

31<sup>st</sup> May 2012

## **A Submission to the Joint Study by the Australian Productivity Commission and the New Zealand Productivity Commission Strengthening Economic Relations between Australia and New Zealand**

**Greg Mahony**, Assistant Professor of Economics, Faculty of Business, Government and Law, University of Canberra and Visiting Fellow at the PPI at ACU.

**Dr Chris Sadleir**, Assistant Professor Public Administration, Faculty of Business, Government and Law, University of Canberra.

---

We appreciate the opportunity to contribute to the Study.

We make two introductory points:

- That the inquiry might usefully portray integration as a process driven by globalisation rather than a solely regional public policy option where there are significant choices.
- That limits to integration suggest barriers that are yet to be overcome such as that suggested by any lack of price convergence. Many of these obstacles, behind or beyond the border, are often related to national approaches to the implementation of regulatory systems and reflect significant social and political norms. Such norms shape regulation itself.

### **Opening remarks**

It appears to us that the task of the Commissions is a subset of a wider debate. That is research into government regulations, the institutions of government and the changes for nation states adapting in the face of globalisation. An interest in such adaptation has led to our recent work which looks at the role of foreign direct investment (FDI) and its regulation especially in the Trans-Tasman relationship (Sadleir and Mahony 2009; Mahony and Sadleir 2011). We see the regulatory frameworks for FDI as an exemplar for understanding how bureaucratic capacity is a necessary component of state regulatory behaviour. Our work has focused on how wider social norms interact with governmental capacities to influence the number and type of regulations.

Experience with processes of globalisation shows a complex patchwork of responses from nation states to greater economic integration. Observations from human geographers and sociologists challenge notions of an easy convergence of institutions to accommodate greater openness to increased trans-border flows. As a consequence deep economic integration between nations remains limited in many senses, even within the EU or the more recent experiments with regional integration such as ASEAN or APEC.

We examine the case of foreign direct investment (FDI) regulation as an exemplar of the impact of these phenomena. The institutions on both sides of the Tasman are similar as are the regulations but the impact of each is noticeably different. This is highlighted by the current debate regarding investment in agricultural land on both sides of the Tasman.

Our examination of the regulation of FDI within ANZERTA reveals factors which appear to be important in shaping the regulatory framework. We identified social norms that mediate regulatory regimes; these help to explain the emergence of 'sand traps' at the border of the Australian New Zealand partnership (Mahony and Sadleir 2011). An understanding of such social and political norms advances understanding of regionalisation.

The increased openness of both economies offers significant challenges to the governments and the public sector. Part of the legacy and legitimacy challenge is public service capacity building:

- This includes legislation and rules;
- Adapting to greater internationalisation (i.e. creating and supporting a greater number and range of links with overseas partners in government, private sector and not for profits (Thatcher 2009) and this involves such issues as:
  - o Databases with information on legislation and rules and contacts. Currently there is no unified 'register' of Trans-Tasman related contacts, engagements and linkages between the two countries. Such a register might include the many business and other non-government and civil society links.
  - o Seeking opportunities for harmonisation of rules and legislation. While this may be an aim in the Single Economic Market (SEM) process it is currently expressed in terms of 'outcomes' rather than processes. In many areas it may well prove insurmountable or very costly to assure the implementation of suitable outcomes with disparate institutions on either side of the Tasman.

## Our argument

ANZERTA has been based on the general acceptance, with a few notable exceptions, of open trade between Australia and New Zealand. The inquiry will distinguish between 'at the border' and 'behind the border' barriers. The latter are worth highlighting because they show the kinds of factors which limit integration. Norms play a major role in shaping regulation. However, changes in norms can only occur gradually over time. For example in the case of

the Australia-New Zealand relationship, despite similar cultures there are significant differences. We have used the example of FDI flows, policies and institutions to illustrate this and we show (Mahony and Sadleir 2011) that these are reflected in distinct sets of norms on either side of the border.

At the same time there are continuing opportunities to share experience from the other side of the border and this may or may not promote integration. For example NZ has in place a land management system which recognises the rights of the Maori people and carefully screens applications for the foreign acquisition of agricultural land. New Zealand stands in contrast to the Australian regime of contested indigenous rights. Very recently some the members of the Australian Senate have become interested in how rules similar to those in NZ might operate to protect farming interests in Australia in the face of increasing foreign interests in the acquisition of agricultural land (Senate committee 2011).

### **Is the focus of the Study too narrow?**

The Issues Paper focuses on and assumes the need to remove those things restricting greater price convergence as a useful lever for economic reforms on both side of the Tasman. However we are suggesting that it is also worth investigating 'at the border' and 'behind the border experience' which acknowledges the interaction between culture and markets, and recognises markets as one institution among many that affect capacities for stronger regional convergence.

