

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, and

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

Introduction

- 6.1 The proposed amendments to Article 3 and Annex G of the *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA) implement recommendations made by a joint Australia and New Zealand review of the agreement completed in March 2010.¹

¹ *National Interest Analysis* [2010] ATNIA 35, Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Annex G of the ANZCERTA, done at Canberra on 28 March 1983[2010] ATNIF 31, (Annex G NIA)

- 6.2 Australia's strong economic relationship with New Zealand is conducted within the framework of ANZCERTA, which was Australia's first bilateral free trade agreement.² As the main instrument governing economic relations between the two nations, it covers all trans-Tasman trade in goods and plays a key role in the elimination of trade barriers between the two nations.³
- 6.3 Under the proposed amendment to Article 3 of ANZCERTA, goods made in Australia and New Zealand which meet the relevant criteria will be deemed to be 'originating goods' and have duty free entry into the importing state.⁴
- 6.4 According to the *National Interest Analysis* for Article 3, this proposal involves minor technical amendments to existing obligations under the ANZCERTA Rules of Origin, providing for new definitions, Minimal Operations and Processes.⁵
- 6.5 More substantive change is implemented under Annex G, which contains ANZCERTA's Product Specific Rules (PSR) schedule. The proposed amendments will adjust 700 tariff lines in the schedule so that they are treated consistently with others listed.⁶
- 6.6 The proposed changes are intended to reduce the administrative burden for exporters and provide duty free admission for Australian products entering the New Zealand market.⁷ Department of Foreign Affairs and Trade (DFAT) representative Mr Roy Clogstoun further advised:

These amendments reflect the broader benefits of deeper economic links between Australia and New Zealand so as to advance economic integration between the two countries. The proposed amendments to ANZCERTA are consistent with its central role in

para. 1.

2 *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA), done at Canberra, 28 March 1983.

3 Department of Foreign Affairs and Trade <http://www.dfat.gov.au/fta/anzcerta/anzcerta_history.html> viewed 4 March 2011.

4 *National Interest Analysis* [2010] ATNIA 34, Exchange of Letters Constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the ANZCERTA, done at Canberra on 28 March 1983[2010] ATNIF 31, (Article 3 NIA), para. 12.

5 Article 3 NIA, paras 8, 11.

6 Annex G NIA, para. 11.

7 Annex G NIA, para. 4.

the trans-Tasman economic relationship and continued efforts to advance this relationship.⁸

The ANZCERTA review

- 6.7 The ANZCERTA has been amended several times since it entered force three decades ago. The current proposals follow major reforms made to the ANZCERTA Rules of Origin in 2007 and were recommended for implementation in a subsequent review, completed in March 2010.⁹
- 6.8 Rules of Origin determine the real level of market access provided under trading schemes.¹⁰ The review of these rules in 2007 brought a major shift in benefit access under ANZCERTA. Prior to the review, assessments for originating product value had been calculated on the factory cost of particular goods, known as the Regional Value Content (RVC). The new approach, the Change-in-Tariff-Classification (CTC) system, applied benefits (duty free access) consistently to products qualifying as originating goods in all tariff lines.¹¹
- 6.9 While consistency of treatment was the object of the review, the Committee was advised that some tariff lines were provided with a transitional arrangement. For this group, the factory cost based RVC was retained as an additional requirement, effectively meaning that the content rule for those products was unchanged.¹²
- 6.10 A condition of this arrangement was that these exempt lines would be subject to review. A new Article 3.27 was inserted into ANZCERTA, requiring:
- 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.¹³
- 6.11 In March 2010, the Joint Australian and New Zealand Review acted on this requirement, recommending that the amendments be made to
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8 *Transcript of Evidence*, 22 November 2010, p. 1.

