ALASTAIR CAMERON

THE PUBLIC LAW IMPLICATIONS OF CER, CEP AND THE WTO AGREEMENTS: NEW ZEALAND'S FREE TRADE AGREEMENTS AS AN ILLUSTRATION OF NEW ZEALAND'S STATE SOVEREIGNTY REDEFINED IN AN INTERCONNECTED WORLD

LLB(HONS) RESEARCH PAPER
LAWS505 PUBLIC LAW

LAW FACULTY
VICTORIA UNIVERSITY OF WELLINGTON

2001

TABLE OF CONTENTS

ABSTRACT

This paper begins by introducing the idea that State sovereignty is an organising principle that provides the context for the exercise of public power, but that it is being challenged by the forces of globalisation and replaced by a new regime of global governance. It suggests that New Zealand's free trade agreements illustrate how New Zealand is bound into the new system of global governance, and how New Zealand's State sovereignty has been redefined within that system.

Part II summarises the concept of sovereignty and, more specifically, the traditional notion of State sovereignty. It then describes how globalisation is challenging the traditional notion of State sovereignty. Part III deals with various provisions of New Zealand's bilateral and multilateral free trade agreements to show how they depict New Zealand's place within the web of global economic governance, and how they represent a redefinition of New Zealand's sovereignty.

Part IV outlines some of the political realities that surround free trade and global governance to illustrate that even though New Zealand retains the right to unilaterally withdraw from the international treaties it has signed, it is politically prohibited from doing so. It is these political realities that ultimately mean New Zealand has surrendered aspects of its State sovereignty into the international arena.

The paper concludes by making some preliminary judgements about whether the redefinition of State sovereignty in a globalised world is positive or negative. While not lamenting the passing of State sovereignty as the context for the exercise of public power per se, it does suggest that there are serious problems associated with the current model of global governance that detract from the legitimacy of the system.

Word Length

The text of this paper (excluding contents page, footnotes, bibliography and annexures) comprises approximately 13,882 words.

I INTRODUCTION

Public law is about power. It deals with who makes public decisions, how they make them, and how they can be influenced in the content of their decisions.[1] Therefore, a concept central to public law and public decision-making is that of "sovereignty", because it conveys the notion of supreme power. State sovereignty – the idea that States have exclusive and absolute power to determine their own domestic affairs – has been the organising principle for the exercise of power since the mid-fifteenth century. It provided the context for the exercise of power by delimiting who could make decisions and who could influence them. In the twenty-first century, however, the traditional notion of State sovereignty is under attack. The phenomenon known as "globalisation" is said to present a challenge to State sovereignty as the ultimate organising principle at the international level. Whereas according to the traditional principle of State sovereignty States had absolute and exclusive domain over their domestic affairs, globalisation has led to a new era of "global governance" in which aspects of States' internal affairs are determined by actors beyond their borders.

There are vast quantities of academic literature devoted to explaining how States are no longer free to determine their own domestic affairs in isolation from the outside world.[2] The basic contention of many authors is that in an increasingly globalised world, decision-making is dispersed among a variety of different entities, thereby doing away with the State's monopoly on power.[3] This is not to say that States have become irrelevant or powerless; only that they are no longer the exclusive determinants of their own domestic affairs. Part II of this paper is devoted to outlining the traditional notion of State sovereignty that

---

[1] See GWR Palmer "The New Public Law: Its Province and Function" (1991) 22 VUWLR 8.

[2] One example is the Indiana Journal of Global Legal Studies, which was founded in 1993 to focus on the intersection of global and domestic legal regimes, markets, politics, technologies and cultures.

[3] For example, see David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, Stanford (Cal), 1995); Jane Kelsey *Reclaiming the Future: New Zealand and the Global Economy* (Bridget Williams Books, Wellington, 1999); Daniel K Tarullo "Law and Governance in a Global Economy" (1999) 93 ASIL Proceedings 105; Michael Hart "The WTO and the Political Economy of Globalisation" (1999) 33 Journal of World Trade 75.

ascribed absolute and exclusive power to States, and then explaining how a convergence of forces has caused a rethink of that notion.

There are many forces behind globalisation, and the ways in which it impacts upon States are varied. One major force is the push towards a global economy, in which private firms transcend national borders, and goods, services and capital investment flow freely between States. New Zealand's free trade agreements help define New Zealand's place in the newly globalising world, in particular the new web of global economic governance. Part III examines the Agreements because they impose binding rules and obligations, thereby establishing a comprehensive *legal* regime that ties New Zealand into the system of global economic governance, giving actors beyond New Zealand's borders influence over New Zealand's law and policy. In establishing such a regime, the Agreements go to the heart of New Zealand's public law: they directly affect how power is exercised in New Zealand. Part III concludes that New Zealand's free trade agreements provide a clear illustration of how New Zealand no longer enjoys an exclusive right to determine its own internal law. The Agreements thus represent the redefinition of New Zealand's State sovereignty brought about by the wider process of globalisation.

When discussing globalisation, and in particular its economic aspects, it is important to consider the realities of the world's political economy. For it is these realities that arguably lock States into the new regime of global economic governance, and may in fact "force" States to relinquish aspects of their sovereignty to the international arena. Part IV outlines these realities and illustrates how they do indeed lock New Zealand into its free trade agreements.

It should be noted that this paper aims to illustrate how New Zealand's free trade agreements play a significant part in an evolving redefinition of New Zealand's sovereignty. It does not attempt to extol or deny the virtues of free trade per se. Such a discussion would take the paper out of the realm of law and into complicated arguments about the economic and social impact of free trade. This lack of attention is not to deny the importance of such discussion and debate, but to recognise that this paper is essentially about the impact of New

Zealand's free trade agreements on New Zealand's lawmaking powers and processes.

Similarly, the paper does not attempt to pass any definitive judgement upon whether any redefinition of New Zealand's State sovereignty is a positive or negative thing. Having said that, rather than simply accepting globalisation and the accompanying redefinition of State sovereignty has inevitable, it does suggest that the new regime of global governance may contain the seeds of a "new world order" that is worth embracing. It points out that the current model of global governance suffers from some serious difficulties, and that these must be overcome to give the new regime a much greater degree of legitimacy and sustainability.

II TRADITIONAL STATE SOVEREIGNTY AND HOW GLOBALISATION IS REDEFINING IT

A The Concept of Sovereignty

Black's Law Dictionary defines "sovereignty" as:[4]

> The supreme, absolute and uncontrollable power by which any independent State is governed; supreme political authority; the supreme will; paramount control of the constitution and frame of government and its administration; the self-sufficient source of political power, from which all specific political powers are derived; *the international independence of a State, combined with the right and power of regulating its internal affairs without foreign dictation*; also a political society, or State, which is sovereign and independent.

This modern definition reflects many years of thinking about the nature and scope of sovereignty. In 1576, Jean Bodin developed what is commonly regarded as the first Statement of the modern theory of sovereignty.[5]

---

[4] Joseph R Nolan and Jacqueline M Nolan-Haley (eds) *Black's Law Dictionary* (6 ed, West Publishing Co, St Paul (Minn), 1990) 1396 (emphasis added).

[5] David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, Stanford (Cal), 1995) 39.

Sovereignty, he said, was the untrammeled and undivided power of States to make laws, and the right to impose those laws on all subjects regardless of their consent. Crucial to this was the fact that the sovereign could not be subject to the commands of another, and that the only limits on sovereignty were morals and religion, and the need to respect the laws of God, nature and custom.[6] Seventy-five years after Bodin, Thomas Hobbes considered the nature of sovereignty in his famous work, *The Leviathan.*[7] In Hobbes' opinion, it was in individuals' interests to surrender their rights of self-government to the State, for only the State could create effective political rule and provide individuals with security and peace in the long term. In order to deliver security and peace, the State's sovereignty had to be self-perpetuating, undivided and ultimately absolute. Within its territory, therefore, the State could use whatever laws, institutions and coercive powers were required to deliver security and peace. The only limit on this power is that the State had no warrant to injure individuals themselves, or harm the bases of their material wellbeing.

The theories of Bodin and Hobbes vest sovereignty within the State itself, even though the State exercises its power for the benefit of its subjects. Later theorists such as John Locke and Jean-Jacques Rousseau argued that sovereignty is ultimately vested in the people themselves.[8] Their arguments, which were the beginnings of the modern conception of popular sovereignty,[9] stipulated that supreme power was the inalienable right of the people, and while a government enjoyed political authority, it was a delegated authority held on trust.[10] Thus the notion of "consent" became an important part of sovereignty: that those subjected to the rule of the State had to agree to their subjection. Of course this

---

[6] Jean Bodin *Six Livres de la Republique* (1576) in Held, above, 40.
[7] Thomas Hobbes *The Leviathan* (1651) in Held, above, 41.
[8] John Locke *The Two Treatises of Government* (1690); Jean-Jacques Rousseau *Social Contract* (1762) in Held, above, 42-45.
[9] David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, Stanford (Cal), 1995) 42.
[10] Rousseau actually went further by contending that sovereignty originates in the people and ought to remain there. The very essence of sovereignty, according to Rousseau, is the creation, authorisation and enactment of the law according to the standards and requirements of the common good. Only citizens themselves can articulate the common good through public discourse, deliberation and agreement. Citizens can only be fully obligated to a system of laws and regulations they have prescribed for themselves with the general good in mind: see Rousseau *Social Contract* (1762) in Held, above, 44-45.

early notion of consent sowed the seeds for universal suffrage and the modern theories of democracy.[11]

A common thread of these theories about State sovereignty is that a State has, within its territory, illimitable and indivisible power to make laws and enforce them over the people within that State. Or to put it another way, States are regarded as independent in all matters of internal politics, and the political community within a State is free to determine its own direction and policies without interference from other powers.[12] It should perhaps be noted at this point that sovereignty has both an internal and external dimension. The internal dimension of sovereignty involves the belief that a certain political body is rightly established as a sovereign within a particular society. Different societies have varying arrangements for the exercise of sovereignty within their territory. In New Zealand, for example, Parliament is said to be sovereign, although political realities and the other two branches of government – the Executive and Judiciary – act as a check upon its power. In countries with federal systems of government, such as Australia, Canada and the United States, internal sovereignty is divided between the institutions of the federal government and the institutions of the state or provincial governments. The external dimension of sovereignty involves the claim that there is no authority above and beyond the sovereign State. It is this external dimension that is the focus of this paper, for the paper's contention is that there is now authority above and beyond the sovereign State of New Zealand. New Zealand's State sovereignty has, in other words, undergone a redefinition from the traditional notion as espoused by theorists such as Bodin, Hobbes, Locke and Rousseau.

B The Traditional Notion of External Sovereignty

The Peace of Westphalia 1648 is generally regarded as the beginning of the modern State system, of which the traditional notion of State sovereignty is the cornerstone. That treaty established unequivocally that each State has

---

[11] Andrew Heywood *Political Ideologies: An Introduction* (MacMillan Education Limited, London, 1992) 271.

supreme authority over all matters that fall within its territorial domain. Three crucial norms stem from this central principle. First, all sovereign States have equal rights. Second, the territorial integrity and political independence of sovereign States is inviolable. And third, intervention in the domestic affairs of sovereign States is not permissible. These principles form part of the corpus of public international law and are well recognised by domestic courts, international courts and arbitrations, and international treaties. In 1812, for instance, the United States Supreme Court noted that the jurisdiction of a nation within its own territory is necessarily exclusive and absolute.[13] In 1928 the notable international lawyer and arbitrator, Max Huber, said:[14]

> Sovereignty in the relations between States signifies independence. Independence in regard to a portion of the globe is the right to exercise therein, to the exclusion of any other State, the functions of a State. The development of the national organisation of States during the last few centuries and, as a corollary, the development of international law, have established this principle of the exclusive competence of the State in regard to its own territory in such a way as to make it the point of departure in settling most questions that concern international relations...

