

# **SPARTECA**

JOINT AUSTRALIA NEW ZEALAND AND FORUM SECRETARIAT BOOKLET

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**RULES OF ORIGIN REQUIREMENTS OF THE SOUTH PACIFIC TRADE AND ECONOMIC  
CO-OPERATION AGREEMENT**

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# **SPARTECA**

## **SOUTH PACIFIC REGIONAL TRADE AND ECONOMIC CO-OPERATION AGREEMENT**

### **A Reference Handbook for Forum Island Country Exporters**

**FORUM SECRETARIAT  
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### Foreword

It is my great pleasure to introduce the 1996 edition of "A Reference Handbook for Forum Island Country Exporters". This booklet provides explanatory notes pertinent to the conduct of trade under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA).

For the traders who have extensively utilised the earlier versions of the Handbook, you will note that this edition contains a lot more detail and also provides useful examples to assist in the understanding of the rules governing trade with Australia and New Zealand under SPARTECA. Key elements outlined in the Handbook cover the issues of the rules of origin, the definitions and formula for determining preference eligibility, derogation, the types of document required for facilitating transactions at the border, and other administrative information.

I would also like to take this opportunity to register my sincere gratitude to the Governments of Australia and New Zealand for their generous assistance in making this publication possible. It has always been my earnest belief that transparency in documents such as this is one of the cornerstones to promoting or realising greater participation in trade and its associated activities. I see the 1996 version as trying to achieve this very objective and hence should be commended.

Ieremia T Tabai GCMG  
**Secretary General**  
Forum Secretariat

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### Important Note

The Rules of Origin information contained in this booklet has been produced jointly by Australian and New Zealand Customs and the Forum Secretariat. It is designed to inform exporters involved in trade with Australia and New Zealand of the impact of current statutory provisions governing entitlement to preferential rates of duty. These are based on, and give effect to, the Rules of Origin requirements of SPARTECA.

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

Australia:	Division 1A of Part VIII of the Customs Act 1901 Section 4 of the Customs Act 1901 (definition of unmanufactured raw products) Customs Regulations 107A and 107B
New Zealand:	Customs Act 1966: Sections 148 to 151J Customs Regulations 1968: Regulations 72C to 72CG

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## 1. WHAT IS SPARTECA

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The South Pacific Regional Trade and Economic Co-operation Agreement (SPARTECA) is a non-reciprocal trade agreement under which the two developed nations of the South Pacific Forum, Australia and New Zealand offer duty free and unrestricted or concessional access for virtually all products originating from the developing island member countries of the Forum, hereinafter called the Forum Island Countries (FICs).

SPARTECA was signed by most Forum members at the Forum's Eleventh Meeting in Kiribati on 14th July, 1980. It came into effect for most FICs from 1 January, 1981.

With the joining of new members to the Forum, the current list of FIC signatories to SPARTECA includes Cook Islands, the Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, Niue, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and Western Samoa.

The Agreement includes provisions for general economic, commercial and technical co-operation, safeguard provisions relating to dumped and subsidised goods and suspension of obligations, and provisions for general exceptions and revenue duties. The Agreement also provides for special treatment and assistance to be extended to the Smaller Island Countries (SICs) viz Cook Islands, Kiribati, Nauru, Niue, Tonga, Tuvalu and Western Samoa.

### ACCESS PROVISIONS

**New Zealand** : provides duty free and unrestricted access to all products originating in the FICs.

**Australia** : allows duty free and unrestricted entry to all FIC products except for sugar.

However, to qualify for duty free and unrestricted or concessional access benefits, goods exported to Australia and New Zealand must meet the **Rules of Origin** set out in SPARTECA. These rules determine whether or not the products are the origin of a FIC for the purpose of SPARTECA concessions.

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### 2. BACKGROUND TO PREFERENCE

Preferential rates of duty are extended by Australia and New Zealand to goods the produce or manufacture of a FIC in accordance with the Rules of Origin provisions of SPARTECA.

These agreed rules have been translated by each country into legislative provisions to give them the force of law.

### 3. OUTLINE OF LEGISLATION

#### Australia

Legislative provisions governing entitlement to preferential rates of duty for goods imported from FICs are set out below:

Customs Act 1901: Section 4 (definition of unmanufactured raw products)  
Division 1A of Part VIII Sections 153A to 153S

Customs Regulations: Regulations 107A and 107B

In addition, Division 9 of Volume 8 of the Australian Customs Service Manual has been published by the Australian Customs Service and this manual explains in detail what is required by the legislation.

