Annex 7. Comparison of WTO, NAFTA and ANZCERTA (CER)

	WTO	NAFTA	ANZCERTA
Membership	There are 142 members in the World Trade Organization (WTO) as of August 2001. The WTO is a multilateral agreement. It administers 15 agreements and several related instruments. The central agreement is the General Agreement on Tariffs and Trade (GATT). WTO agreements are multilateral. All provisions apply equally to all measures.	There are 3 members of the North American Free Trade Agreement (NAFTA): the United States, Canada and Mexico. NAFTA is a preferential agreement. The benefits of the agreement apply only to the members. NAFTA consists of three separate bilateral agreements: one each between US and Canada, US and Mexico and Canada and Mexico.	There are two members of the Australia and New Zealand Closer Economic Relations Trade Agreement: Australia and New Zealand. CER is a preferential agreement. The benefits apply only to the members.
Main principles	There are two principles of non-discrimination in the WTO: Most Favoured Nation Treatment (MFN) and National Treatment. Every member must follow both principles in dealing with other members. MFN is an obligation to treat trade of one member at least as favourably as the trade of another. It means that any benefits granted by one party to another are automatically granted to all other parties to the WTO. National Treatment means that members cannot discriminate between domestic products and foreign products. Products imported into the territory of a member must be accorded treatment *no less favourable* than that accorded to products of national origin.	National treatment is the main principle in NAFTA. A NAFTA member cannot treat its own goods or services differently to goods or services imported from another member. There are obligations in limited circumstances that apply MFN among the three parties.	National Treatment is the main principle in CER.

	WTO	NAFTA	ANZCERTA
Exceptions to general principles	There are several main exceptions to basic principles and obligations. Article XX of the GATT allows members to take measures for certain reasons, provided they do not result in arbitrary discrimination or "a disguised restriction on trade". The grounds are listed. They include when it is necessary to protect human, animal and plant life or health, to protect public morals and to preserve natural resources. Article XX allows exceptions on national security grounds and to safeguard the balance of payments. Other exceptions allow for regional trading blocs, subject to some conditions.	NAFTA incorporates GATT Article XX. It also includes an amended GATT Article XXI, which allows for members to discriminate according to their essential security requirements. This exception applies in more limited circumstances for trade in energy goods and for government procurement. There are also general limitations for taxation measures and bilateral tax treaties. Measures to address serious balance of payments difficulties are also allowed.	CER allows standard exceptions that follow Article XX of the GATT.
*Rules of origin (*For NAFTA see also Textiles and automotive section)*	Rules of origin determine which country goods "originate in" or have been exported from. The WTO Agreement on Rules of Origin does not prescribe the exact rules members must have but aims at harmonising rules[1] by requiring they be transparent, administered in a uniform and reasonable manner and be based on a positive standard. This is aimed at making rules of origin objective and predictable. Rules of origin must not create unnecessary obstacles to international trade nor have restricting, distorting or disruptive effects.	Only goods that "originate" from NAFTA countries receive preferential treatment under the Agreement. The rules are complex and detailed. They provide a test for goods to qualify. Products must be made within NAFTA countries or from NAFTA materials, rather than foreign ones. If they are made of foreign materials then the final product must be significantly processed in a NAFTA country such that it meets certain requirements, such as a regional value content or a certain percentage (50 per cent or 60 per cent depending on the method used.) NAFTA also sets out special rules of origin that apply to automotive products, textiles and clothing and some agricultural products. All three countries had established rules to determine in which country the good is primarily produced by the time NAFTA entered into force. There are special more stringent rules of origin for automotive goods and textiles and apparel. After a transition period, automotive and light vehicles will need to be 62.5 per cent of NAFTA origin, and other vehicles and automotive parts, 60 per cent. Rules for textiles and apparel dictate that they must be produced from fibre made in a NAFTA country. The test is a "de minimus" rule, which allows the amount of non-originating textiles used to make the final good to be up to 7 per cent. There are several exceptions to the rule such as products with small quantities of non-NAFTA yarn or fabric, or items in "short supply".	Only goods that "originate" in the free trade area of Australia and New Zealand are exempt from tariffs and quantitative restrictions. There are 2 minimum requirements for goods to be considered to have originated in the free trade zone. Firstly, the last process of manufacture of the good must be in Australia or New Zealand and secondly, at least half of the factory or works cost of the goods must be made up from expenditure on originating materials, labour or inner containers. All unmanufactured raw products of Australia or NZ are considered to have originated in the area. Products that are wholly manufactured in either country from unmanufactured raw products, or imported materials that have been determined to be of local origin[2], also originate in the free trade area.