The Charter of the United Nations recognises State sovereignty and confirms that all States are equal, that no State shall use force against the territorial integrity or political independence of another State, and that nothing in the Charter authorises any interference in the domestic affairs of any State.[15] More recently, the United Nations General Assembly has affirmed the same principles.[16]

In spite of some of the rhetoric expressed above, sovereign States have never had absolute power to perform whatever actions they please within their

---

[12] David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, Stanford (Cal), 1995) 100.
[13] *The Schooner Exchange v McFaddon* (1812) 7 Cranch 116, per Marshall CJ.
[14] *Island of Palmas Case (Netherlands v US)* (1928) 2 RIAA 829.
[15] Charter of the United Nations (26 June 1945) 145 UKFS 805, arts 2(1), 2(4), 2(7) (Charter of the United Nations).
[16] 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, UNGA Res 2625(XXV); 1974 Resolution on the Definition of Aggression, UNGA Res 3314(XXIX).

territory. The most obvious restriction on State sovereignty, and one already identified by the United Nations Charter, is that States cannot exercise their sovereign powers to impinge upon the sovereignty or territorial integrity of other States.[17] This point was clearly elaborated by the Permanent Court of International Justice in the famous *Lotus Case* of 1927:[18]

> Now the first and foremost restriction imposed by international law upon a State is that – failing the existence of a permissible rule to the contrary – it may not exercise its power in any form in the territory of another State. In this sense jurisdiction is certainly territorial; it cannot be exercised by a State outside its territory except by virtue of a permissive rule derived from international custom or from a convention.[19]

The same point is widely recognised in later international law cases and arbitrations, international treaties and United Nations General Assembly resolutions.[20] The second major exception to the principle that a State's power is exclusive and absolute within its territory is that States may voluntarily impose limitations on their own domestic sovereignty.[21] States usually do this by becoming parties to international treaties that impose certain limits and/or obligations in respect of their domestic affairs. Then, under the basic international law norm of pacta sunt servanda, States uphold and implement the provisions of the treaties they sign. For example, about 200 of New Zealand's 600-700 statutes are affected in one way or another by New Zealand's international law obligations.[22] International law is replete with examples where sovereignty of the nation-state has been subordinated to some external set of

---

[17] Charter of the United Nations, art 2(4).

[18] *The Lotus Case (France v Turkey)* (1927) PCIJ Reports, Series A, No 10, 3.

[19] An example of a convention by which each party permits the other parties to exercise jurisdiction within their territory is the North American Treaty Organisation (NATO) Status of Forces Agreement 1951, by which each party is permitted to exercise jurisdiction over its forces stationed in the territory of the other parties.

[20] Charter of the United Nations, art 2(4); *Island of Palmas Case* (Netherlands v US) (1928) 2 RIAA 829; *Trail Smelter Case* (1938-1941) 3 RIAA 1905; 1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, UNGA Res 2625(XXV); 1974 Resolution on the Definition of Aggression, UNGA Res 3314(XXIX).

[21] In *The Schooner Exchange v McFaddon* Marshall CJ said that the jurisdiction of a nation within its own territory is necessarily exclusive and absolute. He immediately went on to say that such exclusive and absolute jurisdiction is susceptible to any self-imposed limitations: see *The Schooner Exchange v McFaddon* (1812) 7 Cranch 116.

[22] Sir Kenneth Keith "Governance, Sovereignty and Globalisation" (1998) 28 VUWLR 477, 485.

rules, in areas ranging from human rights, nuclear disarmament, the environment and trade. Paradoxically, these incursions into State authority have traditionally been justified as the voluntary exercise of sovereign power, either through an act of State or parliamentary mandate.[23] Moreover, they are not seen as inconsistent with the doctrine of State sovereignty because States retain the ability to unilaterally withdraw from any international treaty, thereby regaining any sovereignty they might have lost in originally signing the treaty.

In the last 60 years since the end of World War II, the number of international treaties entered into by States, and the range of areas they regulate, has greatly increased. In addition, the depth of obligation and limitation imposed by international treaties is much more significant. As a result, States are more closely interconnected than ever before. This interconnection of States via international law is one facet of the process known as "globalisation". While globalisation does not formally attempt to redefine the traditional doctrine of State sovereignty, the contention of many commentators is that it does so regardless.

C State Sovereignty Challenged in an Increasingly Globalised World

The process known as "globalisation" is the subject of massive academic and social debate. While it means different things in different contexts, the underlying theme of globalisation is that State borders are breaking down and nation-states are becoming less relevant. Global processes result from a variety of different forces, including cross-border problems such as ozone depletion, changes to the world's political economy, and the advent of new technologies that permit greater movement of people and instantaneous global

---

[23] Jane Kelsey "Globalisation, State and Law: Towards a 'Multi-Perspectival Polity'" in Australasian Law Teachers' Association *Cross Currents: Internationalism, National Identity and Law* (Australasian Law Teachers' Association, 1995) <http://www.austlii.edu.au> (last accessed 10 September 2001) 1. In New Zealand it is the prerogative of the Executive to ratify international treaties, although new procedures introduced in 1999 gave Parliament a limited role in the ratification process: see Jane Kelsey *Reclaiming the Future: New Zealand and the Global Economy* (Bridget Williams Books, Wellington, 1999) 49.

communication.[24] In response to these global processes, States have willingly and progressively devolved power and authority to transnational non-territorial institutions and actors, the net result of which has been the development of some notion of "global governance".[25] The Commission on Global Governance provides an explanation of this new phenomenon called "global governance":[26]

> Governance is the sum of the many ways individuals and institutions manage their common affairs, and is a continuing process through which conflicting interests may be accommodated...At a global level, governance has been viewed primarily as intergovernmental relationships, but it must now be understood as involving non-government organisations, citizens' movements, multinational corporations and the global capital market.

The Commission's Report refers to the fact that global governance is not itself a new phenomenon. The nineteenth century, for example, was a time of deepening integration and unprecedented expansion of trade, investment flows and migration of people. Some world-wide governance was provided by the cooperation of States and compliance with the basic norms of international law, but it mostly occurred without formalised global rules or institutions. This was unsustainable because it was dependent on self-regulated markets that were prone to crisis, and without strong international rules and institutions the most powerful nations acted unilaterally and tried to control the system.[27] In contrast, the current era of globalisation is producing governance at the international level comprised of international law and international organisations, which regulate everything from human rights to the exploitation of natural resources.[28] Generally speaking, these international organisations exist to ensure States comply with certain rules of international law. Most famously, the United Nations exists to ensure that all nations comply with its Charter, which among

---

[24] Alfred C Aman Jr "Indiana Journal of Global Legal Studies: An Introduction" in *The Globalisation of Law, Politics and Markets: Implications for Domestic Law Reform* (1993) 1 Ind J Global Legal Stud 1, 1-2.

[25] Christian Reus-Smit "Changing Patterns of Governance: From Absolutism to Global Multilateralism" in Albert J Paolini, Anthony P Jarvis and Christian Reus-Smit (eds) *Between Sovereignty and Global Governance: the United Nations, the State and Civil Society* (MacMillan Press, New York, 1998) 8.

[26] The Commission on Global Governance *Our Global Neighbourhood* (Oxford University Press, New York, 1995) 2-3.

[27] The Commission on Global Governance, above, 149.

other things, requires States to settle their disputes peacefully, and to refrain from the use of force against the territorial integrity or political independence of other States.[29]

The web of global governance extends into the economic sphere. There is a significant body of international economic law promulgated by both States and international institutions that imposes substantive obligations on States.[30] Notable examples of international economic law include the World Trade Organisation (WTO) Agreements, regional trade agreements such as Closer Economic Relations (CER) between Australia and New Zealand and the North-American Free Trade Area (NAFTA), and other international treaties dealing with specific aspects of international commerce, such as the United Nations Convention on Contracts for the International Sale of Goods. The institutions responsible for this array of international economic law are primarily the International Monetary Fund (IMF), the World Bank, the WTO, various United Nations committees responsible for codifying private international law, such as the United Nations Commission on International Trade Law (UNCITRAL), and a range of non-governmental bodies responsible for international standard setting, such as the International Institute for the Unification of Private Law (UNIDROIT). According to Christian Reus-Smit, this promulgation of international economic law and the creation of international economic organisations marks a movement towards global multilateralism and a framework for a system of transnational governance.[31]

One contention is that the regime of global governance that has emerged, consisting of international institutions responsible for enforcing international law, necessarily involves a redefinition of State sovereignty. For while States

---

[28] Christian Reus-Smit, above, 6, 20-21.
[29] Charter of the United Nations, arts 2(3), 2(4).
[30] International economic law can be defined as any international treaties or customary international laws that embrace goods, services and investment when they are involved in transactions that cross national borders. It also covers any law involving the establishment on national territory of economic activity of persons or firms originating from outside that territory: see John H Jackson "The World Trading System" in John H Jackson, William J Davey & Alan O Sykes Jr (eds) *Legal Problems of International Economic Relations* (3 ed, West Publishing Company, St Paul (Minn), 1995) 268.
[31] Christian Reus-Smit, above, 11.

have played a major role in the creation and application of the new global legal regimes, in doing so they have transferred a large area of their internal authority to the international domain.[32] In an increasingly interdependent world national boundaries become increasingly permeable so that old notions of territoriality, independence and non-intervention lose some of their meaning.[33]

An examination of international human rights law provides one of the clearest illustrations of international institutions using international law to impose substantive limits on States. Human rights charters such as the International Covenant on Civil and Political Rights 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 provide evidence of a shift from the principle that State sovereignty must be safeguarded irrespective of its consequences for individuals, groups and organisations.[34] In *X v Sweden* the European Commission of Human Rights recognised that:[35]

> ...a State which signs and ratifies the European Convention for the Protection of Human Rights and Fundamental Freedoms must be understood as agreeing to restrict the free exercise of its rights under general international law, including the right to control the entry and exit of foreigners, to the extent and within the limits of the obligations which it has accepted under that Convention.

In other words, once a State chooses to subject itself to the obligations contained in the Convention, it is no longer free to exercise its sovereignty in a manner that breaches those obligations. Similarly, as States enter international economic agreements, they lose some ability to determine domestic economic policy in isolation from international influences. Kelsey submits that agreements such as CER, the Closer Economic Partnership (CEP) between New Zealand and Singapore, and the WTO Agreements aim to create loose economic and

---

[32] Oscar Schachter "The Decline of the Nation-State and its Implications for International Law" (1997) 36 Colombia Journal of Transnational Law 7, 11.
[33] The Commission on Global Governance *Our Global Neighbourhood* (Oxford University Press, New York, 1995) 70.
[34] David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, Stanford (Cal), 1995) 103.
[35] *X v Sweden* Application No. 434/58, 30 June 1959, 2 ECHR 354, 372.

regulatory integration of State economies.[36] In other words, States are bound together by international economic law and through international institutions so that each influences the others' economic policy. This erodes the authority and autonomy of the nation-state to determine its own economic policy. In addition, private transnational enterprise exercises power, which owing to the enormous resources at its disposal, may at times be more potent than the authority exercised by States. All this, according to Kelsey, points to the modern reality whereby economic, political and regulatory power is exercised by diverse public and private agents dispersed across the globe.[37]

It is in this context that New Zealand's free trade agreements are examined. For the free trade agreements to which New Zealand is a party – CER, CEP and the WTO Agreements – largely define New Zealand's place in the regime of global economic governance. When examined, the Agreements provide a practical illustration of the foregoing material, and show that New Zealand has in signing its free trade agreements transferred aspects of its national sovereignty into the international arena. In many respects, New Zealand is no longer free to determine much of its law and regulation independently from influences outside its national borders.

III NEW ZEALAND'S FREE TRADE AGREEMENTS: AN ILLUSTRATION OF NEW ZEALAND'S STATE SOVEREIGNTY REDEFINED

The framework of global trade is established and governed by a multitude of bilateral, multilateral and plurilateral agreements between nations. New Zealand's place in the international trading system is governed by three major agreements:

---

[36] Jane Kelsey "Globalisation, State and Law: Towards a 'Multi-Perspectival Polity'" in Australasian Law Teachers' Association *Cross Currents: Internationalism, National Identity and Law* (Australasian Law Teachers' Association, 1995) <http://www.austlii.edu.au> (last accessed 10 September 2001) 1.

[37] Kelsey, above, 2.

(a) The Australia New Zealand Closer Economic Relations Trade Agreement 1983 (CER);[38]

(b) The Agreement between New Zealand and Singapore on a Closer Economic Partnership 2000 (CEP);[39]

(c) The World Trade Organisation Agreement 1994.[40]

The first of New Zealand's bilateral free trade agreements, CER, entered into force on 1 January 1983. It is now the main instrument governing economic relations between Australia and New Zealand. CER establishes a free trade area between New Zealand and Australia,[41] and aims to strengthen the relationship between the two countries by allowing the development of closer economic relations through a mutually beneficial expansion of free trade.[42] CER is a comprehensive free trade agreement, meaning that all goods are covered unless specifically excluded. A review of CER in 1988 produced the Protocol on Trade in Services, which provides for free trade in services between New Zealand and Australia.