#### New Zealand

Corresponding legislative provisions relating to entitlement for imports from FICs to preferential rates of duty are:

Customs Act 1966: Sections 148 to 151J

Customs Regulations 1968: Regulations 72C to 72CG

If you require further information see section 12 of this booklet.

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### **4. SELF-ASSESSMENT**

#### **Australia**

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

In some cases, the Australian Customs Service will arrange for officers to visit the factory where the goods were made to check the validity of the preference claim.

In satisfying their obligations under this system, importers will be expected to make reasonable enquiries about preference entitlement with their exporter/s in a FIC if they are to avoid the application of penalties. Nevertheless, importers, when requested by Customs, will in ordinary circumstances, be entitled to rely for immunity from the application of penalties, on the provision of a declaration in terms of that at Appendix 1. These declarations should be placed by the exporter on invoices accompanying shipments on which preference is claimed.

Failure to substantiate a preference entitlement claimed will mean that General rates will be applied to shipments of the particular goods entered in the immediately preceding 12 months. For on-going shipments General rates of Customs duty will apply until such time as preference is reinstated (see Section 9 - Review Procedures).

#### **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 (duty) 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:

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- 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 FIC, Australian, or New Zealand sourced materials used in the 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 a FIC are set out in Appendix 2.

### 5. CRITERIA FOR PREFERENCE ENTITLEMENT

For SPARTECA Rules of Origin purposes, goods the produce or manufacture of a FIC are divided into two categories:

1. Goods being unmanufactured raw products/wholly obtained; and
2. Goods wholly or partly manufactured in the FIC.

#### Special Notes

##### Category 1: (Unmanufactured raw products/goods wholly obtained)

For FIC exports to Australia, Australia applies the term "unmanufactured raw products", while for FIC exports to New Zealand, New Zealand applies the term "goods wholly obtained".

The full definitions of "unmanufactured raw products" and "goods wholly obtained" are provided in Appendix 3.

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Goods of this category are entitled to preferential rates of duty without further conditions.

### **Category 2: (Wholly or partly manufactured)**

These goods consist of materials and/or processing which are attributable to countries that are both within and outside the qualifying area.

In the case of wholly or partly manufactured goods, the SPARTECA criteria governing preference entitlement is:

- (a) the last process of manufacture must be performed by the manufacturer in a FIC; and
- (b) not less than 50% of the factory cost must be represented by qualifying expenditure.

A Quick Reference Origin Chart is set out in Appendix 4 to facilitate a ready understanding of conditions of entitlement.

The **FIC qualifying area** for exports to Australia and New Zealand is as follows:

#### **Australia**

The FICs, Papua New Guinea, New Zealand and Australia.

#### **New Zealand**

The FICs and New Zealand, and Australia but only as it relates to qualifying Australian materials.

## **6. 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, reconditioning, overhauling, or refurbishing 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.

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### 7. 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 a FIC. 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;
2. all inputs into the manufacturing process (other than those materials treated as overheads) are to be treated as materials entering that process; and
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% 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 overheads  
(includes inner containers).

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

The elements of factory cost viz. materials, labour and overheads and inner containers are dealt with below under the heading "Elements of the 50%".

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### Special Provisions

Australia and New Zealand have a different basis for calculating qualifying expenditure on materials of mixed origin (see heading "Materials of Mixed Origin").

Other significant provisions relating to the 50% rule which are peculiar to either Australia or New Zealand are as follows:

#### Australian Special Provisions

- Freight from the port/airport to the plant or factory in a FIC is qualifying expenditure (see examples 1 and 2 under "Qualifying Expenditure on Materials" and Appendix 5).
- 25% minimum FIC qualifying expenditure where materials produced or manufactured in New Zealand are used in manufacture, has been removed.

#### New Zealand Special Provisions

- 45% Rule for particular clothing (see Appendix 6).
- 25% minimum FIC content where qualifying Australian materials are used in manufacture (see Appendix 6).

### 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
- inward transport to store

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### **but excludes:**

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

incurred by the manufacturer in a FIC.

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

### **Qualifying Expenditure On Materials**

#### **Unmanufactured raw products or materials from outside the qualifying area - Australia**

Australian legislation provides that where unmanufactured raw products or materials are imported from outside the qualifying area the allowable expenditure consists only of the cost of cartage of those unmanufactured raw products or materials from the port/airport to the factory/plant in the preference country.

#### **Unmanufactured raw products or materials from outside the qualifying area - New Zealand**

In the case of materials the origin of countries not included in the "FIC qualifying area - New Zealand", see definition in Section 5, the total expenditure by the manufacturer on these materials cannot be treated as qualifying expenditure. However, the total expenditure must be added to the factory cost.