9 NIA, para. 7.

10 Oxfam Australia, *Submission 1*, p. 12.

11 Article 3 NIA, para. 6.

12 Article 3 NIA, para. 6.

13 Article 3, Article 3 NIA, para. 7.

ANZCERTA Article 3 and the Product Specific Rules schedule to bring the 700 exempt tariff lines into line with the CTC approach.¹⁴

- 6.12 The Committee was informed that this transition to the ‘substantial transformation approach’,¹⁵ will create consistency with zero tariff conditions under other bilateral and plurilateral free trade agreements entered into by Australia and New Zealand subsequent to the 2007 ANZCERTA reforms.¹⁶

Industry concerns about the amendments

- 6.13 Australian Structured Men’s Apparel, covering men’s suits, was among the tariff lines which retained a transitional arrangement for product treatment following the 2007 reforms.¹⁷
- 6.14 The Council of Textile and Fashion Industries Australia (TFIA), and Stafford Group, which controls the Anthony Squires men’s suit label, informed the Committee that successful lobbying from the sector had secured this exemption. New Zealand suit manufacturers had since been obliged to continue to meet the 50 per cent regional value requirement.¹⁸
- 6.15 Industry representatives saw this as an appropriate offset to New Zealand’s competitive advantages, such as the capacity to access better quality cloth at lower price points, the high Australian dollar and lower operating costs.¹⁹
- 6.16 The TFIA maintained that the proposed amendments, however, would reverse these arrangements, implementing a structural distortion that would disproportionately benefit New Zealand suit manufacturers:

14 Annex G NIA, paras. 4, 11.

15 Mr Roy Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 28 February 2011, p. 3.

16 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*. See Annex G and Article 3 NIAs, para. 9.

17 Customs Classification 6203, Mr Peter Waddell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, p. 15.

18 Mr Wadell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 15; and see Council of Textile and Fashion Industries Australia (TFIA), *Supplementary Submission 8.1*, p. [1].

19 Mr Waddell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, p. 1, 21 and see Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, 22 November 2010, p. 3.

... it is the combination of duty free entry of finished product ex-New Zealand under ANZCERTA and ability to avoid duty on the input materials that creates the significant advantage for New Zealand producers over their Australian counterparts.²⁰

- 6.17 Stafford Group representative Mr Peter Wadell explained that while Australian suits exported to New Zealand attract the same 'duty drawback' benefits under ANZCERTA, Australian made products sold into the domestic market do not:²¹

What we cannot understand is why this structure should be set up in such a way that it disadvantages Australian manufacturers...If there is going to be duty on our inputs, then there should be some constraint on what is coming out of New Zealand on a duty free basis so that at least the playing field is relatively level.²²

- 6.18 Ms Jo-Ann Kellock, TFIA Chief Executive Officer, shared Stafford Group's view that the arrangements will put at risk the viability of Australia's two remaining suit manufacturers, employers of 250 people, and potentially drive them offshore to join major past competitors.²³

- 6.19 The Committee investigated this matter with DFAT. The Department's representative acknowledged that the issue constitutes an anomaly under the agreement: Australian manufacturers would continue to pay five per cent tariffs on fabrics without offsets, while New Zealand importers would be reimbursed under the 'duty drawback'. The Committee was advised that this would be rectified on implementation of the ANZCERTA tariff changes, planned for 2012.²⁴

- 6.20 Apparently, the Government's intention had not, however, been conveyed to industry representatives. TFIA's Ms Kellock informed the Committee that there had been no recent discussion with Government on the proposed changes, which had progressed on a bilateral basis without consultation despite undertakings given at Ministerial level to the contrary.²⁵

20 TFIA Submission 8, p. [2].

21 *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 21, 23.

22 *Transcript of Evidence*, Melbourne, 2 February 2011, p. 16.

23 Ms Kellock, TFIA and Mr Waddell, Stafford Group, *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 14, 16, 20.

24 Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 28 February 2011, p. 2.

25 *Transcript of Evidence*, Melbourne, 2 February 2011, p. 17 and see TFIA, *Submissions 8 and 8.1*.