There appears to be opportunities to use of a range of policy instruments beyond those that focus on coordination through ministerial councils. Certainly ministerial level engagement provides leadership and a semblance of co-ordination. However, it is an open question whether these provide the necessary degree of capacity for change. Do they offer the appropriate collective response to changes in international markets such as new patterns of business investment? E.g. increased investment in natural resources and agriculture.

We point to the need to enable engagement and innovation in agency to agency engagement across the border in the area of service delivery (such as in the regulation of FDI). In the case of FDI regulation each of the agencies on either side of the border illustrates a capacity to adapt to change occurring within their own country and its engagement with change in international business flows. Furthermore such agencies act as the focal point for networks of regulatory activity around FDI. Governments need to promote greater co-ordination between agencies and their wider domestic networks to ensure where possible stronger harmonisation of rules on FDI activity.

More broadly we agree with the Issues Papers view that the Trans-Tasman relationship cannot be seen in isolation. There are wider implications of the cultural and institutional arrangements, and especially capacity, to engage successfully with transformations in regional trading groupings such as ASEAN and APEC and the emergence of new groupings such as the TPP.

In this note we have only very briefly sketched several issues that Commissioners for the Joint Study may wish to consider further. We are happy to discuss our submission at their convenience.

### **Brief responses to several questions in the Issues Paper:**

*Q7. Has the CER agenda to date focused on the highest priority areas?*

Looking at the past we agree but the future should give more attention to the regulation of FDI and the 'identification of the limits to integration' and processes to ameliorate these.

*Q 8 Are the principles underpinning the concept of a Single Economic Market sound? How could they be improved?*

We question whether 'Outcomes' are the appropriate focus. It invites excessive discussion of minutiae related to such matters as transactions costs and compliance rather than broader principles. This is especially the case while important differences between Trans-Tasman institutions and agencies remain.

*Q 9 Are there adequate processes in place for evaluating reforms that have been implemented? How could they be improved?*

In the case of the regulation of FDI that we have studied it appears the answer must be a clear no. It is the implementation of the investment rules that matters as least as much as the broad principles. We know little of investment that might be deterred by the screening processes in Australia and New Zealand. Political skirmishes associated with concerns with foreign acquisition of agricultural land continue in both countries. As a first step the offices of the FIRB and OIO should engage in an ongoing dialogue and joint training at the administrative level. Potential conflict between ANZCERTA and other bilateral treaty obligations need exploration. Perhaps a joint committee of the Treasuries of both countries could act as a facilitator and mediator in regard to coordination of foreign investment.

*Q 14 What is the appropriate 'end-point' to Trans-Tasman integration?*

In a narrow economic sense any 'end-point' such as price equalisation or uniformity of rates of return on capital is best seen as a methodological device against which we measure current outcomes. These will gain little traction in broad public policy debates.

Politically it appears unwise to foreshadow any particular 'end-point' as its attainment depends on political contingencies. Any end-point that was decided upon would invite significant opposition. This is only to be expected as part of an on-going process of integration that both affects and is accompanied by evolving social norms.

*Q16 What would be the advantages and disadvantages of implementing a currency union between Australia and New Zealand?*

The disadvantages are too evident in the current crisis in the Euro zone. A single currency should not be considered while there remains a wide disparity in economic performance in terms of income and productivity unless it becomes politically feasible to embrace substantial fiscal and financial coordination at the same time. This seems unlikely.

*Q17 What emphasis should be given to trans-Tasman integration policy relative to broader regional and multilateral initiatives, and to unilateral action?*

For Australia surely this question needs to be assessed in the context of attention to the 'Asian Century'. New Zealand is very concerned with the continuing income gap and is struggling with acceptance of increased investment from Asia. Any strategy should be subject to broad Trans-Tasman debate and dialogue. How open is the Trans-Tasman relationship to openness?

*Q18 Should trans-Tasman integration policy be designed so as to complement broader initiatives? Would there be net benefits in multilateralising some elements?*

Yes and Yes.

However, at least in the case of FDI we need to recognise that we are a long way from this possibility. This is in part due to the distinct national regimes operating on both sides of the Tasman, but also the ongoing international debate about how best to foster FDI flows.

*Q23 Would this organising framework and high level assessment be likely to identify the potential areas for reform that offer the most significant gains?*

In the area of FDI we do not believe such high level assessment of itself will identify such areas for reform.