On 14 November 2000 New Zealand and Singapore signed CEP, which is also a comprehensive free trade agreement. At the time of signing Prime Minister Goh Chok Tong of Singapore hailed the agreement as a milestone in bilateral relations.[43] CEP takes a very different form from CER in a number of ways. There are fewer provisions governing the removal of tariffs and other direct barriers to trade. This is a reflection of the fact that before CEP's signing New Zealand already maintained few barriers to trade in goods with Singapore.

---

[38] Australia New Zealand Closer Economic Relations Trade Agreement (28 March 1983) NZTS 1983 no 1; AustTS 1983 no 2 (CER).

[39] Agreement between New Zealand and Singapore on a Closer Economic Partnership (14 November 2000) NZTS 2000; SingTS 2000 (CEP).

[40] Marrakech Agreement Establishing the World Trade Organisation (19 December 1993) ILM 1144; NZTS 1994 No 17 (WTO Agreement).

[41] CER, art 2(1). Article 2(2) explains that New Zealand means the territory of New Zealand but does not include the Cook Islands, Niue and Tokelau unless the Agreement is applied to them under article 23. Australia means those parts of Australia to which the Agreement applies under article 23. Article 23 states that the Agreement shall not apply to the Cook Islands, Niue and Tokelau, nor to any Australian territory other than internal territories unless the Member States have exchanged notes agreeing the terms on which the Agreement shall apply.

[42] CER, art 1.

[43] Ministry of Foreign Affairs and Trade *New Zealand and Singapore – Closer Economic Partnership* <http://www.mfat.govt.nz/help/file/nzsincep.html> (last accessed 19 June 2001) 1.

Unlike the original CER, CEP contains comprehensive sections on trade in services and investment.

In addition to assuming trading obligations on a bilateral basis with Australia and Singapore, New Zealand has assumed multilateral trading obligations to most other States under the WTO Agreements. States that accede to the WTO Agreement, thereby becoming WTO Members, also become parties to a number of other agreements, including the General Agreement on Tariffs and Trade 1947 (GATT), the General Agreement on Trade in Services 1994 (GATS) and the Agreement on Trade Related Intellectual Property Rights 1994 (TRIPS).[44] Upon becoming a WTO Member and a party to the many agreements for which it is responsible, a State assumes far-reaching obligations in relation to its trade with other WTO Members. The Most Favoured Nation and National Treatment principles contained in the Agreements ensure that Member States afford trade concessions equally to all WTO Members, and that they treat foreign producers and providers the same as they treat domestic producers and providers.[45] New Zealand is a WTO Member, along with 141 other countries.[46] Like the obligations imposed by all international treaties, the obligations assumed by New Zealand under CER, CEP and the WTO Agreements are binding and must be carried out in good faith.

Since they are all free trade agreements, CER, CEP and the WTO Agreements cover many of the same issues. Primarily, the Agreements establish a regime of free trade by requiring the removal of any barriers, both direct and indirect, to trade in goods and services.[47] In addition to these requirements, the

---

[44] See the WTO web site for a list of the other agreements covered by the WTO Agreement: <http://www.wto.int> (last accessed 28 September 2001).

[45] For a more detailed discussion about the MFN and NT principles, see Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 26-29.

[46] See the WTO web site for a list of the WTO's members: <http://www.wto.int> (last accessed 28 September 2001).

[47] The multilateral trading regime originally consisted of the GATT 1947. The GATT covered only trade in manufactured goods, and not trade in agricultural goods or trade in services. After seven years of negotiation at the Uruguay Round of trade negotiations the WTO Agreement was signed as the umbrella agreement covering the GATT 1947 and various other agreements expanding the regime to cover trade in services, intellectual property, and, to a limited extent, agricultural goods and foreign investment. When CER was signed in 1983 it too dealt only with trade in goods. Since 1983 the Australian and New Zealand Governments have reached a number of understandings extending the Agreement to cover trade in services.

Agreements contain clauses relating to rules of origin, anti-dumping and the ability of Member States to impose countervailing measures in reaction to subsidised goods imported from other countries.[48]

Importantly, the Agreements contain exceptions to their general requirements, which allow Member States to implement trade restricting measures that would normally constitute a breach of the Agreements. Generally speaking, however, the scope of the exceptions is very narrow. For example, article XX of the GATT states that the GATT should not be construed as preventing the adoption or enforcement of measures to achieve certain goals, which are then elaborated in the article. The goals relate to high policy, such as protecting public morals, preventing disorder and crime, and protecting human, animal or plant life or health. There is also an important caveat placed upon any measure justified under article XX, which is that the measure must not be applied in a manner that would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade. Thus the article XX exceptions are very limited in what they allow. CER, CEP and the GATS contain a similar clause to article XX of the GATT.[49] In addition, the Agreements contain clauses that allow States to impose trade restrictive measures in response to dumping,[50] subsidised goods,[51] balance of payments problems,[52] and threats to certain industries.[53] Before States attempt to impose measures under these clauses they must prove that particular circumstances exist. Numerous WTO disputes panel and appellate body decisions illustrate that specific evidence must be produced and complicated legal tests met before the existence of such circumstances will be proven.[54]

---

[48] Article 15, the anti-dumping provision, was removed from CER after New Zealand and Australia amended their competition laws in a manner that deals with the problems originally covered by article 15.

[49] CER, art 18; CEP, art 72; General Agreement on Trade in Services (19 December 1993) UKTS 58 (1996), CM 3276, art XIV (GATS).

[50] General Agreement on Tariffs and Trade (30 October 1947) 55 UNTS 187, art VI (GATT); CEP, art 9. For CER, see above, n 41.

[51] GATT, art VI.

[52] GATT, art XII; GATS, art XII; CEP, art 73.

[53] GATT, art XIX.

[54] For example, see *Canada – Measures Affecting Exports of Unprocessed Herring and Salmon* BISD 35S (1988) 98; *Thailand: Restrictions on Importation of and Internal Taxes on Cigarettes*

CEP does have some exceptions not found in CER or the WTO Agreements. Of particular importance is article 74, the Treaty of Waitangi clause. Under article 74, New Zealand can adopt measures inconsistent with CEP that it deems necessary to accord more favourable treatment to Māori, and to fulfill its Treaty of Waitangi obligations. Like the general exceptions, however, such measures cannot be used as a means of arbitrary or unjustified discrimination against persons or Singapore itself, or as a disguised restriction on trade in goods, services or investment. Finally, CEP does not apply to any taxation measures,[55] and does not override New Zealand's obligations under any other international, regional or bilateral agreement, such as CER and the WTO Agreements.[56]

The range of trade restricting measures allowable under New Zealand's free trade agreements is extremely narrow. The high levels of assessment and justification required, the prohibition on exceptions being disguised trade restrictions, and requirements for ensuring that exceptions restrict trade no more than is necessary, severely restrict New Zealand's ability to regulate in contravention of its free trade agreements.

Finally, CER, CEP and the WTO Agreements contain enforcement mechanisms. CER relies largely on consultations between the Parties to resolve any disputes, but as an international treaty, is subject to enforcement through international arbitration.[57] CEP contains a more explicit regime of dispute settlement, allowing the appointment of arbitral panels and recourse to the WTO disputes settlement procedure.[58] The WTO disputes settlement procedure relies in the first instance on consultations between the Member States to resolve the dispute. If consultations fail to resolve the dispute there is a rules-based dispute

---

BSID 37th Supp (1990); *United States – Restrictions on Imports of Tuna: Report of the Panel* (1994) GATT Doc. DS29/R; *United States – Import Prohibition on Certain Shrimp and Shrimp Products Report of the Panel* WT/D58/R (15 May 1998); *United States – Safeguard Measures on imports of fresh, chilled or frozen lamb meat from New Zealand and Australia* DS177/AB/R, DS178/AB/R (01 May 2001).

[55] CEP, art 78.

[56] CEP, art 80.

[57] CER, art 22.

[58] CEP, part 10.

settlement procedure that can produce binding rulings which require Member States to take specific actions.[59]

In addition to CER, CEP and the WTO Agreements, New Zealand takes part in a number of other international trade organisations. The most significant of these is the Asia-Pacific Economic Cooperation Forum (APEC). APEC is the primary vehicle in the Asia-Pacific region for promoting open trade and economic cooperation. It is not, however, a formal trade agreement like CER, CEP and the WTO Agreements. Instead, leaders and officials from APEC Member States meet to discuss economic cooperation and set certain goals for free trade. In 1994, for instance, the annual meeting of APEC Leaders in Bogor, Indonesia, set the "Bogor Goals" for creating the world's largest area of free trade and investment by 2020. This paper does not focus on APEC, for while its importance is not doubted, the paper is concerned with the free trade agreements which impose binding obligations.

The following sections examine some provisions of CER, CEP and the WTO Agreements to show how they bind New Zealand into the system of global governance. It should be noted that there may be other provisions in the Agreements which also illustrate this point, but which are not mentioned below.

A Direct Barriers to Trade in Goods – Prohibitions on the Use of Tariffs, Quantitative Restrictions and Subsidies

Tariffs, subsidies and quantitative restrictions on imports and exports are measures imposed by governments that are considered *direct* barriers to trade in goods. When imposed, each measure has an adverse impact upon the ability of producers and providers to trade freely in goods. For example, the New Zealand Government may impose a tariff on Australian lamb, requiring all importers to pay a levy on each kilogram of Australian lamb imported. The importer will pass some or all of this extra cost onto the next buyer, whether a retailer or consumer, meaning that the price of the lamb is higher. A higher price for the

---

[59] GATT, arts XXII, XXIII. Also see the WTO Understanding on Rules and Procedures

lamb will result in a lower quantity demanded. By lowering the quantity demanded and the amount of lamb that could be sold in New Zealand, the tariff acts as a barrier to the trade of lamb between New Zealand and Australia. Similarly, any restriction on the quantity of a product that may be imported into New Zealand acts as an obvious barrier to trade by reducing the amount that of the product that could otherwise be imported. A subsidy given to New Zealand producers has the potential to distort trade in two ways. First, it may give New Zealand producers an advantage in foreign markets by allowing them to undercut the prices of foreign producers who do not receive subsidies. Second, foreign exporters who do not receive subsidies will not be able to sell their products in New Zealand as cheaply as New Zealand producers, thereby denying them market access they might otherwise have if the New Zealand producers were not getting the benefits of the subsidy.

Governments may choose to impose tariffs, quantitative restrictions and subsidies for a variety of reasons. For example:[60]

(a) To protect domestic industry;

(b) To protect domestic employment;

(c) To ensure a favourable balance of trade;

(d) To raise revenue to pay for State activity;

(e) To advance national security interests;

(f) To uphold health and safety standards;

(g) To uphold and encourage environmental standards.

All the goals listed in points (a)-(g) above can be considered legitimate and important goals for governments. Tariffs, quantitative restrictions and subsidies are measures available to governments to achieve those goals. They do, however, amount to direct barriers to trade, and so CER, CEP and the WTO Agreements establish comprehensive regimes prohibiting their use. The Agreements thus deny New Zealand's ability to choose those measures as a way of achieving any of the policy outcomes outlined above.

Governing the Settlement of Disputes 1994.

[60] Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 2-11.

Articles 4, 5, 7, 8 and 9 of CER deal with direct barriers to trade in goods between Australia and New Zealand. In essence, the articles provide for the permanent removal of direct barriers to trade in goods between the two nations. In 2001, there are no tariffs or quantitative restrictions on trans-Tasman trade in goods which meet CER origin requirements,[61] and the New Zealand Government cannot place any new tariffs or quantitative import or export restrictions on goods originating in Australia.[62] In addition, the New Zealand Government's ability to give domestic industry any export subsidy, incentive or other assistance measure to produce goods traded with Australia is highly constrained.[63] In accordance with CER, therefore, New Zealand has removed any measures that represent a direct barrier to trade in goods with Australia, and cannot re-impose them.

CEP requires New Zealand to eliminate all tariffs on goods originating in Singapore, and to refrain from imposing any tariffs in the future.[64] New Zealand may not impose any quotas on goods imported from Singapore or on goods exported to Singapore.[65] Also, there is a prohibition on all export subsidies.[66] Like CER, therefore, CEP prevents the New Zealand Government from imposing any measures that amount to a direct barrier to trade in goods.

