

## **Text of the Proposed Treaty Action**

### **Exchange of Letters constituting an Agreement between the Government of Australia and the Government of New Zealand to Amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983**

#### Draft letter from Australia to New Zealand

The Hon Phil Goff  
Minister of Trade  
Parliament Buildings  
Wellington  
NEW ZEALAND

Dear Minister

I have the honour to refer to the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA), done at Canberra on 28 March 1983, and to the discussions that have taken place between representatives of our two Governments regarding Article 3 ('Rules of Origin' (ROO)) of ANZCERTA.

At their annual CER meeting, held in Queenstown on 11 December 2004, Australian and New Zealand Trade and Economic Ministers agreed to adopt a Change of Tariff Classification (CTC) approach to determining ANZCERTA ROO, subject to negotiations on sensitive sectors. CTC ROO are simpler to administer for government and business than the ex-factory regional value-added approach currently used under ANZCERTA and will bring ANZCERTA into line with international trends. The CTC approach also introduces some discipline around the Supporting Information and Verification (Article 3, Section B) that must be provided, as well as expanding the Consultation and Modifications (Article 3, Section C) and Application and Interpretation (Article 3, Section D) provisions of ANZCERTA.

The negotiations were completed on 23 December 2005, when New Zealand Ministers for Economic Development and Trade Negotiations wrote to Australian Ministers for Trade and Industry, Tourism and Resources, confirming their agreement to the package. Australian and New Zealand Ministers simultaneously announced on 3 February 2006 that both Governments had agreed to adopt the CTC approach, with an anticipated implementation date of 1 January 2007.

I, therefore, propose that Article 3 of ANZCERTA should be amended by replacing the whole of the existing text of Article 3 with Attachment A, which includes a new annex, Annex G.

If this is acceptable to the Government of New Zealand, I propose that this letter and your reply to that effect shall constitute an Agreement to amend ANZCERTA. The Agreement to amend ANZCERTA shall enter into force when the two Governments have notified each other by an exchange of notes that they have completed the relevant domestic processes.

Yours sincerely

MARK VAILE

**Article 3**

**Rules of Origin**

**Section A: Rules of Origin**

1. ***Originating goods:*** For the purposes of this Agreement, an originating good means:
  - a) a good wholly obtained in the territory of one or both of the Member States;
  - b) a good produced in the territory of one or both of the Member States exclusively from originating materials;
  - c) a good produced in the territory of one or both of the Member States where:
    - (i) the good meets the requirements specified in Annex G; or
    - (ii) the good is wholly manufactured in the territory of that Member State from one or more of the following:
      - (I) unmanufactured raw products;
      - (II) materials wholly manufactured in the territory of one or both Member States;
      - (III) materials imported from outside the territories of the Member States that the other Member State has determined for the purposes of this Agreement to be manufactured raw materials; or
    - (iii) the good is imported into the territory of the other Member State before 1 January 2012, or any other date as agreed in writing between the Member States, and meets the following conditions:
      - (I) the process last performed in the manufacture of the goods was performed in the territory of that Member State; and
      - (II) there is a regional value content of not less than 50 percent based on the factory cost method; and
  - d) a good that otherwise qualifies as an originating good under this Article.
  - e) Where unforeseen circumstances result in a shipment failing to qualify under paragraph 1(c)(i) or paragraph 1(c)(iii), when the regional value content is based on the factory cost method, the Member States agree to apply a margin of tolerance of up to two percentage points for such shipments. Such shipments shall be deemed to have a 50 percent regional value content. A limited period of time shall be allowed for the manufacturer to take action to ensure future shipments qualify. It is not intended to show a de facto reduction to 48 percent in qualifying regional content.

