1988 CER REVIEW
JOINT UNDERSTANDING
HARMONISATION OF CUSTOMS POLICIES AND PROCEDURES

The Australia New Zealand Closer Economic Relations - Trade Agreement ("the Agreement") recognises in Article 21 that the objectives of the Agreement may be promoted by harmonisation of Customs policies and procedures.

The Memorandum of Understanding between the Government of Australia and the Government of New Zealand Regarding Mutual Assistance between their Customs Agencies, signed at Canberra on 15 August 1985 ("the MOU") recorded the understanding of the two Governments that, through their respective Customs agencies they will co-operate, so far as each of them is able, to harmonise Customs policies and procedures to the maximum extent practicable.

Accordingly, the two Customs agencies have engaged in a process of co-operation and exchange of information with a view to adopting common approaches wherever appropriate. This process is continuing and following discussions in accordance with the MOU the two Customs agencies have prepared this joint understanding.

Some elements of Customs policies and procedures are central to the operation of the Agreement - rules of origin, for example. Other elements such as anti-dumping and countervailing have had a direct impact on trans-Tasman trade but will do so to a diminishing extent as the two markets become increasingly integrated.

Provided that the harmonisation process pays due regard to the outward looking nature of the Agreement and its trade promoting objectives, future benefits will come from the simplification of clearance procedures for cargo and passengers in trans-Tasman movements and increasingly from the adoption of common approaches towards the world outside the area covered by the Agreement.

This latter element does not imply establishment of a customs union, but common approaches to, for example, tariff classification, valuation procedures, clearance documentation and data transmission and storage will carry obvious benefits for businesses operating on both sides of the Tasman.

The balance of this joint understanding surveys the progress made and the scope for further harmonisation in a range of Customs activities.

The two Customs agencies will actively pursue the harmonisation opportunities identified and seek to maintain common approaches in areas where these have already been achieved.

The two Customs agencies endorse as a primary objective the closest possible working relationship and, subject to the over-riding commitment in the Agreement to an outward looking approach to trade, will harmonise their procedures with regard to the world outside the area covered by the Agreement to the greatest extent possible.

Movement of Passengers

The Australian Customs service operates the primary line clearing passengers on behalf of itself and other agencies (essentially Immigration and Quarantine). The system is based on risk assessment techniques supported by an on-line computer system, PASS, and supplemented by intuitive selection by primary line officer.

New Zealand Customs presently operates a manual alert list system but is in the process of introducing an on-line computer system, CAPPS.

The two Customs agencies are already exchanging information on outgoing trans-Tasman passengers and have a link between PASS and CAPPS as an objective for 1988.

The aim of the procedure is to allow earlier identification of low risk passengers and aircraft with consequent speedier processing and more effective use of Customs resources.

Other options to facilitate passenger movements between Australia and New Zealand including pre-clearance are being considered in conjunction with other agencies.

Cargo Clearance/Standard Aligned Entry Documentation

Initiatives using new technology to expedite cargo clearance are underway on both sides of the Tasman and the two Customs agencies have agreed to co-operate in the development of a multi-purpose format for use in a "paperless" electronic environment.

The envisaged format will embody separate sections to be completed if necessary at different times by the various parties involved in the distribution of international cargo, eg, exporters, shippers and importers.

Access to the two Customs agencies' systems may be direct from clients' own facilities, via community data networks or via facilities on Customs premises.

Tariff Classification

Both countries are signatories to the Harmonised Convention of the Customs Co-operation Council (CCC) and in principle should follow the same tariff classification approach. There are several reasons for differences:

- national subdivisions of the Harmonised Convention provide scope for non-standard approaches;

- explanatory guidance material issued by the CCC with respect to the Harmonised Convention can result in different interpretations;

- review bodies in either country may result in the development of different case law; and

- the classification of some goods is a matter for judgement which varies between individuals.

