PROTOCOL ON INVESTMENT
TO THE NEW ZEALAND – AUSTRALIA
CLOSER ECONOMIC RELATIONS TRADE AGREEMENT
Preamble

New Zealand and Australia (“the Parties”),

Conscious of their longstanding friendship and close historic, political, social, economic, and geographic ties and the special nature of the relationship that has developed on the basis of these ties;

Building on the deep and evolving closer economic relationship established under the Australia New Zealand Closer Economic Relations Trade Agreement done on 28 March 1983 (“Agreement”), and furthered by, inter alia, the Protocol on Trade in Services done on 18 August 1988 (“Services Protocol”);

Recognising the joint commitment of the two governments to work towards achieving a trans-Tasman Single Economic Market by progressively removing or minimising impediments to trans-Tasman business;

Acknowledging the extensive degree of trans-Tasman investment and desiring to promote further the flow of investment between the Parties, and contribute to the aim of a Single Economic Market by concluding a protocol on investment to the Agreement (“Protocol”);

Conscious of their rights and obligations under the WTO Agreement, and other multilateral and bilateral trade and economic agreements and arrangements;

Recognising that expanding the closer economic relationship between the Parties to include a protocol on investment can assist in promoting sustainable development, including social development, economic development, and environmental protection;

Have agreed as follows:
Article 1
Definitions

For the purposes of this Protocol:

(a) **covered investment** means, with respect to a Party, an investment in its territory of an investor of the other Party, in existence as of the date of entry into force of this Protocol or established, acquired, or expanded thereafter;

(b) **enterprise** means any entity constituted or organised under applicable law, whether or not for profit, and whether privately-owned or governmentally-owned including any corporation, trust, partnership, sole proprietorship, joint venture, association or similar organisation, and a branch of an enterprise;

(c) **enterprise of a Party** means an enterprise constituted or organised under the law of a Party, and a branch located in the territory of a Party and carrying out business activities there;

(d) **freely useable currency** means a freely useable currency as determined by the International Monetary Fund under the *Articles of Agreement of the International Monetary Fund* and amendments thereafter, or any currency that is used to make international payments and is widely traded in the international principal exchange markets;

(e) **investment** means every kind of asset that an investor owns or controls, directly or indirectly, that has the characteristics of an investment, including such characteristics as the commitment of capital or other resources, the expectation of gain or profit, or the assumption of risk. Forms that an investment may take include the following:
(i) an enterprise;

(ii) shares, stocks, or other forms of equity participation in an enterprise, including rights derived therefrom;

(iii) bonds, including government-issued bonds, debentures, loans and other forms of debt, including rights derived therefrom¹;

(iv) futures, options, and other derivatives;

(v) rights under contracts, including turnkey, construction, management, production or revenue-sharing contracts;

(vi) claims to money or to any contractual performance related to a business and having economic value²;

(vii) intellectual property rights and goodwill;

(viii) rights conferred pursuant to law or contract such as concessions, licences, authorisations, and permits³; and

(ix) any other tangible and intangible, movable and immovable property, and any related property rights, such as leases, mortgages, liens, and pledges.

For the purposes of this definition, investment may include a return. A return that is invested shall also be

¹ Some forms of debt, such as bonds, debentures, and long-term notes, are more likely to have the characteristics of an investment, while other forms of debt, such as claims to payment that are immediately due and result from the sale of goods or services, are less likely to have such characteristics.

² For greater certainty, investment does not mean claims to money that arise solely from:
   (a) commercial contracts for sale of goods or services; or
   (b) the extension of credit in connection with such commercial contracts.

³ The term “investment” does not include an order or judgment entered in a judicial or administrative action.
treated as an investment and any alteration of the form in which an asset is invested or reinvested shall not affect its character as an investment. An investment may be owned or controlled by an investor of a Party, notwithstanding the fact that the investment was made through an enterprise duly incorporated, constituted, set up or otherwise duly organised under the law of a non-Party;

(f) investor of a Party means a Party or a natural person of a Party or an enterprise of a Party that seeks to make, is making, or has made an investment in the territory of the other Party;

(g) measure includes any measure by a Party, whether in the form of a law, regulation, rule, procedure, decision, administrative action, practice, or any other form;

(h) measure adopted or maintained by a Party includes measures taken by:

(i) central, regional, or local governments or authorities; or

(ii) non-governmental bodies in the exercise of powers delegated by central, regional, or local governments or authorities;

(i) natural person of a Party means any natural person possessing the nationality or citizenship of, or right of permanent residence in, that Party under its laws and regulations;

(j) person means a natural person or enterprise;

(k) return means an amount yielded by or derived from an investment, including profits, dividends, interest, capital gains, royalties, payments in connection with intellectual property rights, and all other lawful income;
(l) territory of a Party, consistent with Paragraph 2 of Article 2 of the Agreement:

(i) with respect to Australia, does not include any Australian territory other than internal territories; and

(ii) with respect to New Zealand, means the territory of New Zealand but does not include the Cook Islands, Niue, and Tokelau,

unless the Parties have exchanged notes agreeing the terms on which this Protocol shall apply;

(m) TRIPS Agreement means the Agreement on Trade-Related Aspects of Intellectual Property Rights, which is part of the WTO Agreement; and

(n) WTO Agreement means the Marrakesh Agreement Establishing the World Trade Organization, done on 15 April 1994.

Article 2
Objectives

The objectives of the Parties in concluding this Protocol are:

(a) to strengthen further the economic relationship between the Parties and advance the ongoing evolution of the Agreement and work towards development of a trans-Tasman Single Economic Market;

(b) to liberalise barriers to investment between the Parties;

(c) to encourage and promote investment between the Parties; and
(d) to establish a framework of transparent rules conducive to increased investment between the Parties and to ensure the protection and security of covered investments within each Party’s territory.

**Article 3**

**Scope**

1. This Protocol applies to measures adopted or maintained by a Party relating to:

   (a) investors of the other Party;

   (b) covered investments; and

   (c) with respect to Article 7 (Performance Requirements), all investments in the territory of the Party.

2. A requirement by a Party that a service provider of the other Party post a bond or other form of financial security as a condition of providing a service into its territory does not of itself make this Protocol applicable to the provision of that cross-border service. This Protocol applies to that Party’s treatment of the posted bond or financial security.

3. For greater certainty, the provisions of this Protocol do not bind either Party in relation to any act or fact that took place or any situation that ceased to exist before the date of entry into force of this Protocol.

**Article 4**

**Relationship to Services Protocol**

In the event of any inconsistency between the rights and obligations in the Services Protocol and the rights and obligations in this Protocol, the rights and obligations in this Protocol shall prevail to
the extent that this provides more favourable treatment for investors of the other Party or covered investments.

**Article 5**  
**National Treatment**

Each Party shall accord to investors of the other Party and covered investments treatment no less favourable than that it accords, in like circumstances, to its own investors and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

**Article 6**  
**Most Favoured Nation Treatment**

1. Each Party shall accord to investors of the other Party and covered investments treatment no less favourable than that it accords, in like circumstances, to investors of any non-Party and their investments with respect to the establishment, acquisition, expansion, management, conduct, operation, and sale or other disposition of investments in its territory.

2. For greater certainty, this Article does not apply to dispute settlement procedures.

**Article 7**  
**Performance Requirements**

1. Neither Party may, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment of an investor of a Party or of a non-Party in its territory, impose or enforce any requirement, or enforce any commitment or undertaking:

   4 For greater certainty, a condition for the receipt or continued receipt of an advantage referred to in Paragraph 2 does not constitute a “commitment or undertaking” for the purposes of Paragraph 1.
(a) to export a given level or percentage of goods or services;

(b) to achieve a given level or percentage of domestic content;

(c) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;

(d) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment;

(e) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings;

(f) to transfer a particular technology, a production process, or other proprietary knowledge to a person in its territory; or

(g) to supply exclusively from the territory of the Party the goods that it produces or the services that it supplies to a specific regional market or to the world market.

2. Neither Party may condition the receipt or continued receipt of an advantage, in connection with the establishment, acquisition, expansion, management, conduct, operation, or sale or other disposition of an investment in its territory of an investor of a Party or of a non-Party on compliance with any of the following requirements:

(a) to achieve a given level or percentage of domestic content;

(b) to purchase, use, or accord a preference to goods produced in its territory, or to purchase goods from persons in its territory;
(c) to relate in any way the volume or value of imports to the volume or value of exports or to the amount of foreign exchange inflows associated with such investment; or

(d) to restrict sales of goods or services in its territory that such investment produces or supplies by relating such sales in any way to the volume or value of its exports or foreign exchange earnings.

3. Nothing in Paragraph 2 shall be construed to prevent either Party from conditioning the receipt or continued receipt of an advantage, in connection with an investment in its territory of an investor of a Party or of a non-Party, on compliance with a requirement to locate production, supply a service, train or employ workers, construct or expand particular facilities, or carry out research and development, in its territory.

4. Paragraph 1(f) does not apply:

(a) when a Party authorises use of an intellectual property right in accordance with Article 31 of the TRIPS Agreement, or to measures requiring the disclosure of proprietary information that fall within the scope of, and are consistent with, Article 39 of the TRIPS Agreement; or

(b) when the requirement is imposed or the commitment or undertaking is enforced by a court, administrative tribunal, or competition authority to remedy a practice determined after judicial or administrative process to be anticompetitive under the Party’s competition laws.\(^6\)

5. Paragraphs 1(a), (b), and (c), and 2(a) and (b), do not apply to qualification requirements for goods or services with respect to export promotion and foreign aid programmes.

\(^5\) The reference to “Article 31” includes footnote 7 to Article 31.

\(^6\) The Parties recognise that a patent does not necessarily confer market power.
6. Paragraphs 1(b), (c), (f), and (g), and 2(a) and (b), do not apply to government procurement.

7. Paragraphs 2(a) and (b) do not apply to requirements imposed by an importing Party relating to the content of goods necessary to qualify for preferential tariffs or preferential quotas.

8. For greater certainty, Paragraphs 1 and 2 do not apply to any requirement other than the requirements set out in those Paragraphs.

9. This Article does not preclude enforcement of any commitment, undertaking, or requirement between private parties, where a Party did not impose or require the commitment, undertaking, or requirement.

**Article 8**

**Senior Management and Boards of Directors**

1. Neither Party may require that an enterprise of that Party that is a covered investment appoint to senior management positions natural persons of any particular nationality.

2. Neither Party may require that a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party.

3. Neither Party may require that less than a majority of the board of directors, or any committee thereof, of an enterprise of that Party that is a covered investment, be of a particular nationality, or resident in the territory of the Party, where that requirement would materially impair the ability of the investor to exercise control over its investment.
Article 9
Non-Conforming Measures

1. Articles 5 (National Treatment), 6 (Most Favoured Nation Treatment), 7 (Performance Requirements), and 8 (Senior Management and Boards of Directors) shall not apply to:

   (a) any existing non-conforming measure that is maintained by a Party at:

      (i) the central or regional level of government, as set out by that Party in its Schedule to Annex I; or

      (ii) the local level of government;

   (b) the continuation or prompt renewal of any non-conforming measure referred to in subparagraph (a); or

   (c) an amendment to any non-conforming measure referred to in subparagraph (a) to the extent that the amendment does not decrease the conformity of the measure, as it existed immediately before the amendment, with Articles 5 (National Treatment), 6 (Most Favoured Nation Treatment), 7 (Performance Requirements), and 8 (Senior Management and Boards of Directors).