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### **Qualifying expenditure on materials is 100% where:**

- the material is an unmanufactured raw product/goods wholly obtained in a FIC; or
- the material is an unmanufactured raw product of Australia or New Zealand;\* or
- the materials are wholly manufactured in Australia or New Zealand \* from unmanufactured raw products of Australia or New Zealand; or
- the materials are “materials of mixed origin” which reach 50% or more qualifying expenditure. Calculation of 50% or more qualifying expenditure is to be based on methods mentioned under heading "**Materials of mixed origin**" for Australia or New Zealand \* as the case may be.

*\* New Zealand Special Provision: there must be a 25% minimum FIC qualifying expenditure when Australian qualifying materials are used in the production of preference claim goods for export to New Zealand (see Appendix 6).*

### **Materials of mixed origin**

These are materials which incorporate both qualifying and non-qualifying area content (see definitions of "FIC qualifying area" in Section 5). Australia and New Zealand treat materials of mixed origin which reach 50% or more qualifying expenditure as 100% qualifying expenditure on those materials.

However, Australia and New Zealand calculate qualifying expenditure differently.

- Australia calculates the percentage of qualifying expenditure as the total expenditure on materials less the cost of materials from outside the qualifying area.
- New Zealand calculates the local content of the material by reference to its factory cost.

**Note:** In the case of exports to Australia where qualifying expenditure of 50% or more is relied upon, that expenditure must relate to Australia and/or the preference claim country. In the case of exports to New Zealand, the expenditure must relate to New Zealand and the preference claim country.

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### Examples

#### Manufacturing Scenario

Materials (contributing materials) are imported into the qualifying area from outside the area (China). They are combined with other materials and manufactured by a plant into materials which are then manufactured by a factory into the preference claim good. Because the material used in the manufacture of the preference claim good uses material which consists of both area and non-area content - the material is referred to as a material of mixed origin.

#### Example 1.

This example relates to material of mixed origin that is derived in Australia, New Zealand or a FIC and illustrates where the 50% qualifying expenditure is reached:

	\$
A. Expenditure of plant on non-qualifying area material (China)	10
(B. 'A' includes cost of freight - port to plant in the preference country	1)
C. Expenditure on qualifying area material by plant	5
D. Plant labour and overhead cost incurred in the manufacture of the material of mixed origin	25
E. Total expenditure of plant on materials (A+C+D)	40
F. Profit and other plant overhead	10
G. Total expenditure by factory on material of mixed origin, ie, selling price of material by plant to factory (E+F)	50

Qualifying expenditure on material of mixed origin incorporated by a factory into the manufacture of a FIC good exported to Australia and New Zealand is \$50 in both cases. This is explained as follows:

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### **Australia - Special Rule (FIC goods exported to Australia)**

Qualifying expenditure on materials of mixed origin made in Australia and used in a FIC to manufacture the preference claim good, is calculated as follows:

- $G(\$50) \text{ less } A(\$10) = \$40$
- $\$40 \text{ is greater than } 50\% \text{ of } G(\$50) = \$40/\$50 = 80\%$

Under the Special Rule the qualifying expenditure on materials of mixed origin is the total factory expenditure on those materials ie \$50.

**Note:** For materials of mixed origin made in a FIC the cost of inland freight is an allowable cost. Therefore the qualifying expenditure calculation is modified to include freight as an allowable cost ie  $G(50) - [A(10) - B(1)] = \$41$ . As above, as the allowable expenditure is 50% or more of the total factory expenditure, then the total factory expenditure of \$50 becomes the allowable expenditure.

### **New Zealand - Special Rule (FIC goods exported to New Zealand)**

- Qualifying expenditure (C+D) = \$30
- Qualifying expenditure /total factory cost (E) =  $\$30/\$40 = 75\%$

As the qualifying expenditure ratio (75%) is greater than 50%, the qualifying expenditure on materials = \$50.

**Note:** Where the material of mixed origin is Australian there must be at least 25% FIC content in the finished manufactured goods (see Appendix 6, paragraph No.2).

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### Example 2.