2. **Accumulation:** Originating materials from the territory of a Member State, used or consumed in the production of a good in the territory of the other Member State, shall be considered to originate in the territory of the other Member State.
3. **Third Country Transshipment:** A good shall not be considered to be an originating good if the good undergoes subsequent production or any other operation outside the territories of the Member States, other than unloading, reloading, storing, repacking, relabelling or any other operation necessary to preserve it in good condition or to transport the good to the territory of a Member State.
4. **De Minimis:** Each Member State shall provide that a good that does not undergo a change in tariff classification pursuant to Annex G is nonetheless an originating good if:
  - a) the value of all non-originating materials used or consumed in the production of the good that do not undergo the required change in tariff classification does not exceed 10 percent of the adjusted value of the good; and
  - b) the good meets all other applicable criteria set forth in this Article for qualifying as an originating good.
5. The value of the non-originating materials referred to in paragraph 4 shall, however, be included in the value of non-originating materials for any applicable regional value content requirement for the good.
6. **Regional Value Content:** Where this Agreement refers to a regional value content for a good (meaning content originating in the territory of one or both Member States), each Member State shall provide that for the purposes of claims for preferential treatment in accordance with paragraph 16, the regional value content is calculated based on one of the relevant following methods, as specified in paragraph 1(c)(iii) or Annex G:

- a) Build-down Method

$$RVC = \frac{AV - VNM}{AV} \times 100$$

where

RVC is the regional value content, expressed as a percentage;

AV is the adjusted value; and

VNM is the value of non-originating materials that are acquired and used or consumed by the producer in the production of the good. VNM does not include the value of a material that is self-produced.

- b) Build-up Method

$$RVC = \frac{VOM}{AV} \times 100$$

where

RVC is the regional value content, expressed as a percentage;

AV is the adjusted value; and

VOM is the value of originating materials that are acquired or self-produced, and used or consumed by the producer in the production of the good.

c) Factory Cost Method

$$RVC = \frac{QE}{FC} \times 100$$

where

RVC is the regional value content, expressed as a percentage;

QE is the qualifying expenditure on the good; and

FC is the factory cost of producing the good.

7. ***Value of Materials:*** Each Member State shall provide that for the purpose of this Article, the value of a material is:
- a) for a material imported by the producer of the good, the adjusted value of the material;
  - b) for a material acquired in the territory where the good is produced, the cost of acquisition and the cost of transporting the material to the producer of the good where that cost is not included in the cost of acquisition;
  - c) for a material that is self-produced, the sum of all expenses incurred in the production of the material, including general expenses, and an amount for profit equivalent to the profit added in the normal course of trade.
8. Each Member State shall provide that the value of materials may be adjusted as follows:
- a) for originating materials, the following costs and expenses shall be added to the value of the material if not included under paragraph 7:
    - i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the Member States' territories to the location of the producer;
    - ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Member States, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable; and
    - iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products; and
  - b) for non-originating materials, the following costs and expenses shall be deducted from the value of the material if included under paragraph 7:

- i) the costs of freight, insurance, packing, and all other costs incurred in transporting the material within or between the Member States' territories to the location of the producer;
  - ii) duties, taxes, and customs brokerage fees on the material paid in the territory of one or both of the Member States, other than duties and taxes that are waived, refunded, refundable, or otherwise recoverable, including credit against duty or tax paid or payable;
  - iii) the cost of waste and spoilage resulting from the use of the material in the production of the good, less the value of renewable scrap or by-products;
  - iv) the cost of processing incurred in the territory of a Member State in the production of the non originating material; and
  - v) the cost of originating materials used or consumed in the production of the non-originating material in the territory of a Member State.
9. ***Accessories, Spare Parts, and Tools:*** Each Member State shall provide that accessories, spare parts, or tools delivered with a good that form part of the good's standard accessories, spare parts, or tools, shall be treated as originating goods if the good is an originating good, and shall be disregarded in determining whether all the non-originating materials used or consumed in the production of the good undergo the applicable change in tariff classification, provided that:
- a) the accessories, spare parts, or tools are not invoiced separately from the good;
  - b) the quantities and value of the accessories, spare parts, or tools are customary for the good; and
  - c) if the good is subject to a regional value content requirement, the value of the accessories, spare parts, or tools shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
10. Paragraph 9 does not apply where the accessories, spare parts or tools have been added solely for the purpose of artificially raising the regional value content of the goods.
11. ***Fungible Goods and Materials:*** Each Member State shall provide that the determination of whether fungible goods or materials are originating goods shall be made either by physical segregation of each good or material or through the use of any inventory management method, such as averaging, last-in first-out, or first-in first-out, recognised in the generally accepted accounting principles of the Member State in which the production is performed or otherwise accepted by the Member State in which the production is performed.
12. Each Member State shall provide that an inventory management method selected under paragraph 11 for particular fungible goods or materials