2. Articles 5 (National Treatment), 6 (Most Favoured Nation Treatment), 7 (Performance Requirements), and 8 (Senior Management and Boards of Directors) do not apply to any measure that a Party adopts or maintains with respect to sectors, sub-sectors, or activities, as set out in its Schedule to Annex II.

3. Neither Party may, under any measure adopted after the date of entry into force of this Protocol and covered by its Schedule to Annex II, require an investor of the other Party, by reason of its nationality, to sell or otherwise dispose of an investment existing at the time the measure becomes effective.
4. Articles 5 (National Treatment), 6 (Most Favoured Nation Treatment), and 8 (Senior Management and Boards of Directors) do not apply to:

(a) government procurement; or

(b) subsidies or grants provided by a Party, including government supported loans, guarantees, and insurance.

**Article 10**

**Transfers**

1. Each Party shall permit all transfers into and out of its territory relating to a covered investment to be made freely and without delay in a freely usable currency at the market rate of exchange at the time of transfer. Such transfers include:

(a) contributions to capital, including the initial contribution;

(b) profits, dividends, interest, capital gains, royalty payments, management fees, and technical assistance and other fees;

(c) proceeds from the sale of all or any part of the covered investment or from the partial or complete liquidation of the covered investment;

(d) payments made under a contract, including payments made pursuant to a loan agreement;

(e) payments made pursuant to Articles 13 (Compensation for Losses) or 14 (Expropriation);

(f) payments arising out of the settlement of a dispute; and

(g) earnings and other remuneration of personnel engaged from abroad in connection with that investment.
2. Notwithstanding Paragraph 1, a Party may prevent or delay a transfer through the equitable, non-discriminatory, and good faith application of its laws relating to:

(a) bankruptcy, insolvency, or the protection of the rights of creditors;

(b) issuing, trading, or dealing in securities, futures, or derivatives;

(c) criminal or penal offences;

(d) financial reporting or record keeping of transfers when necessary to assist law enforcement or financial regulatory authorities;

(e) ensuring compliance with orders or judgments in judicial or administrative proceedings; or

(f) social security, public retirement, or compulsory savings schemes.

Article 11
Measures to Safeguard the Balance of Payments

1. Notwithstanding Article 10 (Transfers), where a Party is in serious balance of payments and external financial difficulties or under threat thereof, it may adopt or maintain restrictions relating to transfers to which Article 10 (Transfers) applies.

2. Restrictions adopted or maintained under Paragraph 1 shall:

(a) be consistent with the Articles of Agreement of the International Monetary Fund;

(b) avoid unnecessary damage to the commercial, economic and financial interests of the other Party;
(c) not exceed those necessary to deal with the circumstances described in Paragraph 1;

(d) be temporary and be phased out progressively as the situation specified in Paragraph 1 improves; and

(e) be applied on a national treatment basis and such that covered investments and investors of the other Party are treated no less favourably than investors and investments of any non-Party.

3. Any restrictions adopted or maintained by a Party under Paragraph 1, or any changes therein, shall be notified to the other Party within 14 days from the date such measures are taken.

4. The Party adopting or maintaining any restrictions under Paragraph 1 shall commence consultations with the other Party within 45 days from the date of notification in order to review the measures adopted or maintained by it.

**Article 12**

**Minimum Standard of Treatment**

1. Each Party shall accord to covered investments treatment in accordance with the customary international law minimum standard of treatment, including fair and equitable treatment and full protection and security.

2. The obligation in Paragraph 1 to provide:

   (a) “fair and equitable treatment” includes the obligation not to deny justice in criminal, civil, or administrative adjudicatory proceedings in accordance with the principle of due process;

   (b) “full protection and security” requires each Party to take such measures as may be reasonably necessary to ensure the physical protection and security of the covered investment.
3. For greater certainty, the concepts of “fair and equitable treatment” and “full protection and security” do not require treatment in addition to or beyond that which is required by the customary international law minimum standard, and do not create additional substantive rights.

4. A determination that there has been a breach of another provision of this Protocol, or of a separate international agreement, does not establish that there has been a breach of this Article.

Article 13
Compensation for Losses

1. Notwithstanding Paragraph 4(b) of Article 9 (Non-Conforming Measures), each Party shall accord to investors of the other Party and to covered investments, with respect to measures it adopts or maintains relating to losses suffered by investments in its territory owing to armed conflict or civil strife, treatment no less favourable than that it accords, in like circumstances, to:

   (a) its own investors and their investments; and
   (b) investors of any non-Party and their investments.

2. Notwithstanding Paragraph 1, if an investor of a Party suffers a loss in the territory of the other Party resulting from:

   (a) requisitioning of its covered investment or part thereof by the other Party’s forces or authorities; or
   (b) destruction of its covered investment or part thereof by the other Party’s forces or authorities, which was not required by the necessity of the situation,

the other Party shall provide the investor with restitution, compensation, or both, as appropriate, for such loss. Any compensation shall be prompt, adequate, and effective in
accordance with Paragraphs 2 to 4 of Article 14 (Expropriation) mutatis mutandis.

3. Paragraph 1 does not apply to existing measures relating to subsidies or grants provided by a Party, including government-supported loans, guarantees, and insurance that would be inconsistent with Article 5 (National Treatment) except for Paragraph 4(b) of Article 9 (Non-Conforming Measures).

**Article 14**

**Expropriation**

1. Neither Party may expropriate or nationalise a covered investment either directly or indirectly through measures equivalent to expropriation or nationalisation (“expropriation”)\(^7\), except:

   (a) for a public purpose;

   (b) in a non-discriminatory manner;

   (c) on payment of prompt, adequate, and effective compensation in accordance with Paragraphs 2 to 4; and

   (d) in accordance with due process of law.

2. Compensation shall:

   (a) be paid without delay;

   (b) be equivalent to the fair market value of the expropriated investment immediately before the expropriation took place;

   (c) not reflect any change in value occurring because the intended expropriation had become known earlier; and

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\(^7\) Except in rare circumstances, non-discriminatory regulatory actions by a Party to achieve legitimate public welfare objectives, such as protection of public health, safety, and the environment, do not constitute indirect expropriations.
(d) be fully realisable and freely transferable.

3. The compensation shall be payable either in the currency in which the investment was originally made or, if requested by the investor, in any other freely usable currency. The compensation shall include interest, at a commercially reasonable rate for that currency, from the date the measures in question were taken to the date of payment and shall be freely transferable between the territories of the Parties. If an investor requests payment in a freely usable currency, the compensation referred to in Paragraph 1(c), including any accrued interest, shall be converted into the currency of payment at the market rate of exchange prevailing on the date of payment.

4. This Article does not apply to the issuance of compulsory licences granted in relation to intellectual property rights in accordance with the TRIPS Agreement.

Article 15
Transparency

1. Each Party shall ensure that its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Protocol are published promptly or otherwise made available in such a manner as to enable interested persons of the other Party to become acquainted with them. Each Party shall also publish international agreements pertaining to investment to which it is a party.

2. To the maximum extent possible, each Party shall:

   (a) publish in advance any measure referred to in Paragraph 1 that it proposes to adopt; and

   (b) provide interested persons of the other Party with an opportunity to comment on such proposed measures.
3. With a view to administering its laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by this Protocol in a consistent, impartial, and reasonable manner, each Party shall ensure that its administrative agencies, in applying such measures to particular investors of the other Party or covered investments in specific cases through adjudication, rulemaking, licensing, determination, and approval processes:

(a) provide, wherever possible, persons of the other Party that are directly affected by an agency’s processes reasonable notice, in accordance with domestic procedures, when a process is initiated, including a description of the nature of the relevant process, a statement of the legal authority under which the process is initiated, and a general description of any issues in controversy;

(b) afford such persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, when time, the nature of the process, and the public interest permit; and

(c) follow procedures that are in accordance with its law.

4. Each Party shall maintain judicial, quasi-judicial, or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of final administrative actions regarding matters covered by this Protocol. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

5. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceedings are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and
(b) a decision based on the evidence and submissions of record or, where required by domestic law, the record compiled by the administrative authority.

6. Each Party shall ensure, subject to appeal or further review as provided in its domestic law, that such decision shall be implemented by, and shall govern the practice of, the offices or authorities with respect to the administrative action at issue.

7. Each Party shall designate a contact point or points to facilitate communications between the Parties on any matter covered by this Protocol.

Article 16
Special Formalities and Disclosure of Information

1. Nothing in Article 5 (National Treatment) shall be construed to prevent either Party from adopting or maintaining a measure that prescribes special formalities in connection with covered investments, such as residency requirements for registration or similar purposes or a requirement that covered investments be legally constituted under the laws or regulations of the Party, provided that such formalities do not materially impair the protections afforded by a Party to investors of the other Party and covered investments pursuant to this Protocol.

2. Notwithstanding Articles 5 (National Treatment) and 6 (Most Favoured Nation Treatment), a Party may require an investor of the other Party, or a covered investment, to provide information concerning that investment solely for informational or statistical purposes. The Party shall protect such information that is confidential from any disclosure that would prejudice the competitive position of the investor or the covered investment. Nothing in this Paragraph shall be construed to prevent either Party from otherwise obtaining or disclosing information in connection with the equitable and good faith application of its domestic law.
Article 17
Subrogation

1. If a Party or an agency of a Party makes a payment to an investor of that Party under a guarantee, a contract of insurance, or other form of indemnity against non-commercial risks it has granted in respect of an investment of an investor of that Party, the other Party shall recognise the subrogation or transfer of any right or title in respect of such investment. The subrogated or transferred right or claim shall not be greater than the original right or claim of the investor.

2. Where a Party or an agency of a Party has made a payment to an investor of that Party and has taken over rights and claims of the investor, that investor shall not, unless authorised to act on behalf of the Party or the agency of the Party making the payment, pursue those rights and claims against the other Party.

Article 18
Denial of Benefits

A Party may deny the benefits of this Protocol to an investor of the other Party that is an enterprise of such other Party and to investments of that investor if the enterprise has no substantive business operations in the territory of the other Party and persons of a non-Party or of the denying Party own or control the enterprise.

Article 19
Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between covered investments or investors of the other Party and other investments or investors, where like conditions prevail, or a disguised restriction on investment, nothing in Articles 5 (National Treatment), 6 (Most Favoured Nation Treatment), 7 (Performance Requirements), or 8 (Senior Management and Boards
of Directors) shall preclude the adoption or enforcement by either Party of measures:

(a) necessary to protect public morals or to maintain public order;

(b) necessary to protect human, animal or plant life or health;

(c) necessary to protect national works or specific sites of artistic, historic or archaeological value; or

(d) relating to the conservation of living or non-living exhaustible natural resources.

**Article 20**

**Security Exceptions**

Nothing in this Protocol shall be construed:

(a) to require either Party to furnish or allow access to any information the disclosure of which it considers to be contrary to its essential security interests; or

(b) to prevent either Party from taking any actions which it considers necessary for the protection of its essential security interests:

(i) relating to fissionable and fusionable materials or the materials from which they are derived;

(ii) taken in time of war or other emergency in international relations;

(iii) relating to the production or supply of arms and ammunition; or

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8 The Parties understand that this includes environmental measures necessary to protect human, animal or plant life or health.
(c) to prevent either Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

Article 21
Taxation Measures

1. Except as provided in this Article, nothing in this Protocol shall apply to taxation measures.

2. This Protocol shall only grant rights or impose obligations with respect to taxation measures:

   (a) where corresponding rights or obligations are also granted or imposed under the WTO Agreement;

   (b) under Article 7 (Performance Requirements); or

   (c) under Article 14 (Expropriation).