	WTO	NAFTA	ANZCERTA
Tariff reductions	The approach to tariffs in the WTO has been to allow them to continue, but to reduce them as part of a continuing process of trade liberalisation. Each member has committed to certain tariff reductions, contained for each country in a schedule of tariff concessions, listed by tariff level and product and attached to the GATT. Some of these tariffs are bound or set as the maximum tariff. Where tariffs are not bound, members may charge a tariff of their choice. Tariff concessions are applied on an MFN basis. There are several exceptions to tariff commitments. Members can seek waivers and temporary departures from tariff bindings. There are provisions for a party to withdraw a concession at any time, although compensation, or the right to grant equivalent concessions, must be afforded to parties affected.	There is a general obligation for NAFTA members to eliminate all tariffs on goods that meet the rules of origin test. Tariffs are to be phased out over a period of time according to one of four categories, either immediate, over 5 annual steps, over 10 annual steps or 15 annual steps. Tariff removal differs by good and by sector (see relevant sectors for agriculture, clothing and textiles, automotive parts and energy goods) according to agreement between each of the parties. The relevant category and staging for tariff elimination is set out in each country's tariff schedule. Tariffs on goods traded between the US and Canada were eliminated by January 1998. Between Canada and Mexico goods were eliminated immediately or over 10 years with the exceptions of some agricultural goods in the dairy, poultry egg and sugar sectors. Mexican tariffs on corn are to be phased out over 15 years. Tariffs between the US and Mexico will be eliminated over a five or ten year period. The US tariff on a small number of products will be eliminated over 15 years.	All tariffs on trade in goods that originate in the free trade area were progressively eliminated over 5 and 7 years and are now prohibited. Transitional arrangements required ad valorem tariffs below 5 per cent to be immediately eliminated, tariffs between 5 per cent and 30 per cent to be reduced by 5 per cent per annum and tariffs of more than 30 per cent progressively reduced so eliminated over the time period.
Non tariff measures	Article XI of the GATT prohibits members to maintain or introduce quantitative restrictions on imports or exports including quotas and import or export licences. There are some exceptions, such as temporary restrictions to relieve food shortages, for balance of payments reasons and for developing countries in certain circumstances. The WTO Agreement on Import Licensing Procedures imposes disciplines on users of import licensing systems.	NAFTA prohibits use of non-tariff measures and incorporates the full terms of GATT Article XI obligations for import and export restrictions. Members must eliminate existing quantitative restrictions unless they are specifically permitted[3]. Customs user fees are to be phased out with new fees prohibited. Canada does not maintain such fees. Specific provisions for the removal of blending requirements for imported and domestically distilled spirits mean that distilled products of each member have been mutually recognised as distinctive and can only be sold when they are manufactured in their country of origin.	All quantitative import or export restrictions and tariff quotas on trade in goods between Australia and New Zealand were progressively eliminated within 7 years. New restrictions prohibited. Some restrictions were subject to more progressive elimination, such as quantitative import restrictions on sugar, tyres, and margarine.

1 Rules of origin relating to the granting of tariff preferences are not part of the harmonisation program.

2 Procedures for "determining" a raw material to be of local origin are set out in the 1988 Joint Understanding on the Harmonisation of Customs Policies and Procedures.

3 This permits Canada to maintain certain agricultural non-tariff measures.

	WTO	NAFTA	ANZCERTA
Duty drawback, waivers and remissions	WTO members can seek "waivers" for certain obligations.	Duty drawbacks are to be gradually eliminated between the parties. Waivers or remissions on duties that are dependent on specific performance requirements, such as export to another country, are to be removed.	CER does not contain any such provisions.
Agriculture	For many years, restrictions on tariffs and bans on certain non-tariff measures did not apply to agricultural products. The WTO Agreement on Agriculture, which was negotiated in the Uruguay Round, provides a set of rules as well as a series of concessions and commitments that members are required to undertake on market access, domestic support and export subsidies for agricultural products. They are conceived of as part of a continuing process in securing reductions in support. There are separate commitments for tariffs, market access, export subsidies and domestic support. Non-tariff measures imposed at the border are to be replaced by tariffs. Tariffs resulting from this process are to be reduced by an average of 36 per cent and 24 per cent, over 6 and 10 years respectively[4]. Members can maintain current access opportunities and establish minimum access tariff quotas in certain circumstances, which are to be increased over the implementation period. Special safeguard measures are available for products that have been converted to tariffs. Domestic support measures that have a minimal impact on trade are excluded from reduction commitments[5]. They include general government services and direct payments to producers (such as regional assistance programs). Some other government policies are also not subject to reduction commitments. Members are committed to reduce the value of export subsidies over a six-year implementation period and reduce the quantity of subsidised exports. There are longer time periods for developing countries. Domestic support and certain "green box" measures cannot be challenged under the WTO Subsidies Agreement.	Commitments to reduce tariffs are bilateral among the parties. Between the US and Mexico all non-tariff measures affecting agricultural trade were eliminated in January 1994. All agricultural tariffs are to be phased out over 5, 10 and 15 years, resulting in free trade in agricultural products by 2008. Sensitive areas such as corn, dry beans, vegetables, orange juice and sugar receive longer transition periods. Between the US and Canada agricultural barriers remain. NAFTA incorporates GATT rights and obligations for agricultural food, beverages and related goods. A few additional exceptions remain for items covered by tariff rate quotas. Between Canada and Mexico market access provisions apply only to goods qualifying under rules of origin. All tariffs on agricultural food products are to be eliminated over 5, 10 and 15 years with exceptions remaining for dairy, poultry, egg and sugar products. Members are required to consult before adopting measures arising out of an international commodity agreement where this can affect agricultural trade between NAFTA parties.	The general rules apply to all products. A side agreement applied to dairy products, but it has expired.

