Trans-Tasman Trade – Legal and Regulatory Issues

David Goddard QC
New Zealand

CER has many layers

- "the world's most comprehensive, effective and mutually compatible free trade agreement"
- trans-Tasman integration is both broad and deep
- foundations
  - (mostly) shared language
  - similar legal and political institutions
  - shared values and norms
- free movement of people
  - integrated labour market

CER has many layers (cont)

- free trade in goods under ANZCERTA
  - no tariffs, import licensing or quantitative restrictions, or export incentives, for goods which satisfy ROO
- free trade in services (1988 Protocol)
  - market access
  - rights of establishment, national treatment and MFN treatment
  - negative list – few inscriptions
- s 46A TPA/ s 36A Commerce Act
  - no anti-dumping rules in trans-Tasman context

Border effects remain

- empirical work in other free trade areas confirms significant border effects
- "back of envelope" calculations suggest this is true for trans-Tasman trade also
- affects services more than goods
  - NB around 70% of GDP and growing
- inhibits trade
- inhibits organic growth of trans-Tasman enterprises

Causes of border effects?

- ie where are the increased costs of dealing across borders?
- legal and regulatory differences
- different currencies
- business environment factors
- network/relationship factors

Legal and regulatory barriers to trans-Tasman trade and trans-Tasman enterprises

- tax differences
  - compliance costs
  - double taxation of some revenue streams
- differences in regulation of goods and services, and/or their providers
  - information cost
  - compliance costs
- differences in basic legal rules and institutions
  - information cost
  - compliance costs
- linkages between legal regimes

Steps taken to address these barriers

- TTMRA
- JASANZ
- FSANZ (formerly ANZFA)
- MoU on Business Law Coordination
- unilateral coordination of business laws
- cross-appointments eg Takeovers Panels
- cooperation between regulators and enforcement agencies
- civil justice initiatives
- double tax agreement
- triangular tax arrangements

TTMRA

1. Goods

- The basic principle in respect of Goods is that a Good that may legally be sold in the Jurisdiction of any Australian Party may be sold in New Zealand, and a Good that may legally be sold in New Zealand may be sold in the Jurisdiction of any Australian Party.

2. Occupations

- The basic principle in respect of Occupations is that a person Registered to practise an Occupation in the Jurisdiction of any Australian Party is entitled to practise an Equivalent occupation in New Zealand, and a person Registered to practise an Occupation in New Zealand is entitled to practise an Equivalent occupation in the jurisdiction of any Australian Party.

Civil justice initiatives

- trans-Tasman evidence regime
- simplified procedure for enforcement of judgments
- special arrangements for jurisdiction, hearings, enforcement in some fields

Current work programme

- joint therapeutics agency
- trans-Tasman securities offerings
  - mutual recognition
- financial reporting
  - common accounting standards
  - cooperation in international fora
  - cooperation between standard-setters
  - cross-appointments?
  - single standard-setting body?
- competition laws and institutions
  - institutional cooperation
  - single application process for some matters?
  - single decision process for some matters?
- trans-Tasman insolvencies
  - streamlining the UNCITRAL Model Law in the trans-Tasman context
- etc

What does the future hold?

- more mutual recognition
- more institutional cooperation
  - more cross-appointments?
- improving the interface between our legal systems
- more unilateral coordination
- some joint policy development
- some joint institutions

Mutual recognition possibilities

- regulatory requirements that have the effect of preventing or hindering trans-Tasman movement of goods
- regulatory requirements that affect the movement of service providers
- remote and temporary provision of services
- general presumption of mutual recognition of commercial regulation?

Civil and regulatory proceedings

- the “missing layer” of CER?
- new arrangements for service and enforcement in civil proceedings
  - SEPA as a model?
- new arrangements for service and enforcement in regulatory proceedings
  - consumer protection
  - business regulation
  - other?

Trans-Tasman Trade – Legal and Regulatory Issues

David Goddard QC
New Zealand