3. Nothing in this Protocol shall affect the rights and obligations of the Parties under any tax convention relating to the avoidance of double taxation in force between the Parties.

4. In the event of any inconsistency relating to a taxation measure between this Protocol and a tax convention relating to the avoidance of double taxation in force between the Parties, the latter shall prevail to the extent of the inconsistency. Any consultations between the Parties pursuant to Article 25 (Consultations) about whether an inconsistency relates to a taxation measure, or whether any other matter arising under this Protocol relates to a taxation measure, shall include representatives of the tax administration of each Party.

5. Nothing in this Protocol shall be regarded as obliging either Party to extend to the other Party the benefit of any treatment, preference or privilege arising from any existing or future agreement
on the avoidance of double taxation or from the provisions on the avoidance of double taxation in any other international agreement or arrangement by which the Party is bound.

Article 22
Prudential Measures

Notwithstanding any other provisions of this Protocol, a Party shall not be prevented from taking measures affecting the supply of financial services for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system. Where such measures do not conform with the provisions of this Protocol, they shall not be used as a means of avoiding the Party’s commitments or obligations under this Protocol.

Article 23
Treaty of Waitangi

1. Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Party or as a disguised restriction on investment, nothing in this Protocol shall preclude the adoption by New Zealand of measures it deems necessary to accord more favourable treatment to Maori in respect of matters covered by this Protocol including in fulfilment of its obligations under the Treaty of Waitangi.

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9 For greater certainty the measures which a Party may take, provided they meet the requirements of this Article, include those governing:
(a) juridical form, registration as a financial service supplier, and corresponding requirements, obligations, and operational restrictions;
(b) ownership;
(c) directors and management, including qualifications, residency and nationality requirements;
(d) location of offices, systems, information infrastructure, and staff;
(e) payment, clearance, and security settlement systems;
(f) governance arrangements, including reporting lines;
(g) capital and liquidity requirements and arrangements;
(h) risk management processes;
(i) anti-money laundering and countering terrorism financing; and
(j) the response to the distress or failure of a financial service supplier.
2. The Parties agree that the interpretation of the Treaty of Waitangi, including as to the nature of the rights and obligations arising under it, shall not be the subject of consultations pursuant to Article 25 (Consultations).

**Article 24**

**Investment and Environment**

Nothing in this Protocol shall be construed to prevent either Party from adopting, maintaining, or enforcing any measure otherwise consistent with this Protocol that it considers appropriate to ensure that investment activity in its territory is undertaken in a manner sensitive to environmental concerns.

**Article 25**

**Consultations**

If a Party 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,

it may request consultations with the other Party. Following such a request the Parties shall promptly enter into consultations with a view to seeking an early, equitable, and mutually satisfactory solution.

**Article 26**

**Review**

The Parties agree to meet in or shortly after the first year of entry into force of this Protocol, and regularly thereafter, to review the operation of this Protocol.
Article 27
Status of Annexes and Letters

The Annexes to this Protocol, the Exchange of Letters Concerning Clarification of Australian Non-Conforming Measures at Regional Level of Government, the Exchange of Letters Concerning the New Zealand MFN Reservation, and the Exchange of Letters Concerning New Zealand's Reservation with respect to Water are an integral part of this Protocol.

Article 28
Association with Protocol

1. The Parties may agree to the association of any other State with this Protocol.

2. The terms of any such association shall be negotiated jointly between the Parties and the other State.

Article 29
Entry into Force

This Protocol shall enter into force 30 days, or such other period as the Parties may agree, after the Parties exchange written notification that necessary domestic procedures have been completed.

Signed at Wellington, in duplicate, this 16th day of February two thousand and eleven.

For New Zealand:  For Australia:

Rt Hon John Key  The Hon Julia Gillard
Prime Minister Prime Minister
ANNEX I

1. The Schedule of New Zealand to Annex I sets out, pursuant to Paragraph 1 of Article 9 (Non-Conforming Measures), New Zealand’s existing measures that are not subject to some or all of the obligations imposed by:

   (a) Article 5 (National Treatment);

   (b) Article 6 (Most Favoured Nation Treatment);

   (c) Article 7 (Performance Requirements); or

   (d) Article 8 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

   (a) **Sector** refers to the sector in which the entry is made;

   (b) **Obligations Concerned** specifies the obligation(s) referred to in Paragraph 1;

   (c) **Measures** identify laws, regulations, rules, procedures, decisions, administrative actions, practices or other measures for which the entry is made. A measure cited in the Measures element:

      (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Protocol;

      (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure; and

   (d) **Description** sets out the non-conforming measure to which the entry applies.

3. In accordance with Paragraph 1(a) of Article 9 (Non-Conforming Measures), the articles of this Protocol specified in the **Obligations Concerned** element of an entry do not apply to the laws, regulations, rules, procedures, decisions, administrative actions, practices or other measures identified in the **Description** element of that entry.

4. All elements of the entry shall be considered in their totality for the purposes of its interpretation.
**SCHEDULE OF NEW ZEALAND**

<table>
<thead>
<tr>
<th>Sector</th>
<th>All Sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
</tbody>
</table>
| Measure      | Companies Act 1993  
|              | Financial Reporting Act 1993 |
| Description  | The following entities are required to file audited financial statements with the Registrar of Companies: |
|              | (a) Overseas issuers; |
|              | (b) Overseas incorporated companies that carry on business in New Zealand; |
|              | (c) subsidiaries of companies or bodies corporate incorporated outside New Zealand; or |
|              | (d) companies in which 25 percent or more of the shares are held or controlled by: |
|              |   (i) a subsidiary of a company or body corporate incorporated outside New Zealand or a subsidiary of that subsidiary; |
|              |   (ii) a company or body corporate incorporated outside New Zealand; or |
|              |   (iii) a person not ordinarily resident in New Zealand. |
Sector: All Sectors

Obligations concerned:
- National Treatment (Article 5)
- Performance Requirements (Article 7)
- Senior Management and Boards of Directors (Article 8)

Measure:
- Overseas Investment Act 2005
- Fisheries Act 1996
- Overseas Investment Regulations 2005

Description:
Consistent with New Zealand’s overseas investment regime as set out in the relevant provisions of the Overseas Investment Act 2005, the Fisheries Act 1996, and the Overseas Investment Regulations 2005, the following investment activities require prior approval from the New Zealand Government:

(a) acquisition or control by non-government sources of 25 per cent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$477* million;

(b) commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$477* million;

(c) acquisition or control by government sources of 25 per cent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$100 million*;

(d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$100 million*;

(e) acquisition or control, regardless of dollar value, of...

* To be indexed on 1 January each year after entry into force to the GDP implicit price deflator in the New Zealand National Accounts for the previous financial year.
certain categories of land that are regarded as sensitive or require specific approval according to New Zealand’s Overseas Investment legislation; and

(f) acquisition, regardless of dollar value, of 25 percent or more of any class of shares or voting power in a New Zealand entity that has an interest in fishing quota, or the acquisition of an interest in fishing quota.

Overseas investors must comply with the criteria set out in the overseas investment regime and any conditions specified by the Regulator and the relevant Minister or Ministers.

This entry should be read in conjunction with II-NZ-5.
<table>
<thead>
<tr>
<th>Sector</th>
<th>Agriculture, including services incidental to agriculture</th>
</tr>
</thead>
</table>
| Obligations concerned | National Treatment (Article 5)  
Performance Requirements (Article 7)  
Senior Management and Boards of Directors (Article 8) |
| Measure | Dairy Industry Restructuring Act 2001 |
| Description | The Dairy Industry Restructuring Act 2001 (DIRA) and regulations provide for the New Zealand Government to acquire, free of charge, and without condition, a copy of a regulated database held by the Livestock Improvement Corporation Ltd (LIC) in the event of its demutualisation or certain other events.  
Furthermore, should LIC be liquidated or removed from New Zealand’s register of companies or the New Zealand Government receives a copy of the database as specified above, the New Zealand Government may determine arrangements for the database to be managed by another dairy industry entity. In doing so it may take into account nationality and residency considerations, including in relation to senior management and composition of the board of directors.  
In addition, the DIRA sets out data reporting obligations to the LIC applying to those engaged in herd testing of dairy cattle.  
The DIRA also provides for access to the data held in the core database to be denied if access is not beneficial, or is harmful, to the New Zealand dairy industry, which could take into account nationality or residency considerations and the intended use of the data. Conditions may also be applied to data use.  
The DIRA restricts who may hold shares in LIC, and this regime may not be amended without the consent of the responsible Minister. |
| Sector       | Communication Services  
|             | Telecommunications      |
| Obligations concerned | National Treatment (Article 5)  
|             | Senior Management and Boards of Directors (Article 8) |
| Measure     | The Constitution of the Telecom Corporation of New Zealand. |
| Description | The Constitution of the Telecom Corporation of New Zealand Limited requires New Zealand Government approval for the shareholding of any single overseas entity to exceed 49.9 percent. |

At least half of Board directors are required to be New Zealand citizens.
| Sector         | Communication Services  
|               | Audio-visual Services  |
| Obligations concerned | National Treatment (Article 5)  
|                 | Performance Requirements (Article 7)  |
| Measure        | Radiocommunications Act 1989  |
| Description    | The acquisition of licences or management rights to use the radio frequency spectrum, or any interest in such licences or management rights, under the Radiocommunications Act 1989 by foreign governments or agents on behalf of foreign government is subject to the written approval of the Chief Executive of the Ministry of Economic Development. |
Sector: Agriculture, including services incidental to agriculture

Obligations concerned:
- National Treatment (Article 5)
- Performance Requirements (Article 7)
- Senior Management and Boards of Directors (Article 8)

Measure: Primary Products Marketing Act 1953

Description: Under the Primary Products Marketing Act 1953, the New Zealand Government may impose regulations necessary to enable producers of products derived from beekeeping; fruit growing; hop growing; deer farming or game deer; or of goats, being the fur bristles or fibres grown by the goat (“primary products”) to control the marketing of primary products. In particular, the Primary Products Marketing Act 1953 provides for the establishment of statutory marketing authorities with monopoly marketing and acquisition powers (or lesser powers), and provision of a range of related measures relating to such aspects as:

- the functions, powers, appointment, membership, and dissolution of the marketing authorities;
- the management of the affairs of the marketing authorities;
- the acquisition of primary products by the marketing authorities and matters relating to the pricing and method of payment for primary products so acquired;
- matters relating to the production, distribution, licensing, and sale of primary products;
- matters relating to the payment of fees and levies on primary products;
- the acquisition of information required for the purposes of the marketing authorities; and
- the prescription of offences and penalties relating to the Primary Products Marketing Act 1953.
<table>
<thead>
<tr>
<th>Sector</th>
<th>Air Transportation</th>
</tr>
</thead>
</table>
| Obligations concerned | National Treatment (Article 5)  
                        | Senior Management and Boards of Directors (Article 8) |
| Measure       | Civil Aviation Act 1990  
                        | Ministerial Guidelines |
| Description   | Only a licensed air transport enterprise may provide international scheduled air services as a New Zealand international airline. Only a licensed air transport enterprise may provide international scheduled air services, including cabotage within New Zealand, as a foreign international airline. Either the Minister for Transport or the Secretary for Transport determines the issuance of international air services licences. Non-scheduled air services require either an appropriate licence or the approval of the Secretary for Transport in accordance with guidelines issued by the Minister for Transport. Such determinations shall include consideration of the provisions of New Zealand’s bilateral and multilateral air services agreements. Licences may be subject to certain conditions, such as that the airline is substantially owned and effectively controlled by New Zealand nationals, and/or has its principal place of business in New Zealand. |
Sector: Air Transportation

