

Comments on joint study issues paper

In this submission, I am not advocating any particular position, but rather seek to provide food for thought on some commonly held assumptions and beliefs about the trans-Tasman integration agenda. I have not covered everything, and while some of my questions may seem naive, I have included them deliberately to ensure thought is given to the issues they refer to.

I have just spent 6 months in Europe studying EU border arrangements as part of my PhD on the contribution of border management to the trans-Tasman goal of a Single Economic Market. My comments on your discussion paper therefore cover aspects of the EU system that might be relevant to the trans-Tasman. As I have yet to do field work for the trans-Tasman part of my research, my trans-Tasman comments are based on personal experience¹ and literature-based research.

Note that this is a personal submission, and the opinions are my own.

Goals of SEM

Your discussion paper helpfully addresses terminology, and uses the term “CER agenda”. You also note your uncertainty about the definitions of the terms currently used. This lack of uncertainty has impacts. The following discussion highlights some similarities and differences between the EU and the trans-Tasman terminology, and points to what some of those impacts might be.

The evolution of terms for trans-Tasman integration has not been dissimilar to that of the EU. Initially, there was the European Common Market. This then became the Internal Market, and in 2011, the European Single Market Act set out the future of the Single Market. The two terms ‘internal market’ and ‘single market’ now seem to be used interchangeably.

However, the goal for the Single Market in the EU is clearly expressed in the following statement as:

“... a single market in which the free movement of goods, services, capital and persons is ensured and in which European citizens are free to live, work, study and do business.”²

This statement is supported by four pillars:

1. Common customs tariff.
2. Free movement of goods, people, services and capital between member states.
3. The approximation of laws and the principle of mutual recognition
4. Competition policy

For the trans-Tasman, if we revisit the scope of CER, we see it covers free trade in goods, services, mutual recognition of occupations and goods and a free labour market. This is very similar to the EU’s

¹ As a senior policy official in the New Zealand Customs Service, involved in trans-Tasman border developments over the past few years.

² http://europa.eu/legislation_summaries/internal_market/index_en.htm accessed on 19 April 2012

four freedoms of goods, services, capital and persons even before the SEM agenda, which supports your decision to talk about a “CER agenda”.

However, the lack of clarity about terminology is not so much about interchangeable terms, but more about what is actually meant by the different terms. I consider that the absence of a single goal statement is a problem for making progress, although the SEM principles provide some guidance. For example, the ways Australia and New Zealand express the SEM goal are similar, but not the same. They emphasize different things – Australia’s is simply about removing regulatory duplication; New Zealand’s is more nuanced and has a clear rejection of an overarching infrastructure (I have bolded the key points). These differences must affect each country’s respective interests and priorities:

“ the Single Economic Market... has the objective of **allowing businesses** to conduct operations across the Tasman **without regulatory duplication.**” (Australian Department of Foreign Affairs and Trade website³) or, from the New Zealand perspective

“The SEM is **not** about **prescribing** a particular set of **institutional arrangements** to govern trans-Tasman markets, rather the work programme focuses on **identifying innovative actions** that will **reduce** trans-Tasman **discrimination and transaction costs**, and make it as **easy** for New Zealanders to do business in Australia as it is to do business in and around New Zealand. “ (New Zealand Ministry of Foreign Affairs and Trade⁴

The implications of agreeing to a single definition, and all that implies, are significant, I believe. It would enable the development of a strategy, with jointly agreed commitments of funding allocated to it. It could move the trans-Tasman agenda from a progressive mode of change to something more deliberate, implying dedicated effort and commitment from both sides over the medium to long term.

Such a change would require officials (and the private sector also, perhaps) to step beyond their national interests and work for the common trans-Tasman good. My research indicates that many EU officials are very committed to the “EU project” to which they bring a sense of European-ness in addition to their own national perspectives. This contributes to their ability to commit to the collective EU interest in their work.⁵

To what extent is there a trans-Tasman collectivity of a similar sort, and what is the impact of its absence? For example, do officials involved in the Joint Food Safety Standards Authority have a collective sense, or do they work mostly on finding compromises between their two national positions?

³ http://www.dfat.gov.au/geo/new_zealand/nz_country_brief.html accessed on 19 April 2012

⁴ <http://www.mfat.govt.nz/Foreign-Relations/Australia/0-CER-SEM.php> accessed on 19 April 2012

⁵ Officials are already working for their respective national interests, and would continue to do so, but a strategy and truly joint initiatives would also need officials who could look at the collective interest.