shall continue to be used for those fungible goods or materials throughout the fiscal year that the inventory management method was selected.

13. **Packaging Material and Containers for Retail Sales:** For the purposes of paragraph 7(a) and paragraph 7(b), each Member State shall provide that packaging materials and containers in which a good is packaged for retail sale, if classified with the good, shall be disregarded in determining whether all the non-originating materials used or consumed in the production of the good undergo the applicable change in tariff classification set out in Annex G, and, if the good is subject to a regional value content requirement, the value of such packaging materials and containers shall be taken into account as originating or non-originating materials, as the case may be, in calculating the regional value content of the good.
14. **Packaging Materials and Containers for Shipment:** Each Member State shall provide that packing materials and containers for shipment shall be disregarded in determining whether:
  - a) the non-originating materials used or consumed in the production of the good undergo the applicable change in tariff classification set out in Annex G; and
  - b) the good satisfies a regional value content requirement.
15. **Indirect Materials:** With the exception of paragraph 1(c)(iii), each Member State shall provide that an indirect material shall be treated as an originating material without regard to where it is produced and its value shall be the cost registered in the accounting records of the producer of the good.

## **Section B : Supporting Information and Verification**

16. **Claims for Preference:** Each Member State shall provide that an importer may make a claim for preferential treatment under this Agreement based on a declaration by the exporter.
17. **Provision of information:** Each Member State may require that an importer submit or arrange for the exporter to submit, on request, a declaration setting forth the reasons that the good qualifies as an originating good, including pertinent cost and production information. The Member States shall not require that the declaration be in a prescribed format and shall provide for electronic submission, where feasible.
18. Each Member State shall grant a claim for preferential treatment under this Agreement, made in accordance with this Article, unless the Member State possesses information that the claim is invalid or unsubstantiated.
19. **Denial of Preference:** A Member State may deny preferential treatment under this Agreement to an imported good if the importer fails to comply with any requirement of this Article.
20. If a Member State denies a claim for preferential treatment under this Agreement, it shall issue a written determination outlining the reasons for that determination within 20 working days of the date of denial of preference.

21. ***Maintenance of Records:*** Each Member State may require that importers, exporters, producers and principal manufacturers maintain, for at least five years after the date of importation, records relating to the importation, exportation, and production of the good, and may require, as set out in paragraph 17, records necessary to demonstrate that a good qualifies as an originating good.
22. ***Verification:*** For the purpose of determining whether a good imported into its territory from the territory of the other Member State qualifies as an originating good, a Member State may conduct a verification by means of one or more of the following:
  - a) requests for information from the importer;
  - b) requests for information from the exporter, the producer or principal manufacturer in the territory of the other Member State;
  - c) requests for the importer to arrange for the exporter, producer, or principal manufacturer to provide information directly to the Member State conducting the verification;
  - d) information received directly by the importing Member State from an importer as a result of a request described in paragraph 17;
  - e) visits to the premises of an exporter, producer or principal manufacturer in the territory of the other Member State, in accordance with any procedures that the Member States jointly adopt to review records and observe the facilities; or
  - f) such other procedures as the Member States may agree.
23. A Member State may deny preferential treatment to a good where the importer, exporter, producer or principal manufacturer fails to provide information that the Member State requests in a verification conducted in accordance with paragraph 22 demonstrating that the good is an originating good.