Obligations concerned: National Treatment (Article 5)
Senior Management and Boards of Directors (Article 8)

Measure: Constitution of Air New Zealand Limited (2009)

Description: No one foreign national may hold more than 10% of shares which confer voting rights in Air New Zealand unless they have the permission of the Kiwi Shareholder. In addition:

- No person that owns or operates an airline business, nor any other person 'associated' with a person who owns or operates an airline business, may hold or have an Interest in Air New Zealand unless the prior written consent of the Kiwi Shareholder has been given;

- The location of the Head Office of Air New Zealand and its principal place of business shall be in New Zealand;

- At least three members of the Board of Directors must be ordinarily resident in New Zealand;

- More than half of the Board of Directors must be New Zealand citizens;

- The Chairperson of the Board of Directors must be a New Zealand citizen; and

- Air New Zealand shall continue to be incorporated and registered in New Zealand.
<table>
<thead>
<tr>
<th>Sector</th>
<th>Financial Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
</tbody>
</table>
| Measure         | Commodity Levies Act 1990  
                  | Commodity Levies Amendment Act 1995  
                  | Kiwifruit Industry Restructuring Act 1999 |
| Description     | The provision of crop insurance for wheat can be restricted in accordance with the Commodities Levies Amendment Act 1995, section 4. This provides for the use of funds derived under a mandatory commodity levy on wheat growers to be used for the purpose of funding a scheme insuring wheat crops against loss or damage.  
<pre><code>              | The provision of insurance intermediation services related to the export of kiwifruit can be restricted in accordance with the Kiwifruit Industry Restructuring Act 1999 and regulations relating to the export marketing of kiwifruit. |
</code></pre>
<table>
<thead>
<tr>
<th>Sector</th>
<th>All Sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>Performance Requirements (Article 7)</td>
</tr>
<tr>
<td>Measure</td>
<td>Income Tax Act 2007</td>
</tr>
<tr>
<td></td>
<td>Goods and Services Tax Act 1985</td>
</tr>
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<td></td>
<td>Estate and Gift Duties Act 1968</td>
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<td></td>
<td>Stamp and Cheque Duties Act 1971</td>
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<td></td>
<td>Gaming Duties Act 1971</td>
</tr>
<tr>
<td></td>
<td>Tax Administration Act 1994</td>
</tr>
<tr>
<td>Description</td>
<td>Any existing non-conforming taxation measures.</td>
</tr>
</tbody>
</table>
ANNEX II

1. The Schedule of New Zealand to Annex II sets out, pursuant to Paragraph 2 of Article 9 (Non-Conforming Measures), the specific sectors, sub-sectors or activities for which New Zealand may maintain existing, or adopt new or more restrictive, measures that do not conform with the obligations imposed by:

   (a) Article 5 (National Treatment);

   (b) Article 6 (Most Favoured Nation Treatment);

   (c) Article 7 (Performance Requirements); or

   (d) Article 8 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

   (a) **Sector** refers to the sector in which the entry is made;

   (b) **Obligations Concerned** specifies the obligation(s) referred to in Paragraph 1;

   (c) **Description** sets out the nature and/or scope of the non-conforming measures in the sectors, sub-sectors or activities covered by the entry; and

   (d) **Existing measures** are included for transparency purposes. The measures stipulated therein are not exhaustive.

3. In accordance with Paragraph 2 of Article 9 (Non-Conforming Measures), the articles of this Protocol specified in the **Obligations Concerned** element of an entry do not apply to the sectors, sub-sectors, and activities identified in the **Description** element of that entry.

4. Where an inconsistency arises in relation to the interpretation of an entry, the **Description** element of the entry shall prevail to the extent of the inconsistency.

II-HEADNOTE
## Schedule of New Zealand

<table>
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<tr>
<th>Sector</th>
<th>All sectors</th>
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</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td></td>
<td>Most Favoured Nation Treatment (Article 6)</td>
</tr>
<tr>
<td></td>
<td>Performance Requirements (Article 7)</td>
</tr>
<tr>
<td></td>
<td>Senior Management and Boards of Directors (Article 8)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain any measure with respect to:</td>
</tr>
<tr>
<td></td>
<td>- The provision of public law enforcement and correctional services; and</td>
</tr>
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<td></td>
<td>- the following, to the extent that they are social services established for a public purpose:</td>
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<td>- Child care;</td>
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<td>- Health;</td>
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<td>- Income security and insurance;</td>
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<td>- Public education;</td>
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<td>- Public housing;</td>
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<td>- Public training;</td>
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<td>- Public transport;</td>
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<td>- Public utilities;</td>
</tr>
<tr>
<td></td>
<td>- Social security and insurance; and</td>
</tr>
<tr>
<td></td>
<td>- Social welfare.</td>
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<tr>
<td>Sector</td>
<td>All sectors</td>
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</tr>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain any measure with respect to the allocation of water rights.</td>
</tr>
<tr>
<td>Sector</td>
<td>All Sectors</td>
</tr>
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<td>------------------------</td>
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</tr>
</tbody>
</table>
| **Obligations concerned** | National Treatment (Article 5)  
                      Most-Favoured-Nation Treatment (Article 6)  
                      Performance Requirements (Article 7)  
                      Senior Management and Boards of Directors (Article 8) |
| **Description**         | New Zealand reserves the right to adopt or maintain the following measures solely as part of the act of devolving a service, that is provided in the exercise of governmental authority at the time the Protocol enters into force:  
                      • Restricting the number of service suppliers;  
                      • Allowing an enterprise, wholly or majority owned by the Government of New Zealand, to be the sole service supplier or one amongst a limited number of service suppliers;  
                      • Imposing restrictions on the composition of senior management and boards of directors;  
                      • Requiring local presence; and  
                      • Specifying the juridical form of the service supplier(s). |
<table>
<thead>
<tr>
<th>Sector</th>
<th>All Sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td></td>
<td>Performance Requirements (Article 7)</td>
</tr>
<tr>
<td></td>
<td>Senior Management and Boards of Directors (Article 8)</td>
</tr>
<tr>
<td>Description</td>
<td>Where the New Zealand Government wholly owns or has effective control over an enterprise then New Zealand reserves the right to adopt or maintain any measures regarding the sale of any shares in that enterprise or any assets of that enterprise to any person, including according more favourable treatment to New Zealand nationals.</td>
</tr>
<tr>
<td>Sector</td>
<td>All Sectors</td>
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</tr>
</tbody>
</table>
| Obligations concerned | National Treatment (Article 5)  
Performance Requirements (Article 7)  
Senior Management and Boards of Directors (Article 8) |
| Description | New Zealand reserves the right to adopt or maintain any measure that sets out the approval criteria to be applied to the categories of overseas investment that require approval under New Zealand’s overseas investment regime.  
For transparency purposes those categories, as set out in I-NZ-2, are:  
(a) acquisition or control by non-government sources of 25 percent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$477 million;  
(b) commencement of business operations or acquisition of an existing business by non-government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$477 million;  
(c) acquisition or control by government sources of 25 percent or more of any class of shares or voting power in a New Zealand entity where either the consideration for the transfer or the value of the assets exceeds NZ$100 million;  
(d) commencement of business operations or acquisition of an existing business by government sources, including business assets, in New Zealand, where the total expenditures to be incurred in setting up or acquiring that business or those assets exceed NZ$100 million;  
(e) acquisition or control, regardless of dollar value, of certain categories of land that are regarded as |

* To be indexed on 1 January each year after entry into force to the GDP implicit price deflator in the New Zealand National Accounts for the previous financial year.
sensitive or require specific approval according to New Zealand’s Overseas Investment legislation;

(f) acquisition, regardless of the dollar value, of 25 percent or more of any class of shares or voting power in a New Zealand entity that has an interest in fishing quota or the acquisition of an interest in fishing quota.

Existing measures

Overseas Investment Act 2005
Fisheries Act 1996
Overseas Investment Regulations 2005
<table>
<thead>
<tr>
<th>Sector</th>
<th>All sectors</th>
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</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>Most Favoured Nation Treatment (Article 6)</td>
</tr>
</tbody>
</table>
| Description       | New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to countries under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Protocol. For greater certainty, this includes, in respect of agreements on the liberalisation of trade in goods or services or investment, any measures taken as part of a wider process of economic integration or trade liberalisation between the parties to such agreements. New Zealand reserves the right to adopt or maintain any measure that accords differential treatment to countries under any international agreement in force or signed after the date of entry into force of this Protocol involving:  
  - Aviation;  
  - Fisheries; and  
  - Maritime matters. |
<table>
<thead>
<tr>
<th>Sector</th>
<th>All sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain any measure regarding the control, management or use of:</td>
</tr>
<tr>
<td></td>
<td>• Protected areas, including resources on land, interests in land or water, that are set up for heritage management purposes (both historic and natural heritage), public recreation, and scenery preservation; or</td>
</tr>
<tr>
<td></td>
<td>• Species owned under enactments by the Crown or that are protected by or under an enactment.</td>
</tr>
<tr>
<td>Existing measures</td>
<td>Conservation Act 1987 and the enactments listed in Schedule 1 of the Conservation Act 1987</td>
</tr>
<tr>
<td></td>
<td>Resource Management Act 1991</td>
</tr>
<tr>
<td></td>
<td>Local Government Act 1974</td>
</tr>
<tr>
<td>Sector</td>
<td>All sectors</td>
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</tr>
</tbody>
</table>
| Obligations concerned | National Treatment (Article 5)  
Senior Management and Boards of Directors (Article 8) |
| Description | New Zealand reserves the right to adopt or maintain any nationality or residency measures in relation to:  
- animal welfare; and  
- the preservation of plant, animal and human life and health; including in particular:  
  - food safety of domestic and exported foods;  
  - animal feeds;  
  - food standards;  
  - biosecurity;  
  - biodiversity; and  
  - certification of the plant or animal health status of goods.  
Nothing in this reservation shall be construed to derogate from the obligations of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.  
Nothing in this reservation shall be construed to derogate from the obligations of the WTO Agreement on Technical Barriers to Trade. |
<table>
<thead>
<tr>
<th>Sector</th>
<th>All Sectors</th>
</tr>
</thead>
</table>
| Obligations concerned | National Treatment (Article 5)  
                      Performance Requirements (Article 7)  
                      Senior Management and Boards of Directors (Article 8) |
| Description   | New Zealand reserves the right to maintain or adopt any  
                      measure made by or under an enactment in respect of  
                      the foreshore and seabed, extending out to the limits of  
                      New Zealand’s territorial sea, internal waters as defined  
                      in international law (including the beds, subsoil and  
                      margins of such internal waters) and territorial sea (as  
                      defined in international law). |
| Existing measures | Resource Management Act 1991  
                      Foreshore and Seabed Act 2004  
                      Resource Management (Foreshore and Seabed)  
                      Amendment Act 2004 |
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<tr>
<th><strong>Sector</strong></th>
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<tbody>
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<td>Legal Services</td>
</tr>
<tr>
<td><strong>Obligations concerned</strong></td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td></td>
<td>Senior Management and Boards of Directors (Article 8)</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>New Zealand reserves the right to adopt or maintain any measure with respect to the provision to the public of publicly funded legal services.</td>
</tr>
<tr>
<td>Sector</td>
<td>Business Services</td>
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<tr>
<td>------------------------</td>
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</tr>
<tr>
<td><strong>Obligations concerned</strong></td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>New Zealand reserves the right to adopt or maintain any measure with respect to the provision of fire fighting services, excluding aerial fire fighting services.</td>
</tr>
<tr>
<td><strong>Existing Measures</strong></td>
<td>Fire Service Act 1975</td>
</tr>
</tbody>
</table>
Sector  
Business Services  
Research and Development