Even after the introduction of full free trade, classification will be needed in trans-Tasman trade for excise purposes, for goods which do not meet area content requirements, for anti-dumping/countervailing reasons, to identify prohibited imports and for statistical purposes.

Uniformity of classification decisions is considered desirable in that it reduces uncertainty over the rate of duty which applies in trans-Tasman trade and increases the scope for the Customs agency in the exporting country to provide advice to its own exporters or for those exporters to accurately arrive at their own classifications. A uniform approach will also simplify matters for businesses operating in both countries when they engage in trade outside the area covered by the Agreement.

The two Customs agencies will therefore establish working parties to consider:

- closer alignment of national level tariff structures involving a minimum of national subdivisions and, wherever possible adoption of common wording; and

- closer alignment of working documents, including national legal notes relating to tariffs, formats and phraseology.

The two Customs agencies are already co-operating to foster uniformity in classification decisions including by:

- joint training and seminars;

- staff exchanges (in particular an Australian Customs Officer has been seconded to New Zealand Customs to work in part on the joint tariff classification projects);

- consultation on interpretations; and

- liaison in preparation of papers for submissions to the CCC.

Further initiatives in the area of procedures for giving tariff classification advice to the public, computerised data bases of decisions and mutual recognition of decisions will be considered following completion of present reform activities in Australia.

Valuation

The two countries are both signatories to the GATT Valuation Code and the Customs agencies will jointly examine existing practice in application of the Code and procedures, policies and legislation for dealing with valuation fraud.

As with classification, a uniform approach will simplify matters for businesses operating in both countries when they engage in trade outside the area covered by the Agreement.

A joint working party will be established to consider the scope for adoption of common principles and practices following completion of present reform activities in Australia.

The two Customs agencies will ensure that any consideration of a move towards a CIF basis for valuation will be a joint consideration.

Rules of Origin

The two Customs agencies have a common view on the technical application of the rules of origin.

A revised Explanatory Note is attached to this joint understanding (Attachment A). This note seeks to simplify arrangements for trans-Tasman traders and at the same time minimise economic distortions created by the existence of different tariff regimes on intermediate goods from third countries.

Dumping and Countervailing

The threshold issue of whether anti-dumping or countervailing systems should remain in respect of trans-Tasman trade is not covered in this joint understanding.

However it is expected that there will be less recourse to anti-dumping and countervailing safeguards as the closer trans-Tasman relationship develops.

However while these systems remain in operation it is desirable that the administrative approaches of the two Customs agencies be as closely aligned as possible. Recent

legislative changes in Australia have reduced the disparities in procedures. Attachment B to this joint understanding sets out the present position.

Increasingly, as the New Zealand-Australian market becomes more integrated the scope for taking third country anti-dumping/countervailing action on behalf of the other Member country will need to be examined. The existing procedures allowing such- action seem to be out-dated and revised procedures will be considered.

The two Customs agencies will further consider the adoption of common administrative procedures and study the scope for joint anti-dumping or countervailing action as the economic relationship develops.

Import and Exports Prohibitions

Both agencies are engaged in reviewing their respective import and export prohibitions. There is a general presumption that where appropriate, prohibitions will be removed, liberalised or administered away from the barrier.

The two Customs agencies will exchange information regarding the reviews and provide prior advice to each other of the imposition of any new prohibitions.

Tariff Concessions

The two Customs agencies recognise that there is a lack of co-ordination on tariff concession arrangements which could act as a constraint to trans-Tasman rationalisation.

Given, however, that both Australia and New Zealand are reviewing their tariff concession systems, options for harmonisation in this area can be explored only following decisions on these reviews. To this end a joint working party will be established in September 1988 with a view to achieving closer harmonisation as appropriate at that time.

Customs Legislation

Australia and New Zealand are separately engaged in independent reviews of their respective Customs laws. Although there are differences in the constitutional and legal system frameworks of the two countries, closer alignment of legislation may be possible and accordingly the two Customs agencies will exchange information on issues and approaches as the reviews progress.

