

EXCHANGE OF LETTERS ON THE AGREED MINUTE ON INDUSTRY ASSISTANCE

Minister for Trade and Overseas Development

The Hon Philip Burdon MP
Minister for Trade Negotiations
Parliament Buildings
WELLINGTON

Dear Minister

I am writing to you to seek your formal agreement to arrangements between our two countries to strengthen and clarify the operation of the Agreed Minute on Industry Assistance ("the Agreed Minute"), signed on 21 June 1988 at Christchurch, as amended on 31 July 1989.

Since coming into operation in 1988, the Agreed Minute has helped establish and maintain a single trans-Tasman market, characterised by minimal restraint on or distortion of commercial competition.

The understandings reached by Australia and New Zealand accepted in the Agreed Minute reflected both Governments' recognition that in a single market it is desirable to have industry policies more responsive to CER objectives and to avoid certain industry assistance measures which could adversely affect trans-Tasman competition or provide protection from trans-Tasman competition.

In addition, the notification and consultation provisions set out in paragraph 3 of the Agreed Minute underlined the importance our Governments attached to the flow of information between our two countries on industry policy developments which might affect competition in the Free Trade Area.

These understandings remain as important now as they were in 1988 and both Governments remain fully committed to their implementation. In particular, they affirm their commitment to the notification and consultation understandings set out in the Agreed Minute. Both Governments support the further development of the already substantial consultative framework which exists between the two countries in the area of industry policy.

As a result of the examination Australia and New Zealand have undertaken of the operation of the Agreed Minute (as part of the 1992 Review of the Australia New Zealand Closer Economic Relations Trade Agreement), we have both concluded that we could strengthen and clarify aspects of these consultative procedures, without in any way lessening or altering the effect of the original understandings reached in 1988

There are two specific aspects relating to paragraph 3 of the Agreed Minute which require further clarification:

(a) first, consultative procedures which would apply in situations where each country reached different initial conclusions regarding whether or not a particular industry specific measure of the type specified in paragraph 3 has adverse effects on competition between industries in the Free Trade Area have not been clearly elucidated; and

(b) second, the understanding in paragraph 3(b) that each country would provide at least one month's notice should either country consider that it must adopt an industry specific measure (bounties, subsidies and other financial support) which has adverse effects on competition between industries in the Free Trade Area has not always proved practical, primarily because of the nature of our respective Cabinet and/or Ministerial decision making procedures.

To overcome the difficulties identified in (a) and (b) above, I propose that we agree to the additional notification and consultation procedures relating to paragraph 3 of the Agreed Minute set out in the

attachment to this letter. This attachment also notes the value that we attach to exchanges on industry policy. If this is acceptable to your Government, I wish to propose that this letter together with your reply should constitute a joint understanding between our two Governments, to become effective on the date of your reply.

Yours sincerely

[signed]

John Kerin

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ATTACHMENT

NOTIFICATION AND CONSULTATION PROVISIONS OF THE AGREED MINUTE ON INDUSTRY ASSISTANCE

1. Australia and New Zealand reaffirm their commitment to the undertakings in the Agreed Minute on Industry Assistance, signed on 21 June 1988, as amended on 31 July 1989.
2. In order to strengthen and clarify these commitments, Australia and New Zealand have reached the following additional understandings relating to the notification and consultation understandings set out in paragraph 3 of the Agreed Minute:
 - (a) the country which considers it must adopt a particular industry specific measure of the type set out in paragraph 3 of the Agreed Minute which has adverse effects on competition between industries in the Free Trade Area will:
 - (i) notify the other country; and
 - (ii) consult in accordance with the provisions of the Agreed Minute if the other country considers that the measure has adverse effects on competition between industries in the Free Trade Area; and
 - (b) if either country adopts an industry specific measure of the type set out in paragraph 3 of the Agreed Minute which it considers does not have adverse effects on competition between industries in the Free Trade Area and therefore does not seek and take into account the views of the other country:
 - (i) the other country may, if it considers that the measure has adverse effects on competition between industries in the Free Trade Area, request consultation; and
 - (ii) the country adopting the measure will consider and take into account the views of the other country regarding the effects of the measure on competition between industries in the Free Trade Area;
 - (c) where, despite the best efforts of the country adopting a measure of the type set out in paragraph 3 of the Agreed Minute which has adverse effects on competition between industries in the Free Trade Area, decisions on such measures have to be taken and announced quickly and that the required minimum one month's consultation is therefore not possible - the country taking the decision will:
 - (i) make every effort to provide advance notice of the decision to the other country; and
 - (ii) include in its public announcement of the decision a statement to the effect that the implications of the decision for the other country are still to be addressed; and
 - (iii) consider and take into account, during a period of at least one month after the announcement, representations from the other country regarding the effect of the industry specific measure on competition between industries in the Free Trade Area.
3. In addition, Australia and New Zealand have reached the understanding that exchanges on the operation and future direction of industry policy should be encouraged and further developed, without prejudice to the notification and consultation provisions of the Agreed Minute.

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John Kerin MP
Minister for Trade and Overseas Development
Parliament House
CANBERRA ACT 2600

Dear Minister

I have the honour to refer to your letter of 6 October 1992 which reads as follows:

[Here follows the text as set out under I].

I confirm that the additional notification and consultation procedures relating to paragraph 3 of the Agreed Minute set out in the attachment to your letter are acceptable to my Government and that your letter together with this reply should constitute a joint understanding between our two Governments, to become effective on today's date.

Yours sincerely

[signed]

Philip Burdon