Rationale for further integration

You ask in your discussion paper about the rationale for further integration. Is the current economic imperative strong enough for a clear goal? Even the EU, with its infrastructure, has problems with impetus for its single market. A 2010 EU-commissioned report describes three challenges for the EU in progressing the Single Market (Monti, 2010, p. 6):

- Erosion of political and social support for market integration in Europe. Monti says that it is “seen with suspicion, fear and sometimes open hostility” by citizens and political leaders (at member state level), which he attributes to integration fatigue and reduced confidence in the market
- Uneven development ie there is unfinished business
- A sense of complacency – that the single market is ‘yesterday’s business’

The reference to citizens is instructive. In Europe, lack of buy-in is seen in part as a result of a ‘democratic deficit’, and also as a lack of citizens’ identification with Europe as a collective. Monti refers to complacency⁶. For citizens, the achievements have become so much a part of everyday life (such as freedom of travel in the Schengen area, freedom to work and study anywhere within the EU, and even the use of the common currency) that the EU’s role has become invisible, and the originating force for integration is remote from subsequent generations who have never experienced war⁷. When the achievements of existing integration become invisible, when knowledge of ‘how it was before’ is invisible⁸, the system can falter (Latour, 2007).

We can learn from this in the trans-Tasman. CER has been good for business, but are citizens aware of what it was like before, and the benefits, and do they care? Some of the benefits predated CER, such as freedom to live in work in each other’ countries (for Australian and New Zealand citizens), formally introduced in 1973 with the Trans-Tasman Free Travel Arrangement⁹. Does further trans-Tasman integration need buy-in from, and to be sold to, Australian and New Zealand citizens?

Does the SEM agenda require a strategy, for similar reasons to those set out in the Monti report? At the moment there is a list of outstanding issues that are being addressed in various way, but no real sense of impetus.

And where is the public discussion and debate? Perhaps the present study will generate some of that.

Governance

There is no doubt that the EU supranational structures provide strong governance and an integrating impetus that would not be otherwise possible. That impetus is evident in the discourse, and the

⁶ This is despite the many benefits and achievements since the creation of the internal market. These benefits are articulated by the EU in a report “The Internal Market – Ten Years without Frontiers”, accessed on 25/05/12 at http://ec.europa.eu/internal_market/10years/docs/workingdoc/workingdoc_en.pdf

⁷ Comment from a EU academic in an informal discussion

⁸ Such as the long queues people and business experienced at land borders prior to the removal of internal borders

⁹ and in fact have had a reduction in freedom since the reintroduction of passports in the 1980s

collective EU goals, strategies, principles, policies and law. In the world of border management, it has led to the removal of internal borders between member states for the movement of both goods and people, which have greatly facilitated trade and travel within the EU.

The system isn't perfect. It is complicated and with so many member states and a triangular decision-making process, the outcomes are uncertain, but the achievements have been far beyond what was originally envisaged in 1952¹⁰. However, even apart from the fiscal crisis, the EU is now facing issues of legitimacy. It acknowledges its structures seem remote from the citizens of the European Union – that there isn't enough democratic involvement in EU politics, nor a sense of European-ness with which to connect citizens with the EU. This disconnect is becoming more evident with the Eurocrisis, as citizens vote in their national elections against the politicians they perceive as having forced EU austerity upon them.¹¹

Despite this current uncertainty, the EU's achievements are impressive, and the EU has worked through previous crises. For example, European Union member states have been at peace for 60 years, and the EU has expanded from six to 27 members, and is still growing. How has it achieved this? How do 27 different member states with different cultures get to agreement? The answers lie not only in the EU structures, but also in the techniques and instruments they have constructed, such as comitology, and the technical and brokering role of the European Commission. These methods have prompted me to question some of the trans-Tasman assumptions about integration structures, as I see how much more flexible, adaptive and nuanced EU structures and decision-making are than they first appear.

For example, infrastructural arrangements in the EU are not all or nothing. A case of particular interest, because it is an island nation and its geographic relationship to Europe is similar to New Zealand's geographic relationship with Australia, is the UK. The UK is a member of the European Union, the EU Customs Union, the European Economic Area, and the Council of Europe. It is not a member of Schengen and it is not a member of the Eurozone. So the UK is both in and out of the EU. In practice, this means the UK fully participates in the Customs Union, which is strongly supported by government and business alike, but has an opt-in arrangement for customs law enforcement matters, where it can choose whether or not to come under EU competence, on an issue by issue basis; the UK is not a member of Schengen, and yet seeks a seat on Schengen working groups so it can influence policies that might affect it.