Obligations concerned  
National Treatment (Article 5)  
Performance Requirements (Article 7)

Description  
New Zealand reserves the right to adopt or maintain any measure with respect to:

• Research and development services carried out by State funded tertiary institutions or by Crown Research Institutes when such research is conducted for a public purpose; and

• Research and experimental development services on physical sciences, chemistry, biology, engineering and technology, agricultural sciences, medical, pharmaceutical and other natural sciences.
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<tr>
<th>Sector</th>
<th>Business Services</th>
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<td>Technical testing and analysis services</td>
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<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain any</td>
</tr>
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<td>measures in respect of:</td>
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<tr>
<td></td>
<td>• composition and purity testing and analysis services;</td>
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<td></td>
<td>• technical inspection services;</td>
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<td></td>
<td>• other technical and analysis services; and</td>
</tr>
<tr>
<td></td>
<td>• drug testing services.</td>
</tr>
</tbody>
</table>
Sector: Business Services  
Fisheries and aquaculture

Obligations concerned: National Treatment (Article 5)  
Most Favoured Nation Treatment (Article 6)  
Performance Requirements (Article 7)  
Senior Management and Boards of Directors (Article 8)

Description: New Zealand reserves the right to control the activities of foreign fishing, including fishing landing, first landing of fish processed at sea, and access to New Zealand ports (port privileges) consistent with the provisions of the United Nations Convention on the Law of the Sea.

Existing Measures: For greater transparency, examples of existing measures contained in the Fisheries Act 1996 and the Aquaculture Reform Act 2005 include:

- No vessel owned or operated by an overseas person may be registered to carry out commercial fishing or fish carrying activities without the permission of the Chief Executive of the Ministry of Fisheries, and subject to any conditions that he or she thinks fit to impose;

- Foreign fishing vessels or fish carriers are required to obtain the approval of the Chief Executive before entering New Zealand internal waters or port. If the Chief Executive is satisfied that the vessel has undermined international conservation and management measures he or she may deny the vessel approval to enter New Zealand internal waters;

- Ministerial approval is required before any overseas person may be allocated, purchase or own any provisional catch history, quota, or annual catch entitlement;

- As set out in section 296B of the Fisheries Act 1996, certain specified functions, duties or powers can only be transferred to approved service delivery organisations that comply with specified criteria; and

- Foreign research vessels require the permission of the Minister of Fisheries to take fish, seaweed, or aquatic life within the New Zealand Exclusive Economic Zone.

II-NZ-14
| **Sector** | Business Services  
Energy  
Manufacturing  
Wholesale trade  
Retail |
|-----------------|
| **Obligations concerned** | National Treatment (Article 5)  
Most Favoured Nation Treatment (Article 6)  
Performance Requirements (Article 7)  
Senior Management and Boards of Directors (Article 8) |
<p>| <strong>Description</strong> | New Zealand reserves the right to adopt any measure in order to prohibit, regulate, manage or control the production, use, distribution, or retail of nuclear energy, including setting conditions for natural persons or juridical persons to do so. |</p>
<table>
<thead>
<tr>
<th>Sector</th>
<th>Communication Services</th>
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</thead>
<tbody>
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<td></td>
<td>Audio-visual and other Services</td>
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<tr>
<td>Obligations concerned</td>
<td>Most Favoured Nation Treatment (Article 6)</td>
</tr>
<tr>
<td></td>
<td>Performance Requirements (Article 7)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.</td>
</tr>
<tr>
<td>Existing Measures</td>
<td>For greater transparency, section 18 New Zealand Film Commission Act 1978 limits Commission funding to films with a “significant New Zealand content”. This criterion is deemed to be satisfied if made pursuant to a co-production agreement or arrangement with the partner country in question.</td>
</tr>
</tbody>
</table>
Sector  
Communication Services  
Audio-visual and other Services

Obligations concerned  
Performance Requirements (Article 7)

Description  
New Zealand reserves the right to adopt or maintain any measure made by or under any enactment with respect to the promotion of local content on public radio and public television.
<table>
<thead>
<tr>
<th>Sector</th>
<th>Agriculture, including services incidental to agriculture</th>
</tr>
</thead>
</table>
| Obligations concerned | National Treatment (Article 5)  
Performance Requirements (Article 7)  
Senior Management and Boards of Directors (Article 8) |
| Description | New Zealand reserves the right to adopt or maintain any measures with respect to:  
- the holding of shares in the co-operative dairy company arising from the amalgamation authorised by section 7(1)(a) of the Dairy Industry Restructuring Act 2001 (DIRA) (or any successor body); and  
- the disposition of assets of that company or its successor bodies. |
<table>
<thead>
<tr>
<th>Sector</th>
<th>Agriculture, including services incidental to agriculture</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td></td>
<td>Performance Requirements (Article 7)</td>
</tr>
<tr>
<td></td>
<td>Senior Management and Boards of Directors (Article 8)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain any</td>
</tr>
<tr>
<td></td>
<td>measures with respect to the export marketing of fresh</td>
</tr>
<tr>
<td></td>
<td>kiwifruit to all markets other than Australia.</td>
</tr>
<tr>
<td>Existing Measures</td>
<td>The Kiwifruit Industry Restructuring Act 1999 and</td>
</tr>
<tr>
<td></td>
<td>regulations.</td>
</tr>
</tbody>
</table>
Sector: Agriculture, including services incidental to agriculture

Obligations concerned:
- National Treatment (Article 5)
- Performance Requirements (Article 7)
- Senior Management and Boards of Directors (Article 8)

Description:
New Zealand reserves the right to adopt or maintain any measures with respect to:

- specifying the terms and conditions for the establishment and operation of any government endorsed allocation scheme for the rights to the distribution of export products falling within the HS categories covered by the WTO Agreement on Agriculture to markets where tariff quotas, country-specific preferences, or other measures of similar effect are in force; and

- the allocation of distribution rights to wholesale trade service suppliers pursuant to the establishment or operation of such an allocation scheme.

This reservation is not intended to have the effect of prohibiting all investment in the provision of wholesale trade and distribution services relating to goods in the HS chapters covered by the WTO Agreement on Agriculture. The entry applies in respect of investment to the extent that the services sectors specified in this reservation are a subset of agricultural products subject to tariff quotas, country-specific preferences, or other measures of similar effect.
**Sector**  
Agriculture, including services incidental to agriculture

**Obligations concerned**  
National Treatment (Article 5)  
Senior Management and Boards of Directors (Article 8)

**Description**  
New Zealand reserves the right to maintain or adopt any measures necessary to give effect to the establishment or the implementation of mandatory marketing plans (also referred to as “export marketing strategies”) for the export marketing of products derived from:

- agriculture;
- beekeeping;
- horticulture;
- arboriculture;
- arable farming; and
- the farming of animals,

where there is support within the relevant industry that a mandatory collective marketing plan should be adopted or activated.

For the avoidance of doubt, mandatory marketing plans in the context of this reservation exclude measures limiting the number of market participants or limiting the volume of exports.

**Existing Measures**  
New Zealand Horticulture Export Authority Act 1987
| Sector                  | Health and Social services  
<table>
<thead>
<tr>
<th></th>
<th>Social services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain any measure with respect to the supply of adoption services.</td>
</tr>
</tbody>
</table>
Sector
Recreation, cultural and sporting (other than audiovisual services)

Obligations
National Treatment (Article 5)
Performance Requirements (Article 7)
Senior Management and Boards of Directors (Article 8)

Description
New Zealand reserves the right to adopt or maintain any measure with respect to gambling, betting and prostitution services.

Existing Measures
Gambling Act 2003
Gaming and Lotteries (Licensed Promoters) Regulations 2005
Gambling (Class 4 Banking) Regulations 2006
Gambling (Class 4 Net Proceeds) Regulations 2004
Gambling (Fees) Regulations 2007
Gambling (Infringement Notices) Regulations 2004
Gambling (Harm Prevention and Minimisation) Regulations 2004
Gambling (Prohibited Property) Regulations 2005
Gambling (Problem Gambling Levy) Regulations 2007
Prostitution Reform Act 2003
Racing Act 2003
| Sector | Recreation, cultural and sporting services  
|        | Library, archive, museum and other cultural services |
| Obligations concerned | National Treatment (Article 5)  
<p>|                        | Performance Requirements (Article 7) |
| Description | New Zealand reserves the right to adopt or maintain any measures in respect of: |
|             | • Cultural heritage of national value; including ethnological, archaeological, historical, literary, artistic, scientific or technological heritage, as well as collections that are documented, preserved and exhibited by museums, galleries, libraries, archives, and other heritage collecting institutions; |
|             | • Public archives; |
|             | • Library and museum services; and |
|             | • Services for the preservation of historical or sacred sites or historical buildings. |</p>
<table>
<thead>
<tr>
<th>Sector</th>
<th>Transport</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Maritime Services</td>
</tr>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td></td>
<td>Most Favoured Nation Treatment (Article 6)</td>
</tr>
<tr>
<td></td>
<td>Performance Requirements (Article 7)</td>
</tr>
<tr>
<td></td>
<td>Senior Management and Boards of Directors (Article 8)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain any measure with respect to:</td>
</tr>
<tr>
<td></td>
<td>• The carriage by sea of passengers and/or cargo between a port located in New Zealand and another port located in New Zealand and traffic originating and terminating in the same port in New Zealand (“maritime cabotage”);</td>
</tr>
<tr>
<td></td>
<td>• Provision of certain Port Services (pilotage, towing and tug assistance provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captains’ services, navigation aids, emergency repair facilities, anchorage, other shore-based operational services essential to ship operations, including communications, water and electrical supplies). However no measures shall be applied which deny international maritime transport suppliers reasonable and non-discriminatory access to the above port services;</td>
</tr>
<tr>
<td></td>
<td>• The establishment of registered companies for the purpose of operating a fleet under the New Zealand flag; and</td>
</tr>
<tr>
<td></td>
<td>• The registration of vessels in New Zealand.</td>
</tr>
<tr>
<td><strong>Sector</strong></td>
<td>Financial Services</td>
</tr>
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</tr>
<tr>
<td><strong>Obligations concerned</strong></td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td><strong>Description</strong></td>
<td>New Zealand reserves the right to adopt or maintain any measures with respect to the supply of:</td>
</tr>
<tr>
<td></td>
<td>• Compulsory social insurance for personal injury caused by accident, work related gradual process disease and infection, and treatment injury; and</td>
</tr>
<tr>
<td></td>
<td>• disaster insurance for residential property for replacement cover up to a defined statutory maximum.</td>
</tr>
<tr>
<td><strong>Existing Measures</strong></td>
<td>Injury Prevention, Rehabilitation and Compensation Act 2001</td>
</tr>
<tr>
<td></td>
<td>Earthquake Commission Act 1993</td>
</tr>
<tr>
<td>Sector</td>
<td>All Sectors</td>
</tr>
<tr>
<td>--------------</td>
<td>-------------</td>
</tr>
<tr>
<td>Obligations concerned</td>
<td>National Treatment (Article 5)</td>
</tr>
<tr>
<td>Description</td>
<td>New Zealand reserves the right to adopt or maintain measures restricting the use by a non financial services entity of statutorily protected financial services provider titles including but not limited to “bank”, “building society”, “credit union”, “friendly society”, “stock exchange”, “securities exchange”, “futures exchange”, or “futures market”.</td>
</tr>
</tbody>
</table>
| Existing Measures | Reserve Bank Act 1989  
Building Societies Act 1965  
Friendly Societies and Credit Unions Act 1982  
Securities Act 1978 |
ANNEX I

1. The Schedule of Australia to this Annex sets out, pursuant to Paragraph 1 of Article 9 (Non-Conforming Measures), Australia’s existing measures that are not subject to some or all of the obligations imposed by:

(a) Article 5 (National Treatment);

(b) Article 6 (Most Favoured Nation Treatment);

(c) Article 7 (Performance Requirements); or

(d) Article 8 (Senior Management and Boards of Directors).

