indicated both the assumptions against

which the Agreement had been negotiated and its objectives. But the experience and the frustration of seeking to expand an agreement where the mechanisms were not automatic had led Australia and New Zealand to seek to ensure that the mechanisms of the new agreement lead with certainty to total free trade. Thus the ANZCERT Trade Agreement was not an interim agreement paving the way for a full free-trade agreement. Free-trade was to be achieved under this Agreement in accordance with modalities and a time-table that were presented. No further instrument would be required. In this way the predictability and security necessary would be provided to enable the private sector to plan and invest rationally for the development of a more internationally competitive industry. At the same time the parties had adhered closely to their GATT obligations. The phasing out of tariffs and "other restrictive regulations of commerce" was to be achieved without any raising or intensification of such measures against third countries. The objective of the parties had been to create trade, not to divert it. The parties believed that development of efficient and competitive industry could not be stimulated by reducing the opportunity for imports from the world at large. Examination of the statistics for New Zealand imports during the life of the NAFTA showed that while trans-Tasman trade grew, so did New Zealand's imports from other sources. It was believed that this pattern would continue under the ANZCERT Trade Agreement. Indeed decisions taken by the New Zealand Government over the last year or two on industry plans as well as recent statements by the Government, following consultation with the private sector, on the future import policy, all pointed in the direction of greater opportunity for export to New Zealand on a global basis.

II. Questions and replies

6. The representative of a group of countries, while taking note of the statements that the Agreement would conform to Article XXIV and in particular paragraph 4 thereof, wondered whether any assessment could be given by the parties as to the effects of the Agreement which had now been in force for seventeen months.

7. The parties to the Agreement stated that it had not yet been possible to make a detailed assessment of that kind due to the relatively short time during which the Agreement had been in force. The benefits of liberalization had been available to trade for a shorter time than seventeen months (i.e. entry into force) as it took time to get the necessary measures into place. They pointed out, however, that in 1983 overall trans-Tasman trade had increased by 9 per cent in value terms. There had been a marked increase of exports of manufactured products and to a lesser extent of agricultural products from Australia to New Zealand which could probably be attributed to the new Agreement. The representative of New Zealand said that in his country more confidence in the trade opportunities with Australia had developed with the conclusion of the Agreement; which had established certainty and security for the trading communities of both countries. He mentioned also that the first two steps of tariff reductions had already been implemented as foreseen.

8. Referring to question 11, the same representative wondered how the parties to the Agreement would be able to reconcile possible actions under Article 13, paragraph 3(b) and (c), or Article 14 of the Agreement with their GATT obligations.

9. The parties to the Agreement stated that there was no specific intention in the present Agreement to move from a free trade area to a customs union. However, if in the context of establishing a common external tariff in a specific case under Articles 13 and 14 it became necessary to increase the bound tariff rate for a certain product they would most likely have to engage in Article XXVIII negotiations with affected contracting parties.

10. Referring to question 18 and, since it was related, also to question 1, the same representative questioned whether the requirement of increased "exclusive access" for products originating in Australia or New Zealand would not lead to a reduction in overall access possibilities for third countries, and thus be in contradiction of the principle stated by Australia and New Zealand that they are committed to an outward-looking approach to trade. He wondered also with reference to question 20 how an increase of "exclusive access" would not at the same time lead to a reduction of the level of "global access".

11. The parties to the Agreement emphasized that the Agreement did not involve any increase in trade barriers in relation to third countries and therefore the trading opportunities of these countries with Australia and New Zealand would not be diminished. As to "global" versus "exclusive" access, they stated that there was no intention to reduce the quantity of import licences for third countries in order to compensate for the creation of increased export opportunities for the other party to the Agreement. If the level of licences for global access remained stable the requirement of increased export opportunities for the other party would have to be met by providing additional exclusive access opportunities. The increase of "exclusive access" was not a factor which determined the evolution of "global access". Any real increase in the level of global access would diminish the amount of exclusive access that had to be provided to the other party to the Agreement.

12. Referring to questions 23 to 25, the same representative considered that the statistics given in the reply were rather general and not sufficient to provide a clear picture of the trade coverage under the Agreement and asked whether more detailed figures could be provided, in particular as regards the coverage under Article 6 of the Agreement.