Duty Drawback

Given the increasing integration of the trans-Tasman markets the continuation of duty drawback provisions, whereby duty paid on imported intermediate goods is refunded on export of the finished product, seems anomalous.

The two Customs agencies will establish a joint working party to study the practicalities of removing drawback provisions in trans-Tasman trade while maintaining them in respect of export to third countries.

Report to Ministers

The two Customs agencies will report to their respective Ministers by 1 September 1989 indicating areas where harmonisation has been achieved, outstanding areas where it is intended that harmonisation will take place and the time frame for achieving such harmonisation.

ATTACHMENT A

ARTICLE 3

EXPLANATORY NOTE : RULES OF ORIGIN

This Explanatory Note replaces the former Explanatory Notes to Article 3 dated March 1983, January 1984 and August 1985 which are hereby revoked.

General Matters

The two Customs agencies have a common view on the technical application of the rules of origin and are working jointly to align legislation. The application of origin criteria will be monitored to identify any circumstances inconsistent with the objectives of the Agreement that need to be addressed. Any proposals to amend the substance or interpretive detail of the rules will be the subject of consultation with a view to maintaining a common approach.

Investigations of origin status of imported goods by both Customs agencies are carried out without the necessity to consult or advise the other administration. This practice will continue unless the circumstances of a particular case are such that there might be a need for advice to be given to the other Customs agency.

Materials of Mixed Origin

In terms of Article 3.1(c)(ii), in calculating the value of an imported component incorporated in a final product for export to the other Member State the value of that imported component will be taken as:

- wholly of qualifying area content provided that in its imported form it qualified under the rules of origin on importation into the Member State which manufactured the final product

- totally without qualifying area content if in its imported form it did not qualify under the rules of origin on importation into the Member State which manufactured the final product

Determined Manufactured Raw Materials

It is recognised that Australia and New Zealand do not have identical systems for examining requests for materials from outside the area to be determined as manufactured raw materials

under Article 3.1(b)(iii). It is however accepted that the systems should be transparent and that the trans-Tasman trader should not have an actual or perceived advantage over the domestic trader.

An outline of the procedures to be followed by each country is set out in the Annex attached. These have been accepted by both countries as being in accordance with the Agreement. There will be consultations on any future changes to these procedures.

Materials will therefore be determined as manufactured raw materials in respect of imports from the Member State and will continue to be so determined only where:

- both Customs agencies are satisfied the materials concerned meet the relevant criteria set out in the attached procedures; and

- the relevant materials are eligible for duty free or minimum rates entry into their respective countries substantively or through a concession system.

It is recognised that some items currently determined may not meet the above criteria. These items will be progressively re-examined by both Customs agencies against the above criteria and procedures and either Customs agency may decide that determination is no longer appropriate at any time.

The continued application of the manufactured raw material determination facility will be reviewed by both countries jointly by 1 July 1989.

August 1988

ANNEX TO EXPLANATORY NOTE

NEW ZEALAND INDUSTRY APPLICATIONS FOR DETERMINED MANUFACTURED RAW MATERIA-L STATUS

1 Applicant has goods successfully determined under New Zealand criteria by New Zealand Customs.

2 Applicant lodges a fully documented application with New Zealand Customs which forwards the request to Australian Customs for processing as outlined in the booklet on the Tariff Concessions System. Australian Customs will also establish if the determination will result in the final goods qualifying as of New Zealand origin in terms of Article 3.1(b).

3 Australian Customs advises New Zealand Customs of the outcome. The determination takes effect in both countries from the date on which objections closed in New Zealand. If the materials are not already eligible for duty free or minimum rates entry from all sources a Tariff Concession will be created effective from no later than the same date.

