

# ANZCERTA

*Joint Australia/New Zealand Customs Information Booklet*

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RULES GOVERNING ENTITLEMENT TO PREFERENTIAL RATES  
OF DUTY FOR TRANS-TASMAN TRADE

## *Important Note*

This publication is produced jointly by Australian and New Zealand Customs. It is designed to inform exporters and importers involved in trans-Tasman trade of the impact of current legislative provisions governing entitlement to preferential rates of duty. These provisions are based on, and give effect to, the Rules of Origin requirements of the Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).

In some cases, it has not been possible to achieve legislative and/or administrative uniformity. This booklet outlines joint interpretations with separate comment on differences by way of exception.

Every attempt has been made to provide readers with topical and accurate information. However, this publication is not designed to serve as a substitute for the relevant statutory provisions. Readers should therefore refer also to the following statutory material:

Australia:            Division 1A of Part VIII of the Customs Act 1901  
                             Customs Regulations 107A and 107B

New Zealand:        Customs Act 1966, sections 148 to 151  
                             Customs Regulations 70 to 70G

Changes to legislation will be advised by Australian Customs Notice and New Zealand Customs Release.

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### 1. BACKGROUND TO PREFERENCE

Preferential rates of duty are extended by Australia and New Zealand to each other's produce or manufacture in accordance with the Rules of Origin provisions of the Australia/New Zealand Closer Economic Relations Trade Agreement (ANZCERTA).

These agreed rules have been translated by each country into legislative provisions to give them the force of law. Where possible, these legislative provisions are identical.

The ANZCERTA Agreement was last reviewed in 1992. Amendments to the Rules of Origin flowing from this review were implemented by Australia and New Zealand and this publication reflects the outcome of that Review.

### 2. OUTLINE OF LEGISLATION

Specific Australian legislative provisions governing entitlement of goods imported from New Zealand to preferential rates of duty, are set out below:

Customs Act 1901: sections 4 (definition of unmanufactured raw products), and 153A/153S

Customs Regulations: Regulations 107A and 107B

Corresponding New Zealand legislative provisions relating to entitlement for imports from Australia to preferential rates of duty, are:

Customs Act 1966: sections 148 to 151

Customs Regulations 1968: 70 and 70A/70G

### 3. SELF ASSESSMENT

#### Australia

Australia's system of self assessment for entry clearance places responsibility for correct clearance of goods through Customs on the importer. Customs' compliance monitoring usually takes place after clearance of the goods.

In satisfying their obligations under this system, importers will be expected to make reasonable enquiries about preference entitlement with their

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exporter/s in New Zealand if they are to avoid the application of penalties. Nevertheless, importers will, in ordinary circumstances, be entitled to rely for immunity from the application of penalties, on a declaration in terms of that at Appendix 3 being placed by the exporter on invoices accompanying shipments on which preference is claimed.

Failure to substantiate a preference entitlement claimed, will mean that normal Tariff rates will apply to shipments of the particular goods entered in the immediately preceding 12 months.

### New Zealand

The Collector of Customs may require a preferential duty claim to be verified at the time of entry or at any subsequent time, including any time after the goods have ceased to be subject to the control of Customs.

Where the Collector requires such a claim to be verified at the time of entry, and the claim is not verified to the satisfaction of the Collector at that time, the goods are not entitled to that claim – the Normal Tariff applicable to those goods would be payable.

The extent of verification either at the time of entry, or at a subsequent (post entry) time will depend upon the circumstances in which the claim is made. Verification may involve the following points:

- it may be inappropriate to accept information as to preference from a freight forwarder (as against the manufacturer);
- it may require physical examination of the goods;
- it may require the production of costing details, certified by the manufacturer together with additional details as required. Arrangements can be made for this information to be supplied directly from the manufacturer to the Collector;
- it may require full details on the qualifying expenditure of Australian or New Zealand sourced materials used in manufacture;
- in some cases, the Collector will arrange for officers to visit the factory where the goods were made to check the validity of the preference claim;
- it may require a combination of any of the above factors.

Requirements for origin certification for goods entering New Zealand from Australia are set out in Appendix 4.

