

1992 REVIEW OF CER

ARTICLE 3: RULES OF ORIGIN

GENERAL

References in the following text to Articles refer to Articles in the Australia New Zealand Closer Economic Relations - Trade Agreement.

DEFINITION OF MATERIALS

For the purposes of Article 3, "materials" are all inputs into the manufacturing process (other than those materials treated as overheads) used or consumed in the production of the finished goods, in the form in which they are received from a domestic or foreign supplier.

MATERIALS OF MIXED ORIGIN

Materials of mixed origin are those materials which include both imported content and content of Australia and/or New Zealand. In terms of Article 3.1(c), in calculating the expenditure on a material incorporated in a final product for export to the other Member State, the cost of that material will be taken as:

- (a) Wholly of qualifying area content provided that it would qualify under the rules of origin if it were to be traded between the Member States, ie if a material meets the requirements of Article 3.1(c)(i) and has or is deemed to have 50 percent or more area content, then 100 percent of the expenditure on that material will be taken as qualifying content of the final good.
- (b) Partly of qualifying area content provided that it meets the requirements of Article 3.1(c)(i) but would not qualify under the rules of origin if it were to be traded between the Member States. Qualifying area content will be in direct proportion to the actual area content, ie if a material has 30 percent area content, then 30 percent of the expenditure on that material will be included as qualifying content of the final good.
- (c) Totally without area content if it does not fall within (a) or (b) above.

INNER CONTAINERS

For the purposes of Article 3.1(c)(ii)C, "inner containers" will include any container or containers into which the goods are packed, but will not include shipping containers (including pallets and like articles or air containers).

WASTE, SCRAP AND RECYCLED MATERIALS

For the purposes of Articles 3.1(b)(ii) and Article 3.1(c)(ii), expenditure on waste and scrap resulting from manufacturing or processing operations conducted in the territory of one or both Member States and expenditure on used articles collected in the territory of one or both Member States and fit only for the recovery of raw materials will be treated as wholly of area content.

FACTORY OR WORKS COST

For the purposes of Article 3, factory or works cost covers the expenditure which is incurred directly by the manufacturer in the production of the goods, or which can be reasonably allocated to the production of the goods.

Labour

The expenditure incurred under this heading includes:

- (a) Manufacturing wages and benefits (eg, productivity bonuses, company vehicle)
- (b) Other factory or works labour costs incurred in connection with:
 - management of the process of manufacture
 - receipt of materials
 - storage of materials
 - supervision
 - training
 - quality control
 - packing into inner containers
 - handling and storage of the goods within the factory.

Overheads

Expenditure incurred under this heading includes the costs of:

- (a) Inspecting and testing materials and the goods.
- (b) Insuring real property, plant, equipment and materials used in the production of the goods; insuring work in progress and finished goods; liability insurance; accident compensation; insurance against consequential loss from accident to plant and equipment.
- (c) Dies, moulds, tooling, and the depreciation, maintenance and repair of plant and equipment, without regard to whether these items originate within the territory of a Member State.
- (d) Interest payments for plant and equipment.
- (e) Research, development, design and engineering.
- (f) Rent, leasing, mortgage interest, depreciation on buildings; maintenance, repair, rates and taxes for real property used in the production of the Goods.
- (g) Leasing of plant and equipment, without regard to whether these items originate within a Member State.
- (h) Materials and supplies not being directly incorporated in the manufactured goods, (eg energy, fuel, water, lighting, lubricants, rags) without regard to whether these items originate within the territory of a Member State.
- (i) Storage of the goods at the factory.
- (j) 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.
- (k) Subscriptions to standards institutions and industry and research associations.
- (l) Factory security, provision of medical care, cleaning services, cleaning materials and equipment, training materials, disposal of non-recyclable waste, safety and protective clothing and equipment, and the subsidisation of a factory cafeteria to the extent not recovered by returns.
- (m) Computer facilities allocated to the process of manufacture of the goods.
- (n) Contracting-out parts of the manufacturing process within the Free Trade Area.

but does not include the following (except as provided above):

- (o) Costs relating to the general expense of doing business, such as the cost of providing executive, financial, sales, advertising, marketing, accounting and legal services, and insurance
- (p) Costs for telephone, mail and other means of communication.
- (q) The cost of shipping containers or any cost of packing the goods into them.
- (r) The cost of conveying, insuring, or shipping the goods after their manufacture is completed.
- (s) Royalty payments related to a licensing agreement to distribute or sell the goods.
- (t) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, repair, taxes and rates for real property used by personnel charged with administrative functions.
- (u) Manufacturer's profit; the profit or remuneration of any trader, agent, broker, or other person dealing in the goods after their manufacture.
- (v) International travel expenses, including fares and accommodation.
- (w) Any other costs and expenses incurred after the completion of the manufacture of the goods.

Materials

Subject to (a), (b) and (c) below, the expenditure on materials will be taken as the manufacturer's actual costs in bringing the materials into the factory or works, inclusive of any freight component, but excluding any Customs or excise or other duties paid or payable in respect of those materials.

- (a) Where any material has been supplied free of charge or at a reduced cost, the expenditure on that material will be determined in accordance with sub-paragraph 1(b) of Article 8 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade.

- (b) The Customs service may exclude the expenditure on any material (whether actual cost or normal market value) where it is satisfied that the material has been added or attached to the goods solely for the purpose of artificially raising the level of qualifying content.
- (c) If the Customs service determines that the expenditure on any material is in excess of the normal market value, it may determine the expenditure on that material.

Definitions and Notes

1. "Factory or works" is the place within the Member State where the manufacturing process occurs.
2. "The manufacturer" means the person who undertakes the last process in the manufacture of the goods.
3. Expenditure on items under Article 3.1(c)(ii) will be included once only in the calculation of factory or works cost.
4. Depreciation of plant, equipment and buildings will be calculated in accordance with generally accepted accounting principles, as applied by the manufacturer.

MARGIN OF TOLERANCE

In recognition of the difficulties arising when unforeseen circumstances result in a shipment failing to qualify under Article 3.1(c)(ii), Australia and New Zealand agree to apply a margin of tolerance of up to two percentage points for such shipments. Such shipments will be deemed to have a 50 percent area content. A limited period of time will 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 area content.

DIRECT SHIPMENT RULE

Article 3.1 to be amended to read:

"Goods exported from the territory of a Member State, whether directly or indirectly, into the territory of the other Member State shall be treated as goods originating in the territory of the first Member State if those goods are..."

OTHER DUTIES

In respect of Article 3.2, "other duties" can include (in either New Zealand or Australia) sales tax, goods and services tax, anti-dumping duty and countervailing duty.

REVIEW OF ANZCERTA SYSTEM FOR DETERMINED MANUFACTURED RAW MATERIALS/RAW MATERIAL DETERMINATIONS

The system of Determined Manufactured Raw Materials/Raw Material Determinations will be reviewed by officials of both Australia and New Zealand by 31 December 1993. Recommendations will be presented to Ministers on:

- the extent to which the system is fulfilling its original objectives;
- the degree of utilisation of the system (ie frequency and value and usage rate);
- the appropriateness of administrative procedures.

The review will be undertaken in a transparent fashion and will involve extensive consultation with manufacturing and importing interests. There will be ample opportunity for consultation, and interested parties will be involved at each stage in the process.

Officials will discuss draft Terms of Reference with interested parties, and prepare an issues paper as a basis for initiating an informed examination of the key issues.