The WTO Agreements also deal with direct barriers to trade in goods. Under the GATT, once a WTO Member State agrees to a tariff concession, it must adhere to it by not imposing any tariffs in excess of the concession given.[67] In addition, the GATT contains a general prohibition on the use of quantitative restrictions on the import and export of goods into or out of WTO Member States.[68] The GATT does not provide a complete prohibition on the use of subsidies, but does provide that Member States should seek to avoid the use of

---

[61] Ministry of Foreign Affairs and Trade *Australia: Closer Economic Relations* <http://www.mfat.govt.nz/foreign/regions/australia/cer.html> (last accessed 19 June 2001).
[62] CER, arts 4(1), 5(1), 8(2).
[63] CER, art 9.
[64] CEP, art 4.
[65] CEP, art 6.
[66] CEP, art 7.
[67] GATT, art II.
[68] GATT, art XI.

subsidies.[69] Where any WTO Member does grant or maintain any subsidy, the GATT establishes certain procedures geared towards the termination of the subsidisation.[70]

Following a general preference for neo-classical economic reform, successive New Zealand Governments in the 1980s and 1990s pursued an aggressive agenda of trade liberalisation in accordance with New Zealand's GATT obligations. Almost all tariffs on goods imported from other countries were removed, quantitative import and export restrictions were lifted, and subsidies ceased to be given.[71] In consequence, New Zealand is now restricted under the GATT from re-imposing tariffs, quantitative restrictions or subsidies in relation to its trade in goods with the other 141 WTO Member States.

In sum, it is evident that New Zealand's free trade agreements prohibit the New Zealand Government from imposing tariffs and quantitative restrictions, or from granting subsidies to domestic producers. This denies the Government the opportunity to employ such measures as a means to achieve certain legitimate policy objectives. If sovereignty is considered the exclusive and absolute ability of a State to determine its own laws within its territory, then the prohibition on the use of direct barriers to trade imposed by CER, CEP and the WTO Agreements certainly represents a redefinition of New Zealand's State sovereignty.

B Indirect Barriers to Trade in Goods – the Requirements of Harmonisation and Recognition

Governments may impose measures that form direct barriers to trade in goods. Governments can also impose measures that are not related to trade per se, but which still amount to trade barriers. The numerous regulations which governments enact to check the excesses of the market and to protect the health and safety of their citizens and the environment in which they live can restrict

---

[69] GATT, art XVI.
[70] GATT, art XVI.

trade. Such regulations vary tremendously across borders and can often be manipulated or exploited to protect domestic industry from international competition. Even when there is no protectionist intent on the part of lawmakers, differences in regulatory or standard-setting regimes across borders can function to impede trade.[72] Consider the example of food labeling. In an effort to protect the health and welfare of consumers, the New Zealand Government may impose regulations requiring food producers to provide certain information on the packaging of their products before they go on sale. If New Zealand's food labeling regulations require that more information be included on packaging than is required by Australian regulations, then Australian producers may not be able to export their goods into New Zealand. New Zealand producers, however, who comply with New Zealand regulations will also comply with the more lax Australian regulations, and so will be able to export their product into the Australian market. This creates a trade distortion in favour of New Zealand.

Other examples of indirect barriers to trade in goods include competition law and quarantine systems. If the competition laws in one country are significantly different from those foreign firms have experienced in their home markets, the costs of doing business may be increased and trade growth retarded.[73] Similarly, a quarantine system with very strict sanitary requirements might make it almost impossible for exporters to get their goods through quarantine into the foreign market. As mentioned above, regulation such as food labeling, competition law and quarantine systems may not be designed to be barriers to trade, but their effect is to restrict trade. As a result, CER, CEP and the WTO Agreements impose regimes directed towards the removal of indirect barriers to trade. Significantly, these regimes are largely geared towards the *harmonisation* of laws or the *recognition* of other countries' regulations and standards. New Zealand may attempt to harmonise its laws with the laws of its trading partners in three possible ways. First, it may adopt laws that are the same as the laws of its trading partners. Second, it can work towards laws which are

---

[71] Paul Dalziel and Ralph Lattimore *The New Zealand Macroeconomy: A Briefing on the Reforms* (2 ed, Oxford University Press, Auckland, 1996) 31-34.

[72] Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 135.

complimentary with the laws of its trading partners in that both sets of laws are compatible with the objective of free trade. Third, New Zealand can aim to reduce the difference between its laws and the laws of its trading partners, thereby minimising but not necessarily eliminating trade distorting features.

The notion of recognition involves New Zealand recognising the regulations and standards of its trading partners, so that matters valid in those countries would be recognised in New Zealand. In other words, producers from other countries who comply with their domestic regulations will be deemed to have complied with New Zealand's regulations and will be given access to New Zealand's markets accordingly.

CER recognises that countries may impose significant indirect barriers to trade, mainly through domestic regulation. Under CER, therefore, both New Zealand and Australia are required to examine the scope for taking action to harmonise requirements relating to such matters as standards, technical specifications and testing procedures, domestic labeling and restrictive trade practices.[74] In addition, government bodies and other organisations and institutions should be encouraged to work towards harmonisation of these requirements.[75] In accordance with this requirement, the Memorandum of Understanding (MOU) Between the Government of New Zealand and the Government of Australia on the Harmonisation of Business Law was signed on 1 July 1988. The MOU 1988 was replaced by the Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on Coordination of Business Law signed on 31 August 2000. According to the MOU 2000, both Governments are aware that existing laws and regulatory practices relating to business within each economy may impede the development of trans-Tasman business activity, and that through increased coordination and dialogue both parties will endeavour to minimise such impediments.[76] The MOU 2000 identifies certain areas of business law and regulatory practices as possible

---

[73] Gary A Hughes "Redirecting CER and the Harmonisation of Competition Law" (1995) 7 Auckland University Law Review 1039.
[74] CER, art 12(1)(a).
[75] CER, art 12(1)(b).

candidates for coordination,[77] and obliges each Government to take steps to facilitate early examination of these areas for coordination.[78] In addition, each Government is to consult the other when it considers that a difference between the two countries' business laws or regulatory practices gives rise to an impediment to the development of the trans-Tasman relationship.[79]

Harmonisation of New Zealand and Australian laws has not occurred to the extent envisaged by the MOU 1988. In the area of corporate law for instance, very few of the changes signaled by the MOU have been realised.[80] Nevertheless, some significant harmonisation of laws has occurred.[81] The competition laws of both countries are now in alignment, for the Commerce Act 1986 and the Fair Trading Act 1986 are modeled on the equivalent Australian legislation: the Trade Practices Act 1974 (Cth).[82] Similarly, New Zealand's consumer protection law is now in line with Australian consumer protection law.[83] Furthermore, in recognising that the limited reciprocal enforcement of each others' judgments was a hindrance to the development of closer economic ties, both New Zealand and Australia have amended their reciprocal enforcement of judgments regimes to allow the enforcement of injunctions and other non-monetary judgments.[84] It remains to be seen whether the speed of harmonisation will increase as a result of the MOU 2000.

---

[76] Memorandum of Understanding Between the Government of New Zealand and the Government of Australia on Coordination of Business Law 2000, understanding 3 (MOU 2000).
[77] MOU 2000, understanding 7 and annex.
[78] MOU 2000, understanding 12.
[79] MOU 2000, understanding 10.
[80] Professor John Farrar "Closer Economic Relations and Harmonisation of Law Between Australia and New Zealand" in Philip A Joseph (ed) *Essays on the Constitution* (Brookers, Wellington, 1995) 158, 171.
[81] For a more complete list of the steps that have been taken by New Zealand and Australia in the harmonisation process see Clive Elliott "CER at the Crossroads: Business Law Harmonisation – Where to Now?" [1995] NZLJ 47, 49.
[82] Gary A Hughes "Redirecting CER and the Harmonisation of Competition Law" (1995) 7 Auckland University Law Review 1039, 1041.
[83] The Fair Trading Act 1986 and the Consumer Guarantees Act 1993 establish consumer protection law in New Zealand, and the Trade Practices Act 1974 (Cth) establishes consumer protection law in Australia. See Farrar, above, 177.
[84] David Goddard "The Reciprocal Enforcement of Judgments (Amendment) Act 1992: A Half Step Towards CER" [1992] NZ Recent LR 180. In New Zealand this was achieved by the Reciprocal Enforcement of Judgments (Amendment) Act 1992.

While the level of harmonisation envisaged by CER has not yet occurred, it is clear that CER's harmonisation requirements have had a significant impact upon certain areas of New Zealand law. In deciding to reform certain areas of its law, New Zealand has looked to Australia for guidance as to the shape, nature and substance of the reform it should implement. The significant undertakings of the two countries outlined in the MOU 2000 indicate that New Zealand will be looking to reform more of its laws in line with Australia's laws. It is evident, therefore, that New Zealand is no longer free to unilaterally adopt laws that impinge upon its relationship with Australia.

CEP also contains significant provisions relating to the harmonisation of law, policy and procedure. Under the Agreement New Zealand must endeavour to implement the APEC Principles to Enhance Competition and Regulatory Reform.[85] These principles refer to a wide-range of areas in which New Zealand currently regulates. The implication of the requirement to implement the APEC principles is far-reaching, for they relate to the development of competition law and regulatory practices that enhance economic cooperation throughout the entire APEC region.[86]

Part Seven of the Agreement recognises New Zealand's right to determine its own levels of regulatory protection,[87] but obliges New Zealand to recognise Singapore's regulations when they align with New Zealand's.[88] Following recognition an exporter who complies with Singaporean regulation will also meet New Zealand's regulatory requirements. In a very practical sense, Singapore's regulations will then apply in New Zealand. For when checking to see whether Singaporean goods comply with New Zealand's regulatory requirements, a legal practitioner, for example, will not look solely to New Zealand law, but will also check whether the goods comply with Singaporean

---

[85] CEP, art 3(1).
[86] See the Pacific Economic Cooperation Council *Competition Policy – Aims and Findings* <http://pecc.org/trade/policy.html> (last accessed 6 September 2001). The APEC region consists of APEC's 21 Member States: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong (China), Chinese Taipei, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Republic of the Philippines, Russia, Singapore, Thailand, Unites States of America and Vietnam.
[87] CEP, art 44.
[88] CEP, part 7.

law as recognised by New Zealand. Thus recognition allows the laws of one State to apply within the jurisdiction of another State, and in this sense, the whole notion of recognition appears to run counter to the traditional notion of State sovereignty. It is hard to judge the effect of CEP's recognition requirements upon the law of New Zealand because the Agreement has only been in force for a short while. It must be presumed, however, that New Zealand will strive to uphold its recognition obligations, thereby allowing Singaporean law to apply in New Zealand.

The WTO Agreements, or more specifically the GATT, also deals with indirect barriers to trade in goods. The national treatment provisions found in the GATT obligate Member States to treat "like products" alike within the borders of the importing country.[89] This prevents discriminatory application of regulations between domestic and imported goods. In addition, any regulation imposed by a country that equally applies to both foreign and domestic products, but which places a disproportionately larger burden on imports, will breach article III(1) of the GATT, which provides that internal regulations should not be applied to imported or domestic products so as to afford protection to domestic production. A breach of article III(1) will occur whether or not the internal regulation is intended to protect domestic industry. Once a regulation is found to have breached the GATT provisions, the State wishing to apply the regulation must attempt to justify it under the various exceptions provisions, often article XX. Two further agreements exist to determine what kind of regulation comes within article XX to be GATT consistent: the Agreement on Technical Barriers to Trade 1994 (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures 1994 (SPS Agreement).[90]

---

[89] GATT, art III(4).

[90] A sanitary or phytosanitary measure includes all relevant laws, decrees, regulations, requirements and procedures including, *inter alia*, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety applied to (a) protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; (b) protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; (c) protect human life or

The TBT Agreement encourages WTO Members to use relevant international standards of regulation where they exist.[91] There is a range of organisations, both governmental and non-governmental, that set international standards. Those mentioned in the various WTO Agreements include the International Organisation for Standardisation, the Codex Alimentarius Commission, the International Office of Epizootics, the Food and Agricultural Organisation, and the World Health Organisation.[92] Upon adopting a regulation that is line with the international standards, a rebuttable presumption is created that the standard does not create an unnecessary obstacle to trade, thereby complying with article XX.[93] Should New Zealand adopt a regulation not in accordance with international standards, it must in some circumstances enable other WTO Members and interested parties to comment on the proposed regulation.[94] In addition, New Zealand must prove that the regulation complies with article XX, which, as previously mentioned, involves difficult legal tests. The incentive, therefore, is for New Zealand to adopt regulations that accord with international standards. By providing this incentive to New Zealand, and to the other 141 WTO Member States, the TBT Agreement strives to promote international policy convergence. This may constrain New Zealand in its ability to set regulations and standards at levels it deems appropriate, thereby undermining its political sovereignty and policy autonomy.[95]

The SPS Agreement establishes a similar regime as the TBT Agreement in relation to sanitary and phytosanitary measures (SPS measures). In underlining the requirements of article XX of the GATT, SPS measures adopted by New Zealand must not arbitrarily or unjustifiably discriminate against

---

health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or (d) prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests: see the SPS Agreement, annex 1.