### **Section C: Consultation and Modifications**

24. The Member States shall consult and cooperate to ensure that this Article is applied in an effective and uniform manner.
25. The Member States shall consult regularly to discuss necessary amendments to this Article and its Annexes, taking into account developments in technology, production processes and other related matters.
26. Where a Member State considers that in relation to goods subject to paragraph 1(c)(i) the relevant regional value content set out in Annex G is inappropriate, then that Member State may request in writing consultations with the other Member State to determine a suitable regional value content. The Member States shall consult promptly and may mutually determine for such goods a regional value content different to that provided in Annex G.



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.

#### **Section D: Application and Interpretation**

28. For the purposes of this Article:
- a) the basis for tariff classification is the Harmonized Commodity Description and Coding System in force at the time preference is claimed;
  - b) any cost and value referred to in this Article
    - i) shall be recorded and maintained in accordance with the generally accepted accounting principles applicable in the territory of the Member State in which the good is produced; and
    - ii) shall not be counted more than once for the purposes of determining if the good qualifies as an originating good or not.

#### **Section E: Definitions**

29. For the purposes of this Article:
- a) **adjusted value** means the value determined under Articles 1 through 8, Article 15, and the corresponding interpretative notes of the Customs Valuation Agreement, as adjusted to exclude any costs, charges, or expenses incurred for transportation, insurance, and related services incidental to the international shipment of the good from one Member State to the other;
  - b) **allowable expenditure on labour** means the sum of the part of each of the following costs:
    - i) the cost of wages and employee benefits;
    - ii) the cost of supervision and training;
    - iii) the cost of management of the process of manufacture;
    - iv) the cost of receipt and storage of materials;
    - v) the cost of quality control;
    - vi) the cost of packing of goods into inner containers;
    - vii) the cost of handling and storage of goods within the place or places in which a process is performed, that is operated by the principal manufacturer in the territory of the exporting Member State;that is incurred by, or on behalf of, the principal manufacturer and:
    - (I) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of the Member State; and

- (II) that can reasonably be allocated to the processing of the goods in the territory of the Member State.
- c) **allowable expenditure on overheads** means the sum of the part of each of the following costs:
- i) the cost of inspection and testing of materials and goods;
  - ii) the cost of insurance of the following kinds:
    - (I) insurance of plant, equipment and materials used in the production of the goods;
    - (II) insurance of work in progress and finished goods;
    - (III) liability insurance;
    - (IV) accident compensation insurance; and
    - (V) insurance against consequential loss from accident to plant and equipment;
  - iii) the cost of dies, moulds, and tooling and the depreciation, maintenance and repair of plant and equipment;
  - iv) the cost of interest payments for plant and equipment;
  - v) the cost of research, development, design and engineering;
  - vi) the cost of the following items in respect of real property in the territory of the exporting Member State used in the manufacture of the goods:
    - (I) insurance;
    - (II) rent and lease payments;
    - (III) mortgage interest;
    - (IV) depreciation on buildings;
    - (V) maintenance and repair; and
    - (VI) rates and taxes;
  - vii) the cost of leasing of plant and equipment;
  - viii) the cost of energy, fuel, water, lighting, lubricants, rags and other materials and supplies not directly incorporated in goods manufactured in the territory of the exporting Member State;
  - ix) the cost of storage of goods at the place or places in which a process is performed, that is operated by the principal manufacturer in the territory of the exporting Member State;
  - x) the cost of royalties or licences in respect of patented machines or processes used in the manufacture of the goods or in respect of the right to manufacture the goods;
  - xi) the cost of subscriptions to standards institutions and industry and research associations;

