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Trans-Tasman Textile, Clothing & Footwear Rules of Origin Enquiries

PROTOCOL ON CUSTOMS PROCEDURES

Foreword

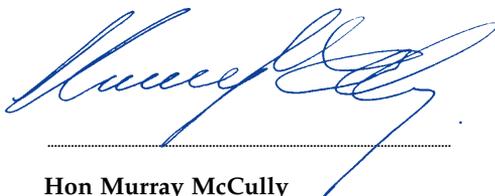
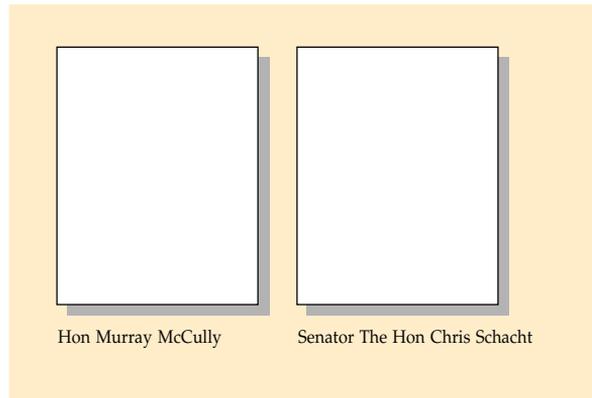
As Ministers responsible for Customs, we wholeheartedly endorse this Protocol, and recognise the efforts of the Textile Clothing and Footwear Council of Australia Limited, the Apparel and Textile Federation of New Zealand and the Customs Services of Australia and New Zealand.

A close relationship between Customs and industry is essential for a positive and harmonious trade relationship between Australia and New Zealand.

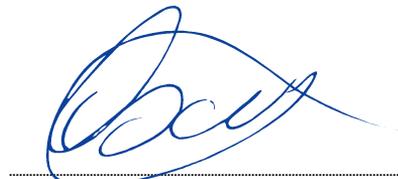
The benefits from Government and industry working on practical issues such as developing agreed procedures and timeframes for Rules of Origin enquiries under CER, are a demonstration of how this can be achieved.

This Protocol provides a certain and harmonious system of dealing with Rules of Origin issues.

We are also confident that the Protocol will create a firmer foundation for the close relationship between the clothing, textile and footwear industries in both countries.



Hon Murray McCully
Minister of Customs, New Zealand



Senator The Hon Chris Schacht
Minister for Customs, Australia

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Trans-Tasman Textile, Clothing & Footwear Rules of Origin Enquiries:

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The following procedures reflect an agreement applying to the conduct of enquiries into the entitlement of textiles, clothing and footwear (TCF) for duty free trans-Tasman trade under the provisions of CER.

The agreement has been reached through a process of consultation between the Textile, Clothing and Footwear Council of Australia Limited, the Apparel and Textile Federation of New Zealand and the Customs Services of Australia and New Zealand.

The procedures set out in this document have been developed specifically to apply to the investigation by Customs of complaints lodged by a member of the textile, clothing and footwear manufacturing sector. The procedures will, however, be extended as appropriate to the conduct of any request for an investigation into the eligibility of other goods for duty free trade under the provisions of CER.

The respective Customs Services reserve the right to themselves initiate investigations into the origin of imported goods to ensure compliance with tariff, trade and revenue laws.

All time-frames set out in this agreement are adopted by the parties as standards to be complied with. Enquiries of particular complexity may be subject to revised time-frames, which will be notified to the affected parties as appropriate. No relevant information will be excluded from consideration on the grounds that it was submitted to the investigating authorities outside of time. All references to “days” in this agreement are references to “working days”. Legitimate requests for time extensions of up to 15 days will be considered on their merits.

Lodgement of Complaints

A request for an investigation into the eligibility of goods for duty-free trade under the provisions of CER may be lodged:

- direct with the Customs Service in the country of import; or
- through the relevant Industry Association.

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Scope of Complaint

The request for an investigation should specify as exactly as possible the goods in respect of which the complaint is made, and the period of time over which it is believed the goods have been, or are to be, imported. The complaint should specify known importers of the product and the manufacturer or supplier, where this information is available to the complainant.

The complainant should specify the grounds on which it is believed the goods would not qualify for preference under the CER Rules of Origin.

Where a complaint has been lodged through an Industry Association, that Association may provide such additional information as it considers relevant, including the impact of the imports on the industry sector as a whole.

The TCF Associations have agreed to provide Customs with access to independent industry advice on, for example, industry standards, where requested. Any information provided to the investigating authorities on a confidential basis should be clearly identified as such.

Acknowledgement of Complaints

Customs will acknowledge receipt of the complaint within five days of receiving it.

Screening of Complaints

Prior to accepting a complaint for investigation, Customs will evaluate whether there are prima facie grounds for proceeding. In undertaking this assessment Customs will have regard to:

- whether its own records confirm the goods in question have been imported duty free under the provisions of CER
- whether the complaint is sufficiently specific
- whether the complaint appears vexatious or frivolous
- such other information as is relevant to an assessment of the complaint (e.g., the outcome of previous enquiries into the same or similar goods).

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In undertaking this preliminary assessment, Customs may contact the complainant for further details or clarification. The outcome of the preliminary assessment will be notified to the complainant within 15 days of Customs receiving the complaint. This notification will include advice as to whether the complaint has or has not, been accepted for investigation.