Q24 *If not, what alternative frameworks might be used?*

In our work on FDI and Trans-Tasman regulatory frameworks we adopt an inductive approach. As illustrated in the table below the emphasis is on institutions and their capacities as demonstrating and operationalising important social norms and values (Mahony and Sadleir 2012; Mahony and Sadleir 2011). Identifying and acknowledging these emergent categories of norms allow us to explore differences in regulatory regimes and their efficacy.

**Table 1**  
**A Framework for the Comparison of the Tone and Substance of FDI Regulation in Australia and New Zealand**

					<u>NORMS</u>				
					Openness	Indigeniety	Identity	Equity	
<b>Australian and New Zealand FDI regulations:</b>  <b><u>Comparisons</u></b>					<i>Security</i>	<i>Land rights</i>	<i>Languages of regulation</i>	<i>Government administrative practice</i>	
					<i>National Interest:</i>	<i>Rents to native title</i>	<i>Human rights issues</i>	<i>Legal systems</i>	
					<i>Nationalism:</i>		<i>'Fair go'</i>	<i>Company laws</i>	
					<i>National autonomy</i>		<i>Direct restrictions - national identity</i>	<i>Management and business practices</i>	

Sources:

- 1 Foreign Investment Review Board Annual Reports, (1995-96 to 2008-09); Sadleir and Mahony 2009; Sadleir 2007
- 2 Overseas of Investment Office, Land Information New Zealand, <http://www.linz.govt.nz/overseas-investment/>; Ministry of Foreign Affairs and Trade, The Australia – New Zealand Closer Economic Relationship, 2005, www.mfat.govt.nz
- 3 Department of Foreign Affairs, Australian Government, CER Joint Ministerial communiqués, various 2003 – 2010.
- 4 Lloyd 1991, 2002; Akoorie 1996; Ministry of Economic Development Review of Investment New Zealand 2007.

Q32 *In which areas (if any) would the adoption of a single trans-Tasman regulator yield net benefits (through more efficient delivery of the regulatory function and/or lower costs for regulated businesses)?*

A single regulator should be considered for inward FDI as linkages between the two countries grow.

*Q36 What are the most important considerations regarding the sequencing and timing of integration policy reforms?*

Perhaps it is less of a question of sequencing at this stage than rejuvenating the process of ANZCERTA at both the public level and that of business and other forums.

*Q37 Are the current governance frameworks around the CER agenda adequate? If not, how could they be improved?*

The formal governance frameworks, beyond the highest levels are not obvious to the outside observer. If the CER agenda is relying on processes of more and more widely diffused relationships between government agencies, business and communities then these might be articulated and knowledge of the processes disseminated. As suggested earlier in this note, as a starting point there could be a register constructed and maintained of all Trans-Tasman engagement.

*Greg Mahony & Chris Sadleir*

## References

- Mahony, G and Sadleir, C (2011) "Metagovernance and the Role of Cultural Norms in the Regulation of Foreign Direct Investment: Trans-Tasman FDI Regimes", *Asia Pacific Journal of Public Administration*, 33 (1), 77-92
- Mahony, G, Sadleir, C. (2012) 'Exploring Limits to Integration', The Asia-Pacific Economic and Business History Conference, ANU Canberra, February.
- Sadleir, C and Mahony, G (2009) *Institutional Challenges and Response In Regulating Foreign Direct Investment to Australia*, Economic Papers Vol 28, No 4 337-345
- Sadleir, C., Mahony, G., and Rafi, B (2011) *Foregrounding Government Institutional Capacity in the case of FDI to 5 ASEAN countries*. Papers and Proceedings of AIB South East Asia Regional Conference, 1-3 December 2011, Taipei, Taiwan.
- Senate Committee (2011) The Senate Legislative Committee Inquiry into the Foreign Acquisition of Agricultural Land, Canberra.



Thatcher, M. (2009) Internationalization and the state: reforming regulatory institutions, paper presented at the Workshop on Mapping State Administrations: Towards a Common European Research Agenda, Dublin, March see <http://ideas.repec.org/p/ucd/wpaper/200914.html>

[www.canberra.edu.au](http://www.canberra.edu.au)

---

Postal Address:

University of Canberra ACT 2601 Australia

Location:

University Drive Bruce ACT

---

Australian Government Higher Education Registered

Provider Number (CRICOS): 00212K

Greg Mahony

Visiting Fellow Public Policy Institute

Australian Catholic University Limited, ABN 15 050 192 660

Canberra Campus (Signadou), 127 Phillip Avenue, Watson, ACT 2602 Australia

PO Box 256 Dickson, ACT 2602 Australia

CRICOS registered provider: 00004G, 00112C, 00873F, 00885B

Telephone: 02 6209 1276

Fax: 02 6209 1105

Website: [www.acu.edu.au/ppi](http://www.acu.edu.au/ppi)