[91] Agreement on Technical Barriers to Trade 1994 (19 December 1993) UKTS 11 (1996), CM 3044, art 2.4 (TBT Agreement).

[92] Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 151.

[93] TBT Agreement, art 2.5.

[94] TBT Agreement, art 2.5-2.9.

[95] See Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 144.

Members, or be applied in a way that constitutes a disguised restriction on trade.[96] More significantly, however, SPS measures must apply only to the extent necessary and be based on scientific principles and evidence.[97] New Zealand should base its SPS measures on international standards, guidelines or recommendations wherever possible,[98] and when it does so, its measures will be assumed to be GATT consistent.[99] Once again, the incentive is to adopt SPS measures in line international standards. Adopting international standards encourages harmonisation of laws, but in the absence of international standards and the possibility of harmonisation, New Zealand is obliged to recognise the SPS measures of other WTO Members if they demonstrate their measures achieve the same purpose as New Zealand's measures.[100] In this way the SPS measures of 141 other States may apply in New Zealand. Arguably, the SPS Agreement has greater implications for New Zealand's sovereignty than the TBT Agreement, for SPS measures relate to New Zealand's food supply and environment, which are central to any nation's wellbeing. In prescribing how New Zealand should justify regulations pertaining to its environment and food supply, and that it should recognise the regulations of other countries pertaining to its environment and food supply, the SPS Agreement goes to the core of New Zealand's sovereignty.[101]

To sum up this Part, the wide-spread requirements for harmonisation and recognition on both a bilateral and multilateral basis have significant implications for the traditional notion of State sovereignty. The practical consequences of the requirements are a convergence of New Zealand's laws with those of its trading partners, and an extension of its trading partner's laws into New Zealand. As explained in Part II, sovereignty has always been defined as the ability of a State to determine its internal laws free from outside influence. The requirements for the removal of indirect barriers to trade in goods clearly bring outside influences

---

[96] Agreement on the Application of Sanitary and Phytosanitary Measures 1994 (19 December 1993) UKTS 54 (1996), CM 3275, art 2.3 (SPS Agreement).
[97] SPS Agreement, art 2.2.
[98] SPS Agreement, art 3.1.
[99] SPS Agreement, art 3.2
[100] SPS Agreement, art 4.1.
[101] See Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 145.

into New Zealand's lawmaking process, and in doing so they cut across that definition of sovereignty.

C Barriers to Trade in Services – More Harmonisation and Recognition Required

Trade in services is a relatively new aspect of the world trading system. For example, the General Agreement on Trade in Services (GATS) governing multilateral trade in services was only finalised in 1994 at the end of the Uruguay negotiations. The original CER did not contain any provisions relating to trade in services, but a review of CER in 1988 produced the Protocol on Trade in Services, which provided for free trade in services between New Zealand and Australia. In contrast, CEP contained a detailed section on trade in services when signed in 2000.[102] Tradable services are many and varied, but include things such as legal services, financial services, architecture, telecommunications, and building contracting. Trade in services is defined as the supply of a service:[103]

(a) from the territory of one State into the territory of another State (for example, insurance claims from country A may be processed in country B; the information and data is often transferred electronically);

(b) in the territory of one State to the service consumer of another State (for example, a person in country A retains the legal services of a lawyer in country B);

(c) by a service supplier of one State, through commercial presence in the territory of another State;

(d) by a service supplier of one State, through presence of natural persons of a State in the territory of any other State.

As with trade in goods, governments can erect barriers to trade in services. The nature of the barriers, however, is quite different from the nature of barriers to trade in goods. Given the various modes of service delivery just outlined, most barriers to trade in services will take the form of domestic

---

[102] CEP, part 5.

regulation. Quality regulation, for instance, such as requirements for training and certification of professionals that allow for limited recognition of foreign credentials, will prevent foreign service providers from entering a domestic market. Similarly, immigration policy denying temporary entry of foreign service providers may impose barriers to trade. Therefore, as with indirect barriers to trade in goods, the means of removing barriers to trade in services is for nations to work towards harmonisation of domestic regulation and/or recognition of each others' regulation. Thus, the ultimate implications for domestic policy sovereignty of free trade in services may be profound.

As mentioned above, the main instrument governing trade in services between Australia and New Zealand is the CER Protocol on Trade in Services 1988.[104] Upon signing the Protocol, each government agreed to treat the providers of services from the other country on the same basis as its own service providers, and looked to harmonise a range of non-tariff measures such as customs issues, standards, and business law. In accordance with the Protocol, and on a reciprocal basis with Australia, New Zealand passed the Trans-Tasman Mutual Recognition Act 1997 (TTRMA). The Long Title of the TTRMA states that it is an Act to provide for the recognition in New Zealand of regulatory standards adopted in Australia regarding goods and occupations. In effect, the Act allows anyone occupationally registered in an Australian jurisdiction to register for and carry out the equivalent occupation in New Zealand without satisfying any further requirements.[105] When the TTRMA is coupled with corporate and competition laws that allow New Zealand and Australian companies to trade equally in both countries, and with laws permitting the free movement of people between the two countries, then it is possible to conceive service delivery in the two countries as virtually occurring within a common market. In a very real sense, therefore, CER has bound New Zealand's economy to Australia's. The laws New Zealand passes, and conversely the laws Australia passes, will have a direct impact upon the economies and markets of the other. In other words, neither border is impervious to the actions of another State.

---

[103] GATS, art 1. See also Trebilcock and Howse, above, 273.

[104] Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement (1 January 1989) NZTS 1988 no 30; AustTS 1988 no 20.

There is no clearer illustration of a redefinition of State sovereignty as outlined in Part II(A).

The regimes for free trade in services established by CEP and the GATS have not been as pervasive in New Zealand as the requirements of CER. They have the potential to be extremely far-reaching, however, by integrating New Zealand's services market with the services markets of Singapore and the other WTO Member States. The key provision of the GATS is the national treatment provision, under which quality regulation, qualification requirements, registration requirements, establishment conditions and other such regulation cannot be more burdensome for foreign service providers than for domestic service providers.[106] In essence, this provision achieves the same outcome as produced by the TTMRA in relation to trade in services with Australia, but it relates to all other WTO Members.[107]

In addition to the national treatment provisions of the GATS, there are other provisions of the Agreement which may one day circumscribe New Zealand's ability to regulate as it pleases. Of particular note are the recognition requirements. New Zealand may recognise the regulations of one WTO Member, and once it has done so, it must afford all other WTO Members the opportunity to show that their domestic regulation is also worthy of recognition.[108] In the long run, this variant on the Most Favoured Nations principle has the potential to result in the regulations of almost every other country in the world being recognised as valid in New Zealand. Or to put it another way, the laws made by almost every other country will apply in New Zealand. This seems a far cry from the position that no State has the ability to interfere with the domestic affairs of another State.

As already mentioned, the GATS has not had the equivalent deep impact of the CER trade in services requirements. Nevertheless, the GATS regime

---

[105] Trans-Tasman Mutual Recognition Act 1997, ss 14, 15, 16.
[106] GATS, art XVII.
[107] It should be noted that unlike CER the GATS does allow members to make specific reservations to the national treatment requirements in relation to particular service sectors: see the GATS, art XVII(1).

represents a redefinition of New Zealand's sovereignty in that it already circumscribes how New Zealand can regulate it services sector, but more significantly, it heralds the potential for the actions of other nations to impact upon the domestic affairs of New Zealand.

The provisions of CEP dealing with trade in services look like a blend of the CER and GATS provisions.[109] CEP thus provides a further illustration of how New Zealand's sovereignty has been redefined as a result of signing a free trade agreement.

D The WTO Disputes Settlement Procedure – New Zealand Overruled

If a WTO Member considers that any trading benefit accruing to it directly or indirectly under the WTO Agreements is being "nullified or impaired" by a policy or practice of another Member, the complaining Member can refer its complaint to the General Council of the WTO acting as the Disputes Settlement Body (DSB). The DSB will appoint a panel to investigate the complaint and make recommendations to the WTO Council for resolution of the dispute.[110] Any member may appeal a panel's decision on a matter of law to a standing appellate body. If the Council adopts the recommendations of a panel or appellate body, *a member is required to modify or withdraw its policy or practice to bring itself into conformity with the Council's decision*. If it fails to do so, the Council can authorise retaliatory action by the aggrieved Member in the form of a suspension of trade concessions or other obligations. There has been a high compliance rate with panel recommendations.[111]

There have been some high profile disputes resolved through the WTO dispute settlement procedure that have highlighted the potential effect of the WTO Agreements on a nation's domestic sovereignty. In the *Tuna/Dolphin I*

---

[108] GATS, art VII(2).
[109] CEP, part 5.
[110] GATT, art XXIII. This article is now substantially elaborated in the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (13 December 1993) UKTS 10 (1996), CM 3046.
[111] Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 37.

case,[112] the United States of America placed an embargo on the import of tuna from Mexico because Mexico had failed to satisfy the United States' authorities that its tuna was caught in a manner that did not risk the destruction of dolphins. Mexico complained that the embargo violated article XI of the GATT, which prohibits quantitative restrictions on imports. The United States relied on the GATT exceptions in article XX to justify the embargo, saying that it was to protect the life and health of dolphins, and that it related to the conservation of dolphins as an exhaustible natural resource. In other words, the embargo was a measure designed to achieve a particular environmental outcome. The Panel found that the article XX exceptions did not apply, and that the United States embargo therefore constituted a breach of its GATT obligations.[113] The United States was required modify or withdraw its embargo. Similarly, in the *Reformulated Gasoline Case*,[114] the United States passed environmental legislation stipulating that conventional and reformulated gasoline sold in the United States must conform to a minimum level of cleanliness. The legislation's goal was to ensure cleaner air in the United States. To achieve this goal, the legislation regulated domestic and foreign producers of gasoline differently. Brazil and Venezuela, who were exporters of conventional and reformulated gasoline to the United States, challenged the United States legislation under article III(4) of GATT, which requires members to treat foreign producers the same as domestic producers. Again the United States relied on the article XX exceptions to justify its legislation. Both the Panel and Appellate Body found that article XX did not apply, that the United States legislation constituted a breach of its GATT obligations, and that it had to modify or withdraw its contravening legislation.[115]

What these WTO Panel and Appellate Body decisions show is that New Zealand is potentially restrained from imposing regulation designed to achieve legitimate policy aims if the regulation conflicts with its WTO obligations. New Zealand is currently facing this very issue in relation to local content on

---

[112] *United States – Restrictions on the Import of Tuna* (1991) 30 ILM 1594.
[113] For a full discussion of the Panel's reasoning see Trebilcock and Howse, above, 406-410.
[114] *United States – Standards for Reformulated and Conventional Gasoline* Report of the Panel, WT/DS2/R (29 January 1996).
[115] For a full discussion of the Panel's reasoning see Trebilcock and Howse, above, 413-416. .

commercial radio stations. The Minister of Broadcasting, Hon Marian Hobbs MP (the Minister), has indicated her willingness to impose mandatory local content quotas on commercial radio stations if they fail to implement a system of self-regulation resulting in greater airtime for New Zealand music.[116] Advice to the Minister is that a mandatory quota would be inconsistent with New Zealand's obligations under articles XVI and XVII of the GATS, which require New Zealand to treat foreign service providers no less favourably that domestic service providers, and prevent New Zealand from placing limitations on the total quantity of service output in the form of quotas.[117] If the Minister insists on implementing the local content policy, it is likely that another WTO Member, most likely the United States, will register a dispute with the WTO.[118] Should New Zealand then fail to amount a successful defence of the mandatory quota, a dispute panel may rule against New Zealand and require it to withdraw or redesign the mandatory quota to bring New Zealand into conformity with its GATS obligations. Failure to do so could result in retaliatory action by the Member(s) which had initiated the dispute. Of course this is not to say New Zealand cannot regulate to achieve the aim of the local content policy.[119] What is clear, however, is that New Zealand cannot regulate in a manner that is inconsistent with its GATS obligations. In the immediate instance, this means the Minister of Broadcasting cannot implement the mode of regulation she prefers. More pervasively, if there is no other means available to achieve the goal of the local content quota, it means the Minister cannot regulate to achieve her desired goal at all.