2. Each Schedule entry sets out the following elements:

(a) **Sector** refers to the general sector for which the entry is made;

(b) **Obligations Concerned** specifies the obligation(s) referred to in paragraph 1 that, pursuant to Paragraph 1(a) of Article 9 (Non-Conforming Measures), do not apply to the listed measure(s);

(c) **Level of Government** indicates the level of government maintaining the listed measure(s);

(d) **Source of Measure** means the laws, regulations, or other measures that are the source of the non-conforming measures for which the entry is made. A measure cited in the **Source of Measure** element:

   (i) means the measure as amended, continued, or renewed as of the date of entry into force of this Protocol, and

   (ii) includes any subordinate measure adopted or maintained under the authority of and consistent with the measure;

(e) **Description** sets out the non-conforming measure for which the entry is made.

3. In accordance with Paragraph 1(a) of Article 9 (Non-Conforming Measures), the articles of this Protocol specified in the **Obligations Concerned** element of an entry do not apply to the non-conforming measure identified in the **Description** element of that entry.
**Schedule of Australia**

<table>
<thead>
<tr>
<th>Sector:</th>
<th>All sectors</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Obligations</strong></td>
<td>National Treatment</td>
</tr>
<tr>
<td><strong>Concerned:</strong></td>
<td>Most Favoured Nation Treatment</td>
</tr>
<tr>
<td></td>
<td>Performance Requirements</td>
</tr>
<tr>
<td></td>
<td>Senior Management and Boards of Directors</td>
</tr>
<tr>
<td><strong>Level of Government:</strong></td>
<td>Regional</td>
</tr>
<tr>
<td><strong>Source of Measure:</strong></td>
<td>All existing non-conforming measures at the regional level of government.</td>
</tr>
<tr>
<td><strong>Description:</strong></td>
<td>All existing non-conforming measures at the regional level of government.</td>
</tr>
</tbody>
</table>
Sector: All sectors
Obligations Concerned: National Treatment Senior Management and Boards of Directors
Level of Government: Central

Description: A. The following investments may be subject to objections by the Australian Government and may also require notification to the Government¹:

(a) Investments by foreign persons² in existing³ Australian businesses in the media sector as follows:

(i) Direct (i.e., non-portfolio) investment irrespective of size; and

(ii) Portfolio investments of 5 per cent or more;

(b) Investments by foreign persons in existing Australian businesses, or prescribed corporations,⁴ the value of

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¹ *Foreign Acquisitions and Takeovers Act 1975 (FATA).* Investments means activities covered by Part II of FATA or, where applicable, ministerial statements on foreign investment policy. Funding arrangements that include debt instruments having quasi-equity characteristics will be treated as direct foreign investment.

² A foreign person means, as defined in section 5 of the FATA,:

(a) a natural person not ordinarily resident in Australia;
(b) a corporation in which a natural person not ordinarily resident in Australia or a foreign corporation holds a controlling interest;
(c) a corporation in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate controlling interest;
(d) the trustee of a trust estate in which a natural person not ordinarily resident in Australia or a foreign corporation holds a substantial interest; or
(e) the trustee of a trust estate in which 2 or more persons, each of whom is either a natural person not ordinarily resident in Australia or a foreign corporation, hold an aggregate substantial interest.

³ For the purposes of this entry, existing means in existence at the time the investment is proposed or made.

⁴ For the purposes of this entry, prescribed corporation means:
(a) a trading corporation;
(b) a financial corporation;
(c) a corporation incorporated in a Territory under the law in force in that Territory relating to companies;
whose assets exceeds $A231 million\(^\#\) in the following sectors:

(i) The telecommunications sector;

(ii) The transport sector, including airports, port facilities, rail infrastructure, international and domestic aviation and shipping services provided

(d) a foreign corporation that, on its last accounting date, held assets the sum of the values of which exceeded A$231 million (for item (b) of the entry) or A$1004 million (for item (c) of the entry), being assets consisting of all or any of the following:

(i) land situated in Australia (including legal and equitable interests in such land);

(ii) mineral rights;

(iii) shares in a corporation incorporated in Australia;

(e) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of the Australian corporation or Australian corporations exceeded A$231 million (for item (b) of the entry) or A$1004 million (for item (c) of the entry);

(f) a corporation that was, on its last accounting date, a holding corporation of an foreign corporation referred to in paragraph (d) or (e) of this footnote;

(g) a foreign corporation that, on its last accounting date, held assets of a kind or kinds referred to in paragraph (d) of this footnote, where the sum of the values on that date of those assets was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation;

or

(h) a foreign corporation that was, on its last accounting date, a holding corporation of an Australian corporation or Australian corporations, where the sum of the values on that date of the assets of that Australian corporation or those Australian corporations was not less than one-half of the sum of the values on that date of the assets of the foreign corporation and of all the subsidiaries of that corporation.

\(^\#\) This is the figure as at 1 January 2010. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year. If the Protocol has not entered into force by 1 January 2011, this figure will be indexed on entry into force.

5 A financial sector company means, as defined in section 3 of the Financial Sector (Shareholdings) Act 1998:

(a) an authorised deposit-taking institution; or

(b) an authorised insurance company; or

(c) a holding company of a company covered by paragraph (a) or (b) of this footnote.

\(^6\) This is the figure as at 1 January 2010. To be indexed on 1 January each year to the GDP implicit price deflator in the Australian National Accounts for the previous financial year. If the Protocol has not entered into force by 1 January 2011, this figure will be indexed on entry into force.

6 A foreign custodian company means, as defined in the Foreign Acquisitions and Takeovers Regulations 1989, a corporation that:

(a) is a foreign person; and

(b) is the holder of an Australian financial services licence under Chapter 7 of the Corporations Act 2001; and

(c) is in the business of providing custodian services to other persons in relation to the ownership of shares.

\(^7\) As provided by the Foreign Acquisitions and Takeovers Regulations 1989.

\(^8\) Unacceptable shareholding situation and practical control as defined in the Financial Sector (Shareholdings) Act 1998.

either within, or to and from, Australia;

(iii) The supply of training or human resources, or the manufacture or supply of military goods, equipment, or technology, to the Australian or other defence forces;

(iv) The manufacture or supply of goods, equipment or technologies able to be used for a military purpose;

(v) The development, manufacture or supply of, or provision of services relating to, encryption and security technologies and communication systems; and

(vi) The extraction of (or rights to extract) uranium or plutonium, or the operation of nuclear facilities;

(c) Investments by foreign persons in existing Australian businesses, or prescribed corporations, in all other sectors, excluding financial sector companies, the value of whose total assets exceeds $A1004 million; and

(d) Acquisitions by foreign persons of developed non-residential commercial real estate valued at more than $A1004 million; and

(e) Direct (i.e., non-portfolio) investment by foreign governments or their agencies, or companies with greater than a 15 per cent direct or indirect holding by a foreign government or agency or otherwise regarded as controlled by a foreign government, irrespective of size.

Notified investments may be refused, subject to interim orders, and/or approved subject to compliance with certain conditions. Investments referred to in (a) through (e) for which no notification is required or received may be subject to orders under Sections 18, 19, 20, 21 and 21A of the FATA.

B. The acquisition of an interest in shares in an Australian corporation by a custodian company is exempt from the application of the FATA where the company is granted a certificate of exemption in respect of that interest.

C. The acquisition of a stake in an existing financial sector company by a foreign investor, or entry into an arrangement by a foreign investor, that would lead to an unacceptable shareholding situation or to practical control of an existing financial sector company, may be refused, or
be subject to certain conditions\textsuperscript{9}.

D. In addition to the measures identified in this entry, other entries in Annex I or Annex II set out additional non-conforming measures imposing specific limits on, or requirements relating to, foreign investment in the following areas:

- Telstra;
- Commonwealth Serum Laboratories;
- Qantas Airways Ltd.;
- Australian international airlines, other than Qantas;
- Urban land;
- Federal leased airports; and
- Shipping.
Fishing

Sector: Fishing
Obligations Concerned: National Treatment
Level of Government: Central
Source of Measure: 
- Fisheries Management Act 1991
- Foreign Fishing Licenses Levy Act 1991

Description: Foreign fishing vessels seeking to undertake fishing activity in the Australian Fishing Zone must be authorised.

Where foreign fishing vessels are authorised they may then be subject to a levy.11

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10 For the purposes of fisheries management, a foreign vessel is one that does not meet the definition of an Australian boat, that is, a boat based in Australia which is owned by an Australian resident or corporation.

11 The levy charged will be in accordance with the Foreign Fishing Licenses Levy Act 1991 or any amendments thereto.

I-AUS-3
<table>
<thead>
<tr>
<th>Sector:</th>
<th>Postal Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations Concerned:</td>
<td>National Treatment</td>
</tr>
<tr>
<td>Level of Government:</td>
<td>Central</td>
</tr>
<tr>
<td>Source of Measure:</td>
<td><em>Australian Postal Corporation Act 1989</em></td>
</tr>
</tbody>
</table>
| Description: | The Australian Postal Corporation (Australia Post) has, under section 29 of the *Australian Postal Corporation Act 1989*, the exclusive right to carry letters for reward within Australia, whether the letters originated within or outside Australia. Section 30 of the Act sets out a number of exceptions to the reserved service including:

- the carriage of letters weighing more than 250 grams;
- the carriage of letters where the charge or fee is at least four times the standard letter rate;
- the movement of documents within document exchange services; and
- the carriage of letters between offices of the same organisation by a third party. |
Sector: Telecommunications

Obligations Concerned: National Treatment
Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: Telstra Corporation Act 1991

Description: Aggregate foreign equity is restricted to no more than 35 per cent of shares of Telstra. Individual or associated group foreign investment is restricted to no more than five per cent of shares.

The Chairperson and a majority of directors of Telstra must be Australian citizens, and Telstra is required to maintain its head office, main base of operations, and place of incorporation in Australia.
Sector: Broadcasting and Audiovisual Services
Advertising Services

Obligations Concerned: Performance Requirements

Level of Government: Central

Source of Measure: Broadcasting Services Act 1992

Description: Transmission quotas for local content imposed on free-to-air commercial analogue and digital (other than multichannelling) television broadcasting services shall not exceed 55 per cent of programming transmitted annually between 6:00 a.m. and midnight. Subquotas for particular programme formats (e.g., drama, documentary) may be applied within the 55 per cent quota.