- xii) the cost of the provision of medical care, cleaning services, cleaning materials and equipment, training materials and safety and protective clothing and equipment;
- xiii) the cost of the disposal of non-recyclable waste;
- xiv) the cost of subsidisation of a cafeteria in the place or places in which a process is performed, that is operated by the principal manufacturer in the territory of the exporting Member State, to the extent not recovered by returns;
- xv) the cost of security in the place or places in which a process is performed, that is operated by the principal manufacturer in the territory of the exporting Member State;
- xvi) the cost of computer facilities allocated to the process of manufacture of the goods;
- xvii) the cost of contracting out part of the manufacturing process within the Member States, including any associated transport or storage costs;
- xviii) the cost of employee transport;
- xix) the cost of vehicle expenses;
- xx) the cost of any tax in the nature of a fringe benefits tax; and
- xxi) the cost of transporting goods between places in the territory of the exporting Member State in which one or more processes are performed by, or on behalf of, the principal manufacturer;

that is incurred by, or on behalf of, the principal manufacturer and:

- (I) that relates, directly or indirectly, and wholly or partly, to the processing of the goods in the territory of the Member State; and
- (II) that can reasonably be allocated to the processing of the goods in the territory of the Member State;

and excludes the following costs:

- (III) any cost or expense relating to the general expense of doing business (including, but not limited to, any cost or expense relating to insurance or to executive, financial, sales, advertising, marketing, accounting or legal services);
- (IV) the cost of telephone, mail and other means of communication;
- (V) the cost of international travel expenses, including fares and accommodation;
- (VI) the cost of the following items in respect of real property used by persons carrying out administrative functions:
  - (A) insurance;

- (B) rent and lease payments;
  - (C) mortgage interest;
  - (D) depreciation on buildings;
  - (E) maintenance and repair; and
  - (F) rates and taxes;
  - (VII) the cost of conveying, insuring or shipping the goods after manufacture;
  - (VIII) the cost of shipping containers or packing the goods into shipping containers;
  - (IX) the cost of any royalty payment relating to a licensing agreement to distribute or sell the goods;
  - (X) the profit of the principal manufacturer and the profit or remuneration of any trader, agent, broker or other person dealing in the goods after manufacture;
  - (XI) any other cost incurred after the completion of all processes performed by, or on behalf of, the principal manufacturer; and
  - (XII) the cost of processing goods in the territory of a non-Member State.
- d) **Customs Valuation Agreement** means the *Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994*, contained in Annex 1A to the *Marrakesh Agreement Establishing the World Trade Organization 1994*;
- e) **factory cost** means the sum of the total expenditure on originating and non-originating materials, the allowable expenditure on labour and factory overheads, and the cost of inner containers;
- f) **fungible goods or materials** means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical and between which it is impractical to differentiate by mere visual examination;
- g) **generally accepted accounting principles** means the recognized consensus or substantial authoritative support in the territory of a Member State, with respect to the recording of revenues, expenses, costs, assets, and liabilities, the disclosure of information, and the preparation of financial statements. These standards may encompass broad guidelines of general application as well as detailed standards, practices, and procedures;
- h) **good wholly obtained in the territory of one or both of the Member States** means a good that is:
- i) a mineral good extracted there;
  - ii) plants grown there, or products obtained from such plants;
  - iii) a live animal born and raised there;

- iv) a product obtained from a live animal in the territory of a Member State;
  - v) a good obtained from hunting, trapping, fishing, capturing or aquaculture conducted there;
  - vi) fish, shellfish, and any other marine life taken from the sea by vessels registered or recorded with a Member State and flying its flag, or entitled to fly its flag;
  - vii) a good produced or obtained exclusively from products referred to in subparagraph (vi) on board factory ships registered or recorded with a Member State and flying its flag;
  - viii) a good taken by a Member State, or a person of a Member State, from the seabed or subsoil of the territorial sea or the continental shelf of that Member State, in accordance with that Member State's rights under international law;
  - ix) waste and scrap, provided such goods are fit only for the recovery of raw materials, derived from
    - (I) production there; or
    - (II) used goods collected there;
  - x) a good produced there exclusively from goods referred to in subparagraphs (i) to (ix), or from their derivatives, at any stage of production;
- i) **indirect material** means a good used or consumed in the production, testing, or inspection of a good but not physically incorporated into the good, or a good used or consumed in the maintenance of buildings or the operation of equipment associated with the production of a good, including:
- i) fuel and energy;
  - ii) tools, dies, and moulds;
  - iii) spare parts and materials used in the maintenance of equipment and buildings;
  - iv) lubricants, greases, compounding materials, and other materials used in production or used to operate equipment and buildings;
  - v) gloves, glasses, footwear, clothing, safety equipment, and supplies;
  - vi) equipment, devices, and supplies used for testing or inspecting the goods;
  - vii) catalysts and solvents; and
  - viii) any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production;