In the trans-Tasman situation, as you have indicated, there is an asymmetry in size and influence between Australia and New Zealand which situates New Zealand in particular differently from smaller states in the EU, which can join together to create a collective influence. There is also the physical

¹⁰Initially it was economic, and the creation of a political infrastructure. There were six members and the fall of the Soviet bloc was not in sight. Details of the objectives are available on the EU website at http://europa.eu/legislation_summaries/institutional_affairs/treaties/treaties_eec_en.htm

¹¹ Eg in May 2012, there was the ousting of President Sarkozy in France, the rejection in the Greek election of the sitting centrist party, and the rejection of Merkel's party in German provincial elections.

barrier of the Tasman Sea. And to date our two countries have dealt with this by agreeing on full integration in a very few areas and only partial or no integration in others?¹² Are there options we have discounted because they were perceived to be too different from our situation, for example, EU instruments such as cross-border macro-regions? Could not New Zealand join together with States of Australia to create collective influence on the Australian Federal Government? Are there other countries who, if serious integration was underway, could be interested in joining the collective? Do we need a trans-Tasman neighbourhood policy along the lines of the EU's neighbourhood policy?¹³

Funding

The EU's supranational structures impose disciplines on member states, but also give things back. One of these is funding. In the border context, a proportion of VAT collected by customs administrations is used to fund development initiatives, such as IT systems, changes to practices, training, capacity building for new or pre-accession member states. EU and member state officials I talked to all mentioned the importance of this funding to their ability to contribute to the collective work.

There is no equivalent in the border area in the trans-Tasman. I don't know about other areas, but border developments depend on each government assigning funding in competition with its other national priorities, and there is often uncertainty from one year to the next about its continued availability.

Integration

Integration discourse

It is interesting that the respective trans-Tasman goal statements avoid the term 'integration'— perhaps it is political caution; perhaps it is a communication, 'plain English' device. I would go further, in suggesting that the New Zealand version is talking as much about not integrating as integrating. The issue of New Zealand sovereignty is always a sensitive one, as demonstrated by the opposition to the joint Australia-New Zealand Therapeutics Agency in 2005-6¹⁴.

In other words, when New Zealand gets prickly or sensitive with Australia about New Zealand sovereignty, as in the definition of SEM, is there an element of re-making the decision not to federate with Australia? This cartoon from 1900 is a useful reminder.

¹² The range of different arrangements are well set out in Australian Government Department of Finance and Administration, & New Zealand Ministry of Economic Development. (Undated). *Arrangements for facilitating trans-Tasman government institutional co-operation*. Carlton, Victoria: Australia and New Zealand School of Government.

¹³ One could argue that we do, via the Pacific Islands Forum, but the way in which New Zealand and Australia work together in this arena is more informal.

¹⁴ Colin James articulates the issues in his blog, accessed on 25 May 2012 at http://www.colinjames.co.nz/herald/Herald_2006/BizHerald_col_06Aug09.htm



HOW WE SEE IT

THE OGRE: "Come into these arms." NEW ZEALAND: "Nay sir, those arms bear chains."

The New South Wales Premier speaking at a Federal League meeting said that as the Colonies were on the eve of federation it was proper for Great Britain to defer linking the South Sea Islands to New Zealand. He also believed that the sentiment of the people of New Zealand would force that Government into the Australian Federation.

New Zealand Graphic, Auckland, Saturday, October 20, 1900. Vol. XXV. - No. XVI. Cartoonist: Scarr.

Source: (Mein Smith, Hempenstall, & Goldfinch, 2008)

So maybe New Zealand official language needs an overhaul. Or maybe there needs to be more public debate challenging our need to constantly reiterate our desire to stay separated from Australia, and the impact that has on our collective work with them.

For example, the discussion paper looks at economic integration from a technical perspective. The section on the extent of integration in the discussion paper (pp18-20) uses language like "unduly compromising national sovereignty". I suggest that this language is misleading, because sovereignty isn't just one shape and size, even within one country, and governments signing up to integrative measures do so as sovereign authorities.

In the EU, there are many different levels of integration. The EU has competence over certain areas, partial competence in others and none in others. Even for customs matters, the area of law enforcement is still largely handled at an intergovernmental level, not at the EU level. So there is not *a priori* a complete trade-off between integration and independent sovereignty.