	WTO	NAFTA	ANZCERTA
Automotive	There are no specific WTO provisions governing trade in automotive goods. They are subject to the general provisions of the GATT and applicable WTO agreements. The EU was granted a transition period to remove voluntary export restraints on automotive production in the WTO Agreement on Safeguards.	The majority of Canadian and US automotive and vehicle parts trade are currently duty free under the Canada US Auto Pact. Mexican tariffs on automotive vehicles and parts are to be removed or reduced by 50 per cent immediately or over 5, 10 or 25 years. Canada is required to phase out its embargo on vehicles entering from Mexico over a 10-year period from 2009 and the US to modify its auto standards to include Mexican content for exported automobiles. Mexico must open its automotive market over a 10-year transition period and undertake certain measures that modify trade restrictions in the auto sector. It will allow Canadian and US investors 100 per cent holdings in an auto parts enterprise by 1999.	There are no specific provisions for trade in automotive goods in CER.
Clothing and textiles	For many years, the GATT Multi-Fibre Agreement permitted imposition of discriminatory import quotas on imports of clothing and textiles from developing countries. The WTO Agreement on Clothing and Textiles negotiated in the Uruguay Round requires these import quotas to be phased out. Quotas are to be phased out in 4 stages. Each party expands quotas by an increasing percentage as a proportion of the total volume of imports that existed in 1990 over 5, 8 and 12 years from 1990. Remaining quotas are to be eliminated by the end of 2005. Imports are then subject to the general rules of the GATT. The only controls on imports are tariffs. There is a special safeguard mechanism for products not yet integrated into the GATT. Restraints may be imposed on trade in clothing and textiles where imports from one country enter another in such large quantities that they cause (or threaten) serious damage to the domestic industry of the receiving country.	Commitments for removal of tariffs between Canada and the US require elimination over a 10-year period for apparel and an 8-year period for most textiles. Mexico and the US, and Mexico and Canada will progressively eliminate tariffs on textiles and apparel in stages, immediately, over 5 years and within 10 years. Commitments apply only to goods listed in NAFTA within the time frame nominated by each member is its schedule. NAFTA specifically provides for bilateral safeguard actions to be taken in relation to listed goods during the transition period for removal of tariffs. Special emergency action allowing the use of quantitative restrictions is permitted for trade between Mexico and NAFTA parties against non-NAFTA goods that are causing serious damage (or threat of serious damage) to a party's imports. This does not apply to trade between Canada and the US, which is governed by the FTA which affirms GATT obligations in relation to prohibitions on restrictions on trade in bilateral goods, and which allows for the imposition of restrictions on third countries.	CER has no specific provisions on clothing and textiles goods.

4 36% reductions for developed countries and 24% for developing countries.

5 "Green box" policies.

	WTO	NAFTA	ANZCERTA
Energy and Petrochemicals	There are no specific WTO provisions governing trade in energy and petrochemical goods. These are subject to the general provisions of the GATT and applicable WTO agreements.	NAFTA has specific rules on energy, basic petrochemicals trade and related regulatory activities. Governments affirm their rights and obligations under the GATT with respect to restrictions on trade in energy and basic petrochemical goods. Existing GATT principles are clarified in relation to prohibitions on export taxes, national security exceptions and a proportional access clause. Governments are prohibited from applying restrictions to imports or exports except in limited circumstances. Energy regulatory bodies are to apply measures consistent with national treatment and import and export restriction obligations, including licensing of imports and exports. Canada and the US are party to a "proportional access clause" that allows them to impose export restrictions for certain reasons, whilst maintaining continued access to the market for the other party. They can invoke trade restrictive measures on the grounds of national security, with qualifications. Mexico has retained reservations and investment permitting it to restrict trade in certain goods as required by its Constitution in 1994.	CER has no specific provisions on trade in energy and petrochemical goods.
Subsidies	Subsidies are governed by the provisions of the GATT and the WTO Agreement on Subsidies and Countervailing Measures. (ACSM). The agreement establishes three categories of subsidies (prohibited, actionable and allowable[6]), and a particular set of rules for each. Prohibited subsidies include those tied to export performance and are illegal. Actionable subsidies can be challenged by other members to be removed where they cause "adverse effects" to the interests of other members. There are special more lenient rules for developing countries. Agricultural export subsidies are covered by the Agreement on Agriculture. (See agriculture section)	There is agreement in NAFTA for all members to work towards eliminating their export subsidies. Export subsidies for agricultural products for trade between the US and Canada are prohibited. It is considered "inappropriate" for either country to provide an export subsidy for goods exported to Mexico where there are no other subsidised imports of that good already in that party, but are permitted to provide export subsidies into the Mexican market to counter subsidised exports from other countries. They must consider each other's export interests before subsidising agricultural exports to third countries. Each party maintains its rights to apply countervailing duties to subsidised imports on agriculture.	CER requires all export subsidies and incentives on goods traded between Australia and New Zealand to be eliminated. The parties agreed not to make payments to industry tied to production or similar measures on goods exported to the other country and to avoid using industry specific measures that have adverse effects on competition in the free trade area. Measures such as those for research and development, and those in the national interest, are excluded. Export subsidies, and incentives and other assistance measures that have a direct distorting effect on trade in services, are prohibited.