Quite obviously, New Zealand's lawmaking autonomy has to an extent been circumscribed by its accession to the WTO Agreements. This raises an important question about New Zealand's ability to regulate in the future for

---

[116] Office of the Minister for Trade Negotiations "Local Content in Broadcasting: New Zealand's International Obligations" (September 2001) para 2.
[117] Office of the Minister for Trade Negotiations "Local Content in Broadcasting: New Zealand's International Obligations" (September 2001) paras 10-13.
[118] The United States has already put New Zealand "on notice" on this issue in its 2001 USTR National Trade Estimate Report of Foreign Trade Barriers. See Office of the Minister for Trade Negotiations "Local Content in Broadcasting: New Zealand's International Obligations" (September 2001) para 19.

matters currently unforeseen. An issue that is currently high on New Zealand's political agenda is that of genetic modification of organisms, which was not a major issue when New Zealand signed the WTO Agreements. There is now significant public support for a complete ban on all genetically modified organisms in New Zealand.[120] Any law that prohibits the import of genetically modified organisms could potentially conflict with the GATT provisions prohibiting quantitative restriction on imports. For instance, a complete ban would obviously restrict the importation of seeds or plants that have been genetically modified. A complete ban may also prevent the import of a brand of muesli that contains genetically modified oats.[121] In both instances, an affected Member may have a case before a WTO disputes panel that New Zealand's law banning all genetically modified organisms nullifies or impairs the benefits accruing to it under the GATT. It would then be incumbent upon New Zealand to justify the ban under the article XX exceptions, which apply narrowly. If the law restricted trade more than is necessary to achieve the aim of the law (as decided by the WTO panel), if it was not based upon proper scientific principles and evidence (also as decided by the WTO panel), and if it is not based on international standards, it is very likely that the WTO panel would rule against New Zealand and require it to repeal or modify the ban.

Daniel Tarullo considers that the WTO Agreements increasingly address domestic laws, policies and practices, thereby blurring the distinction between domestic and international economic law and policy. In particular, he contends that the blur occurs when the Agreements deem domestic interventions to be new brands of non-tariff barriers to trade.[122] This blur is particularly significant in light of the adjudicatory governance mechanism used by the WTO, which rules

---

[119] Local content helps to create a unified and tolerant society in which citizens have strong national identity and clear values. See Office of the Minister of Broadcasting "Broadcasting Policy: Objectives and Delivery Mechanisms" (06 July 2000) paras 17-21.

[120] 10,000 people recently marched up Queen Street in Auckland to protest against genetic modification. See Robyn McLean "Beast is Unleashed – But What Now?" (2 September 2001) *Sunday Star Times* Auckland 2.

[121] Of course the GATT does not apply to most agricultural goods, and the Agreement on Agriculture 1994 does not implement a comprehensive free trade regime surrounding free trade in agricultural goods. This example is meant as a hypothetical, however, to indicate the potential impact of New Zealand's WTO obligations on New Zealand's ability to regulate.

[122] Daniel K Tarullo "Law and Governance in a Global Economy" (1999) 93 ASIL Proceedings 105, 106.

explicitly on domestic regulatory law and practice with an expectation that Member States will change their domestic law in order to conform with the WTO ruling. Michael Hart is of the view that in effect each WTO Member has agreed to the superior claim of their WTO obligations over domestic law.[123] He says that even a cursory examination of WTO Agreements suggests that governments have now agreed to a consequential degree of potential intervention in their internal affairs by other member governments through the dispute settlement procedures.[124] This provides a stark depiction of how New Zealand has bound itself into the system of global economic governance and, in doing so, allowed organisations from outside New Zealand to have considerable say over what laws it may implement.

E Institutions – the Changing Structure and Function of New Zealand's Governmental Institutions

The harmonisation requirements of CER, CEP and the WTO Agreements outlined in subparts B and C above not only have implications for New Zealand law and regulation, but also New Zealand's governmental institutions. For example, in accordance with CER's requirement of harmonising business law and regulatory practices,[125] New Zealand and Australia signed the 1995 Agreement Establishing a System for the Development of Joint Food Standards.[126] This was the first trans-Tasman agreement to create a single regulatory agency, the Australia New Zealand Food Authority (ANZFA).[127] ANZFA develops and maintains joint food standards for both Australia and New Zealand. Both countries are represented at all levels of the standards setting process, including the Board of ANZFA and on the Ministerial Australia New Zealand Food Standards Council.[128] ANZFA is a significant step towards

---

[123] Michael Hart "The WTO and the Political Economy of Globalisation" (1999) 33 Journal of World Trade 75, 84.
[124] Hart, above, 86.
[125] CER, art 12.
[126] Agreement Establishing a System for the Development of Joint Food Standards (5 December 1995) NZTS 1996 no 9; AustTS 1996 no 12.
[127] The Agreement entered into force on 5 July 1996 following the passage of legislation in both New Zealand and Australian Federal and State Governments.
[128] Ministry of Foreign Affairs and Trade *Australia: Agreement Between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint*

creating a single food market between Australia and New Zealand, and means that in a very real sense the New Zealand Government no longer sets food standards unilaterally. It must cooperate with nine other jurisdictions when doing so – the Australian Commonwealth Government and the eight Australian State/Territory Governments that are a Party to the Agreement.

The New Zealand Department of Customs is especially affected by New Zealand's free trade agreements. CER provides that New Zealand and Australia will consult each other to determine any harmonisation of customs policies and procedures appropriate to promote the objectives of the Agreement.[129] Under CEP, the customs administrations of New Zealand and Singapore are to work together to simplify customs procedures.[130] While these requirements may not expressly bind New Zealand to particular policies and practices relating to customs, they do illustrate that the New Zealand Government is no longer free to determine customs policy and practice on a completely unilateral basis.

The Agreements encourage other governmental bodies to cooperate to aid the free flow of goods and services between New Zealand and its trading partners. This has had practical effect. For instance, there is close cooperation between the New Zealand Securities Commission and Commerce Commission, and the Australian Securities Commission and Australian Trade Practices Commission. The New Zealand Securities Amendment Act 1988 contained provision to facilitate such assistance.[131]

Harmonisation requirements can therefore be seen as not only having implications for the substantive content of New Zealand law, but also the structure and function of New Zealand's governmental and standard-setting institutions. How a country chooses to arrange its internal institutions which set and enforce its law must surely be considered an integral part of traditional State

---

Food Standards <http://www.mfat.govt.nz/foreign/regions/australia/food.html> (last accessed 19 June 2001) 1.

[129] CER, art 21.

[130] CEP, art 11.

[131] Professor John Farrar "Closer Economic Relations and Harmonisation of Law Between Australia and New Zealand" in Philip A Joseph (ed) *Essays on the Constitution* (Brookers, Wellington, 1995) 158, 177.

sovereignty. Therefore, any agreement that imposes an obligation upon a State to structure is governmental institutions in a particular way, and which governs the very function of that institution, certainly represents a redefinition of State sovereignty.

F Transparency and Consultation – How Other Countries Can Influence New Zealand's Choice of Law, Regulation and Policy

CER provides for ongoing consultation and review, including the consideration of whether there is need for changes in either the New Zealand or Australian government policies and practices in fields such as taxation, company law, standards, foreign investment, movement of people, tourism and transport.[132] Under CEP New Zealand is required to promptly publish all laws, rules, regulations, judicial decisions, and administrative rulings and guidelines pertaining to trade.[133] In addition, New Zealand must provide opportunity for comment by Singapore on its proposed laws, rules, regulations and procedures affecting trade if it is of the view that they are likely to affect the rights and obligations of either Party under the Agreement.[134] There are similar provisions in the various WTO Agreements relating to all WTO Member States.[135] In effect, these provisions authorise formal input into New Zealand lawmaking from sources outside New Zealand.

G Future Developments

1 Additional agreements for free trade in goods and services

In April 2001, the Rt Hon Helen Clark MP, Prime Minister of New Zealand, announced that New Zealand and the Hong Kong Special Administrative Region had agreed to commence negotiations on a closer economic partnership agreement. The Agreement's aims are likely to be similar to those of CEP with Singapore, expecting to boost two-way trade in goods and

---

[132] CER, art 22.
[133] CEP, art 69(1).
[134] CEP, art 69(2).

services and to increase investment.[136] There have also been indications from the New Zealand Government that free trade negotiations may begin with the United States,[137] Thailand, South Korea, Chile, and that CER may be linked to the Association of Southeast Asian Nations' free trade area.[138] Given the trade liberalising agenda of the current Government, these agreements will almost certainly have provisions that run as deep as the provisions contained in CER, CEP and possibly the WTO Agreements.

2 *Trade in investment*

As is outlined in the following part, capital investment flows are a very important part of the world's economy. Moreover, the regulation, or deregulation as the case may be, of foreign investment can go to the heart of State sovereignty.[139] CER and CEP establish bilateral regimes for free trade in investment, and one of the WTO Agreements, the Agreement on Trade Related Investment Measures 1994 (TRIMs), contains limited provisions relating to multilateral trade in investment. Towards the end of the 1990s, States entered into negotiations over the Multilateral Investment on Trade (MAI), which if signed, would have been a comprehensive agreement about multilateral free trade in investment. The negotiations foundered, however, largely in the face of concerns that the MAI would subject States to the dictates of multinational firms. Nevertheless, the desire to sign a detailed agreement on free trade in investment has not disappeared, and the issue is likely to remain on the global economic agenda.[140] Such an agreement has the potential to strengthen the world's system of global governance with significant implications for State sovereignty.

---

[135] GATT, art X; GATS, art III.
[136] Ministry of Foreign Affairs and Trade *New Zealand and Singapore to Start Negotiations* <http://www.mfat.govt.nz/speech/sministy.html> (last accessed 19 June 2001) 1.
[137] The New Zealand Government "Proposed United States Trade Agreement Law Welcomed" (29 May 2001) Press Release, 1.
[138] Hon Jim Sutton MP "Minister Spells Out Trade Policy Principles" (27 June 2001) Press Release, 1.
[139] For a discussion about the implications of foreign investment on State sovereignty see Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999) 342-347.
[140] Trebilcock and Howse, above, 362-365.

Rather than dealing with trade in investment and its impact upon State sovereignty in this section, this paper deals with the issue in Part IV within the context of political realities. For completeness, however, it should noted that there are provisions establishing trade in investment in CER, CEP and to a limited extent, the WTO Agreements.

H Summary

Taken together, New Zealand's free trade agreements illustrate how New Zealand has bound itself into the system of global economic governance, and how in doing so, it arguably no longer retains the rights traditionally ascribed to a sovereign nation. Recalling those rights from Part II, the Agreements lay out very clearly that some intervention in New Zealand's domestic affairs is now permissible. The WTO in particular has the power to constrain the regulation New Zealand can impose. Also, while New Zealand's territorial integrity may still be inviolable, its political independence is arguably no longer so. Under CER, for instance, the New Zealand Government cannot make decisions without first considering their impact on Australia. Should a decision have an adverse impact upon Australia, undoubtedly the Australian Government would place considerable pressure on the New Zealand Government to make an alternative decision. Moreover, all the Agreements give other countries the opportunity to comment on the laws and regulations New Zealand is considering, and to influence the ultimate decision. The third principle of traditional State sovereignty – that New Zealand is equal to all other States – appears to remain in tact in spite of New Zealand's free trade agreements. Of course the reality of the world economic system is that some countries wield much greater power than others. Therefore, within the interconnected web of global governance, perhaps New Zealand is not really equal to other States.

The implications of New Zealand's free trade agreements appear to point unequivocally to the fact that New Zealand's domestic sovereignty has been redefined, and that New Zealand has surrendered aspects of it in the name of global economic cooperation. On the other hand, CER, CEP and the WTO Agreements are all international treaties the New Zealand Executive has chosen

to sign. Likewise, under pure constitutional theory the New Zealand Government could choose to terminate them at any time, along with any other treaty that purports to bind New Zealand into the system of global governance. In taking such action New Zealand could essentially withdraw from the growing web of global governance and regain any measure of State sovereignty it might have lost. While the correctness of such pure constitutional theory cannot be denied in principle, it fails to take into account the realities of the world's political economy, which arguably lock-in the new system of global governance as the way of the future. The next part of this paper considers these realities, and the fact that they lock New Zealand into its free trade agreements, as the final plank in the argument that New Zealand no longer enjoys the traditional notion of State sovereignty.

