

National Interest Analysis [2010] ATNIA 35

with attachment on consultation

**Exchange of Letters Constituting an Agreement
between
the Government of Australia and the Government of New Zealand
to amend Annex G
of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA),
done at Canberra on 28 March 1983**

[2010] ATNIF 31

NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

SUMMARY PAGE

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Nature and timing of the proposed treaty action

1. The proposed treaty action is to bring into force amendments to Annex G of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983 [1983] ATS 2. ANZCERTA has been amended several times since it entered into force. The exchange of notes is intended to implement recommendations made pursuant to a joint Australia-New Zealand Review (the 'Review') completed in March 2010.
2. A separate, but related, treaty action is proposed for the implementation of amendments to ANZCERTA Article 3, which were also recommended by the Review. Two separate treaty actions are proposed owing to differences in the means by which amendments to Article 3 and Annex G would be implemented and timing differences that would arise from this. The Article 3 amendments will be implemented through amendments to the *Customs Act 1901*, while amendments to Annex G will be implemented through the *Customs (New Zealand Rules of Origin) Regulations 2006*. It is anticipated that amendments to the *Customs Act 1901* will be implemented at a later point in time than the amendments to the Regulations owing to Parliamentary timetables for the passage of legislation.
3. Once all necessary domestic processes have been completed, including amending the *Customs (New Zealand Rules of Origin) Regulations 2006*, (which requires Executive Council approval), the proposed amendments to ANZCERTA Annex G will be brought into force as soon as is practical by an exchange of diplomatic notes.

Overview and national interest summary

4. The Review recommended that the Product Specific Rules (PSR) applying to a relatively small number of tariff lines where factory-cost Regional Value Content (RVC) requirements were retained in 2007 be changed to Change in Tariff Classification-only (CTC) rules. It also recommended that small administrative changes be made to the PSR for around 700 other tariff lines to make the rules easier for businesses to interpret and more consistent with Australia's other Free Trade Agreements. The proposed changes to the PSR will reduce the administrative burden for exporters and will facilitate the eligibility of Australian firms for duty free entry into the New Zealand market.
5. The broader benefits of deeper economic links between Australia and New Zealand are recognised in ongoing shared endeavours to advance economic integration between the two countries. These include the Single Economic Market initiative, which is aimed at allowing businesses to operate across the Tasman with minimal regulatory impediments. The proposed amendments to ANZCERTA are consistent with its central role in the trans-Tasman economic relationship and continued efforts to advance this relationship.

Reasons for Australia to take the proposed treaty action

6. On 1 January 2007, the current ANZCERTA Rules of Origin (ROO), including its associated PSR schedule, entered into force. The 2007 ROO reflected a major change from the earlier ROO regime - a shift away from ROO based solely on the RVC approach based on the factory cost of a good, to ROO based on a CTC approach. CTC rules were adopted for all tariff lines; however, for a small number of items the factory cost based RVC was retained as an additional requirement to be met, effectively meaning that the rule for those products was unchanged.

7. In negotiating these ROO, both countries agreed to include a provision in ANZCERTA requiring that the ROO be reviewed within three years of the new rules taking effect. Accordingly, Article 3.27 of ANZCERTA contains the following paragraph:

27. The Member States shall complete a review within three years of entry into force of this Article to address any differences between the Member States arising from the operation of this Article.

8. In order to meet this obligation the Review was commenced in late-2008 by officials from Australia and New Zealand. The Review was completed in March 2010. It covered ANZCERTA Article 3 (“Rules of Origin”) and the related Annex G, which contains the PSR schedule. The Review recommended to Ministers that amendments be made to Article 3 and the PSR schedule. The proposed treaty action implements the recommendation with respect to Annex G. The vast majority of the proposed amendments stemming from the Review are to the PSR schedule.

9. A key factor in the Review was that, since 1 January 2007, Australia and New Zealand have each concluded a number of bilateral and plurilateral Free Trade Agreements. These include the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA), the Australia-Chile Free Trade Agreement and the New Zealand-China Free Trade Agreement. Australia and New Zealand have agreed that, where appropriate, the ANZCERTA ROO should be brought into line with ROO under these other agreements. Doing so will provide consistency for exporters and ensure that ANZCERTA reflects best practice and remains one of the world’s most exemplary Free Trade Agreements.

10. Accordingly, the proposed amendments to the ANZCERTA ROO and PSR will provide greater consistency of treatment within ANZCERTA across product areas and with Australia’s more recent Free Trade Agreements. PSRs based on the CTC approach are simpler to administer for government and business than the RVC approach to ROO and their adoption is in line with international trends.

Obligations

11. The proposed amendments change the PSR applying to a relatively small number of tariff lines. These particular tariff lines had retained the RVC approach in determining the country of origin, whereas the 2007 reforms had shifted most tariff lines to a CTC approach. The proposed amendments effectively bring those outstanding tariff lines into line with the CTC approach. As such, the proposed amendments do not give rise to new substantive obligations, but instead involve technical amendments to Australia’s existing obligations with regard to ANZCERTA ROO.

