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RULES of ORIGIN US/AUST FTA - AN OVERVIEW

At the time I prepared this paper specific details of the Rules of Origin (ROO) applicable to the Australia US Free Trade Agreement were not available. However, general information was provided by DFAT who also advised the structure of the rules mirrored those that apply to the US Singapore FTA the details of which are available to the public.

A complete explanation of the ROO component of the US/Singapore FTA is provided in some hundreds of pages. A first reading reveals numerous definitions, the need for substantial additions to the Customs Tariff and the application of rules that vary according to the tariff classification of the particular goods that are traded.

Having had extended first hand experience with tariff classification issues my initial reaction was that the correct application of the ROO could well prove to be a nightmare for some importers/ manufacturers particularly for those having a large import inventory.

Notwithstanding the sheer volume of the ROO and the technical difficulties that can arise with some tariff classifications the basic concept is simple.

In recent times DFAT has liaised with Australian industry with the view to seeking input for the purpose of determining acceptable ROO to apply to Free Trade Agreements negotiated with Singapore, Thailand and most recently the USA.

The ROO that are to apply to the recently negotiated Australia/ United States of America Free Trade Agreement generally fall into line with the options previously canvassed with industry. We therefore expect their adoption will result in limited complaints if any.

The following is intended to provide a brief overview.

ESSENTIAL TEST:

- goods must be “substantially transformed” in either the US or Australia before they can benefit from the Agreement;
- meaning there must be a change in the tariff classification of the goods i.e. the inputs must move the product from one tariff code to another;
- where it is difficult to demonstrate the product has been “ substantially transformed” through the tariff change an additional or alternative local content threshold test will be applied.

Regional Value Content (RVC) :

- to apply only to 20 % of Tariff Headings/ Sub Headings
- build up – 35%, generally;
- build down – 45 %, generally;
- importers choice of either build up or build down method – onus on importer to prove compliance.

Special Arrangements:

- a new definition impacting at the sub-heading level is to be written into the Footwear chapter 64 legal notes of the Customs Tariff;
- additional sub-headings of the Tariff will need to be created;
- textiles & clothing tariff chapters 51-63 will require some changes;
- NAFTA like arrangements relating to RVC are to apply to certain automotive tariff sub-headings.

Source: DFAT

MANAGING RULES OF ORIGIN

The ROO tests under the Aust/US FTA are straight forward and easily understood.

Manufacturers trading with the US either as an exporter or an importer, or both, will need to ensure the product/s they are trading have undergone a substantial transformation in order to benefit from the FTA i.e. the material production inputs have been transformed resulting in the output falling to another/different tariff classification.

Where the tariff classification to which the traded goods fall requires a specified RVC and the option exists to adopt either the " Build Down' or "Build Up" method the manufacturer/importer must ensure the supplier has provided sufficient evidence for the appropriate election to be made.

Likewise in certain instances the RVC requirement will be restricted to either a "Build Up" or a "Build Down" method. Clearly manufacturers/importers will need to establish the specific requirement in order to determine whether their product can benefit from the preferential tariff treatment accorded by the FTA.

As a hypothetical example assume we have an Australian water pump manufacturer who sells his product in both the domestic and export markets but has been unable to sell into the US market because of an (assumed) import tariff of 7.5 %.

The manufacturer establishes his water pump must have a RVC of not less than 40% on the "Build Up" method in order to qualify for duty free entry into the US as a consequence of the FTA. At this duty free level the manufacturer is confident of achieving substantial sales in a particular niche of the US market. Achievement of these sales will be vital for the longer term viability of the local production of the water pumps.

The manufacturer has been exporting to New Zealand and therefore assumes that the RVC US requirement is easily satisfied as he knows he has been achieving the 50% content required by ANZCERTA .

When caused to closely examine the RVC by his Finance Manager the manufacturer finds that the impeller and other major components of the pump are sourced from his New Zealand subsidiary company resulting in the Australian content falling short of the 40%. Clearly in these circumstances the manufacturer has to consider the option of re-sourcing some or all of the components from Australian production.

The FTA provides for an audit of exporters claiming an FTA benefit. It is understood audits will be conducted by the Customs authorities in the country of exportation.

Given the highly competitive environment in which most products compete in both the US and Australian markets it can be anticipated that there will be calls for verification of compliance with the ROO.

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