13. The parties to the Agreement stated that Article 6 covered three categories of products, namely products for which the formula and timing of liberalization have yet to be determined, products where liberalization has been accelerated compared to the normal scheme set out in Articles 4 and 5 of the Agreement, and products where the normal scheme set out in Articles 4 and 5 had been modified. In 1983, trans-Tasman trade amounted to approximately $A 2 billion, of which about $A 450 million was covered by the provisions of Article 6. Of that amount about $A 243 million fell in the first, about $A 120 million in the second, and about $A 118 million in the third-mentioned category. The category of products where liberalization had not yet started included iron and steel, motor vehicles, apparel and tobacco; the category benefiting from accelerated liberalization included carpets, footwear, rum, brandy, furniture and sleeping bags; the category subject to a modified scheme included ball point pens, white goods, electronic products, ceramic sanitary ware, pulp and newsprint, tyres, plastic products, wine, canned fruit, a number of horticultural products and wheat and wheat flour. It was intended to incorporate the industries not yet covered as soon as possible into the

liberalization plans foreseen under the Agreement. This was particularly the case for the steel and motor vehicles industries where the relevant plans were being worked out at present.

14. One member of the Working Party, referring to question 20, wondered whether an announcement made by the New Zealand authorities last year that additional import licences would be made available amounting to 5 per cent of the domestic market for 1984 and to 2.5 per cent of the domestic market in subsequent years meant that "global access" would increase generally and that New Zealand would not have any obligations vis-à-vis Australia in terms of Article 5, paragraphs a, b and c of the Agreement. He wondered furthermore, referring to question 29, what other than commercial considerations Australia might possibly consider in fulfilling its obligation under the Agreement to encourage Australian users of newsprint to regard the New Zealand industry as the preferred supplier. On the same question of newsprint, another member wondered what the reference to "fair and reasonable price" referred to in paragraph 4 of Annex F meant as compared to "commercial considerations" referred to in answer to question 29.

15. The representative of New Zealand stated that, while he could confirm that such an announcement concerning the provision of additional imports corresponding to 5 per cent and 2.5 per cent of domestic production had been made, the practical details, particularly relating to the measurement of domestic production in the various sectors, were still being worked out by his authorities and it was not certain at this stage precisely when these increases might take place. The problem was also closely linked to the question of "global" and "exclusive" access, and the formula under which the possible additional import opportunities for Australia resulting from the increased global access would have to be calculated was extremely complex and had to be worked out on the basis of Article 5 of the Agreement. As regards the questions raised on newsprint, the representative of Australia stated that the Agreement had to be seen as a political as well as a commercial document which had to take account of certain local industry sensitivities. Such considerations applied for instance to Annex F, paragraph 4. This did not, however, involve any intention on the part of his government to interfere with commercial considerations in deciding upon imports of this product from New Zealand. If any problems arose in the context of paragraph 4 of Annex F, it would be the intention to consult with industry and encourage a mutually acceptable solution. The text was more in the nature of an exhortation to Australian users to look to New Zealand as the preferred supplier of newsprint where it was attractive and there existed no other measures or rules to assure preferred access of newsprint from New Zealand.

16. In reply to a question by one member of the Working Party whether the parties to the Agreement had envisaged a harmonization of their GSP schemes, the parties stated that no harmonization or coordination of their respective schemes was planned.

17. Referring to question 4, one member of the Working Party pointed out that the origin rules in Article 3, paragraph 3 of the Agreement provide that the value added necessary for conferring origin status in the territory of either party could be varied. He said that the reply given by the parties did not alter the fact that this provision allowed for the creation of an internal preference which could have trade diverting effects and reduce the scope of the free trade area.

18. The parties to the Agreement stated that the provision had already existed in the NAFTA but had never been used. They assured contracting parties that in case the provision would have to be applied it would not be done with the intention of diverting trade. In fact there was one instance of a modified origin rule included in the Agreement. This was the case of synthetic carpets, where a change of the normal origin rule had been made and this change had resulted in an increase of trade opportunities in that product with third countries.

19. The same member noted that paragraph 11(d) of Article 4 of the Agreement committed the parties to sympathetically consider maintaining a margin of preference of at least 5 per cent on goods of significant trade interest to the other member State. He considered that the replies given by the parties to questions 7, 8, 9 and 14 were not reassuring. His authorities regarded the principle of special preferences as unfortunate. They were concerned that the Agreement did not contain any provision which would assure that the margin of preference mentioned in the Agreement would not inhibit any future MFM reductions. He wondered whether any assurance could be given by the parties that this provision would not be used to impede trade between them and third countries.

20. The parties to the Agreement stated that Article 4, paragraph 11(d) related only to a situation where normal tariff rates were being reduced. It would never be used to increase tariffs vis-à-vis third countries in order to create a preferential rate between the parties. The parties may, however, choose to keep a 5 per cent tariff preference in specific cases in the circumstances set out in Article 4:11(d). They could not give any assurance that the provision would not be applied.

21. The same member referring to the discussion that had taken place on newsprint and to the provision in the Agreement that the New Zealand Wheat Board would use Australian wheat as a primary source, wondered under which GATT provision the use of Australian wheat as preferred source was justified.