This example relates to a material of mixed origin that is derived in Australia, New Zealand or a FIC and illustrates where the 50% qualifying expenditure is not reached:

A.	Expenditure by plant on non qualifying area material (China)	\$ 150
(B.	'A' includes cost of freight - port to plant in the preference country	2)
C.	Expenditure on qualifying area material by plant which is then incorporated in the material of mixed origin	20
D.	Plants labour and overhead cost incurred in the manufacture of the material of mixed origin	30
E.	Total expenditure of plant on materials (A+C+D)	200
F.	Other plant overhead and profit	50
G.	Total expenditure by factory on material of mixed origin, ie, selling price of material by plant to factory (E+F)	250

Qualifying expenditure on material of mixed origin incorporated by a factory into the manufacture of a FIC good exported to Australia or New Zealand is calculated as follows:

#### **Australia (FIC goods exported to Australia)**

Qualifying expenditure is  $G(\$250) \text{ less } A(\$150) = \$100$

Qualifying expenditure \$100 is less than 50% of G(\$250) ie,  $\$100/\$250 = 40\%$

Qualifying expenditure on materials is \$100.

**Note:** For a material of mixed origin made in a FIC the cost of inland freight is an allowable cost. Therefore the qualifying expenditure would be increased as follows:

$$G(\$250) - [A(\$150) - B(\$2)] = \$250 - \$148 = \$102.$$

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### **New Zealand (FIC goods exported to New Zealand)**

**Note:** Example 2, and the following calculation applies to materials of mixed origin that are derived in a FIC or New Zealand. Australian materials of mixed origin which do not achieve the necessary 50% qualifying expenditure cannot be treated as having any “qualifying expenditure on materials” (see Appendix 6, paragraph No 2, and Appendix 7, paragraph No 3 and the “Notes” under the heading “FIC Exports to New Zealand”).

Qualifying expenditure (C+D) = \$50

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

Qualifying expenditure on materials = 25% of G (\$250) = \$62.50.

**Example 2 Note:** Although the qualifying expenditure on the material is \$100 for FIC goods exported to Australia and \$62.50 for FIC goods exported to New Zealand, the balance of the total expenditure on the materials (\$150 for exports to Australia and \$187.50 for exports to New Zealand ) must be included in the factory cost (F/C) for the 50% calculation (see heading "How is the 50% calculated" and "Elements of the 50% Rule - Materials").

### **Important Conclusion on “Qualifying Expenditure on Materials”**

Appendix 7 contains a summary of materials derived in Australia, New Zealand, or a FIC within the FIC qualifying area and which are deemed to be classed within the term “qualifying expenditure on materials”.

The Appendix is split into two headings, viz, FIC exports to Australia, and FIC exports to New Zealand. It gives a step-by-step breakdown of the materials as well as illustrating a practical example of each “qualifying” material. Notes are added at the end of the Appendix to clarify particular points.

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### Inner Containers

Inner containers include 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 the cost of inner containers in the same manner as any other materials.

**New Zealand** treats inner containers as a separate item of factory cost and requires not less than 50% FIC or New Zealand content requirement before the inner container can be treated as qualifying expenditure.

### Materials Recovered From Waste and Scrap

Expenditure by the manufacturer

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

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

**New Zealand Note** - In (a) above, it is not necessary that raw materials must be recovered from waste and scrap. Also, expenditure on raw materials recovered from the waste, scrap, or used articles in (a) and (b) above is treated as 100% qualifying expenditure on materials.

### 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;

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- 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 eg, under overhead,

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

### OVERHEADS

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 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;
- interest payments for plant and equipment and on borrowings to pay wages;
- research, development, design and engineering;

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- 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 recovered 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 a FIC or New Zealand (exports to New Zealand only);
- the contracting out of part of the manufacturing process within a FIC, Australia or New Zealand (exports to Australia only);
- employee transport;
- vehicle expenses;
- any tax in the nature of a fringe benefits tax;

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- the cost of overseas travel for one person per year to attend either one trade fair or to purchase equipment (Australia only); and
- 25% of telecommunications costs (Australia only).

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

**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;

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- (vi) rates and taxes;
- conveying, insuring or shipping the 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.

**\*Note:** Australia - In spite of the exclusion of communication costs and the cost of overseas travel, Australia allows as qualifying expenditure a quarter of the telecommunication costs of the manufacturer and the cost of one company employee to travel overseas to attend a trade fair or to purchase plant or equipment.

### **The 50% Rule: Practical Example**

Appendix 5 provides a manufacturing situation and illustrates the practical workings of the 50% rule. The example shows the steps necessary to identify "qualifying expenditure on materials" and details how the factory cost is accumulated to calculate the percentage of "qualifying expenditure".

### **The 50% Rule - 2% Tolerance**

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.

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Applications for tolerances should be sent to the addresses listed under the heading "Section 12-Further Information". In the case of New Zealand all applications should be directed to the Customs Head Office address in Wellington.