IV HOW THE REALITIES OF THE WORLD'S POLITICAL ECONOMY CONFIRM GLOBAL GOVERNANCE AS THE WAY OF THE FUTURE

The global economy is made up of markets in goods, services, finance and investment, and economic activity undertaken by firms that are established in one territory but operate in another. The global market is not a new phenomenon, but is now at unprecedented size. In 1997, the volume of international trade was fourteen times greater than in 1945,[141] and capital transfers exceeded a trillion dollars a day.[142] States themselves are actors within the global economy. They participate directly in markets, often through State trading entities, as buyers, sellers and investors, and they create and oversee the legal regimes in which the markets function. Clearly, however, the major participant in the global economy is private enterprise. In particular, transnational corporations span national borders to conduct their business in all parts of the globe.

---

[141] Trebilcock and Howse, above, 22.

[142] Oscar Schachter "The Erosion of State Authority and its Implications for Equitable Development" in Friedl Wiess, Erik Denters and Paul de Warrt (eds) *International Economic Law with a Human Face* (Kluwer Law International, The Hague, 1998) 31, 32.

For most of this century, major corporations have shopped around for legal environments that are the most conducive to profitable enterprise.[143] Generally speaking, businesses prefer to invest their capital in deregulated markets where there are few barriers to how they can invest, and few restrictions on what they can do with their profits. Since investment and capital is the engine of development, pressure has come onto States to deregulate their markets in a manner that attracts and retains capital. More significant are new technologies allow corporations to move their capital in and out of countries at the push of a button. This has two important implications. First, any regulation a State might want to implement to control investment and capital is simply ineffective. The State's power has dwindled over currencies, interest rates, trade flows, rates of unemployment and foreign investment. Exchange controls, for example, have become almost impossible to apply, for the finance capital that can be mobilised in currency markets exceeds what any government can put up against it. In other words, while governments can still implement economic policies such as fixing interest rates and controlling the volume of currency, they are subject to the discipline of the market.[144]

Second, States will refrain from imposing regulation that might deter capital investment because of the consequential effects on its domestic business and national economy. A government's domestic economic policy must to a large degree be compatible with the regional and global movements of capital. Otherwise that government risks a run on its currency, the outflow of capital to safer havens and the loss of private investment.[145] Such occurrences adversely affect a nation's employment rate and tax base, and its ability to pay for expensive social policies.

---

[143] Jane Kelsey "Globalisation, State and Law: Towards a 'Multi-Perspectival Polity'" in Australasian Law Teachers' Association *Cross Currents: Internationalism, National Identity and Law* (Australasian Law Teachers' Association, 1995) <http://www.austlii.edu.au> (last accessed 10 September 2001) 2.

[144] Oscar Schachter "The Decline of the Nation-State and its Implications for International Law" (1997) 36 Colombia Journal of Transnational Law 7, 10.

[145] David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, Stanford (Cal), 1995) 131.

In the area of trade, nations must free up their trading systems in order to attract vital investment and finance capital.[146] Private enterprise now expects to operate within deregulated markets with free trade in goods, services and investment. New Zealand has created such markets through signing CER, CEP and the WTO Agreements, and any movement away from this position will cause private investment to flee New Zealand's shores. Given that New Zealand's low level of domestic savings makes it very dependent on foreign investment,[147] it is evident that New Zealand's free trade agreements are now crucial to New Zealand's economic prosperity. Thus any argument that New Zealand could use its sovereign right of unilateral withdrawal to terminate its free trade agreements is fatuous and ignores the stark realities of the world's political economy.

V CONCLUSION

As a sovereign State New Zealand has traditionally had absolute and exclusive control over its domestic affairs. No other State or organisation has been entitled to interfere with New Zealand's internal lawmaking. The forces of globalisation have changed this traditional notion of State sovereignty. In the face of problems that cross borders, the freer movement of people, goods, and services, and technology that allows instantaneous communication and movement of capital, the ability of States to regulate without being influenced by the wider world is diminished. In addition, non-State actors such as trans-national corporations and non-governmental bodies now wield considerable power and influence, sometimes over and above the power of States. In response to the forces of globalisation, or are a result of those forces, a new system of global governance has emerged. States have bound themselves into a web of governance agreements and organisations covering a vast array of areas. One extremely important area in which nation-states are becoming increasingly interconnected is in relation to their economies. In particular the complex and pervasive system of global free trade in goods, services and investment has bound nations' economies more closely than ever before.

---

[146] Schachter, above, 9.
[147] Paul Dalziel and Ralph Lattimore *The New Zealand Macroeconomy: A Briefing on the Reforms* (2 ed, Oxford University Press, Auckland, 1996) 35.

New Zealand's place within this web of global economic governance is largely defined by its three free trade agreements, CER, CEP and the WTO Agreements. All three of these Agreements are directed towards loose integration of national economies. They do not create supranational organisations, such as the European Union, which have the power to enforce laws and regulations over Member States. They do, however, impose substantive restrictions on the kinds of laws and policies New Zealand can impose domestically. More pervasively, the Agreements impose wide-ranging harmonisation and recognition requirements that obligate the New Zealand Government to adopt certain laws in accordance with international standards and the standards of its trading partners. Failure to do so can result in the initiation of the WTO disputes settlement procedure, which can in turn result in a requirement for withdraw or amends its own regulation. In other words, New Zealand's ability to determine its own domestic regulation is circumscribed by its free trade agreements. In addition, the Agreements give other States formal input into New Zealand's lawmaking, and help determine the very structure and function of some of New Zealand's governmental institutions.

New Zealand's free trade agreements thus provide a graphic illustration of New Zealand's sovereignty redefined in an interconnected world. The economic and political realities of the world's economic system effectively prohibit New Zealand from terminating its free trade agreements to regain any sovereignty it may have surrendered. Global governance has, therefore, supplanted State sovereignty as the ultimate organisational principle at the international level. Power is no longer located solely within the State, but is dispersed among a variety of different actors, many of whom are beyond a State's national borders.

So it may be said that traditional State sovereignty has had its time, and that the world is now moving into an era of global governance where borders and boundaries are largely irrelevant. The immensity of the forces driving globalisation tend to give the whole process an air of inevitability: that the world is destined to become a global neighbourhood regardless of whether we like the

idea or not. Surely it is worth reflecting on this, however, and actually considering whether the redefinition of State sovereignty to make room for the new web of global governance is a good thing or not.

There are some who malign globalisation, particularly its economic aspects, for they see it as perpetuating a free-market ideology that is aimed at designing society for the benefit of the economically powerful.[148] Kelsey, for instance, points to the ascendancy of finance capital and trans-national enterprise, and the interdependence of the domestic and international spheres, as impinging upon national sovereignty by allowing only the neo-classical form of economic management. She insists that any attempt by a State to nationalise, restrict the movements of capital, renege on the bindings in the WTO, significantly increase taxes, re-regulate the labour market, or require a balance of economic, social and environmental goals would invite a devastating backlash that would deter any governments from changing tack. This, she says, has serious implications for social justice and self-determination.[149]

Others, however, point to the new system of economic integration and interdependence as heralding better living standards for all the world's population.[150] Dr Roderick Deane insists that outward looking domestic policies enhance economic growth, and that rather than being an ideology or a plan, globalisation is simply what happens when governments loosen controls and allow people and businesses to make their own decisions. New Zealand's success, he says, depends upon economic success at the global level.[151]

---

[148] For example, Jane Kelsey *Reclaiming the Future: New Zealand and the Global Economy* (Bridget Williams Books, Wellington 1999). Also see <http://www.citizen.org> (last accessed 28 September 2001) and <www.policyalternatives.ca> (last accessed 28 September 2001) for a list of publications outlining the negative aspects of economic globalisation.

[149] Jane Kelsey "Globalisation, State and Law: Towards a 'Multi-Perspectival Polity'" in Australasian Law Teachers' Association *Cross Currents: Internationalism, National Identity and Law* (Australasian Law Teachers' Association, 1995) <http://www.austlii.edu.au> (last accessed 10 September 2001) 4-5.

[150] See the web sites of the WTO, IMF and World Bank for information and publications outlining the positive aspects of economic globalisation: <http://www.wto.int> (last accessed 28 September 2001); <http://www.imf.org> (last accessed 28 September 2001); <http://www.worldbank.org> (last accessed 28 September 2001).

In the end, then, perhaps the real test for whether global governance should replace State sovereignty as an organising principle will be whether it can deliver better living standards, better environmental outcomes, and greater peace and security for a majority of the world's population. As already indicated, it is not possible within the scope of this paper to make any substantial conclusions as to whether this has happened, whether it is happening, or whether it is likely to happen.

What I am able to say, however, is that it seems impossible to refute that the world is inherently a more global place now than ever before, and that it will continue to globalise. The use individuals and firms make of new technology will continue to break-down borders whether nations and governments like it or not. Furthermore, there are serious global problems that can only be addressed realistically on a multilateral basis. There is also evidence to suggest that economic integration arrangements, such as the European Union, lead to peace and security in the long-term.[152] It makes sense on a conceptual level that people will not fight those with whom their own wellbeing is interwoven. It is this last point that leads me to the conclusion that the passing of State sovereignty as the ultimate organising principle is not necessarily a bad thing, and that some form of global governance should be welcomed. For global governance appears to herald the possibility of a world that is united against common problems and focussed on bettering the lives of all its inhabitants.

This is not to say that the current model of global governance should be embraced. At present the model displays serious flaws that deserve careful scrutiny. As already seen, the political realities surrounding global economic governance arguably prevent the State from instituting policies that are "business-unfriendly", even though they may benefit people in need. Power, it could be said, is located in the hands of the powerful at the expense of the less powerful. There is, therefore, perhaps greater scope for the world's system of

---

[151] Roderick Deane "Globalisation and Constitutional Development" in Colin James (ed) *Building the Constitution* (Victoria University of Wellington Institute of Policy Studies, Wellington, 2000) 112.

[152] Martin J Dedman *The Origins and Development of the European Union 1945-95: A History of European Integration* (Routledge, London, 1996) 8-15.

global governance to balance social and environmental goals with economic concerns.

In addition, the key economic and political agents participating in the new regime of global governance, such as the WTO, are not democratic in the sense that individuals do not have a direct say in their direction and function. This is problematic when those organisations purport to regulate the lives of those individuals. As a further consequence of this lack of democracy, there is little if any direct accountability from international organisations back to individuals. While it seems difficult to address this without establishing structures like the European Parliament, the members of which are directly elected by the people of Europe, there is perhaps more that can occur at the national level to ensure a higher level of participation in the system of global governance. Taking New Zealand as the example, the Government could certainly attempt to involve its citizens more when negotiating and ratifying international treaties with implications for sovereignty. The recent changes that allow Parliament to vote on whether the Executive should ratify an international treaty does introduce more transparency into the process. It is fairly peace-meal reform, however, because the Executive requires no Parliamentary mandate before it begins negotiations, Parliament cannot impose any constraints on the Executive in relation to negotiations, Parliament only sees the text of the treaty once negotiated and finalised, and Parliament only votes to take or leave the treaty, rather than endorsing certain parts but rejecting others.[153] There is, therefore, very limited ability for Parliament and individuals to influence international treaty making. In response, Bill Mansfield suggests that New Zealand formalise certain processes to ensure that Māori, the business community, NGOs and other community interests are:

(a) made aware of matters that are to become the subject of negotiations;

(b) have the opportunity to contribute to the development of a negotiating brief;

---

[153] Jane Kelsey *Reclaiming the Future: New Zealand and the Global Economy* (Bridget Williams Books, Wellington, 1999) 49.

(c) have the opportunity to participate in, or be kept informed about, the negotiations.[154]

My contention is that these three steps would introduce a greater degree of consent into the process whereby New Zealand binds itself into the new system of global governance and passes away aspects of its sovereignty. Recalling the theories of Locke and Rousseau, such consent would lend the product of that process, the new system of global governance, greater legitimacy. It is surely vital that the new system of global governance has legitimacy when it purports to replace a notion as fundamental to the exercise of power as national sovereignty.