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### 4. CRITERIA FOR PREFERENCE ENTITLEMENT

For Australia/New Zealand Rules of Origin purposes, goods, the produce or manufacture of the preference country, may be divided into three categories:

1. **goods wholly the produce of the country (unmanufactured raw products);**
2. **goods wholly manufactured in the country from one or more of the following:**
  - (a) **unmanufactured raw products (of any country);**
  - (b) **materials wholly manufactured in Australia or New Zealand or both;**
  - (c) **materials determined to be raw materials of the country; and**
3. **goods partly manufactured in the country.**

### Special Notes

**Category 1 (Unmanufactured Raw Products)** are defined in Australian and New Zealand legislation as follows:

Australia: section 4 of the Customs Act 1901

New Zealand: Customs Regulation 70

(The relevant legislative provisions are reproduced in Appendix 2.)

Item (c) in **category 2 (Wholly Manufactured Goods)** is a special provision that allows determination of imported materials as manufactured raw materials of the preference country. Applications may be made to the Customs administration in the preference country for determination of particular materials. For wholly manufactured goods of category 2, a 3% tolerance will be applied to allow for minor constituents which are the manufacture of countries other than Australia or New Zealand.

Goods in categories 1 and 2 are entitled to preferential rates of duty without further conditions.

**Category 3 (Partly Manufactured)** goods consist of materials and/or processing which are attributable to countries that are both within, and outside, the preference area i.e., Australia and/or New Zealand. In the case

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of these goods, the criteria governing preference entitlement is:

- (a) the last process of manufacture must be performed by the manufacturer in either Australia or New Zealand; and
- (b) not less than 50% of the factory cost must represent qualifying expenditure.

A Quick Reference Origin Chart is set out in Appendix 1 to facilitate a ready understanding of conditions of entitlement.

### 5. LAST PROCESS OF MANUFACTURE

In essence, manufacture involves the creation of an article different from the component parts or materials which go into such manufacture. Repairing, re-conditioning, overhauling or re-furbishing do not constitute manufacture as these are restoration processes.

Minimal operations or processes such as pressing, labelling, ticketing, packaging, preparation for sale and quality control inspections will not, by themselves, be considered to be the last process of manufacture. However, where the last process of manufacture has been performed, the cost of these operations or processes may, in some cases, be considered as local area content.

### 6. THE 50% RULE – CRITERIA

What is the setting for the 50% and who must incur it?

The scheme of current Australia/New Zealand legislation is built around 'the factory' which is defined as the place where the last process in the manufacture of *the goods* was performed. It is important to understand that the manufacturer is defined as the person undertaking the last process in the manufacture of *the goods*. Manufacture of *the goods* must take place in *the preference country* (or 'the country') which may be either Australia or New Zealand. When put together, the significance of these concepts is that:

1. *goods* produced by 'the factory' in *the preference country* are those on which preferential rates of duty are claimed on entry into either Australia or New Zealand; and
2. all inputs into the manufacturing process (other than those materials treated as overheads) are to be treated as materials entering that process;

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3. all expenditure forming part of the 50% requirement must be incurred by the manufacturer of *the goods*.

Another important aspect of the 50% calculation is that no cost may be taken into account more than once.

### How is the 50% Calculated?

The 50% rule is a value added test and is based on the formula:

$$\frac{\text{qualifying expenditure (Q/E)}}{\text{factory cost (F/C)}} \quad \%$$

Q/E = Qualifying expenditure on materials + qualifying labour and overhead (includes inner containers)

F/C = Total expenditure on materials + qualifying labour and overhead (includes inner containers)

The elements of factory cost viz., material, labour and overhead and inner containers are dealt with below.

### Elements of the 50%

#### MATERIALS

**Total expenditure on materials** includes all directly attributable costs of acquisition into the manufacturer's store. This will **include**:

- the purchase price
- overseas freight and insurance
- port and clearance charges, and
- inward transport to store

but **excludes**:

- Customs duty
- anti-dumping or countervailing duty
- excise duty
- sales tax, and
- goods and services tax

incurred by the manufacturer in Australia and/or New Zealand.

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Where materials:

- (a) are provided free of charge or at a cost which is found to be more or less than normal market value; or
- (b) are added or attached to goods on which preferential rates of duty are claimed in order to artificially raise qualifying expenditure,

Customs has power in each case to determine a value which will apply.

### **Qualifying expenditure on materials:**

Qualifying expenditure is 100% where:

- the material is an unmanufactured raw product of Australia or New Zealand; or
- the material is wholly manufactured in Australia or New Zealand from the unmanufactured raw products of those countries.