Transmission quotas for local content imposed on advertising broadcast by providers of free-to-air commercial analogue and digital (other than multichannelling) television broadcasting services shall not exceed 80 per cent of advertising time transmitted annually between 6:00 a.m. and midnight.
Sector: Financial Services

Obligations Concerned: National Treatment

Level of Government: Central


Description: A branch of a foreign bank that is authorised as a deposit taking institution in Australia (foreign ADI) is not permitted to accept initial deposits (and other funds) from individuals and non-corporate institutions of less than A$250,000.

A foreign bank that operates a representative office in Australia is not permitted to undertake any banking business, including advertising for deposits, in Australia. Such a representative office is only permitted to act as a liaison point.
Sector: Health Services

Obligations Concerned: National Treatment
Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: Commonwealth Serum Laboratories Act 1961

Description: The votes attaching to significant foreign shareholdings\textsuperscript{12} may not be counted in respect of the appointment, replacement or removal of more than one-third of the directors of Commonwealth Serum Laboratories (CSL) who hold office at a particular time. The head office, principal facilities used by CSL and any CSL subsidiaries used to produce products derived from human plasma collected from blood or plasma donated by individuals in Australia must remain in Australia. Two thirds of the directors of the board of CSL and the chairperson of any meeting must be Australian citizens. CSL must not seek incorporation outside of Australia.

\textsuperscript{12} For the purposes of this entry, significant foreign shareholding means a holding of voting shares in CSL in which a foreign person has a relevant interest, if the foreign person has relevant interests in at least 5 per cent of the voting shares in CSL.
Sector: Transport services

Obligations Concerned: National Treatment

Level of Government: Central

Source of Measure: *Trade Practices Act 1974*

Description: Only a person affected by a registered conference agreement or by a registered non-conference ocean carrier with substantial market power may apply to the Australian Competition and Consumer Commission to examine whether conference members, and non-conference operators with substantial market power, are hindering other shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent that is reasonable.

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13 For the purposes of this entry, section 10.48 and 10.58 of Part X of the *Trade Practices Act 1974* list the categories of persons to whom this reservation will apply.
<table>
<thead>
<tr>
<th>Sector:</th>
<th>Air Transport</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations</td>
<td>National Treatment</td>
</tr>
<tr>
<td>Concerned:</td>
<td></td>
</tr>
<tr>
<td>Level of</td>
<td>Central</td>
</tr>
<tr>
<td>Government:</td>
<td></td>
</tr>
<tr>
<td>Source of</td>
<td></td>
</tr>
<tr>
<td>Measure:</td>
<td></td>
</tr>
<tr>
<td>Description:</td>
<td>Scheduled passenger and freight services within and between Australia and New Zealand are governed by the <em>Australia-New Zealand Single Aviation Market Agreement</em> of 2002.</td>
</tr>
</tbody>
</table>
Sector: Transport

Obligations Concerned: National Treatment Senior Management and Boards of Directors

Level of Government: Central

Source of Measure: *Air Navigation Act 1920* Ministerial Statement

Description: Total foreign ownership of individual Australian international airlines (other than Qantas) is restricted to a maximum of 49 per cent.

Furthermore:

- at least two thirds of the Board members must be Australian citizens;
- the Chairperson of the Board must be an Australian citizen;
- the airline’s head office must be in Australia; and
- the airline’s operational base must be in Australia.
Sector: Transport

Obligations Concerned: National Treatment Senior Management and Boards of Directors

Source of Measure: Qantas Sale Act 1992

Description: Total foreign ownership of Qantas Airways Ltd. is restricted to a maximum of 49 per cent in aggregate, with individual holdings limited to 25 per cent and aggregate holdings by foreign airlines to 35 per cent. In addition:

- the head office of Qantas must always be located in Australia;
- the majority of Qantas’s operational facilities must be located in Australia;
- at all times, at least two thirds of the directors of Qantas must be Australian citizens;
- at a meeting of the board of directors of Qantas, the director presiding at the meeting (however described) must be an Australian citizen; and
- Qantas is prohibited from taking any action to become incorporated outside Australia.
ANNEX II

1. The Schedule of Australia to this Annex sets out, pursuant to Paragraph 2 of Article 9 (Non-Conforming Measures), the specific sectors, sub-sectors, or activities for which Australia may maintain existing, or adopt new or more restrictive, measures that do not conform with obligations imposed by:

   (a) Article 5 (National Treatment);
   (b) Article 6 (Most Favoured Nation Treatment);
   (c) Article 7 (Performance Requirements); or
   (d) Article 8 (Senior Management and Boards of Directors).

2. Each Annex entry sets out the following elements:

   (a) Sector refers to the sector for which the entry is made;
   (b) Obligations Concerned specifies the obligation(s) referred to in paragraph 1 that, pursuant to Paragraph 2 of Article 9 (Non-Conforming Measures), do not apply to the sectors, sub-sectors, or activities listed in the entry;
   (c) Description sets out the scope of the sector, sub-sector, or activities covered by the entry; and
   (d) Existing Measures identifies, for transparency purposes, existing measures that apply to the sector, sub-sector, or activities covered by the entry.

3. In accordance with Paragraph 2 of Article 9 (Non-Conforming Measures), the articles of this Protocol specified in the Obligations Concerned element of an entry do not apply to the sectors, sub-sectors, and activities identified in the Description element of that entry.
SCHEDULE OF AUSTRALIA

Sector: All

Obligations Concerned: National Treatment
                      Performance Requirements
                      Senior Management and Board of Directors

Description: Australia reserves the right to adopt or maintain any measure according preferences to any indigenous person or organisation or providing for the favourable treatment of any indigenous person or organisation in relation to acquisition, establishment or operation of any commercial or industrial undertaking in the service sector.

Australia reserves the right to adopt or maintain any measure with respect to investment that accords preferences to any indigenous person or organisation or provides for the favourable treatment of any indigenous person or organisation.

For the purpose of this entry, indigenous person means a person of the Aboriginal race of Australia or a descendent of an indigenous inhabitant of the Torres Strait Islands.

Existing Measures: Legislation and Ministerial Statements at all levels of government including Australia’s foreign investment policy and the Native Title Act 1993.
<table>
<thead>
<tr>
<th><strong>Sector:</strong></th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Obligations Concerned:</strong></td>
<td>National Treatment</td>
</tr>
<tr>
<td><strong>Performance Requirements</strong></td>
<td></td>
</tr>
</tbody>
</table>

**Description:** Australia reserves the right to adopt or maintain any measure with respect to proposals by ‘foreign persons’ to invest in Australian urban land\(^{14}\) (including interests that arise via leases, financing and profit sharing arrangements, and the acquisition of interests in urban land corporations and trusts), other than developed non-residential commercial real estate.

**Existing Measures:** Australia’s foreign investment policy, which comprises the: *Foreign Acquisitions and Takeovers Act 1975 (FATA)*; *Foreign Acquisitions and Takeovers Regulations 1989*; and *Ministerial Statements*.

\(^{14}\) Australian urban land means land situated in Australia that is not used wholly and exclusively for carrying on a business of primary production.
Sector: Social Services

Obligations Concerned: National Treatment
Most Favoured Nation Treatment
Performance Requirements
Senior Management and Boards of Directors

Description: Australia reserves the right to adopt or maintain any measure with respect to the provision of law enforcement and correctional services, and the following to the extent that they are social services established or maintained for a public purpose: income security or insurance, social security or insurance, social welfare, public education, public training, health, child care, public utilities, public transport and public housing.

Existing Measures:
**Sector:** Broadcasting and Audiovisual Services  
Advertising Services  
Live Performance  

**Obligations Concerned:** National Treatment  
Performance Requirements  

**Description:** Australia reserves the right to adopt or maintain:

(a) **Interactive audio and/or video services**

Measures to ensure that, upon a finding by the Government of Australia that Australian audiovisual content or genres thereof is not readily available to Australian consumers, access to such programming on interactive audio and/or video services is not unreasonably denied to Australian consumers. Any measures addressing such a situation will be implemented through a transparent process permitting participation by any affected parties, be based on objective criteria, be the minimum necessary, be no more trade restrictive than necessary, not be unreasonably burdensome, and be applied only to a service provided by an enterprise that carries on business activities in Australia in relation to the supply of that service.

(b) **Spectrum and licensing**

Measures, as specified in the *Broadcasting Services Act 1992* at 1 January 2005, that restrict the eligibility for broadcasting services licences to enterprises that are a specific legal type and/or are established in Australia or in an external territory.

(c) **Subsidies or grants**

Subsidies or grants for investment in Australian cultural activity where eligibility for the subsidy or grant is subject to local content or production requirements.

**Existing Measures:**

- *Broadcasting Services Act 1992*
- *Radiocommunications Act 1992*
- *Income Tax Assessment Act 1936*
- *Income Tax Assessment Act 1997*
- *Australian Film Commission Act 1975*
- Broadcasting Services (Australian Content) Standard 1999
- Television Program Standard 23 – Australian Content

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15 Applies only in respect of item (c).
Advertising
Commercial Radio Codes of Practice and Guidelines
Community Broadcasting Codes of Practice
Sector: Broadcasting and Audiovisual Services
Advertising Services

Obligations Concerned: Performance Requirements

Description: Australia reserves the right to adopt or maintain:

(a) Multichannelled free-to-air commercial television broadcasting services

- Transmission quotas for local content, where more than one channel of programming is made available by a provider of free-to-air commercial television broadcasting services. Such quotas may not exceed 55 per cent of the programming on an individual channel of a service provider transmitted annually between 6:00 a.m. and midnight and may not be imposed on more than two channels or 20 per cent of the total number of channels (whichever is greater) made available by that provider. No such transmission quotas shall be applied to more than three channels of an individual service provider. Subquotas for particular program formats (e.g. drama, documentary, children’s) may be applied within the transmission quotas in a manner consistent with existing standards.

- Transmission quotas for local content in relation to advertising, where more than one channel of programming on a particular service is made available by a service provider of free-to-air commercial television broadcasting services. Such quotas may not exceed 80 per cent of the advertising time on an individual channel of a service provider transmitted annually between 6:00 a.m. and midnight and may not be imposed on more than three channels made available by that provider.

(b) Free-to-air commercial television broadcasting services

- Requirements that, where a free-to-air commercial television channel subject to a transmission quota is rebroadcast over another transmission platform, the quota may be applied to the rebroadcast channel.

- Requirements that, where a free-to-air commercial television broadcasting service provider moves a channel subject to a transmission quota to another transmission platform, the quota may be applied to
that channel.

(c) Subscription television broadcasting services

- Expenditure requirements for Australian production not exceeding 10 per cent of total program expenditure. Such requirements may be imposed on service providers making available services in the following program formats: the arts, children's, documentary, drama, and educational.\textsuperscript{16}

- Upon a finding by the Government of Australia that the expenditure requirement for the production of Australian drama is insufficient to meet its stated goal for such expenditure, this expenditure requirement may be increased up to a maximum level of 20 per cent. Such a finding shall be made through a transparent process that includes consultations with any affected parties. Any increase imposed shall be non-discriminatory and no more burdensome than necessary.

(d) Free-to-air radio broadcasting services

Transmission quotas for local content not exceeding 25 per cent of the programming (e.g., of musical items) on individual stations of a service provider transmitted annually between 6.00 a.m. and midnight.