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 INQUIRY PROCEDURES**

Australian and New Zealand Customs have co-operated in compiling a Protocol on Customs procedures for origin investigations under ANZCERTA. 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, in the absence of a separate bilateral agreement with individual FICs, be extended as appropriate to the conduct of any request for an investigation into the eligibility of goods for duty free trade under SPARTECA.

Australia and Fiji have developed a Protocol for goods exported from Fiji to Australia where preference is claimed. The Protocol was officially signed on 23 November 1995.

Copies of the ANZCERTA Protocol on Customs Procedures or the Australia/ Fiji Protocol are available at the addresses listed under the heading "Section 12 - Further Information".

### **9. REVIEW PROCEDURES**

Both Customs administrations maintain internal review procedures. Any party may request an internal review of any inquiry 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:

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Australia	National Manager Tariff and Valuation Australian Customs Service Customs House 5-11 Constitution Avenue CANBERRA CITY      ACT      2601
New Zealand	The Director Trade and Business Facilitation PO Box 2218 WELLINGTON

### **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 is binding on Customs unless successfully appealed to the Federal Court.

These procedures will apply in all instances except where a contrary bilateral agreement exists, eg, the Australia/Fiji Protocol on Customs Procedures.

### **New Zealand**

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. DEROGATION - SPECIAL CIRCUMSTANCES PROVISION**

#### **Australia**

In special circumstances, the Australian Customs Service may determine that the expenditure referred to in paragraph 1(b)(ii) of Article V of the SPARTECA agreement may be less than 50 per cent of the factory or works cost of the goods. Application is to be made by the Government of a FIC. The Australian Customs Service will consider the request within three months taking all relevant circumstances into account. Any such determination would apply to all such goods originating from one or all FICs.

The circumstances in which requests for derogation will be considered and the conditions applying thereto are outlined in Appendix 8.

#### **New Zealand**

The SPARTECA rules of origin contain a provision which allows the 50% qualifying content requirement of goods "partly manufactured" to be reduced in special circumstances.

Any determination that the content requirement may be less than 50% may be applied to all such goods originating from beneficiary countries or restricted to goods from individual beneficiary countries.

The Agreement provides that in making a determination under this provision the Government of New Zealand shall take into account inter-alia of the special problems of the smaller FICs.

Requests for content variations under this determination provision proceed on a Government to Government basis. The actual Agreement provision reads:

- "A Government of a Forum Island Country may request the Government of Australia or the Government of New Zealand to make a determination pursuant to paragraph III of this Article (the Rules of Origin). The requesting Government shall notify the Director (of the South Pacific Bureau for Economic Co-operation) of its request who shall notify the Director of the outcome of the request within 3 months of the receipt of that request. The Director shall thereupon notify all the parties of that outcome".

Exporters wishing to make requests under this provision should approach their appropriate Government body in the first instance.

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### **11. JOINT RULINGS AND INTERPRETATIONS**

Australia and New Zealand have a Joint Rulings and Interpretations System to provide definitive advice on the treatment of specific costs and circumstances. Australia will publish Joint Rulings in the Australian Customs Service Preference and Valuation Manual (Volume 8, Division 9) (see Section 12 - Further Information). In New Zealand, notification of a Joint Ruling will be made available in the fortnightly Customs Release - a Customs News and Information publication.

Australia will extend the decisions made under the Joint Rulings system to FICs.

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

Provisions for Binding Preference Rulings are explained in Appendix 9.

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### 12. FURTHER INFORMATION

More information may be obtained from the following sources:

#### Australia

##### DIRECT CONTACT

###### Customs Head Office

Director Origin  
Tariff and Valuation Branch  
Australian Customs Service  
Customs House  
5-11 Constitution Avenue  
CANBERRA CITY ACT 2601

Phone 02 6275 6815  
Facsimile 02 6275 6377

##### Other written material

Detailed information is available in Division 9 of Volume 8 of the Australian Customs Service Manual. This publication and periodic updates are available to the public by way of subscription by contacting:

The Distribution Officer  
Publications Section  
Australian Customs Service  
Canberra, ACT 2601

Phone 02 6275 5721  
Facsimile 02 6275 5731

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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 tolerances, or a "Binding Preference Ruling" 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**

##### **Northern Region**

Customs House  
Box 29  
AUCKLAND

Attention: Import Review

Phone 0 9 377 3520

Facsimile 0 9 307 9056

#### **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**

##### **Southern Region**

Box 14086  
CHRISTCHURCH AIRPORT

Attention: Import Review

Phone 0 9 358 0600

Facsimile 0 9 358 0606

#### **Other written material**

A substantive publication on the SPARTECA Rules of Origin was distributed at the Rules of Origin Seminars presented by New Zealand Customs in Fiji in April 1995.