22. The representative of New Zealand stated that the purchase and distribution of wheat in his country had for a long time been a state monopoly administered by the New Zealand Wheat Board. It had also become common to cover shortfalls in New Zealand's wheat supply by purchases from Australia, its closest and traditional trading partner. But also such purchases were subject to commercial considerations like price, quality and delivery. This situation had not changed with the introduction of the Agreement. The question of GATT justification had not been particularly addressed by his authorities but the reference in Article XXIV:8(b) to restrictive regulations of commerce would probably cover such a situation where a special preference was granted to a partner in a free-trade area.

23. Referring to the percentage figures given in reply to question 3 concerning the shares of trade between the two parties which were already free from all restrictions, one member wanted to know the respective shares of agricultural and manufactured products which were already traded freely. The representative of Australia stated that all agricultural products from New Zealand, except sugar, entered the Australian market free of quantitative restrictions, and nearly all agricultural products could enter from New Zealand free of duty. The representative of New Zealand pointed out that a number of agricultural products, e.g. sugar and wheat, which

constituted a significant part of agricultural imports from Australia, entered the New Zealand market duty free.

Compatibility of the Agreement with the General Agreement

24. The representative of a group of countries stated that, in examining the GATT conformity of the Agreement, the provisions of Article XXIV:4, 5(b) and 8(b) would have to be mainly addressed. His delegation had no problem with the trade coverage under the Agreement. Although there were certain product areas amounting to a trade value of about $A 250 million where the provisions still had to be finalized, it would appear that substantially all the trade between the parties was covered. It was, however, more difficult to take a definite position as to the compatibility of the Agreement with paragraphs 4 and 5(b) of Article XXIV. This was partly due to a certain lack of statistical information but, more importantly, to the question of quantitative restrictions, i.e. the problem of "global" versus "exclusive" access, which in certain circumstances could lead to a reduction in market access for third countries, while at the same time providing increased access for the parties to the Agreement. For the reasons given, he was as yet unconvinced that the Agreement was in conformity with Article XXIV and he reserved the rights of his delegation under the GATT in this respect.

25. Another member of the Working Party stated that there were a number of years before a full free trade area under the Agreement would come into existence. During that period some uncertainty would remain as to how this goal would be achieved. He referred in this context in particular to Article 3, paragraph 3 relating to the origin rules; Article 4, paragraph 11(d) relating to the maintenance of tariff preferences; Article 5, paragraphs 10, 20 and 21, relating to the level of access; and the provisions in Annexes E and F concerning the position of Australia as preferred supplier for purchases of wheat and newsprint from New Zealand. He expressed certain doubts whether, in the light of these provisions, during the implementation of the Agreement, full GATT compatibility would be achieved. He also stressed that, in the view of his delegation, the reply given to question 21 in L/5619, concerning the application of Article XXIV to quantitative restrictions, could not be used to justify the possible elimination of quantitative import restrictions, for which so far no GATT justification had been provided, solely between the parties to the Agreement. While not taking a final position at this stage as to the GATT compatibility of the Agreement, he reserved the rights of his delegation under the GATT in this respect. In his view, which was supported by other members of the Working Party, it would also be useful if the parties, in accordance with past GATT practice, would submit an annual or biennial report on the operation of the Agreement during the formation of the free trade area.

26. Another member also stated that there existed some concern as to the GATT rights of third parties in connection with the Agreement. This was true in particular with regard to quantitative import restrictions. More information was needed to assess fully the impact of these provisions on the trade of third countries. He also reserved the full GATT rights of his country with respect to the conformity of the Agreement with the GATT.

27. The representative of Australia stated that his authorities had, with the exception of the case of used four-wheel-drive vehicles for which particular circumstances applied, justified in GATT legal terms all

quantitative import restrictions in the relevant GATT bodies. He stated also that consistent with past GATT practice, the parties would be prepared to submit a report biennially to the CONTRACTING PARTIES on the operation of the Agreement. They would, however, see no need to continue this reporting once the full free trade area had been finally established.

28. The representative of New Zealand re-emphasized that the Agreement was in no sense provisional or incomplete but a definitive establishment of a free trade area under Article XXIV, paragraph 7(a). There was, however, an intervening period between entry into force and the complete elimination of duties and other restrictive regulations on substantially all the trade. As concerns some of the problems raised by other members of the Working Party, he stated that the decision of the authorities on "global" access was not dependent on the provisions of the Agreement but on economic policy considerations. As to rules of origin, it should not be presumed that these rules would be used to divert trade to the detriment of third countries. Concerning the question of quantitative import restrictions, while his country had not justified them in GATT terms, New Zealand would not eliminate them solely in respect of Australia on a discriminatory basis. As far as the position of Australia as preferred supplier of wheat and newsprint was concerned, in the view of his authorities, Article XXIV, paragraph 8(b) applied.

Conclusions

[To be added.]