REPLIES BY AUSTRALIA TO QUESTIONS RAISED BY CANADA ON THE TRADE PRACTICES (MISUSE OF TRANS-TASMAN MARKET POWER) ACT 1990

The following are replies by Australia to certain questions raised by Canada on the Trade Practices (Misuse of Trans-Tasman Market Power) Act 1990 in document ADP/M/32, paragraph 38 (by reference to questions asked of New Zealand in ADP/M/32, paragraph 26).

Question:

The representative of Canada asked whether there had been changes to Australia's competition laws with respect to the ability to bring persons or corporate entities within the jurisdiction of courts of Australia and the ability of the courts to enforce remedies and to compel certain behaviour. Furthermore, his delegation was interested in knowing whether any changes had occurred with respect to the question of territoriality and with respect to the more general question of enforcement of judgements, penalties and orders.

Answer:

(A) Jurisdiction

The new Section 46A of the Act prohibits a corporation which has a substantial degree of market power in Australia or New Zealand or both from taking advantage of that power for the purpose of:

- Eliminating or substantially damaging a competitor in an "Impact Market" (i.e. a market in Australia that is not exclusively a market for services).

- Preventing the entry of a person in an "Impact Market".

- Deterring or preventing a person from engaging in competitive conduct in an Impact Market.

Accordingly, in enforcing Section 46A the Australian Trade Practices Commission may take action against a person or company which, while based in another country, is carrying on business in Australia or New Zealand, and engaging in conduct with an effect in an Australian market.
(B) Enforcement

The Federal Court of Australia Act 1976 and the evidence Act 1905 have been amended so that:

- Judgments and orders made by a court in either nation in Trans-Tasman market proceedings will be readily enforceable by registration in the other court.

- The Federal Court of Australia may now issue subpoenas to be served on persons in New Zealand requiring attendance in Australia.

- Evidence may be obtained and submissions made from New Zealand by video-link or telephone.

- Where it may be appropriate to do so the Federal Court may conduct its proceedings in New Zealand.

- Proof of New Zealand judicial, official and public documents and acts will be facilitated.

Question:

Canada asked the representatives of Australia to indicate whether there had been support for or opposition to the removal of anti-dumping measures between Australia and New Zealand by particular industries in Australia.

Answer:

There had been both support for and opposition to the removal of anti-dumping measures under the Australia New Zealand Closer Economic Relations Trade Agreement ("CER"). One association representing an industry group, for example, proposed that anti-dumping measures should remain in force until a thorough review of the removal of anti-dumping measures had taken place.

Conversely, a major food company strongly endorsed the proposal for the abolition of anti-dumping measures between Australia and New Zealand.

Question:

Canada also asked how long had the removal of anti-dumping measures been under consideration before it was implemented.

Answer:

Three years; the Trade Agreement on the acceleration of free trade in goods (a protocol to CER) was signed in 1988 and implemented on 1 July 1991.
Question:

Canada further asked whether the amended competition laws had already been applied, whether there had ever been problems between New Zealand and Australia regarding questions of origin and whether Australia was also considering a possible removal of application of countervailing measures from trade with New Zealand.

Answer:

Assuming that the question regarding "origin" is concerned with anti-dumping and countervailing measures under CER the answer to all three questions is no.