- j) **manufacture** means the creation of an article essentially different from the matters or substances that go into such manufacture. Manufacture does not include the following activities, performed alone or in combination with each other:
  - i) restoration or renovation processes such as repairing, re-conditioning, overhauling or refurbishing;
  - ii) minimal operations of pressing, labelling, ticketing, packaging and preparation for sale, conducted alone or in combination with each other; or
  - iii) quality control inspections;
- k) **material** means a good that is used or consumed in the production of another good;
- l) **material that is self-produced** means a material that is produced by a producer of a good and used or consumed in the production of that good;
- m) **non-originating material** means a material that is not an originating material;
- n) originating **material** means a material that qualifies as originating in accordance with the relevant provisions of this Article.
- o) **preferential treatment** means the tariff treatment applied to an originating good under Article 4 of this Agreement.
- p) **principal manufacturer** means the person in the territory of a Member State who performs, or has had performed on its behalf, the last process of manufacture of the goods;
- q) **producer** means a person who grows, farms, raises, breeds, mines, harvests, fishes, traps, hunts, captures, gathers, collects, extracts, manufactures, processes, assembles, or disassembles a good;
- r) **production** means growing, farming, breeding, capturing, gathering, collecting, extracting, raising, mining, harvesting, fishing, trapping, hunting, manufacturing, processing, assembling, or disassembling a good;
- s) **qualifying expenditure** means:
  - i) total expenditure on originating materials; and
  - ii) allowable expenditure on labour and factory overheads incurred in the territory of one or both Member States; and
  - iii) the cost of inner containers that originate in the territory of one or both Member States.
- t) **reasonably allocate** means to apportion in a manner appropriate under generally accepted accounting principles;
- u) **unmanufactured raw products** means natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and includes:

- (I) animals;
- (II) bones, hides, skins and other parts of animals obtained by killing, including such hides and skins that have been sun-dried;
- (III) greasy wool;
- (IV) plants and parts of plants, including raw cotton, bark, fruit, nuts, grains, seeds in their natural state and unwrought logs;
- (V) minerals in their natural state and ores; and
- (VI) crude petroleum.

## **Annex G**

see last of documents



Draft letter from New Zealand to Australia

The Hon Mark Vaile MP  
Minister for Trade  
PARLIAMENT HOUSE  
CANBERRA ACT 2600  
AUSTRALIA

Dear Minister

I have the honour to refer to your letter of [\*\*] which reads as follows:

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The negotiations were completed on 23 December 2005, when New Zealand Ministers for Economic Development and Trade Negotiations wrote to Australian Ministers for Trade and Industry, Tourism and Resources, confirming their agreement to the package. Australian and New Zealand Ministers simultaneously announced on 3 February 2006 that both Governments had agreed to adopt the CTC approach, with an anticipated implementation date of 1 January 2007.

I, therefore, propose that Article 3 of ANZCERTA should be amended by replacing the whole of the existing text of Article 3 with Attachment A, which includes a new annex, Annex G.

If this is acceptable to the Government of New Zealand, I propose that this letter and your reply to that effect shall constitute an Agreement to amend ANZCERTA. The Agreement to amend ANZCERTA shall enter into force when the two Governments have notified each other by an

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I confirm that it is acceptable to the Government of New Zealand that your letter and this reply shall constitute an Agreement to amend ANZCERTA. The Agreement will enter into force when the two Governments have notified each other by an exchange of notes that they have completed the relevant domestic processes.

Yours sincerely

PHIL GOFF