Copies of the publication are available from the above Customs' offices. The title of the publication is "SPARTECA: Rules of Origin: Seminars for Fiji Exporters of New Zealand". The publication is relevant for all FIC exporters.

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## APPENDIX 1

### FORUM ISLAND COUNTRY PREFERENTIAL RATES OF DUTY

#### DECLARATION REQUIRED BY FORUM ISLAND COUNTRY EXPORTERS TO AUSTRALIA

"I declare that:

- (a) the last process in the manufacture of the goods described below was performed in .....(preference country); 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 of ..... ." (name of relevant preference countries and, if applicable, Australia)

Description of goods:

Item Nos	Marks and numbers of packages	Quantity	Description of goods	Number and date of invoices
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Signature:

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Name:

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Position in manufacturing company:

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Name of manufacturing company:

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Date:

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### APPENDIX 2

#### FORUM ISLAND COUNTRY PREFERENTIAL RATES OF DUTY

##### CONDITIONS PRECEDENT TO ENTRY INTO NEW ZEALAND AT PREFERENTIAL RATES

New Zealand has no legal requirement for the production of a prescribed Certificate of Origin (previously Form 59b).

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 FIC manufacturer or exporter to provide the importer with clear information as to those goods which meet the 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 under "goods wholly obtained" would be (example of fruit):-

"I hereby certify/declare that.....  
(specify the fruit)  
is grown and picked in .....  
(specify the FIC)"

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 .....: and  
(specify the FIC)
- (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, in terms of the SPARTECA Rules of Origin"

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### APPENDIX 3

#### **DEFINITION OF UNMANUFACTURED RAW PRODUCTS/GOODS WHOLLY OBTAINED**

##### **FORUM ISLAND COUNTRY GOODS EXPORTED TO 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."

##### **FORUM ISLAND COUNTRY GOODS EXPORTED TO NEW ZEALAND**

Regulation 72CA(1)(a) defines goods wholly obtained as:

- (i) Mineral products extracted from its soil or from its seabed;
- (ii) Vegetable products harvested there;
- (iii) Live animals born and raised there;
- (iv) Products obtained there from live animals;
- (v) Products obtained by hunting or fishing conducted there;
- (vi) Products of sea fishing and other products taken from the sea by its vessels;
- (vii) Products made on board its factory ships exclusively from the products referred to in subparagraph (vi) of this paragraph;
- (viii) Used articles collected there fit only for the recovery of raw materials;
- (ix) Waste and scrap resulting from manufacturing operations conducted there;
- (x) products obtained there exclusively from products specified in subparagraphs
  - (i) to (ix) above.

Containers used to pack "wholly obtained goods" are treated as having the same origin as the wholly obtained goods themselves, eg, FIC grown capsicum packed in bags made in China; the capsicum is still classed as "wholly obtained".

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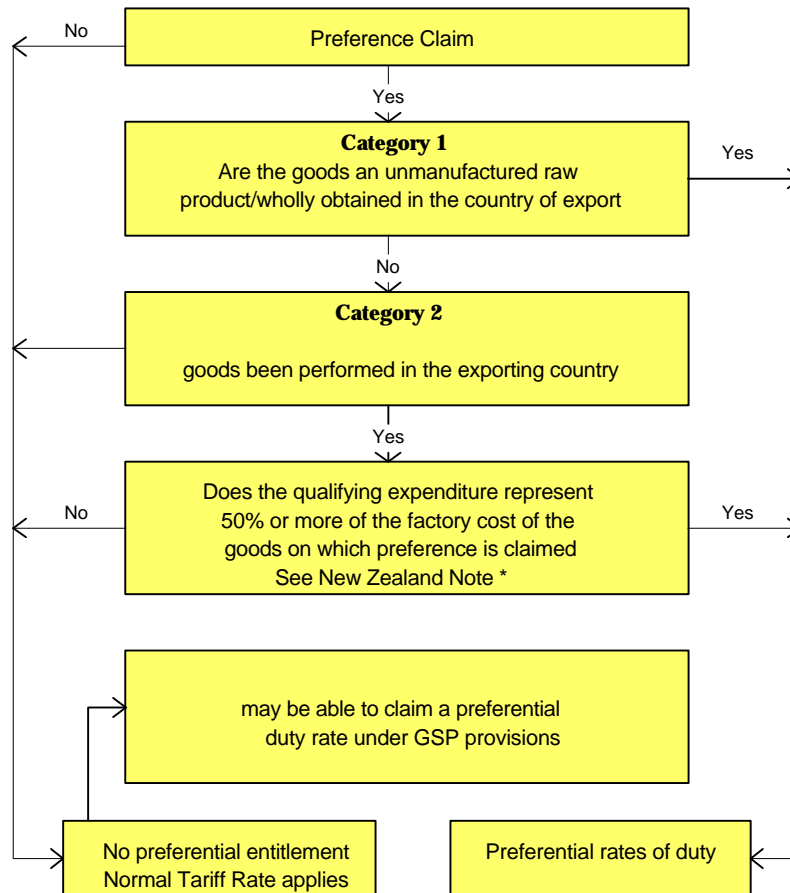
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### APPENDIX 4