### ***Materials of Mixed Origin***

These are materials which incorporate both imported content and content of Australia and New Zealand. Both Australia and New Zealand treat materials of mixed origin which reach 50% or more local content as 100% qualifying materials. However, Australia and New Zealand calculate the local content from a different base. Australia calculates the percentage of local content as the sale price of the material minus the imported content. New Zealand calculates the local content of the factory cost of the material.

*The following example illustrates the different Australia/New Zealand outcomes where the 50% local content is not reached:*

	\$
A. Cost of imported materials	150
B. Cost of materials manufactured in Australia/New Zealand	20
C. Labour and factory overhead for manufacture of materials	30
D. Total factory cost of materials	200
E. Other overhead and profit	50
F. Selling price of material to factory	250



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*Qualifying Expenditure on Materials:*

### ***New Zealand Goods exported to Australia***

F (\$250) – A (\$150) = Qualifying expenditure on materials = **\$100**

NOTE: Qualifying expenditure (\$100) is less than 50% of F (\$250)

### ***Australian Goods exported to New Zealand***

Qualifying expenditure (B+C) = \$50

Qualifying expenditure/total factory cost (D) = \$50/\$200 = 25%

Qualifying expenditure on materials = 25% of F (\$250) = **\$62.50**

### **Materials recovered from waste and scrap**

Australia and New Zealand have agreed to a joint interpretation of this provision. Thus, expenditure:

- (a) on waste and scrap resulting from manufacturing or processing operations in Australia and/or New Zealand; and
- (b) on used articles collected in Australia and/or New Zealand,

which are fit only for the recovery of raw materials, shall be treated as qualifying expenditure on materials used in manufacture of goods on which preference is claimed.

### **Inner Containers**

Inner containers includes any container or containers into which any finished goods are packed other than pallets, containers or similar articles which are used by carriers for cargo conveyancing.

Australia treats materials for inner containers in the same manner as any other materials. However, New Zealand treats inner containers as a separate item of factory cost and requires a not less than 50% Australian and/or New Zealand content requirement before the inner container can be treated as qualifying expenditure. The effect of this difference is that where there is less than 50% Australia/New Zealand content, Australia may allow some qualifying expenditure, whereas none would be allowed in New Zealand.

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### LABOUR

Labour costs associated with the following functions may form part of qualifying expenditure:

- manufacturing wages and employee benefits;
- supervision and training;
- management of the process of manufacture;
- receipt and storage of materials;
- quality control;
- packing goods into inner containers; and
- handling and storage of goods within the factory.

To the extent that any of the listed costs:

- (a) are incurred by the manufacturer of the goods;
- (b) relate directly or indirectly to the production of the goods;
- (c) can reasonably be allocated to the production of the goods;
- (d) are not specifically excluded (see exclusions under overhead below);  
and
- (e) are not included elsewhere e.g., under overhead,

they may be included, in whole or in part, within qualifying expenditure.

### OVERHEAD

Subject to later qualifications, the following overhead costs associated with manufacturing functions **may form part of qualifying expenditure:**

- inspection and testing of materials and the goods;
- insurance of the following kinds:
  - (i) plant, equipment and materials used in the production of the goods;
  - (ii) work-in-progress and finished goods;
  - (iii) liability;
  - (iv) accident compensation;
  - (v) consequential loss from accident to plant and equipment;
- dies, moulds, tooling and the depreciation, maintenance and repair of plant and equipment;

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- interest payments for plant and equipment;
- research, development, design and engineering;
- the following real property items used in the production of the goods:
  - (i) insurance;
  - (ii) rent and leasing;
  - (iii) mortgage interest;
  - (iv) depreciation on buildings;
  - (v) maintenance and repair;
  - (vi) rates and taxes;
- leasing of plant and equipment;
- energy, fuel, water, lighting, lubricants, rags and other materials and supplies not directly incorporated in manufactured goods;
- storage of goods at the factory;
- 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;
- subscriptions to standards institutions and industry and research associations;
- the provision of medical care, cleaning services, cleaning materials and equipment, training materials and safety and protective clothing and equipment;
- the disposal of non-recyclable waste;
- subsidisation of a factory cafeteria to the extent not covered by returns;
- factory security;
- computer facilities allocated to the process of manufacture of the goods;
- the contracting out of part of the manufacturing process within Australia or New Zealand;
- employee transport;
- vehicle expenses; and
- any tax in the nature of a fringe benefits tax.