Consent for the power structures of global governance from those whose lives the structures purport to regulate is also vital for securing the structures' sustainability. Without this informed consent, any new structures will be racked with dissent, disobedience and instability, rendering them dysfunctional at best, and ineffective at worst. The mass demonstrations that occur whenever world leaders meet to discuss issues associated with globalisation, such as the protests in Seattle at the time of the Third Ministerial Conference of the WTO in 1999, indicate that there is currently widespread mistrust about globalisation and a lack of consent for the emerging system of global governance.[155] Unless people's concerns about globalisation are addressed and their consent for the system sought, any new system will struggle to gain acceptance in the long-term. This imposes an obligation upon world leaders and those engaged in the globalisation process to be more transparent about the potential effects of the process, and to engage the world's populations more actively.

In the final analysis, the formula prescribed by international law and institutions, and the political realities associated with them, dramatically alters the function of domestic legislators, executive agents, and even of the courts,

---

[154] Bill Mansfield "The Constraints of Treaties and International Law" in Colin James (ed) *Building the Constitution* (Victoria University of Wellington Institute of Policy Studies, Wellington, 2000) 110.

[155] See Paolo Galizzi "Globalisation, Trade and the Environment: Broadening the Agenda After Seattle? [2000] 4 Env Liability 106, 106-107.

through the intertwining of New Zealand's domestic interests with international interests. It replaces the old notion of State sovereignty as the context in which power is exercised with a new regime of global governance where power is dispersed among a variety of actors. While is not a bad this per se, the current model of global governance lacks a large degree of legitimacy. This cannot be allowed to continue when it purports to define the fundamental basis for how power over individuals is to be exercised. If people in the various nations around the world are brought into the globalisation process, and can see that it is genuinely aimed at delivering a better world, then there appears little problem with replacing State sovereignty with global governance.

VI BIBLIOGRAPHY

A New Zealand Legislation

Commerce Act 1986

Consumer Guarantees Act 1993.

Fair Trading Act 1986.

New Zealand Securities Amendment Act 1988

Reciprocal Enforcement of Judgments (Amendment) Act 1992.

Trans-Tasman Mutual Recognition Act 1997.

B Non-New Zealand Legislation

Trade Practices Act 1974 (Cth).

C International Agreements

Agreement between New Zealand and Singapore on a Closer Economic Partnership (14 November 2000) NZTS 2000; SingTS 2000.

Agreement Establishing a System for the Development of Joint Food Standards (5 December 1995) NZTS 1996 no 9; AustTS 1996 no 12.

Agreement on Agriculture (13 December 1996) UKTS 49 (1996), CM 3268.

Agreement on the Application of Sanitary and Phytosanitary Measures 1994 (19 December 1993) UKTS 54 (1996), CM 3275.

Agreement on Technical Barriers to Trade 1994 (19 December 1993) UKTS 11 (1996), CM 3044.

Agreement on Trade Related Intellectual Property Rights (19 December 1993) UKTS 10 (1996), CM 3046.

Agreement on Trade Related Investment Measures (19 December 1993) UKTS 48 (1996), CM 3264.

Australia New Zealand Closer Economic Relations Trade Agreement (28 March 1983) NZTS 1983 no 1; AustTS 1983 no 2.

Charter of the United Nations (26 June 1945) 145 UKFS 805.

General Agreement on Tariffs and Trade (30 October 1947) 55 UNTS 187.

General Agreement on Trade in Services (19 December 1993) UKTS 58 (1996), CM 3276.

Marrakech Agreement Establishing the World Trade Organisation (19 December 1993) ILM 1144; NZTS 1994 No 17.

Protocol on Trade in Services to the Australia New Zealand Closer Economic Relations Trade Agreement (1 January 1989) NZTS 1988 no 30; AustTS 1988 no 20.

WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (13 December 1993) UKTS 10 (1996), CM 3046.

D International Cases and Arbitrations

Island of Palmas Case (Netherlands v US) (1928) 2 RIAA 829.

The Lotus Case (France v Turkey) (1927) PCIJ Reports, Series A, No 10.

The Schooner Exchange v McFaddon (1812) 7 Cranch 116.

Trail Smelter Case (1938-1941) 3 RIAA 1905.

X v Sweden Application No. 434/58, 30 June 1959, 2 ECHR 354.

E International Trade Dispute Rulings

Canada – Measures Affecting Exports of Unprocessed Herring and Salmon BISD 35S (1988) 98.

Thailand: Restrictions on Importation of and Internal Taxes on Cigarettes BSID 37th Supp (1990).

United States – Import Prohibition on Certain Shrimp and Shrimp Products Report of the Panel WT/D58/R (15 May 1998).

United States – Restrictions on Imports of Tuna: Report of the Panel (1994) GATT Doc. DS29/R.

United States – Safeguard Measures on imports of fresh, chilled or frozen lamb meat from New Zealand and Australia DS177/AB/R, DS178/AB/R (01 May 2001).

United States – Standards for Reformulated and Conventional Gasoline Report of the Panel, WT/DS2/R (29 January 1996).

F Texts

Paul Dalziel and Ralph Lattimore *The New Zealand Macroeconomy: A Briefing on the Reforms* (2 ed, Oxford University Press, Auckland, 1996).

Roderick Deane "Globalisation and Constitutional Development" in Colin James (ed) *Building the Constitution* (Victoria University of Wellington Institute of Policy Studies, Wellington, 2000) 112.

Martin J Dedman *The Origins and Development of the European Union 1945-95: A History of European Integration* (Routledge, London, 1996).

Professor John Farrar "Closer Economic Relations and Harmonisation of Law Between Australia and New Zealand" in Philip A Joseph (ed) *Essays on the Constitution* (Brookers, Wellington, 1995) 158.

D J Harris (ed) *Cases and Materials on International Law* (5 ed, Sweet & Maxwell, London, 1998).

David Held *Democracy and the Global Order: From the Modern State to Cosmopolitan Governance* (Stanford University Press, Stanford (Cal), 1995).

Bjorn Hettne (ed) *International Political Economy: Understanding Global Disorder* (Fernwood Publishing, Halifax, 1995).

Meinhard Hilf and Ernst-Ulrich Petersmann (eds) *National Constitutions and International Economic Law* (Kluwer Law and Taxation Publishers, Boston, 1993).

Andrew Heywood *Political Ideologies: An Introduction* (MacMillan Education Limited, London, 1992) 271.

John H Jackson "The World Trading System" in John H Jackson, William J Davey & Alan O Sykes Jr (eds) *Legal Problems of International Economic Relations* (3 ed, West Publishing Company, St Paul (Minn), 1995).

Philip A Joseph *Constitutional and Administrative Law in New Zealand* (The Law Book Company, Sydney, 1993).

Jane Kelsey *Reclaiming the Future: New Zealand and the Global Economy* (Bridget Williams Books, Wellington, 1999).

Jane Kelsey *Rolling Back the State: Privatisation of Power in Aotearoa/New Zealand* (Bridget Williams Books Limited, Wellington, 1993).

Hon Justice Michael Kirby and Philip A Joseph "Trans-Tasman Relations – Towards 2000 and Beyond" in Philip A Joseph (ed) *Essays on the Constitution* (Brookers, Wellington, 1995) 129.

Bill Mansfield "The Constraints of Treaties and International Law" in Colin James (ed) *Building the Constitution* (Victoria University of Wellington Institute of Policy Studies, Wellington, 2000) 110.

Joseph R Nolan and Jacqueline M Nolan-Haley (eds) *Black's Law Dictionary* (6 ed, West Publishing Co, St Paul (Minn), 1990) 1396.

Christian Reus-Smit "Changing Patterns of Governance: From Absolutism to Global Multilateralism" in Albert J Paolini, Anthony P Jarvis and Christian Reus-Smit (eds) *Between Sovereignty and Global Governance: the United Nations, the State and Civil Society* (MacMillan Press, New York, 1998).

Oscar Schachter "The Erosion of State Authority and its Implications for Equitable Development" in Friedl Wiess, Erik Denters and Paul de Warrt (eds) *International Economic Law with a Human Face* (Kluwer Law International, The Hague, 1998) 31.

The Commission on Global Governance *Our Global Neighbourhood* (Oxford University Press, New York, 1995).

Michael J Trebilcock and Robert Howse *The Regulation of International Trade* (2 ed, Routledge, London, 1999).

G Journal Articles

Alfred C Aman Jr "Indiana Journal of Global Legal Studies: An Introduction" in *The Globalisation of Law, Politics and Markets: Implications for Domestic Law Reform* (1993) 1 Indiana Journal Global Legal Studies 1.

Clive Elliott "CER at the Crossroads: Business Law Harmonisation – Where to Now?" [1995] NZLJ 47.

Paolo Galizzi "Globalisation, Trade and the Environment: Broadening the Agenda After Seattle? [2000] 4 Env Liability 106.

David Goddard "The Reciprocal Enforcement of Judgments (Amendment) Act 1992: A Half Step Towards CER" [1992] NZ Recent LR 180.

Michael Hart "The WTO and the Political Economy of Globalisation" (1999) 33 Journal of World Trade 75.

Gary A Hughes "Redirecting CER and the Harmonisation of Competition Law" (1995) 7 Auckland University Law Review 1039.

Sir Kenneth Keith "Governance, Sovereignty and Globalisation" (1998) 28 VUWLR 477.

David W Kennedy "A New World Order: Yesterday, Today, and Tomorrow" (1994) 4 Transnational Law & Contemporary Problems 329.

GWR Palmer "The New Public Law: Its Province and Function" (1991) 22 VUWLR 8.

Oscar Schachter "The Decline of the Nation-State and its Implications for International Law" (1997) 36 Colombia Journal of Transnational Law 7.

Daniel K Tarullo "Law and Governance in a Global Economy" (1999) 93 ASIL Proceedings 105.

H Newspaper Articles

Robyn McLean "Beast is Unleashed – But What Now?" (2 September 2001) *Sunday Star Times* Auckland 2.

I Electronic Material

Citizen.org web site: <http://www.citizen.org> (last accessed 28 September 2001).

Jane Kelsey "Globalisation, State and Law: Towards a 'Multi-Perspectival Polity'" in Australasian Law Teachers' Association *Cross Currents: Internationalism, National Identity and Law* (Australasian Law Teachers' Association, 1995) <http://www.austlii.edu.au> (last accessed 10 September 2001) 1.

IMF web site: <http://www.imf.org> (last accessed 28 September 2001).

Ministry of Foreign Affairs and Trade *Australia: Agreement Between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards* <http://www.mfat.govt.nz/foreign/regions> (last accessed 19 June 2001).

Ministry of Foreign Affairs and Trade *Australia: Closer Economic Relations* <http://www.mfat.govt.nz/foreign/regions/australia/cer.html> (last accessed 19 June 2001).

Ministry of Foreign Affairs and Trade *New Zealand and Singapore – Closer Economic Partnership* <http://www.mfat.govt.nz/help/file/nzsincep.html> (last accessed 19 June 2001).

Ministry of Foreign Affairs and Trade *New Zealand and Singapore to Start Negotiations* <http://www.mfat.govt.nz/speech/sministy.html> (last accessed 19 June 2001).

Pacific Economic Cooperation Council *Competition Policy – Aims and Findings* <http://pecc.org/trade/policy.html> (last accessed 6 September 2001).

Policyalternatives.org web site: <www.policyalternatives.ca> (last accessed 28 September 2001).

World Bank web site: <http://www.worldbank.org> (last accessed 28 September 2001).

WTO web site: <http://www.wto.int> (last accessed 28 September 2001).

J Other Material

1970 Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States in Accordance with the Charter of the United Nations, United Nations General Assembly Resolution 2625(XXV).

1974 Resolution on the Definition of Aggression, United Nations General Assembly Resolution 3314(XXIX).

David Goddard "Making Business Law: The CER Dimension" Report Commissioned by the Ministry of Commerce (Wellington, 1999).

New Zealand Law Commission *International Trade Conventions* (NZLC SP5, Wellington, 2000).

Office of the Minister of Broadcasting "Broadcasting Policy: Objectives and Delivery Mechanisms" (06 July 2000).

Office of the Minister for Trade Negotiations "Local Content in Broadcasting: New Zealand's International Obligations" (September 2001).

The New Zealand Government "Proposed United States Trade Agreement Law Welcomed" (29 May 2001) Press Release.

Hon Jim Sutton, MP "Minister Spells Out Trade Policy Principles" (27 June 2001) Press Release.