- 6.21 DFAT's response indicated that consultations with the Minister for Department of Innovation, Industry, Science and Research (DIISR) had last occurred in 2009, and that Senior Officials had met with Stafford Group in mid 2010.²⁶ The Committee was also informed that, in DFAT's view, the issue for the industry was transition under ANZCERTA, which had a shorter lead-time than other free trade agreements.²⁷
- 6.22 The Committee sought supplementary advice about the potential economic impact on the structured apparel sector under the proposed Rule of Origin amendments. On the basis of analysis of the sector's trade and revenue conducted during the 2010 Review, the DIISR had concluded that New Zealand suit imports were in decline, suggesting minor revenue impacts.²⁸
- 6.23 The Department noted, however, that the findings were not predictive of outcomes following amendments to the Rules of Origin.²⁹

Rules of Origin under SPARTECA

- 6.24 In the context of the proposed amendments to ANZCERTA Rules of Origin, Oxfam Australia raised concerns about the lack of review of the product rules governing the *South Pacific Regional Trade and Economic Co-operation Agreement*, known as SPARTECA.³⁰
- 6.25 SPARTECA is a plurilateral free trade agreement between Australia and New Zealand and the 14 island members of the Pacific Islands Forum.³¹ Signed in 1981, the agreement is conducted on a non-reciprocal basis, allowing for most Pacific exports duty free entry into Australia and New Zealand without requiring equal treatment for Australian and New Zealand products.³² As noted in the Preamble to the Agreement, this

26 Department of Foreign Affairs and Trade, *Submission 4.1*, p. [1].

27 Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 28 February 2011, p. 3.

28 Department of Innovation, Industry, Science and Research, *Submission 4*, p.[1]

29 Department of Innovation, Industry, Science and Research, *Submission 4*, p.[1]

30 Oxfam Australia, *Submission 1*.

31 The Pacific Islands Forum is a political grouping of 16 independent and self-governing states founded in 1971 to strengthen regional co-operation and integration. Forum island members comprise Nuie, Nauru, Samoa, Fiji, Tonga, Papua New Guinea, the Solomon Islands, the Federated States of Micronesia, Vanuatu, Kiribati, Palau, the Cook Islands, Tuvalu, and the Marshall Islands, see <<http://www.forumsec.org.fj/index.cfm>> viewed 27 April 2011.

32 Oxfam New Zealand and Oxfam Australia, *PACER Plus and its Alternatives: Which Way for Trade and Development in the Pacific?* Oxfam Briefing Paper 2009, p. 6.

arrangement recognises the market isolation and developing status of the Pacific island nations.³³

- 6.26 Oxfam's Trade Adviser Mr Wesley Morgan informed the Committee that, in contrast to the regularly updated rules of ANZCERTA, the SPARTECA rules have not been revised for thirty years. As a consequence they are now so out of date, they must be broken for any trade to occur:

The SPARTECA agreement makes it very difficult for Pacific countries to become links in global supply chains and still adhere to the SPARTECA requirement that 50 per cent of the value of a product must be added in the Pacific. Both Australia and New Zealand have applied ad hoc derogations to the SPARTECA rules of origin requirements – most notably for clothing from Fiji and wire harnesses used in the manufacture of car parts from Samoa – but these are no substitute for a more dependable and transparent solution.³⁴

- 6.27 The Committee notes that SPARTECA's 50 per cent requirement had been imposed to stimulate local production, and to offset the likelihood of 'trade deflection'; the channelling of products through a Pacific Island country to gain concessional access to Australian and New Zealand markets.³⁵
- 6.28 Oxfam advised that trade deflection is no longer a practical consideration, given high trans-island transport costs in the Pacific, and recommended that the SPARTECA Rules of Origin requirements be immediately revised down to 10 per cent to restore the preferential axis.³⁶
- 6.29 DFAT's representative, however, informed the Committee that this was not an option. Instead, Pacific Island trade arrangements are currently being progressed under negotiations for the new *Pacific Agreement on Closer Economic Relations (PACER) Plus*, with the third round of negotiations scheduled for 14 and 15 March 2011. Priority items for

33 Oxfam New Zealand and Oxfam Australia, *PACER Plus and its Alternatives: Which Way for Trade and Development in the Pacific?* Oxfam Briefing Paper 2009, p. 7.