#### QUICK REFERENCE ORIGIN CHART

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



\* New Zealand Note: (1) Certain clothing has a 45% requirement. (2) Where Australian qualifying materials are used in manufacture there must be 25% or more sole FIC qualifying expenditure.

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## APPENDIX 5

### AN EXAMPLE OF THE PRACTICAL OPERATION OF THE 50% RULE

This example is the manufacture of shirts in Fiji for export to Australia and New Zealand

#### MATERIALS USED IN MANUFACTURE

The following materials are used in manufacture;

*Cotton fabric*

*Buttons*

*Thread*

*Pins*

*Label - textile*

*Label - Cardboard*

*Carton - Cardboard*

A break down of all materials into "qualifying expenditure" and "non-qualifying area content" is as follows:

#### Qualifying Expenditure on Materials

It is important that you refer to the text on "Materials of mixed origin" in this booklet to understand what are materials of mixed origin and how the cost of the materials is allocated to the "factory cost".

#### Sewing thread

The thread is made in Australia from Australian grown cotton and Korean dyes.

The thread has a 65% qualifying area content based on the factory cost of the thread under the ANZCERTA Rules of Origin.

The Australian manufacturer has supplied documentary evidence detailing that the qualifying area content of the thread is 65%.

Two metres of thread with a total cost of F\$0.10 is required per shirt.

Sewing thread is a material of mixed origin and the qualifying expenditure is 100% which equals F\$0.10.

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### **Textile Labels**

The labels contain consumer information on washing instructions and size/fabric and are made in New Zealand. The labels are of mixed origin as they are made in New Zealand from Australian fabric and USA ink.

Documentary evidence has been supplied by the New Zealand manufacturer detailing that the ANZCERTA qualifying area content of the labels is 58%.

Two labels with a total cost of F\$0.10 is required per shirt.

Labels are materials of mixed origin and the qualifying expenditure is 100% which equals F\$0.10.

### **Cardboard Label**

A cardboard label is used as a swing tag for marketing the shirts brand and is made in New Zealand from New Zealand wood pulp and USA ink.

Documentary evidence has been supplied by the New Zealand manufacturer detailing that the ANZCERTA qualifying area content of the label is 90%.

The label is a material of mixed origin and the qualifying expenditure is 100% which equals F\$0.70.

### **Cardboard carton**

The carton is made in a Fiji from Fiji grown wood pulp and the cost of the carton is F\$0.20.

Documentary evidence has been supplied by the manufacturer of the carton. The carton has a qualifying expenditure of 100% which equals F\$0.20.

### **QUALIFYING LABOUR & FACTORY OVERHEADS**

The labour and overheads in this example used by the manufacturer in the manufacture of the shirts is as follows:

Labour, being the manufacturer's cost for people employed in the actual manufacture of the shirts.  
F\$2.00 per hour @ 1 1/2 hours = F\$3.00

Factory overheads F\$1.50

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The composition of the labour & overheads must be based on the list as detailed in the booklet. The allocation of labour and factory overheads to the manufacture of the shirts must be in a manner consistent with generally accepted accountancy principles.

### NON-QUALIFYING AREA CONTENT

Cotton fabric - Chinese origin = F\$4.00 per metre (in this example for clarification of the shirt manufacturing example, it is assumed that 1 metre of cloth is used to manufacture one shirt).