In the event that the screening process has identified a potential issue, other than qualification under the provisions of CER, that could be affecting the trade in question, that issue will be examined by Customs. For example, if the imports are duty free because the importer has claimed a Tariff concession, eligibility for that concession will be assessed in line with standard operating procedures.

Notification of Initiation

Once a complaint has been accepted for investigation Customs will notify all known importers and the manufacturers of the goods which are covered by the complaint. Where a complaint has been lodged through an Industry Association, that Association will also receive notification.

Information Requirements

Customs will notify importers in writing of their information requirements within 10 days of accepting the complaint for investigation.

Importers have an obligation to request manufacturers in the country of export to submit factory costings in relation to the goods under enquiry and shall have a period of 30 days to compile and submit that information. Manufacturers can choose to supply this information direct to Customs. Customs also reserves the right to deal directly with the manufacturer over information requirements.

No action will be taken by Customs to deny Preference claims during this period, unless clear evidence exists that the goods do not qualify for Preference. This evidence may be an acknowledgment by the importer that the Preference claim was made in error. In the event of no reply or a refusal to supply the requested information, the goods will be treated as non-qualifying for Preference.

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Evaluation of Information

On receipt of all the information requested, Customs will evaluate that information and advise relevant parties of any further information or clarification required. This process will be undertaken within 15 days.

In the event that the Preference status of the goods can be conclusively determined on the basis of information held, the outcome of the investigation will be advised to affected parties.

Where further documentary requirements are identified, the affected parties shall be given a period of 15 days to compile and submit that further information.

No action will be taken by Customs to deny Preference claims during this period, except in the circumstances outlined above (Information Requirements).

On-site Verification

Verification of factory costings submitted by manufacturers will from time to time be facilitated by a visit to the manufacturer in the country of export. Where this is to occur, the following procedures will apply:

- the manufacturer will receive written notification of the intention to conduct on-site verification, the details of the information which is to be verified and the suggested arrangements for the visit
- no less than 15 days prior notice will be given by Customs, except where mutual agreement to an earlier visit has been reached
- the manufacturer will co-operate with Customs to expedite progress with the enquiry
- Customs will protect the confidentiality of information obtained in the course of the verification of factory costings
- a copy of the investigator's draft report, including an evaluation of information verified on-site, will be made available to the manufacturer, prior to the finalisation of the Preference enquiry. The manufacturer will be invited to correct or clarify any matter contained in the report within 10 days of its receipt.

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Finalisation of Enquiry

Once all relevant information has been received, verified and, where relevant, commented on by the manufacturer, Customs will complete its evaluation of the Preference status of the goods within 15 days.

All interested parties will be notified of the outcome.

Occasionally Customs may need to conduct follow-up enquiries. If at the time of finalising the initial enquiry, Customs has formed the view that further enquiries will be required within the next six months, the manufacturer will be advised by letter.

The complainant will receive a full account of the nature of the enquiries undertaken, but no commercially sensitive information obtained by Customs in the course of the enquiry will be released.

Review Procedures

Both Customs administrations maintain internal review procedures. Any party may request an internal review of the enquiry outcome. A review will be undertaken upon receipt of a written request, supported by appropriate documentation, which should be submitted within 30 days of notification of the decision to:

Australia	National Manager Tariff and Valuation Customs House Canberra ACT
New Zealand	The Director Industry and Taxation Policy PO Box 2218 Wellington

The obligation to pay any outstanding duty is not deferred by reason of the review.

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Claims for Back-Duties

The basis of the claim and the detail of how it has been calculated will be made available to the importer and, on request, to the exporter of the goods in question.

Customs will take action to recover unpaid duties in accordance with the legal requirements imposed in the respective country of import. In the case of Australia, Customs will claim back duties for the 12 month period preceding finalisation of the enquiry. In the case of New Zealand, Customs will recover duty on any previous non-qualifying shipments, regardless of date of import. The time limits and other conditions applicable to retrospective duty recovery may be subject to statutory change in either country from time to time. No time limit currently applies in either country where fraud is involved.

Reinstatement of Preference

Both Customs administrations recognise the importance of prompt action where a request is made for reinstatement of Preference on such grounds as changes to manufacturing methods or the sourcing of raw materials.

To this end, the Customs Services agree that on-site verification in the country of manufacture may be undertaken by the Customs administration of that country on behalf of, and at the request of, the Customs Service of the country of import. In such a case, the Customs Service undertaking the verification will report the facts back to the administration requesting the visit, for decision in terms of the legislation of the country of import.

A decision on reinstatement will be notified to affected parties within 15 days of receipt of all the required information, including the verification report.

In the event that reinstatement is denied, the Customs Service of the country of import will provide full details as to the reasons for that decision. In particular, Customs will identify the areas of fact or law which they have determined to be relevant to the decision not to reinstate Preference entitlement.

Notwithstanding an initial decision against reinstatement Customs will remain prepared to reconsider the matter on receipt of further relevant information.

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Harmonisation of Customs Rulings and Procedures

Both Customs Services agree to continue to work towards harmonisation of rulings and procedures in respect of the administration and interpretation of Rules of Origin under CER.