12. Under Article 3 of ANZCERTA, Australia remains obligated to treat goods which meet the relevant criteria as originating in the territory of Australia and New Zealand for the purposes of the agreement. Goods that are deemed to be originating goods according to these criteria have duty free access to the importing state.

Implementation

13. The proposed treaty action will require amendments to Annex G of ANZCERTA. These amendments will be implemented by changes to the *Customs (New Zealand Rules of Origin) Regulations 2006*.

14. Following the completion of all domestic legislative requirements, including amendment of the *Customs (New Zealand Rules of Origin) Regulations 2006*, the proposed treaty action will enter into force through an exchange of diplomatic notes.

15. There will be no impact on State or Territory laws.

16. New Zealand will undertake all changes to its domestic law necessary for its compliance with the proposed treaty action through amendment to the relevant regulations.

Costs

17. The proposed amendments simplify the determination of origin for goods traded between Australia and New Zealand. They entail no financial outlays by the government and Treasury has assessed that they are expected to have a negligible cost to revenue each year. Compliance costs to industry are expected to decrease.

Regulation Impact Statement

18. The Office of Best Practice Regulation, Department Finance and Deregulation has been consulted and has confirmed that a Regulatory Impact Statement is not required.

Future treaty action

19. ANZCERTA does not set out any amendment procedures. Future amendments to Annex G of ANZCERTA would be by agreement of both parties, as set out in Article 22 of ANZCERTA. ANZCERTA also provides for consultation and review of ROO provisions under Articles 3.24-3.26.

Withdrawal or denunciation

20. The proposed treaty action is an amendment of Annex G of ANZCERTA. Neither the proposed treaty action nor ANZCERTA include an express reference to the right of Member States to withdraw from, or denounce, the Treaty. Under Article 54 of the Vienna Convention on the Law of Treaties, withdrawal is possible only with the consent of both parties. Such withdrawal would be subject to the Australian treaty process.

Contact details

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ATTACHMENT ON CONSULTATION

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CONSULTATION

21. Within the Australian Government, officials from the Department of Foreign Affairs and Trade (DFAT), the Department of Innovation, Industry, Science and Research (DIISR), Department of Agriculture, Forestry and Fisheries (DAFF), the Australian Customs and Border Protection Service (ACBPS) and the Department of Prime Minister and Cabinet discussed the proposal to make amendments to the text of Article 3 and the Product Specific Rules (PSR) Appendix, contained in Annex G. The proposal has also been promoted on the DIISR websites and in newspaper advertisements run in *The Australian* and the *Australian Financial Review* on 3 February 2008.

22. Australian industry bodies were consulted extensively in the development of the proposal, initially in February 2009 and then throughout the review process. In the main, no opposition was expressed to the changes.

23. Strong opposition was, however, expressed by Australian men's suit manufacturers to any change to the PSR for their products (HS Code 6203). They contended that the removal of the existing factory cost based regional value content (RVC) rule would allow New Zealand producers to use high quality imported fabric and gain duty free entry into Australia, significantly eroding the Australian manufacturers' competitive position in the market for high quality suits. The Australian manufacturers alleged that New Zealand producers enjoy a significant cost advantage as a result of lower infrastructure and labour costs.

24. Submissions were also received from Australian retailers which argued that the current ROO for HS 6203 is unduly restrictive and increases the wholesale cost of their products. Similar concerns were expressed by two Australian fashion designers, producing products in New Zealand under license.

25. Under the proposed amendments to ANZCERTA, the PSR for HS Code 6203 is to shift from an RVC requirement to a CTC rule, effective from 1 January 2012, i.e, a later date than will apply for other changes to the ROO and PSR. This change in the PSR for HS Code 6203 recognises the intent of Australia and New Zealand to apply the CTC approach consistently across the ROO, thereby removing anomalies and complexities, while also giving Australian structured apparel manufacturers additional time to adjust to the new rule.

26. States and Territories were consulted through the Commonwealth-State/Territory Standing Committee on Treaties (SCOT).

Business and industry groups consulted include:

- ACCORD Australasia Limited
- Australian Chamber of Commerce and Industry (ACCI)

- Australian Industry Group (Ai Group)
- Australian Information Industry Association (AIIA)
- Australian Manufacturing Workers Union (AMWU)
- Australian Paint Manufactures Federation (APMF)
- Australian Services Union (ASU)
- Australian Steel Institute
- Cambridge Clothing
- Carpet Institute of Australia
- Council of Textiles and Fashions Industries Australia (TFIA)
- Dom Bagnato
- Federal Chamber of Automotive Industries (FCAI)
- Federation of Auto Parts Manufactures (FAPM)
- Furnishing Industry of Australia (FIAA)
- Howard Consulting
- John Hannah
- Law Institute of Victoria
- Oz Leather
- Peter Jackson
- Plastics and Chemicals Industries Association (PACIA)
- Surimex
- Stafford Group
- Styleride Seating Systems
- Textile, Clothing and Footwear Victoria (TCFVic)
- Travellers Apparel