	WTO	NAFTA	ANZCERTA
Anti-dumping and Countervailing Measures	Anti-dumping actions in the WTO are governed by the Anti-Dumping Agreement[7]. Members may impose duties on imports of another member in certain circumstances when they are "dumped", or sold at a price below the normal value of the good and where they cause damage or "injury" to the domestic industry. The WTO provides for detailed rules in relation to dumping initiation, investigation and determinations. Settlement of anti-dumping disputes is through the general dispute settlement mechanism of the WTO. The rules for imposing countervailing duties are governed by the WTO ASCM. Countervailing duties can be imposed on subsidised imports when they are causing injury to the domestic industry. There are similar detailed rules for initiating and conducting actions and imposing duties. Under the Agreement on Agriculture, certain subsidies on agricultural products are not countervailable.	Each country maintains its own regime and legislation for initiating dumping and countervailing actions, however, must consult with other members when modifying them. Amendments must be consistent with GATT or NAFTA's object and purpose. NAFTA provides for initiation of actions and for dispute settlement between the members over dumping or countervailing actions through bi-national panels. Any NAFTA government can seek review of a dumping or countervailing decision made by another government agency. Review panels made up of member representatives undertake judicial review, as would a domestic court. Actions found to be illegal are referred back to the decision maker for a new determination.	Countervailing measures can be taken by each party, but must be in accordance with the WTO ASCM and when there is no other mutually acceptable solution. Each member must keep the other fully informed of the countervailing investigation. Anti-dumping actions cannot be taken between CER members. (Effective 1990) Competition law under each party extends to anti-competitive conduct instead. Third countries anti dumping actions are permitted in accordance with the WTO.
Safeguards	Under the WTO Agreement on Safeguards, members may take special "safeguard" action (impose tariffs or quotas) to protect their domestic industry from a surge or large increase in imports, where this causes "injury" to or hurts their domestic industry. Measures must conform to provisions of the WTO or the affected member may suspend concessions under the GATT. There are detailed rules for imposing safeguard actions and procedural rules for standards of transparency, procedural fairness and public notice. There are special rules for developing countries.	NAFTA gives each member the right to take safeguard action ("emergency controls"), to impose duties on imports, if increased imports from one member "cause (or in the case of Mexico, threatens) serious injury" or hurt the domestic industry of the other. Detailed criteria must be met before any action can be taken. Actions can be taken bilaterally between NAFTA parties or against all suppliers ("global actions"). Bilaterally, action can only be triggered as a result of a reduction in duty. When a global action is taken, one NAFTA member's goods should not be included in another's restrictions unless certain criteria are met. Actions are initiated by the domestic industry, investigated by a Tribunal in the member affected, and then a determination made as to whether action may be taken.	CER does not provide for safeguard actions by either party.

6 This category of subsidy expired at the end of 1999 in accordance with Article 31 of the Agreement on Subsidies and Countervailing Measures. It is now defunct. Subsidies that were allowed under the third category include those for activities such as research and development, for disadvantaged regions and environmental requirements.

7 "Agreement on Implementation of Article VI"

	WTO	NAFTA	ANZCERTA
Government Procurement	Government procurement is expressly excluded from WTO obligations of national treatment and from several WTO covered agreements. A plurilateral agreement whereby membership is not compulsory for all WTO members limits the exclusion of the application of national treatment in the GATT. Only countries that are signatories to the GPA are bound by its terms. Australia and New Zealand are not members. The US is a member. The agreement extends to the purchase of goods and services of central government and sub-central government authorities as well as government utilities that have been listed in the agreement by the parties. It extends only to purchases above certain threshold levels. Members must accord national treatment and MFN with respect to covered procurements.	NAFTA is based on the GATT Government Procurement Agreement, to which both the US and Canada are parties, but Mexico is not. NAFTA extends to federal government entities listed by the parties in an Annex. It applies to the purchase of goods and services by government for their own use except for these that are specifically listed as exempt. It applies to goods and services above certain threshold levels. The agreement requires national treatment of covered procurements. Locally established suppliers are to be treated no less favourably than others on the basis of foreign affiliation or that the goods to be supplied are those of another party. There are general exceptions for all parties that include national security interests, measures for the protection of life and health and intellectual property. There are detailed tendering procedures to be followed as well as a requirement for members to establish a "bid challenge system" for review of the procurement process.	CER does not include comprehensive provisions on government procurement. It ensures that one party not discriminate against suppliers from the other in selecting preferred tenderers or in applying "offsets" in relation to content. Under the Government Procurement Agreement, the Australian federal, state and territory governments and New Zealand have eliminated discrimination between suppliers from either country by granting them equal and national treatment. Tenderers must be selected on the basis of value for money. New Zealand content is treated as equivalent to Australian for the purpose of local content preferences maintained by Australian states.
Sanitary and Phytosanitary measures	The WTO Sanitary and Phytosanitary Agreement (SPS) covers food safety and animal and plant health regulations. It provides a right for governments to take SPS measures but only to the extent necessary to protect human, animal or plant life or health. Measures must not arbitrarily or unjustifiably discriminate between members. Members should base their SPS measures on international standards, or provide a scientific justification based on an assessment of risk. There are detailed criteria and procedures for assessing risk and for determining the appropriate levels of protection. There are also provisions that encourage members to accept SPS measures of others as equivalent to their own and for control, inspection and approval.	NAFTA is based on the rules of the WTO SPS Agreement. It imposes disciplines on measures taken to protect human, animal or plant life or health. It allows members to impose these measures provided they are not disguised restrictions on trade and encourages them to be based on international standards. Each country may determine its own level of protection provided the measure is in accordance with scientific principles and based on a risk assessment. There are rules that allow for areas within a country to be recognised as pest or disease free. Parties have agreed to work toward accepting each other's measures as equivalent where they achieve the same level of protection.	Members can adopt SPS and quarantine measures under the general exception to CER obligations which allows measures that are necessary to protect human, animal or plant life or health as long as they are not used as a means of discrimination or a disguised restriction on trade. They must be scientifically justified. Members have committed to harmonisation of quarantine and inspection standards and procedures. Food that is not considered to be a "risk" can be imported and exported freely, subject only to the quarantine requirements of locally produced goods. Only foods considered risky, based on scientific evidence, are inspected.