You ask in Q1-4 about barriers to doing business with Australia. These questions address some aspects of 'negative integration'. Scharpf (2010) suggests that the supremacy of EU law, adjudged by the European Court of Justice in the 1960s, creates the ability of the EU to maintain and extend the negative integration side of things (another aspect of what a supranational structure can provide).

Is there enough 'positive integration' in the trans-Tasman discourse? Scharpf defines positive integration in the EU context as "common European policies to shape the conditions under which markets operate." (Scharpf, 2010, p. 91). He acknowledges the difficulty of getting agreement between member states in this area, as it is outside the competence of the EU.

The rhetoric of trans-Tasman SEM has been largely confined to the ‘economic’ basket, but in examining the effects and future prospects, I would suggest a wider view is necessary. Integration can cause spillover effects – the drivers for further integration that come from integrating in the first place. We have seen this in the development of CER. Some of the spillover effects are social, and others are political. How is it that New Zealand now participates in relevant aspects of COAG? Would that have happened without economic integration? Is that economic or is it political? What about the New Zealand diaspora in Australia, who may have moved there for economic reasons but are now participating fully in Australian society, and expect to have all the benefits of being Australians as well as New Zealanders¹⁵? Is that economic or is it social?

Border integration

In the border context, despite structural differences (ie the policy and practices of managing the border are separate for goods and people, whereas in New Zealand and Australia, the respective customs administrations manage the flows of both goods and people), in both regions the functions of border administrations, and why they do them, are very similar.

For the EU, concepts of integration are largely in the ‘of course’ basket in the area of border management. The objective of the internal market has resulted in the removal of internal borders and the strengthening of the common external border around the EU member states.¹⁶ Integration has evolved over time. At the start of the EU in 1952, there was just the Customs Union¹⁷. Removal of the internal borders for the movement of goods was achieved as recently as 1993. For people movements, only six countries signed up to Schengen Agreement initially. It is now a core part of the EU to which new members states have to be prepared to sign up.¹⁸ The exception is law enforcement, where member states still have discretion in a number of areas.

For the trans-Tasman border management, the concept of integration is more in the ‘of course not’ basket¹⁹. There is no integration of borders. We can argue quite cogently as to why border checks remain – the Tasman Sea is a different control environment from a land border. One way of looking at it is that we can control our borders, so we should, especially for biosecurity reasons. Also, the movement of people is primarily by air, which has aviation security requirements, so trans-Tasman travel is never going to be the same as driving or catching the train from Brussels to Paris.

¹⁵ While eventually granted in February 2011, Queensland state assistance for New Zealanders after the Queensland floods was not automatically available. For example, see <http://canadaupdates.com/content/flood-relief-missing-new-zealanders-australia-15999.html>

¹⁶ The borders for goods and people are different because of different membership of Schengen from the Customs Union

¹⁷ Removal of internal borders is not normally a feature of customs unions.

¹⁸ The EU has not yet allowed new member states Romania and Bulgaria to join the Schengen agreement, and existing members Ireland and UK declined to sign up to the Schengen Agreement at its beginning.

¹⁹ A possible exception is the Australian trial to integrate Australian SmartGate processes with New Zealand’s, although even some of this work is not joint.

Even so, there is also very little joint work on creating a common policy platform²⁰. There is a lot of alignment, of professional connection, of cooperation, of sharing of developments, there is daily contact between New Zealand and Australian officials, but can we say there is a joint development agenda where both sides develop joint policy together? Not really, and not easily. Why not?²¹ Should there be?

Conclusion

The questions in the discussion paper suggest that the two Productivity Commissions are looking at trans-Tasman economic integration broadly, which I support. However, I maintain that it is a false distinction to separate economic from political and social. That separation can be useful to achieve certain objectives, but at some point, those other factors need to be acknowledged and addressed.

As stated in my introduction, I have attempted to present some relevant EU perspectives to help break through some of our preconceived notions about what is appropriate or possible in the trans-Tasman. I started with the SEM goals, and highlighted how the two countries characterize SEM differently, and the implications of changing that. I addressed governance, and the value of a champion body to drive and fund a collective agenda. I looked at integration discourse, suggesting New Zealand has a persisting 'separating' discourse, and the impact of that in the border management domain.

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²⁰ Joint work on a trans-Tasman travel 'blueprint' is underway, but is still not collective in the sense of the EU approach.

²¹ This question is highly relevant to my PhD research.

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