34 *Transcript of Evidence*, Melbourne, 2 February 2011, pp. 2, 3.

35 Oxfam Australia, *Submission 1*, p. [4]

36 Mr Wesley Morgan, Oxfam Australia, *Committee Hansard*, Melbourne, 2 February 2011, pp. 7, 9, 10.

negotiation at the meeting include rules of origin, trade facilitation, development assistance and regional labour mobility.³⁷

- 6.30 The Committee notes that while negotiations will continue at the next Pacific Islands Forum Trade Ministers' meeting, there is no projected end date for conclusion of the negotiations.³⁸
- 6.31 Oxfam saw this as unacceptable, and urged the Australian Government to ensure the relative disadvantage of Pacific nations is recognised under PACER negotiations in the lead up to zero tariff targets under the *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area*.³⁹

Conclusion

- 6.32 The Committee notes that the proposed amendments to the Rules of Origin under the ANZCERTA have been endorsed by the joint review in 2010, which was conducted as a pre-condition to major reforms to the ANZCERTA Rules of Origin in 2007.
- 6.33 Since the time of the 2007 reforms, Australia and New Zealand have made commitments under other regional free trade agreements to pursue across-the-board zero duty on trade.
- 6.34 In pursuing that objective, the Committee considers that the Government has an obligation to ensure affected industries are kept abreast of policy developments and their implications. In the case of Australia's structured apparel sector, the importance of this seems to have been lost in the race to implement consistent trade arrangements, as foreshadowed under the 2007 ANZCERTA review.
- 6.35 The Committee's enquiries into the matter brought reassurances from the Department of Foreign Affairs and Trade that unintended consequences affecting Australian suit makers, resulting from 'duty drawback' and local tariff arrangements, will be addressed on implementation of the ANZCERTA amendments in 2012.

37 Mr Clogstoun, Department of Foreign Affairs and Trade, *Transcript of Evidence*, Canberra, 28 February 2011, p. 1.

38 Department of Foreign Affairs and Trade, *Pacific Agreement on Closer Economic Relations (PACER) Plus negotiations*, < <http://www.dfat.gov.au/fta/pacer/index.html> > viewed 6 April 2011.

39 Mr Morgan, Oxfam Australia, *Committee Hansard*, Melbourne, 2 February 2011, p. 5.

- 6.36 The Committee therefore supports binding treaty action being taken on the proposed amendments to Article 3 and Annex G of ANZCERTA, but also recommends the Australian Government report back on its commitments to rectify any unintended consequences on Australia's suit manufacturers in the lead up to 2012.
- 6.37 The Committee's review of the ANZCERTA amendments also highlighted concerns about the *Pacific Agreement on Closer Economic Relations (PACER) Plus*, and the need for due consideration of the impacts of trade liberalisation on the economies in island nations.
- 6.38 In view of the imminent progress towards zero tariffs targets under the ANZCERTA amendments (2012) and the wider *Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (2020)* the Committee urges the Government to conduct an early review of the issues raised by OXFAM under the *PACER Plus*.
- 6.39 The Committee will monitor progress of this matter in its ultimate review of the treaty when tabled.

Recommendation 4

The Committee supports the Exchange of Letters implementing Amendments to Article 3, and to Annex G, of the *Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA)* and recommends binding treaty action be taken.

Recommendation 5

The Committee recommends the Minister of Innovation, Industry, Science and Research report to the Committee on the measures implemented to address the impact of 'duty drawback' on Australia's Structured Apparel sector under the amendments to Article 3 and to Annex G of ANZCERTA, and monitor ongoing effects on the sector after 2012.