	WTO	NAFTA	ANZCERTA
Standards and Technical Barriers	The WTO Agreement on Technical Barriers to Trade (TBT) applies to technical regulations, standards and testing and certification procedures, as they apply to goods. It distinguishes between mandatory and non-mandatory standards and procedures to ensure products conform to these. Mandatory standards and testing must not discriminate or cause unnecessary obstacles to trade and be based on international standards. Members may maintain mandatory standards at levels of protection that they consider appropriate for specified reasons including to protect human, animal or plant life or health and the environment, and can take measures to ensure the level of protection is met, provided they are necessary based on a scientific assessment. A Code of Practice that embodies the above principles and procedures governs non-mandatory standards. Harmonisation and mutual recognition of standards are encouraged.	NAFTA standards obligations extend to some services, and to sub national and non-government standardising bodies. They apply only to standards that affect trade. NAFTA allows members to maintain standards for health, safety and security provided they do not cause discrimination in trade and are based on international standards. NAFTA provides for greater discretion in assessing whether discriminatory standards are justified than the WTO by not mandating a scientific assessment and by allowing for potentially wider consideration on environmental and consumer grounds. NAFTA does not seek to harmonise all standards between members but encourages them to be made compatible. Standards for CER are governed by the WTO TBT	Agreement. There are additional complementary agreements of less than treaty status between Australia and New Zealand for mutual recognition and harmonisation of standards. There is commitment towards harmonisation of standards, technical specifications and mutual acceptance of certification and accreditation[8] as well auditing and certification of quality management systems in accordance with international standards[9]. Food standards are developed jointly under a single regulatory agency[10]; and there is a complete joint Food Standards Code. Goods need only comply with the standards or regulations for the sale of goods applying in the jurisdiction in which they are produced or through which they are imported[11].
Trade Facilitation: Customs	The WTO Agreement on Customs Valuation governs certain procedures in relation to customs administrations of each member, particularly in relation to determining the value of goods in certain circumstances. It gives customs administrations the right to request further information of importers where there is reason to doubt the accuracy of the declared value of a good. Customs may establish the value of the goods taking into account the provisions of the agreement. Accompanying texts to the agreement clarify provisions relating to developing countries, minimum values, sole distributors and sole concessionaries.	NAFTA provides for rules to be followed by the customs administration of each member in administering and enforcing the rules of origin and for regulations regarding their application and other customs procedures. These include the requirement for a certificate confirming the origin of a good. There is agreement between the parties to develop uniform regulations on rules of origin and a requirement to grant rights of review, equivalent to that accorded to importers, for any person completing a certificate of origin. CER provides for procedures to be followed by	Australian and New Zealand customs agencies for determining whether goods meet the rules of origin. It provides for harmonisation of customs policies and procedures between them and for the parties to adopt common policies and practices for valuation in accordance with the WTO Customs Valuation Agreement.

8 MOU on Technical Barriers to Trade between Australia and New Zealand.

9 The Trans Tasman Joint Accreditation System (JAS-ANZ)

10 Australia New Zealand Food authority

11 Under the Trans Tasman Mutual Recognition Arrangement

	WTO	NAFTA	ANZCERTA
Competition Policy	There are no specific WTO provisions concerning competition policy. The WTO Agreement on Trade Related Investment Measures provides for future consideration of provisions on competition policy and investment more broadly. The GATS Agreement contains provisions to ensure that monopolies and exclusive service providers do not abuse their positions. Restrictive business practices should be subject to consultations between the parties with a view to their elimination. There is an accompanying set of voluntary guidelines on competition policy in GATS. The TRIPS Agreement also contains provisions concerning anti-competitive practices in contractual licences for intellectual property rights. Remedies against these abuses must be consistent with the TRIPS agreement.	NAFTA requires each party to maintain measures for anticompetitive business conduct, but restricts these obligations to state enterprises and monopolies. Rules are based on the principle of non-discrimination in the purchase and sale of goods by a monopoly. The main obligation is to adopt competitive business conduct and take appropriate action to enforce adequate competition law. Parties retain the rights to designate a monopoly, but must comply with notification requirements. Monopolies must act solely in accordance with commercial considerations. Members can also designate state enterprises that are subject to the investment and financial services disciplines of NAFTA, including the right to utilise investor-state arbitration.	CER does not contain specific provisions relating to competition policy. Each country maintains and determines its own competition laws with the exceptions of some Trans- Tasman provisions regarding the abuse of dominant positions in the market place. An understanding to CER provides for the harmonisation of business law between the two members, focussing on impediments to trade that arise out of differences. It requires governments to work towards harmonisation in areas such as companies and securities law, competition policy and consumer protection and enforcement of court decisions Harmonisation effectively eliminates anti – dumping actions between the two members.
Temporary entry	There are no specific WTO provisions on temporary entry. The GATS contains some provisions for temporary entry of persons providing financial services in accordance with negotiated commitments.	NAFTA provisions set out rules and principles regarding temporary access to each NAFTA country by citizens of each country for business purposes. There are detailed obligations concerning eligibility of business visitors and professionals.	CER does not contain any provisions related to temporary access. The Trans–Tasman Travel Arrangement operates alongside CER and facilitates the entry of Australian and New Zealand citizens into each other's country to take up employment and residence.