* Australian Tariff Concession application forms will be available from the Customs Department - Wellington

AUSTRALIAN INDUSTRY APPLICATIONS FOR DETERMINED MANUFACTURED RAW MATERIAL STATUS

1 Applicant has goods successfully determined .under Australian criteria by Australian Customs

2 Application is referred to New Zealand Customs by Australian Customs.

3 New Zealand Customs will establish whether or not there is local manufacture and if the determination will result in the goods qualifying as of Australian origin in terms of Article 3.1(b) of the Agreement.

4 New Zealand Customs advises Australian Customs of the outcome. The determination takes effect in both countries from the date on which objections closed in Australia. If the materials are not already eligible for duty free or minimum rates

entry from all sources a Tariff Concession will be created effective from no later than the same date.

APPLICATIONS TO AUSTRALIAN CUSTOMS FOR CANCELLATION OF DETERMINED MANUFACTURED RAW MATERIAL STATUS

1 Where the determined materials are the subject of a Commercial Tariff Concession Order on importation into Australia, cancellation of the determination will be automatic on cancellation of the concession.

2 Where the determined materials are eligible for substantive duty free or minimum rates entry from all sources into Australia, cancellation will be considered on the same criteria as would cancellation of a Commercial Tariff Concession Order.

3 Applications for cancellation will be considered whether from Australian or New Zealand industry on the same basis.

APPLICATIONS TO NEW ZEALAND CUSTOMS FOR CANCELLATION OF DETERMINED MANUFACTURED RAW MATERIAL STATUS

1 Applications which establish that there is New Zealand or Australian manufacture of the determined raw materials will result in cancellation of the determination.

2 Applications for cancellation will be considered whether from Australian or New Zealand industry on the same basis.

ATTACHMENT B

DIFFERENCES IN ANTI-DUMPING AND COUNTERVAILING PROCEDURES IN AUSTRALIA AND NEW ZEALAND

Actual and perceived differences in anti-dumping and countervailing procedures between Australia and New Zealand exist despite the provisions of the Agreement and despite both countries being members of the relevant GATT Codes.

The root causes of the problem are in a sense inherent in the adversarial nature of anti-dumping and countervailing systems. The exporter who has anti-dumping or countervailing measures imposed on him will consider he was given inadequate opportunities to present contrary arguments and will claim a decision was taken too quickly. The local industry seeking protection against dumping will claim the investigatory process is too long and too much weight is given to the exporter's evidence.

The Governments in adopting anti-dumping and countervailing schemes and the Customs agencies in administering them have to balance the need for speedy decision-making with the need for natural justice to be done.

The New Zealand anti-dumpiing provisions involve statutory time limits for investigations of 60 days to preliminary finding and 90 days to final finding. These time limits are considerably shorter than those which have so far applied in the Australian system. Australian criticism of New Zealand procedures have in consequence focused on the lack of time for consultation and presentation of submissions.

The Australian process has not had statutory time limits and New Zealand criticisms have focused on the length of time inquiries have taken and especially the keeping of securities on a rolling 120 day basis during the period from preliminary finding to final finding. In some cases this period extended well beyond 120 days.

The New Zealand Government has a view that this rolling approach to the 120 days limitation on provisional measures is contrary to the provisions of the GATT Codes. The Australian Government does not share this view.

Legislation has recently been passed by the Australian Parliament and will shortly be implemented to impose statutory time limits on dumping investigations of 120 days to preliminary finding and a further 120 days to final finding. While these limits are still longer than the New Zealand equivalents they do for the first time mean that both Customs agencies will operate with statutory limitations which will prevent any securities being held longer than New Zealand's interpretation of the GATT Codes would allow.

The remaining disparity in time limits is likely to lead to continued, if reduced, differences in perceptions of the balance between natural justice and speed of decision-making under the two systems. The two Customs agencies will, however, place continued emphasis on the consultation provisions of Articles 15 and 16 of the Agreement as expanded in explanatory notes.

The two Customs agencies will also further consider the adoption of common administration procedures.