

23 February 2018

Ms Trudy Witbreuk
First Assistant Secretary
Free Trade Agreements Division
Department of Foreign Affairs and Trade
R.G. Casey Building
John McEwen Crescent
Barton ACT 0221 Australia
Asean.fta@dfat.gov.au



Chamber of Commerce
and Industry WA

ABN 96 929 977 985
T: (08) 9365 7555
E: info@cciwa.com
W: www.cciwa.com

Dear Ms Witbreuk

General Review of ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA)

Thank you for providing the Chamber of Commerce and Industry of Western Australia (CCI) with the opportunity to provide a submission to the General Review of the AANZFTA, with specific focus on the examination of the self-certification process for Certificates of Origin.

CCI is the peak body representing employers in Western Australia. We represent small, medium and large businesses, not-for-profit organisations, and government enterprises across the spectrum of the State's economy and from all regions of WA. Our vision is for Western Australia to be a world-leading place to live and do business.

We believe the current Certificate of Origin system, and rules chapter generally, within AANZFTA are well adopted and successful in business practice. This should therefore be the model with which Australia continues to seek harmonisation with future Free Trade Agreements (FTAs).

This position supports the Australian Chamber of Commerce and Industry's May 2017 submission to the General Review.

CCI provides certification services for 3,319 exporters, of which 612 are registered under Australian FTAs. This makes CCI well placed to understand the issues and concerns facing businesses conducting international trade.

CCI actively advocates to reduce government red tape across importing, exporting, investment and policy, to make it easier to do business in WA. Free trade will be the cornerstone of WA's globally focused export-driven economic future, however self-certification has the potential to hinder the flow of trade due to a number of issues.

The purposes and benefits of a Certificate of Origin

As part of Australian FTAs, preferential treatment such as the reduction and elimination of tariffs on goods, is available for those that satisfy the Rules of Origin (ROO) required under each FTA. Certificates of Origin, which are issued by an authorised, government audited verifying third-party, are an important document for businesses involved in such agreements to demonstrate compliance with ROO requirements. The burden of proof of the origin of goods

180 Hay Street, East Perth
Western Australia 6004
PO Box 6209, East Perth
Western Australia 6892

Chamber of Commerce and Industry
of Western Australia (Inc)
ARBN 099 891 611
Incorporated in Western Australia

CCI correspondence is managed in
accordance with CCI's Privacy Policy.

lies with the importer. It is their responsibility to identify the origin of the supply chain to be able to access preferential treatment. These documents provide importers with the greatest degree of reliability to ensure that any statements they make are not deemed false or misleading which can have serious repercussions. Certificates of Origin are also important for government reporting, such as collating international trade statistics, quota and sanctions management and international trade remedies applications.

These verified and trusted documents ensure that goods move through the border more swiftly. If a customs official has concerns about the legitimacy of a self-certified document, they may delay the passage of goods through the border while they investigate the issue, or simply charge a higher import tariff and leave it up to the importer to dispute and reclaim the overpaid tariff, or reject the importation of goods.

Difficulties with Self-Certification

CCI has identified several issues when investigating how self-certification fits into FTAs.

First, many businesses do not understand the complex ROO which vary according to different trade agreements and will not have prior experience in how to self-certify. This is likely to result in applications being completed incorrectly due to a genuine lack of understanding, leading to non-compliance and providing false and misleading statements.

Incorrect applications either lead to incorrect tariffs being paid or a rise in the number and complexity of disputes. An importer may be required to follow-up with an exporter, resulting in monetary loss, shipment delays and ultimately changes to an importer's net earnings.

If the importer is unable to provide the required proof of origin, they may also be required to pay increased duty on goods or penalties. While some may argue that Certificates of Origin are costly, this is a minor cost compared to infringement costs and the expenses to dispute and reclaim incorrect tariffs should incorrect information be provided through self-certification.

Businesses face steep penalties for providing a false or misleading statement. For example, under the *Customs Act 1901*:

- a) S 243T – False or misleading statements resulting in loss of duty - The maximum fine is 60 penalty points (\$10,800) or the amount of excess duty, if a document is incorrectly certified.
- b) S243U – False or misleading statements not resulting in loss of duty - The maximum fine is 60 penalty points (\$10,800) for each false or misleading statement, if a document is incorrectly certified.

The penalty for an offence under S234U applies to each misleading statement. Therefore, each origin certificate provided to Customs may be considered a new statement attracting a fine.

Increased financial exposure will also increase the cost of business insurance for all stakeholders.

Under the current system, obtaining a Certificate of Origin from a professionally trained and government-audited, verifying independent third-party, ensures the validity of a claim for proof of origin. It also provides peace of mind for all stakeholders in the supply chain and improves the flow of trade for business. Even with this level of scrutiny, it has been noted that customs do infrequently pick up errors which are resolved through an audited and prescribed process

in collaboration with the Chamber. This offers an incentive for businesses to remain compliant, businesses know their claims are being assessed and validated and that they will be supported when verification checks are made.

Federal Government agencies, including the Department of Home Affairs (Australian Border Force), may find that the burden and cost of encouraging compliance will shift to them, due to a potential increase in disputed applications. Although a genuine lack of understanding may lead to incorrect applications, a self-certification system could contribute to an increase in fraudulent applications to purposefully avoid implemented quotas or to access preferential treatment. To deal with a potential increase in disputed applications, customs and revenue authorities would need an increased capacity to continue enforcing the system and ensure an incentive to compliance. Of greatest concern is that without continued investigation into imports, the rules of origin lose their value altogether.

The evidence already shows that self-certification puts exporters at risk, an aspect businesses may not always consider as the burden of proof for rules of origin is usually placed on the importer. In some agreements (including The Australia – United States Free Trade Agreement, Malaysia-Australia Free Trade Agreement and the Comprehensive and Progressive Agreement for Trans-Pacific Partnership), the Australian Government has agreed that the authorities of the importing country can undertake direct investigation of the supply chain in Australia.

This exposes exporters to scrutiny from foreign governments and can prove to be costly and time consuming. In addition to costs associated with hiring customs consultants and legal representation to defend their claims, such cases can also negatively affect a company's share price and reputation if the investigation becomes public knowledge. CCI is aware of such instances where foreign governments have requested confirmation of details surrounding the provided Certificate of Origin. In such instances, it has been CCI's experience, that as an authorised third-party, confirmation of the details supplied in the Certificate of Origin has sufficed and prevented further investigation into exporters.

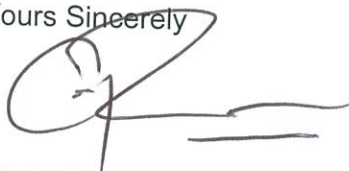
Considerations in continuing the use of Certificates of Origin

The Certificate of Origin systems, and rules chapter generally, within AANZFTA are well adopted and successfully implemented in practice and should be the model with which to seek harmonisation of future FTAs. The current audited verification process is accepted, respected and ensures that exporters and importers are supplied with consistent and reliable documentation.

CCI therefore recommends that the system of using Certificates of Origin continue and that these considerations be noted in the development and review of future FTAs.

Please do not hesitate to contact CCI Advocacy Officer Kim Moss on Kim.Moss@cciwa.com or 08 9365 7531, if you require any further information or to clarify any of the above points.

Yours Sincerely



Chris Rodwell
Chief Executive Officer