	WTO	NAFTA	ANZCERTA
Services	The General Agreement on Trade in Services applies to measures that affect trade in services. It has three main parts: basic obligations that apply to all members, specific commitments of each member listed in national schedules, and a number of annexes addressing individual service sectors. The general positive obligation applicable to all measures is to accord MFN treatment for services and service providers of other members. Other obligations are transparency and publication of regulations. General exceptions to these principles similar to GATT articles XX and XXI apply, an exception for members of regional trading blocks and also specific exemptions from MFN tabled by each party. Specific commitments of each member are tabled in schedules to the GATS. Under provisions for market access, members accord treatment to services and service suppliers of another member that no less favourable than provided for under the terms, conditions and limitations specified in its schedule. Scheduled services are also subject to prohibitions on limits of the number of service providers, operators, natural persons employed in a service sector, the participation of foreign capital in shareholding or investment and the total value of service transactions. Parties can modify or withdraw their commitments, provided they consult with interested parties or provide compensation. There are also several annexes to the agreement in relation to specific services sectors such as telecommunications, financial services, the movement of labour and air transport and maritime services.	NAFTA imposes obligations on the provision of services across NAFTA borders. Subsidies, grants and services specifically exempted by the parties are not subject to these obligations. Government procurement of services and financial services are not covered by the general service obligations. There is an obligation to accord national treatment by requiring parties not to discriminate in favour of domestic service providers. Members agree not to increase current discrimination and to ensure future laws are non discriminatory. They cannot require that other NAFTA service providers establish a residence or office in their country. Within 2 years, citizenship or permanent residency requirements for licensing of professional service providers of other parties must be removed. Excluded services include the cultural industries of Canada, US maritime transportation services and government services including health and social services. Some other sectors were left unbound. Discriminatory measures listed by each member within 2 years can be maintained, but discrimination not increased unless specifically provided for. Existing quantitative restrictions may be maintained and new ones introduced but must be listed when at the federal level. Obligations for trade in services do not apply to subsidies or grants including government supported loans, guarantees and insurance. Work programs and parties are established to develop common procedures for temporary authorisation of legal consultants and engineers.	The CER Protocol on Trade in Services provides for free trade in the provision of all services between Australia and New Zealand with some exemptions. It applies to any measure that relates to or affects the provision of a service by a person of one member country within or into the other member country. Rules on services are subject to the foreign investment policies of each country. The basic principles are market access and national treatment. Each member must grant the other access rights to its market for service providers on terms that are not less favourable than its accords to domestic providers. Each country must also grant the persons and services of the other, treatment no less favourable than that it grants its own. Certain services are exempt including some subject to existing government regulations, such as taxation and those listed in an Annex. Members are to review listed services with the view to liberalising trade in services. In 1999 listed services for Australia included air services, coastal shipping, broadcasting and television, third party insurance and postal services. New Zealand has included aviation and coastal shipping, which is less than originally inscribed in 1988. In relation to services inscribed in the Annex, each member must accord to persons and services of the other, treatment no less favourable that that it accords to third countries.