**NOTE:** The cost of any depreciation must be worked out in accordance with generally accepted accounting principles applied by the manufacturer.

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**To the extent that any of the costs included in qualifying expenditure:**

- (a) are incurred by the manufacturer of the goods;**
- (b) relate directly or indirectly to the production of the goods;**
- (c) can reasonably be allocated to the production of the goods;**
- (d) are not specifically excluded (see below); and**
- (e) are not included elsewhere e.g., under Labour,**

**they may be included, in whole or in part, within qualifying expenditure.**

The following costs are specifically **excluded as qualifying expenditure:**

- any cost or expense relating to the general expense of doing business (including, but not limited to, any cost or expense relating to insurance or to executive, financial, sales, advertising, marketing, accounting or legal services);
- telephone, mail and other means of communication;
- international travel expenses including fares and accommodation;
- the following items in respect of real property used by persons carrying out administrative functions:
  - (i) insurance;
  - (ii) rent and leasing;
  - (iii) mortgage interest;
  - (iv) depreciation on buildings;
  - (v) maintenance and repair;
  - (vi) rates and taxes;
- conveying, insuring or shipping goods after manufacture;
- shipping containers or packing the goods into shipping containers;
- any royalty payment relating to a licensing agreement to distribute or sell the goods;
- the manufacturer's profit and the profit or remuneration of any trader, agent, broker or other person dealing in the goods after manufacture;
- any other cost incurred after the completion of manufacture of the goods.

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### 7. THE 50% RULE – TOLERANCES

Where unforeseen circumstances lead to a failure to achieve the 50% threshold, a 2% tolerance may be applied thereby entitling shipments which have qualifying expenditure of not less than 48% of factory cost. A condition of the exercise of this discretion is that the unforeseen circumstances are unlikely to continue.

It is important to emphasise that this provision:

- is not a de facto lowering of the limit;
- will be applied in response to particular circumstances; and
- would not normally be expected to extend beyond three months.

Applications for tolerances should be made to the offices listed under the heading 'Further Information'. In the case of New Zealand all applications should be directed to the Wellington Head Office address.

Key information required in an application includes:

- evidence that qualifying expenditure is not less than 48%;
- details of the unforeseen circumstances and their impact;
- evidence that, in the absence of the unforeseen circumstance/s, the relevant percentage would have been 50% or more; and
- details of when the unforeseen circumstance/s is likely to cease.

### 8. PREFERENCE ENQUIRY PROCEDURES

Australia and New Zealand Customs have co-operated in compiling a Protocol on Customs procedures for origin investigations. 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. Copies of this publication are available at the addresses listed under the heading 'Further Information'.

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### 9. REVIEW PROCEDURES

Both Customs administrations maintain internal review procedures. Any party may request an internal review of an enquiry outcome. A review may 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  
5-11 Constitution Avenue  
CANBERRA CITY, ACT 2601

New Zealand: The Director  
Trade and Business Facilitation  
PO Box 2218  
WELLINGTON

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

#### Australia

Where a decision is taken to require the payment of full duty on shipments presented for clearance through Customs, such payments may be made under protest by importers. This procedure will give rise to a right to challenge the decision to require full duty allowing an application for review to be made to the Administrative Appeals Tribunal.

The Administrative Appeals Tribunal is then empowered to subject the decision to a full merit review. The finding of the Tribunal will be binding on Customs unless successfully appealed to the Federal Court.

#### New Zealand

It is expected that a Customs Appeals Authority will be established along similar lines to the Administrative Appeals Tribunal. In the meantime, decisions on preferential entitlement are reviewable by the High Court.

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### 10. JOINT RULINGS AND INTERPRETATIONS

Australia and New Zealand are developing legislation to institute a Joint Rulings and Interpretations system to provide definitive advice on the treatment of specific costs and circumstances. Australia will publish Joint Rulings in Appendix 9 of Division 9 of Volume 8 of the Australian Customs Manual (see 'Further Information' below for details). In New Zealand, notification of a Joint Ruling will be made available in the fortnightly *Customs Release* – a Customs News and Information publication.

