

Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement

Introduction

- 5.1 The *Australia-United States Free Trade Agreement* (AUSFTA) aims to increase trade liberalisation and facilitate investment between Australia and the United States.¹
- 5.2 The Exchange of Letters under the agreement will amend the Product Specific Rule for tariff classifications concerning yarns made of mixed synthetic staple fibres (Classifications 5501.00 to 5510.30, 5510.90 and 5511 in AUSFTA Annex 4-A).²
- 5.3 The proposed amendment responds to changes in the textile industry in Australia and the United States (US) since agreement on the Product Specific Rules in 2004. Specifically, the lack of availability of Australian

1 *National Interest Analysis* (NIA) [2010] ATNIA 26, Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement (AUSFTA) done at Washington on 18 May 2004, [2010] ATNIF 23, para. 2.

2 AUSFTA, Article 23.3 provides for amendment by agreement in writing by the Parties following completion of respective necessary internal requirements. This extends to amendment of AUSFTA Annexes, being integral to the agreement (Article 23.2).

and US made viscose rayon fibres for use in yarn manufacture made it impracticable to achieve 'originating goods' status under the current rule, and AUSFTA's preferential rate of duty could not be accessed.³

5.4 The new arrangements will provide Australian and US manufacturers with access to the preferential duty rate when exporting into each Party's markets, regardless of the origin of the viscose rayon staple fibres used to produce the yarn.⁴

5.5 The Department of Foreign Affairs and Trade (DFAT) advised the Committee that the proposed amendment is consistent with the objective of the AUSFTA to:

Establish clear and mutually advantageous rules governing the Parties' trade and reduce the barriers to trade that exist between them.⁵

Amendments to the AUSFTA

5.6 The purpose of the amendments to the Product Specific Rules under the AUSFTA is to create a reciprocal obligation for Australia and the United States to provide manufacturers with the preferential rate of duty when exporting yarn into each other's markets.⁶

5.7 The Committee notes that this is the first and only such amendment made to the Product Specific Rules since the signing of the AUSFTA in 2004, and is necessitated by changes in the textile market.⁷

5.8 Investigating the nature of the change, the Committee was informed that the sole US manufacturer of viscose rayon staple fibres had ceased operation, causing the Australian yarn manufacturer to source viscose rayon from Asian suppliers.⁸ Subsequent advice on this clarified that the US manufacturer had closed due to the inability to compete with the

3 NIA, paras 6 and 10.

4 NIA, para. 5.

5 Ms Catherine Johnstone, *Transcript of Evidence*, Canberra 21 March 2011, p. 6, citing the Preamble to the Agreement, NIA, para. 4.

6 NIA, paras 5 and 7.

7 NIA, paras 6 and 10.

8 NIA, para. 10

cheaper made Asian product in 2005, shortly after the AUSFTA had been entered into.⁹

- 5.9 DFAT's representative Ms Catherine Johnstone commented on the broader reciprocal benefits to be anticipated under the AUSFTA amendments, stating:

We see it as a win-win situation that enhances trade opportunities for both Australian and US industry and gives Australian industry an opportunity to realise the benefit of price competitiveness relative to other countries that cannot claim the duty-free preference. This is particularly the case with apparel manufactured from the viscose rayon staple fibres. Under the relevant product-specific rule for tariff classification, 5510, Australian industry in 2010 had exports to the US valued at \$4.4 million, whereas there were no US imports into Australia in 2010 under that particular code.¹⁰

- 5.10 Given Australia's current export dominance indicated by the data cited above, the Committee determined to assess the extent the amendments might benefit Australian exporters.
- 5.11 The Committee noted that an evaluation of the proposed amendments provided by DFAT indicated that only marginal advantage would accrue to the relevant industry sectors in both nations.¹¹ On the broader export outcomes under AUSFTA, the Committee established with DFAT that, although there had been an overall growth in exports and imports for both parties, Australia's share of trade with the US had fallen under the Agreement.¹²
- 5.12 Notwithstanding this, the Committee was informed that Australian and US industry representatives had actively sought the proposed amendments. Consultations on the matter began in November 2007 and

9 United States International Trade Commission, 'Viscose Rayon Staple Fiber: probable Effect of Modification of U.S.-Australia FTA Rules of Origin', *Investigations No. U.S.-Australia FTA-103-021 USTIC Publication 4041*, October 2008, p. 4, received from the Department of Innovation, Industry, Science and Research through the Department of Foreign Affairs and Trade, 12 April 2011.

10 Ms Catherine Johnstone, *Transcript of Evidence*, Canberra 21 March 2011, pp. 6-7.

11 United States International Trade Commission, 'Viscose Rayon Staple Fiber: Probable Effect of Modification of U.S.-Australia FTA Rules of Origin', *Investigations No. U.S.-Australia FTA-103-021 USTIC Publication 4041*, October 2008, p. 4.

12 This could not, however, be directly attributed to the Agreement itself. Ms Catherine Johnstone, *Transcript of Evidence*, Canberra 21 March 2011, p. 8.

industry assessments were conducted. In late 2008, the US Government issued a proclamation endorsing the changes which initiated Australia's domestic progression of the amendment proposal.¹³

- 5.13 Acknowledging the apparently protracted timeframe taken for negotiations given early industry requests, Ms Johnstone advised that the long delay post 2008 was largely the result of the complex clearance process in Australia. The Committee's review was also entailed, given the Election prorogation (in 2010). Ms Johnstone suggested that the process might be simplified by treating such amendments as minor, or less than, treaty actions.¹⁴

Implementation

- 5.14 The Committee was advised that the letter setting out the requested amendments had been approved by the American Trade Ambassador and forwarded to the President for Proclamation.¹⁵
- 5.15 Following review by JSCOT, and its support for ratification, the *Customs (Australia-US Free Trade Agreement) Regulations 2004* will be amended to incorporate the amendment. Letters will then be exchanged confirming readiness for the amendments to enter force on an agreed date.¹⁶

Conclusion

- 5.16 The Committee notes this is the first and only amendment to AUSFTA, an agreement which governs an important trade relationship.
- 5.17 The Committee regards examination of this apparently minor change to the AUSFTA as an important obligation. Evaluations of even minor amendments provide an opportunity for periodic evaluation of industry specific and broader outcomes under this trade agreement.
- 5.18 In the course of its evaluation of the proposed amendments, it became evident, for example, that Australia's share of trade with the United States

13 Mr Alan Coleman, Department of Innovation, Industry, Science and Research, and Ms Johnstone, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 21 March 2011, p. 7.

14 *Transcript of Evidence*, Canberra 21 March 2011, p. 10.

15 Ms Johnstone, *Transcript of Evidence*, Canberra, 21 March 2011, p. 9.

16 NIA paras 8 and 3.

has fallen under the AUSFTA, despite overall growth in exports and imports for both parties. This is a cause for reflection in the framing and adjustment of such agreements.

- 5.19 The Committee notes, however, that the particular proposals made in this agreement were sought by industry in both countries, with mutual benefits anticipated. The Committee supports binding treaty action.

Recommendation 3

The Committee supports the *Exchange of Letters Constituting an Agreement to Amend Annex 4-A (Textile or Apparel Specific Rules of Origin) of the Australia-United States Free Trade Agreement*, and recommends binding treaty action be taken.