	WTO	NAFTA	ANZCERTA
Telecommunications	An Annex to the GATS Agreement on telecommunications, which is independent of specific GATS commitments, relates to measures that affect access to and the use of public telecommunications services and networks. It requires that access to and use of public telecommunications be accorded by a member to a service supplier of another party on reasonable and non-discriminatory terms as listed by that member in its schedule to the GATS agreement. Developing countries may place some limitations on access. Rights apply to public services such as telephone, telegraph, telex and data transmission but not to the transmission of radio or television programming. This includes rights to buy or lease equipment, connect to public networks, connect private circuits, and use the public network to transmit information both within a member and to or from any other WTO member. (The Information Technology Agreement also eliminates tariffs on most telecommunications products.)	NAFTA provides common rules for providers and users of telecommunications and computer services and sets out the way in which telecommunications firms can gain access to networks and services. It requires elimination of tariffs on telecommunications equipment over 10 years and guarantees certain conditions of access, such as ensuring rates for public telecommunications services will reflect economic costs. Cross subsidisation between public services is permitted. Access to public networks and services must be on reasonable and non-discriminatory terms. Restrictions on access must be justified as necessary to protect the public responsibilities of the network operator, the integrity of the network, privacy of subscribers and confidentiality of messages. Basic or public telephone and telecommunications services, and establishment and provision of telecommunications networks and services are excluded. Operators of private networks do not acquire the right to provide public telecommunications services.	Telecommunications services are subject to the general services provisions under CER. Telecommunications are not listed by neither Australia nor New Zealand as services exempt from obligations in the Services Protocol.
Financial Services	Financial services in the WTO are governed by an Annex to the GATS Agreement, which identifies sixteen forms of financial services covered by special rules. Insurance and related services are distinguished from banking and financial services. Obligations apply to services as listed in each member's schedule. Commitments are to be implemented on an MFN basis. National treatment obligations, where granted, refer explicitly to access to payments and clearing systems operated by public entities and to official funding and refinancing facilities. They also relate to membership and participation of self-regulatory bodies, securities or futures exchanges. There are detailed provisions on market access with respect to monopoly rights, cross border trade, the right to establish or expand a commercial presence in another member's territory and the temporary entry of personnel. Certain financial services are excluded, including those of a government authority, activities of central banks and certain activities of public entities. Measures can be taken for prudential reasons to protect investors, depositors, policyholders or persons in certain circumstances.	NAFTA governs measures of the Parties relating to financial institutions, investors and their investments and cross border trade in financial services. Such measures are subject to the principles of national treatment, qualified by the principle of "competitive opportunity[12]". MFN also applies but preferential treatment is permitted as long as other parties are given an opportunity to demonstrate they qualify for similar treatment. An investor is permitted to establish a financial institution in the territory of another party in the juridical form chosen by the investor. Other principles include the right for consumers to purchase services in each member, for institutions to introduce any new financials services in another party's territory and the right to market access by establishing a commercial presence. Each member maintains reservations listed in an Annex. Government-owned entities such as insurance and worker's compensation fall outside the scope of the chapter. Reasonable measures for "prudential reasons to protect the integrity of the financial system or the consumers of financial services" are permitted.	There are no specific provisions in CER dealing with Financial Services.

	WTO	NAFTA	ANZCERTA
Investment	Investment is not covered extensively by the WTO. The WTO Agreement on Trade Related Investment Measures applies to certain investment measures that restrict trade. Members must not impose trade related investment measures unless they are consistent with national treatment obligations and do not constitute quantitative restrictions as in the GATT. GATS provides for MFN to apply to rights of establishment to supply services.	NAFTA lays down rules on investment. It accords national treatment and MFN for investors[13] and their investments with respect to establishment, acquisition, expansion, management, conduct operation and sale. NAFTA parties must also not treat an investor or investment from a non-NAFTA country more favourably than that from a NAFTA country. They must also accord each other a minium standard of treatment in accordance with international law. Investment is defined to include portfolio investment; real property, minority interests and majority owned or controlled investments from NAFTA countries. Coverage extends to investments made by any company incorporated in a NAFTA country, regardless of the country of origin. NAFTA prohibits parties using trade-distorting requirements on the entry of investments or throughout their ongoing operation, including performance requirements. These prohibitions do not apply to subsidised conditions on requirements to locate production, provide a service or employ workers etc. Some measures requiring domestic content are permitted provided they do not constitute a disguised restriction on trade. Specifically listed exceptions by each country and several areas not bound are not covered by NAFTA. Members retain the right to perform functions such as law enforcement and to provide services such as social welfare and health. Unbound areas include taxes on income, capital gains or capital or corporations. Additional exceptions are permitted for listed bilateral and multinational agreements.	CER has no specific provisions on investment. Investors and investments of each member are subject to the general foreign investment policies and requirements of the other country.

12 This means that an equal competitive opportunity may allow for differential treatment as long as foreign institutions or investors are not disadvantaged compared to domestic counterparts.

13 Who are investing between NAFTA countries.

	WTO	NAFTA	ANZCERTA
Dispute settlement of investment issues		State-to-state dispute settlement is through the general provisions contained in NAFTA. Direct investor – state arbitration, including foreign investors, is through arbitration where the party has breached an investment obligation and the investor has suffered damage or loss as a result of it. If consultations fail, the matter is brought to international arbitration before a tribunal. The tribunal decides the dispute in accordance with NAFTA provisions and applicable international laws. It can appoint experts concerning factual issues and award monetary damages and costs. Awards are made without prejudice to the right of the investor to seek damages at domestic law. Tribunal decisions can be enforced only after judicial review has been completed.	
Intellectual Property	The WTO Agreement on Trade Related Aspects of Intellectual Property (TRIPS) incorporates basic GATT principles and those of international intellectual property agreements and provides for intellectual property rights (IPR's) and their enforcement. The basic principles of the TRIPS agreement are national treatment and MFN. It provides protection for IPRs in relation to copyright, trademarks, geographical indicators, industrial designs, patents, integrated circuits and trademarks. Members are specifically required to comply with the Geneva, Berne and Paris Conventions, provide full copyright protection to computer programs and grant 20-year patent protection for all inventions including products and processes. Plant varieties must be protected by patents or an equivalent system. Members are required to provide procedures and remedies under domestic law to ensure adequate enforcement of IPRs, including judicial review. There are special transition periods for implementation of the agreement[14].	NAFTA is patterned on the TRIPs Agreement. It commits each member to provide protection and enforcement of intellectual property rights. (IPRs) It sets out rights and rules to enforce them both domestically and as they enter or leave each country. It covers copyright, sound recordings, trademarks, patents, semi conductor integrated circuits, trade secrets, geographical indications and industrial designs. All countries agree to comply with the Geneva, Berne and Paris Conventions and the Convention for the Protection of New Varieties of Plants. The basic principle is national treatment with certain exceptions recognised by the WIPO conventions. Main obligations include comprehensive patent obligations for products and processes in all fields of technology for 20 years and additional obligations for users of integrated circuits, trade secrets and geographical indications. Each member must be able to enforce IPRs without causing barriers to trade through appropriate procedures. Judicial review, recourse to damages and other remedies as well as interim measures and criminal and civil penalties must be available.	Intellectual Property rights are not covered by CER.