NOTE: All enquiries regarding Joint Rulings should be addressed to the Head Office of Customs in each country.

### 11. FURTHER INFORMATION

More information may be obtained from the following sources:

#### Australia

##### **DIRECT CONTACT**

##### **Customs Head Office**

Origin Section  
Tariff and Valuation Branch  
Australian Customs Service  
5-11 Constitution Avenue  
CANBERRA, ACT 2601

Phone: 06-275 6512

Facsimile: 06-275 6477

##### **Other written material**

More detailed information is available in Division 9 of Volume 8 of the Australian Customs Manual. This publication and periodic updates are available to the public by way of subscription by contacting the Distribution Officer, Publications Section of the Australian Customs Service, Canberra. Phone: 06-276 2449. Facsimile: 06-276 2451.

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### New Zealand

Manufacturers/exporters are able to contact the following Customs offices should there be any particular Rules of Origin query or question that arises and requires clarification or answer.

NOTE: All applications for determination of raw materials or tolerances are to be made to the Comptroller of Customs in Wellington only.

#### **Customs Head Office**

Comptroller of Customs  
Box 2218  
WELLINGTON

Attention:  
Trade and Business Facilitation

Phone: 0-4-473 6099  
Facsimile: 0-4-472 3886

#### **Regional Collector of Customs Central Region**

Box 2218  
WELLINGTON

Attention: Import Review

Phone: 0-4-473 6099  
Facsimile: 0-4-473 7370

#### **Regional Collector of Customs Northern Region**

Customhouse  
Box 29  
AUCKLAND

Attention: Import Review

Phone: 0-9-377 3520  
Facsimile: 0-9-307 9056

#### **Regional Collector of Customs Southern Region**

Box 14086  
CHRISTCHURCH AIRPORT

Attention: Import Review

Phone: 0-3-358 0600  
Facsimile: 0-3-358 0606



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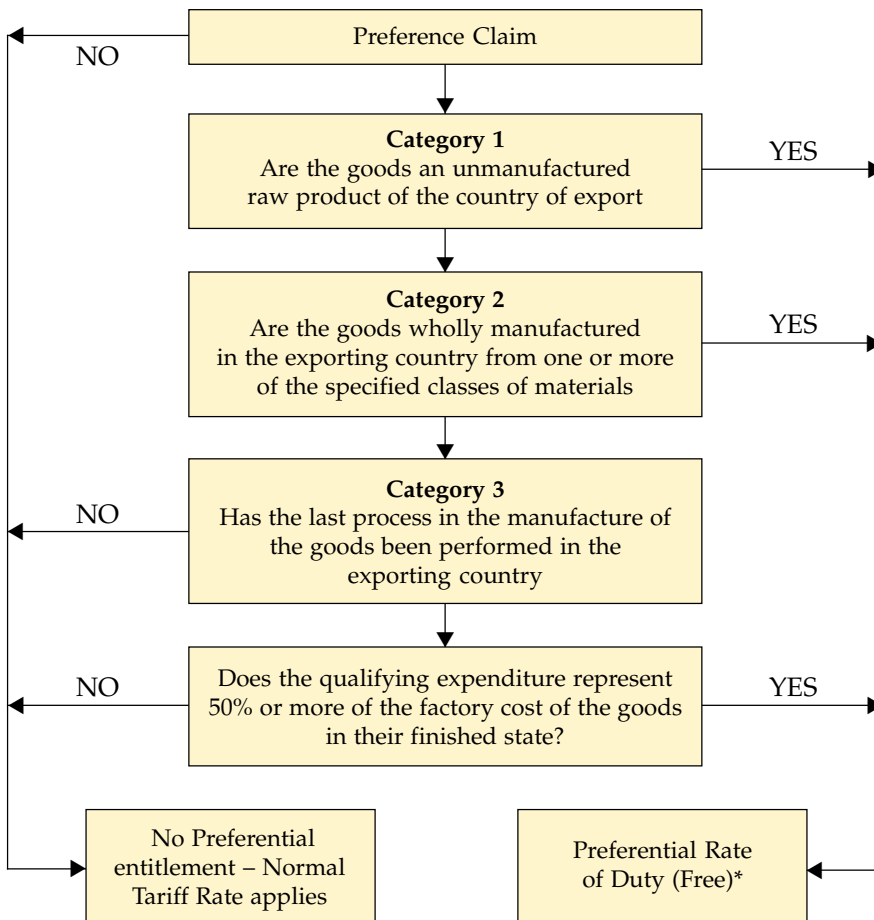
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### APPENDIX 1

#### QUICK REFERENCE ORIGIN CHART

WHEN ARE GOODS TRADED BETWEEN AUSTRALIA AND NEW ZEALAND ENTITLED TO PREFERENTIAL RATES OF DUTY



\* New Zealand note: Although Australian goods may qualify for duty free entry into New Zealand, Goods and Services Tax (GST), at 12.5% is still payable on imports into New Zealand.