Existing Measures:

- Broadcasting Services Act 1992
- Radiocommunications Act 1992
- Income Tax Assessment Act 1936
- Income Tax Assessment Act 1997
- Australian Film Commission Act 1975
- Broadcasting Services (Australian Content) Standard 1999
- Television Program Standard 23 – Australian Content in Advertising
- Commercial Radio Codes of Practice and Guidelines
- Community Broadcasting Codes of Practice

\textsuperscript{16} No one channel will be subject to an expenditure requirement for more than a single program format.
Sector: Broadcasting and Audiovisual Services

Obligations Concerned: Most Favoured Nation Treatment Performance Requirements

Description: Australia reserves the right to adopt or maintain, under the International Co-production Program, preferential co-production arrangements for film and television productions. Official co-production status, which may be granted to a co-production produced under these co-production arrangements, confers national treatment on works covered by these arrangements.

Existing Measures: International Co-production Program
Sector: Education Services

Obligations Concerned:
- National Treatment
- Performance Requirements
- Senior Management and Boards of Directors

Description: Australia reserves the right to adopt or maintain any measure with respect to primary education.

Existing Measures:
Sector: Maritime

Obligations Concerned: National Treatment

Description: Australia reserves the right to adopt or maintain any measure with respect to the registration of vessels in Australia.

Existing Measures: Shipping Registration Act 1981 (Cth)
Sector: Maritime Transport

Obligations Concerned: National Treatment
Performance Requirements
Senior Management and Boards of Directors

Description: Australia reserves the right to adopt or maintain any measures with respect to maritime cabotage services and offshore transport services.

Existing Measures: Navigation Act 1912 (Cth) supported by Migration Act 1958 (Cth), Customs Act 1901 (Cth), Workplace Relations Act 1996 (Cth), Seafarers’ Compensation and Rehabilitation Act 1992 (Cth), Occupational Health and Safety (Maritime Industry) Act 1993 (Cth), Shipping Registration Act 1981 (Cth) and Income Tax Assessment Act 1936 (Cth)

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17 For the purposes of this entry, cabotage means the transportation of passengers or goods between a port located in Australia and another port located in Australia and traffic originating and terminating in the same port located in Australia. Offshore transport means shipping services involving the transportation of passengers or goods between a port located in Australia and any location associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of Australia, the seabed of the Australian coastal sea, and the subsoil of that seabed.
Sector: Transport

Obligations Concerned: National Treatment
Senior Management and Boards of Directors

Description: Australia reserves the right to adopt or maintain any measure with respect to investment in federal leased airports, including specific foreign ownership limits.

Existing Measures:
- Airports Act 1996
- Airports (Ownership-Interest in Shares) Regulations 1996
- Airports Regulations 1997
Sector: All

Obligations Concerned: Most Favoured Nation Treatment

Description: Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the investors of non-parties under any bilateral or multilateral international agreement in force or signed prior to the date of entry into force of this Protocol.

Australia reserves the right to adopt or maintain any measure that accords more favourable treatment to the investors of non-parties under any bilateral or multilateral international agreement in force or signed after the date of entry into force of this Protocol involving:

(a) aviation;
(b) fisheries; or
(c) maritime matters, including salvage.

Existing Measures:
<table>
<thead>
<tr>
<th>Sector:</th>
<th>All</th>
</tr>
</thead>
<tbody>
<tr>
<td>Obligations Concerned:</td>
<td>National Treatment Performance Requirements Senior Management and Boards of Directors</td>
</tr>
<tr>
<td>Description:</td>
<td>Australia reserves the right to adopt or maintain:</td>
</tr>
<tr>
<td></td>
<td>(a) any measure with respect to the sale of any shares in or any assets of an enterprise which the government wholly owns or has effective control over; and</td>
</tr>
<tr>
<td></td>
<td>(b) the following measures solely as part of the devolution to the private sector of services provided in the exercise of governmental authority at the time that the Protocol enters into force:</td>
</tr>
<tr>
<td></td>
<td>i. Restricting the number of service suppliers;</td>
</tr>
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<td></td>
<td>ii. Allowing an enterprise, wholly or majority government owned, to be the sole service supplier or one amongst a limited number of service suppliers;</td>
</tr>
<tr>
<td></td>
<td>iii. Imposing restrictions on the composition of senior management and boards of directors;</td>
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<td></td>
<td>iv. Requiring local presence; and</td>
</tr>
<tr>
<td></td>
<td>v. Specifying the juridical form of the service supplier(s).</td>
</tr>
</tbody>
</table>

**Existing Measures:**

II-AUS-12
SIDE LETTER CONCERNING CLARIFICATION OF AUSTRALIAN NON-CONFORMING MEASURES AT REGIONAL LEVEL OF GOVERNMENT

Rt Hon John Key
Prime Minister
New Zealand

16 FEB 2011

Dear Prime Minister,

I have the honour to refer to the Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement ("Protocol") and to the discussions that have taken place between representatives of our two governments regarding Articles 5 (National Treatment), 6 (Most Favoured Nation Treatment), 7 (Performance Requirements), and 8 (Senior Management and Boards of Directors) and the non-conforming measures set out in Australia's schedules to Annex I and II of the Protocol.

Recalling the breadth and depth of economic integration under the Australia-New Zealand closer economic relationship, being built on through the Protocol, and for the purposes of clarifying Australia's commitments under the Protocol, I have the honour to propose that Australia shall, in time for the first meeting of the Parties under Article 26 (Review) of the Protocol, provide to New Zealand revised schedules to Annex I and Annex II, incorporating all known non-conforming measures at the central and regional levels of government, including those to which reservation I-AUS-1 of Australia's Schedule to Annex I refers.

Australia reserves the right to maintain and to add to its revised schedule to Annex 1 any non-conforming measure at the regional level of government that existed at 1 January 2005, but is not listed in this revised schedule.

If the foregoing is acceptable to New Zealand, I have the honour to propose that this letter and your reply to that effect shall constitute an integral part of the Protocol. Following the receipt of Australia's revised schedules, New Zealand will confirm its acceptance thereof and the Parties shall amend the Protocol to incorporate the revised schedules through an exchange of letters.

Yours sincerely

Julia Gillard
The Hon Julia Gillard  
Prime Minister  
Australia  

Dear Prime Minister,

I have the honour to acknowledge receipt of your letter of today’s date, which reads as follows:

"I have the honour to refer to the Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement ("Protocol") and to the discussions that have taken place between representatives of our two governments regarding Articles 5 (National Treatment), 6 (Most Favoured Nation Treatment), 7 (Performance Requirements), and 8 (Senior Management and Boards of Directors) and the non-conforming measures set out in Australia’s schedules to Annex I and II of the Protocol.

Recalling the breadth and depth of economic integration under the Australia - New Zealand closer economic relationship, being built on through the Protocol, and for the purposes of clarifying Australia’s commitments under the Protocol, I have the honour to propose that Australia shall, in time for the first meeting of the Parties under Article 26 (Review) of the Protocol, provide to New Zealand revised schedules to Annex I and Annex II, incorporating all known non-conforming measures at the central and regional levels of government, including those to which reservation I-AUS-1 of Australia’s Schedule to Annex I refers.

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If the foregoing is acceptable to New Zealand, I have the honour to propose that this letter and your reply to that effect shall constitute an integral part of the Protocol. Following the receipt of Australia’s revised schedules, New Zealand will confirm its acceptance thereof and the Parties shall amend the Protocol to incorporate the revised schedules through an exchange of letters."

I have the further honour to confirm that the foregoing is acceptable to New Zealand and that your letter and this letter in reply shall constitute an integral part of the Protocol.

Yours sincerely,

John Key
The Hon Julia Gillard  
Prime Minister  
Australia  

Dear Prime Minister,

I have the honour to refer to the Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement ("Protocol") and to the discussions that have taken place between representatives of our two governments regarding Article 6 (Most Favoured Nation Treatment) and New Zealand's reservation II-NZ-6 to that Article in New Zealand's Schedule to Annex II.

In recognition of the longstanding friendship between New Zealand and Australia, and the joint commitment by both Parties to work towards achieving a trans-Tasman Single Economic Market, I propose that, notwithstanding reservation II-NZ-6, New Zealand shall extend to Australian investors and covered investments no less favourable treatment than that agreed with any other country or countries in the context of a wider process of economic integration or trade liberalisation as referred to in Paragraph 2 of reservation II-NZ-6.

This proposal acknowledges our mutual understanding of the reciprocity of our most favoured nation treatment under the Protocol. If the foregoing is acceptable to Australia, I have the honour to propose that this letter and your reply to that effect shall constitute an integral part of the Protocol.

Yours sincerely

John Key
Rt Hon John Key  
Prime Minister  
New Zealand  

16 FEB 2011

Dear Prime Minister

I have the honour to acknowledge receipt of your letter of today’s date, which reads as follows:

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In recognition of the longstanding friendship between New Zealand and Australia, and the joint commitment by both Parties to work towards achieving a trans-Tasman Single Economic Market, I propose that, notwithstanding reservation II-NZ-6, New Zealand shall extend to Australian investors and covered investments no less favourable treatment than that agreed with any other country or countries in the context of a wider process of economic integration or trade liberalisation as referred to in Paragraph 2 of reservation II-NZ-6.

This proposal acknowledges our mutual understanding of the reciprocity of our most favoured nation treatment under the Protocol. If the foregoing is acceptable to Australia, I have the honour to propose that this letter and your reply to that effect shall constitute an integral part of the Protocol.”

I have the further honour to confirm that the foregoing is acceptable to Australia and that your letter and this letter in reply shall constitute an integral part of the Protocol.

Yours sincerely

[Signature]

Julia Gillard
SIDE LETTER CONCERNING NEW ZEALAND’S RESERVATION WITH RESPECT TO WATER

The Hon Julia Gillard
Prime Minister
Australia

16 FEB 2011

Dear Prime Minister

I have the honour to refer to the Protocol on Investment to the Australia-New Zealand Closer Economic Relations Trade Agreement ("Protocol") and to the discussions that have taken place between representatives of our two governments regarding Article 5 (National Treatment) and New Zealand’s reservation II-NZ-2 to that Article in New Zealand’s Schedule to Annex II of the Protocol.

In recognition of the longstanding friendship between New Zealand and Australia, and the joint commitment by both Parties to work towards achieving a trans-Tasman Single Economic Market, I propose that, within 5 years of the Protocol’s entry into force, New Zealand shall review reservation II-NZ-2 in New Zealand’s Schedule to Annex II of the Protocol in light of any developments in New Zealand on allocation of water rights. If a reservation remains, New Zealand commits to further regular reviews.

Pending such review, notwithstanding reservation II-NZ-2 in New Zealand’s Schedule to Annex II of the Protocol, should Australia consider that New Zealand has adopted or is proposing to adopt any measure which, but for reservation II-NZ-2, would be inconsistent with its obligations under Article 5 (National Treatment), Australia may request consultations with New Zealand. Following receipt of such a request, New Zealand shall promptly enter into consultations with a view to both Parties seeking an early, equitable, and mutually satisfactory solution.

If the foregoing is acceptable to Australia, I have the honour to propose that this letter and your reply to that effect shall constitute an integral part of the Protocol.

Yours sincerely

John Key
Rt Hon John Key  
Prime Minister  
New Zealand  

16 FEB 2011

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I have the further honour to confirm that the foregoing is acceptable to Australia and that your letter and this letter in reply shall constitute an integral part of the Protocol.

Yours sincerely

[Signature]

Julia Gillard