	WTO	NAFTA	ANZCERTA
Sub National Government	Generally, WTO obligations apply to the actions of central government bodies. Some agreements provide weak obligations for sub national governments. The Agreement on Technical Barriers to Trade requires central government bodies to reasonably ensure state, non-government and regional standardising bodies comply with the terms of the agreement. The optional Government Procurement Agreement applies to sub national government as listed by the parties in their respective schedules.	NAFTA requires federal governments to ensure that state and provincial governments also abide the principle of national treatment in relation to the provisions of services and investment. NAFTA also sets out rules on regulations by state and self-regulatory institutions regarding financial services. State, provincial and local governments must accord other NAFTA investors and investments "the best treatment provided by that government to an investor or investment". Competition policy requires state enterprises to act consistently with NAFTA investment and financial services obligations when they have been delegated government authority. State enterprises must accord non-discriminatory treatment in the sale of goods or services to investments in its party territory of investors of another party.	Generally CER applies to the federal governments of Australia and New Zealand.

14 For developing countries the transition period is 5 years and for least developed countries 11 years.

	WTO	NAFTA	ANZCERTA
Dispute Settlement	Dispute Settlement in the WTO is governed by the Uruguay Round 'Understanding on Rules and Procedures Governing the Settlement of Disputes". It allows members to base their claims on the GATT and any of the multilateral trade agreements included as part of the WTO Agreement. The Dispute Settlement Body (DSB), comprising all the members, exercises the decision-making authority. Decisions are adopted by the DSB unless the DSB decides by consensus not to adopt them, or to appeal a decision. The stages of dispute settlement include firstly, consultations, and secondly, where this fails, establishment of a Panel to issue a report making recommendations on the matter. An appeal may be taken on issues of law covered in the panel report by an Appellate body (AB). The AB issues a report, the recommendations of which the members concerned are bound to implement. In the event of non-implementation, there are rules governing compensation or the suspension of concessions. The DSU also contains some special provisions for developing countries and rules for disputes which do not involve a violation of an obligation under a covered agreement, but where a member believes a benefit accruing to it is being nullified by the action of another[15].	There are four characteristics of dispute settlement under the NAFTA. One, Government-to-government through 3 stages of: consultation, resolution by the commission and then binding panel proceedings. Two, dispute settlement for antidumping and countervailing duties through bi-national panels with judicial powers. Three, mixed investor-state arbitration for enforcement of investment obligations and four, dispute avoidance through procedural due process. The Free Trade Commission is the central institution for dispute settlement, consisting of representatives from each member. If consultations fail and the Commission fail to resolve a dispute, arbitration panels provide a recommendation as a basis for an agreed solution, which can be binding should the parties decide. Panels have special powers to permit scientific boards to provide expert advice on matters related to the environment, technical standards and other matters. Members can choose for the dispute to be brought under NAFTA or under WTO, if applicable. Where there is no agreed outcome as to panel recommendations, compensation or suspension of equivalent benefits can be taken against the offending party. Counter retaliation is not permitted. Actions can be brought for reasons of nullification and impairment and for special rules regarding environmental measures, standards and conservation agreements. Private rights of action at domestic law on grounds of inconsistency with NAFTA are prohibited.	There are no specific binding dispute settlement procedures under CER. CER provides for members to undertake consultations with the aim of reaching a mutually acceptable solution, in the event of a grievance over the agreement.

	WTO	NAFTA	ANZCERTA
Labour and Environment	The WTO contains no specific provisions pertaining to labour and environment. Under the general exceptions to the GATT in Article XX, Members may take measures "necessary to protect human or animal plant life or health" and those "relating to the products of prison labour", provided they do not cause discrimination or disguised restrictions on trade. The GATS Annex on the Movement of Labour permits members to negotiate specific commitments that apply to the movement of people providing services under the agreement. People covered by a commitment can perform the service according to the commitment. It excludes measures affecting employment, citizenship or residence on a permanent basis.	NAFTA has no specific provisions on labour and the environment. NAFTA expressly affirms the rights of the parties under the WTO Agreement and other multilateral and bilateral agreements. NAFTA will prevail where there is any inconsistency with nominated environment agreements. There are separate side agreements to NAFTA on the environment and on labour. The North American Agreement on Environmental Cooperation between the NAFTA parties imposes general obligations in relation to reporting, emergency environmental measures and promotion of environmental education, science and technology. Governments must adequately enforce environmental laws and regulations, although enforcement does not operate extraterritorially. The rights of other international environmental and conservation agreements are affirmed. The Agreement on Labour Cooperation recognises the rights of each country to establish their own labour laws, requires them to provide high labour standards and enforce their labour laws.	CER does not contain specific provisions on labour or environmental protection.

15 For example, where a tariff reduction has been negotiated, if a party then subsidises the good concerned, the benefit of the tariff reduction may be nullified.