

**National Interest Analysis [2010] ATNIA 34**

**with attachment on consultation**

**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),  
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 Article 3 (Rules of Origin) ('ROO') 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 the Product Specific Rules (PSR) schedule, 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 the PSR schedule 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 the PSR schedule 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 amendments to the *Customs Act 1901* (which requires Executive Council approval), the proposed amendments to ANZCERTA Article 3 will be brought into force as soon as is practical by an exchange of diplomatic notes.

### **Overview and national interest summary**

4. In addition to changes to the PSR, the Review recommended a number of changes to ANZCERTA Article 3, including the addition of provisions on minimal operations and processes and on restoration and renovation, the addition of definitions of aquaculture and product specific rules and some re-ordering of the text and minor amendments of wording to simplify the presentation of the text. These amendments would complement proposed amendments to the PSR. They would provide increased clarity to the ANZCERTA ROO and bring it more closely into line with Australia's more recent Free Trade Agreements.

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 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 Regional Value Content (RVC) approach based on the factory cost of a good, to ROO based on a Change-in-Tariff-Classification (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 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 Article 3. It involves the inclusion of new definitions and a Minimal Operations and Processes provision. (The majority of the changes proposed from the review are to the Product Specific Rules (PSR) contained in Annex G.)

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 (FTAs). 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 would 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 add a minimal operations and processes provision to the ANZCERTA ROO, add "restoring" and "renovation" to the definition of production and add definitions of aquaculture and product specific rules. 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 Article 3 of ANZCERTA. These amendments will be implemented by changes to the *Customs Act 1901*.

14. Following the completion of all domestic legislative requirements, including amendment of the *Customs Act 1901*, 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, in conjunction with the proposed amendments to Annex G, simplify the determination of origin for goods traded between Australia and New Zealand. They entail no financial outlays by the government and 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 Article 3 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 Article 3 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**

New Zealand Section  
Pacific Division  
Department of Foreign Affairs and Trade



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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. 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. Strong opposition was, however, expressed by Australian men's suit manufacturers to any change to the PSR for their products (HS Code 6203). Details on the treatment of HS Code 6203 are provided in the "Attachment on Consultation" in National Interest Analysis [2010] ATNIA 35.

23. 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 Manufacturers 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