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### APPENDIX 2

#### DEFINITION OF UNMANUFACTURED RAW PRODUCTS

##### AUSTRALIA

Section 4 of the Customs Act 1901 defines unmanufactured raw products as follows:

*“ ‘unmanufactured raw products’ means natural or primary products that have not been subjected to an industrial process, other than an ordinary process of primary production, and, without limiting the generality of the foregoing, includes:*

- (a) animals;*
- (b) bones, hides, skins and other parts of animals obtained by killing, including such hides and skins that have been sun-dried;*
- (c) greasy wool;*
- (d) plants and parts of plants, including raw cotton, bark, fruit, nuts, grain, seeds in their natural state and unwrought logs;*
- (e) minerals in their natural state and ores; and*
- (f) crude petroleum.”*

##### NEW ZEALAND

Regulation 70 defines unmanufactured raw product as follows:

*“Unmanufactured raw product –*

- (a) Means any product that is both:*
  - (i) A product of any farm, mine, forest, fishery, or similar activity; and*
  - (ii) A product that is in its natural form or has undergone only such basic processing as is customarily required to prepare the product for marketing in substantial volume in international trade; and*
- (b) Without limiting the generality of paragraph (a) of this definition, includes:*
  - (i) Animals; and*
  - (ii) Bones, hides, skins, and any other part of any animal; and*
  - (iii) Greasy wool and scoured wool; and*
  - (iv) Plants and parts of plants, including (without limitation) raw cotton, fruit, nuts, vegetables, grains, seeds (cleaned and graded), and green coffee beans; and*
  - (v) Logs of timber with branches removed but otherwise unworked; and*
  - (vi) Minerals in their natural form and ores; and*
  - (vii) Crude petroleum.”*

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## APPENDIX 3

### AUSTRALIA/NEW ZEALAND PREFERENTIAL RATES OF DUTY DECLARATION REQUIRED BY NEW ZEALAND EXPORTERS TO AUSTRALIA TO SUPPORT ENTITLEMENT

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#### Manufactured Goods New Zealand

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**“I declare that:**

- (a) the last process in the manufacture of the goods described below was performed in New Zealand; **and**
- (b) not less than 50 % of their total factory cost is represented by the sum of the allowable expenditure of the factory on materials, labour and overheads and the cost of inner containers of New Zealand or of Australia and New Zealand.”

**Description of goods:**

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Item numbers	Marks and numbers of packages	Quantity	Description of goods	Number and date of invoices
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---

Signature:

---

Name:

---

Position in manufacturing company:

---

Name of manufacturing company:

---

Date:

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## APPENDIX 4

### AUSTRALIAN EXPORTS TO NEW ZEALAND

#### CONDITIONS PRECEDENT TO ENTRY AT PREFERENTIAL RATES

New Zealand has no legal requirement for the production of a prescribed Certificate of Origin (previously Form 58).

But the New Zealand importer must, on entering the goods for Customs purposes, have sufficient information on which to base a claim for preferential duty free entry. Effectively, this requires the Australian manufacturer or exporter to provide the importer with clear information as to those goods which meet the ANZCERTA Rules of Origin.

There is now the opportunity to detail on the export documentation, e.g., the commercial documents (invoice) by way of a statement, declaration, or certification that identified goods meet the rules of origin. This requirement accommodates the 'paperless' environment for international trade under EDI (Electronic Data Interchange).

An example of a certification/declaration/statement for the 50% rule would be:

**"I hereby certify/declare that:** *(specify the goods)*

- (a) The process last performed in the manufacture of the goods was performed in Australia; and
- (b) That (*actual* %) of the factory cost of the goods in their finished state is represented by qualifying expenditure on materials, labour, factory overheads, or inner containers."

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