

Bilateral Arbitration Treaty

Evaluating the proposed Bilateral Arbitration Treaty

Name of presenters Event Date of presentation

Chris Nixon and Georgia Whelan Bilateral Arbitration Treaty Regime: An Economic Analysis 2 March 2016



Overview

- Purpose: to conduct a practical assessment of the potential impact a BAT could have on exporters
- A BAT could:
 - Assist exporting businesses
 - Improve participation



Survey

NZIER

COMPANY ID: RESPOND BY: 15/01/2016

CONFIDENTIAL SURVEY OF OPINION ON A BILATERAL ARBITRATION TREATY

				nail responses to: georgia.whelan@nzier.org.nz				
ike this:	Not like	this: 🕖	\otimes \oslash					
How many	employees	does the b	usiness emp	loy?	1 - 10	11 - 19	20 - 49	50+
					1	2	3	4
Which one	of the follo	wing classif	ications mo	st closely de	scibes you	r firm's expo	rts?	
Agriculture,	Accommod-				Scientific &	Electricity, gas,	Wholesale	Health care &
forestry & fishing	ation & food services	Retail trade	Manufacture	Construction	technical services	water & waste services	trade	social assistance
1	-	0		(5)	6	$\overline{\mathcal{O}}$	(8)	(9)
(I)	(2)	(3)	(4)	\sim	\sim	Information,	0	9
Education &	Transport, postal &	Admin & support	Rental, hiring & real estate	Arts & recreation	Financial & insurance	media &	Mining	Other
training	warehousing	services	services	services	services	telecommu- nications	Mining.	other
10	(11)	(12)	(13)	(14)	(15)	(16)	17	(18)
-	-	-	-	-	-	-	-	-
		mational tra	ansactions, i	is a formal o	ontract usi	ally created	between t	he business
and other Yes	No No							
(1)	(2)							
U								
f yes, doe:	s the contra	ct usually c	ontain a disp	oute resoluti	ion clause?			
Yes	N.	N1 / A						
162	No	N/A						
1	2	3						
1	2	3				discuster 2		
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① Has your b Yes	2 usiness been No	3	in internatio	nal busines	s-to-busine	ss dispute?		
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Do you believe that arbitration is a better dispute resolution mechanism for international business-tobusiness disputes than litigation?

Yes	No	Unsure
1	2	3

How beneficial do you believe default arbitration could be to your business?

A lot	A little	None	
1	2	(3)	

What do you believe this value to your business could be?

With no	international experience:	dispute		With in	nternational d experience:	ispute
Agree	Disagree	Unsure		Agree	Disagree	Unsure
1	2	3	Increased trade	1	2	3
1	2	3	Decreased negotiation costs	1	2	3
1	2	3	Expertise of arbitrators	1	2	3
1	2	3	Enforceability of award	1	2	3
1	2	3	Lowered costs	1	2	3
1	2	3	Speed	1	2	3
1	2	3	Independence of arbitrators	1	2	3
1	2	3	Flexibility of procedure	1	2	3
1	2	3	Favourable outcome	1	2	3
1	2	3	Confidentiality	1	2	3
1	2	3	Access to justice	1	2	3
1	2	3	Certainty	1	2	3
1	2	3	Relationship building	1	2	3
1	2	3	Other	1	2	3

Do you believe that there would be costs to your business with default arbitration?

A lot A little None

1 2 3

What do you believe this cost to your business could be?

With no international dispute				With international dispute		
	experience:				experience:	
Agree	Disagree	Unsure		Agree	Disagree	Unsure
1	2	3	Expense	1	2	3
1	2	3	Management time	1	2	3
1	2	3	Delay	1	2	3
1	2	3	Denial of right to access the courts	1	2	3
1	2	3	Unfavourable outcome	1	2	3
1	2	3	Unfamiliarity with procedure	1	2	3
1	2	3	Enforceability	1	2	3
1	2	3	Lack of right to appeal	1	2	3
1	2	3	The risk of compromise awards	1	2	3
1	2	3	Other	1	2	3

Additional comments or clarification:



Primary costs and benefits

Primary costs	Primary benefits
Expense	Independence of arbitrators
Management time	Decreased negotiation costs
Delay	Lowered costs of dispute resolution
Unfamiliarity with procedure	Expertise of arbitrators



Conclusion

- Degree of uncertainty
 - Knowledge gap
 - Heterogeneity in firm behaviour
- Growth in collective experience
- Decrease risks
- Could function in the New Zealand environment



THANK YOU