Buttons - Malaysian origin (10) @ 2c each =	F\$0.20
Pins - Chinese origin (10) @ 0.5c each =	F\$0.05

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### SUMMARY OF FACTORY COST

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**NAME** of manufacturer: Shirt Manufacturing of Fiji Co Ltd

**GOODS** exported: Men's business shirts

**UNIT** to which costs apply: One shirt

**ACCOUNTING PERIOD** to which costs apply: Year to end of march 1996

List all materials or components including inside containers	Name, address and facsimile No. of supplier of materials	Country of manufacture of materials	Cost of material or component			
			Qualifying		Non Qualifying	
Cotton Fabric	ABC Co	China			4.00*	
Buttons	Button Company	Malaysia			0.20*	
Pins	MNO Co	China			0.05*	
Thread	Thread Co	Aust	0.10			
Label - textile	Label Co	NZ	0.10			
Label - Cardboard	XYZ Co	NZ	0.70			
Cardboard carton	CC Co	Fiji	0.20			
TOTAL COST OF MATERIALS (per unit)			<b>A</b>	1.10	<b>E</b>	4.25
FACTORY LABOUR COST (per unit)			<b>B</b>	3.00		
FACTORY OVERHEADS COST (per unit)			<b>C</b>	1.50		
TOTAL ALLOWABLE EXPENDITURE (A+B+C)			<b>D</b>	5.60		
TOTAL FACTORY COST (D+E)			<b>F</b>	9.85		
<b>CALCULATION OF SPECIFIED PERCENTAGE OF TOTAL FACTORY COST</b>						
$\frac{D}{F} \times \frac{100}{1} = \%$ $\frac{5.6}{9.85} \times \frac{100}{1} = 56.85\%$						

## KEY POINTS

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The following points are highlighted to assist in the understanding of the 50% calculation:

- All materials are costed as the manufacturer's cost of bringing the materials into the factory. This cost includes the purchase price and freight/insurance etc - see details on "materials" under the heading "Elements of the 50%".
- There must be sufficient evidenced to demonstrate that materials are qualifying materials and sufficient details must be provided to enable the qualifying material costs to be allocated to the factory cost. The manufacturer is responsible for ensuring the materials are "qualifying materials" in terms of the provisions under the heading "Qualifying expenditure on materials".
- Other terms which fall outside of these "qualifying materials" are termed "non-qualifying" ("imported foreign") area content.
- Inland freight \* - Australia allows the cost of freight from the port to the factory or plant in the preference country as an allowable cost.
- The labour and factory overheads can only include those specified in this booklet.
- Note: certain costs are excluded from "qualifying expenditure" and these costs are detailed in this booklet.
- Note: for exports of the shirt to New Zealand, the FIC qualifying area content need only be 45%.
- For the shirts which are being exported to New Zealand, because Australian qualifying materials have been used in manufacture, the 25% FIC qualifying expenditure must be met. Thus the total of \$4.50 (B+C), + \$0.20 for the cardboard carton, which totals \$4.70, this \$4.70 divided by \$9.85 (expressed as a percentage ) = 47.72%; the 25% requirement has therefore been met.

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### APPENDIX 6

#### FORUM ISLAND COUNTRY EXPORTS TO NEW ZEALAND

##### 1. 45% RULE FOR CLOTHING

A special derogation under the 50% Rule is now in place which requires only a 45% qualifying area content for specified clothing.

This derogation is for a period of up to three years where it will be subject to review.

The derogation is applicable to clothing within the following Tariff references (based on the Tariff of New Zealand):

3926.20.22: 3926.20.31: 3926.20.41: 3926.20.61

4015.90.00: 4203.10: 4303.10.09

6101: 6102: 6103: 6104: 6105: 6106: 6107: 6108: 6109: 6110: 6111: 6112: 6113:  
6114: 6115

6201: 6202: 6203: 6204: 6205: 6206: 6207: 6208: 6209: 6210: 6211: 6212

The clothing must be classified in the identified tariff references in terms of the "General Rules for the interpretation of Part 1 of the Tariff of New Zealand".

The New Zealand Tariff References are based on the Harmonised Commodity Description and Coding System - commonly known as the HS System.

See the New Zealand Customs contacts under Section 12 - Further Information if you need more detail about this special provision.

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**2. 50% Rule: 25% minimum FIC content where qualifying Australian materials are used in manufacture.**

A minimum 25% FIC qualifying expenditure is necessary where FIC goods are exported to New Zealand and Australian qualifying materials are used, in part or in whole, in the manufacture of the goods.

The 25% FIC qualifying expenditure must be made up of one or more of the following:

- qualifying expenditure on FIC materials;
- qualifying expenditure on labour and overheads (including inner containers) incurred in a FIC.

The difference between the actual FIC qualifying expenditure and the achievement of the 50% Rule (or 45% for clothing) can comprise New Zealand qualifying materials and of course the Australian qualifying materials.

Refer to Appendix 3 under the heading "FIC exports to New Zealand" which details what are "Australian qualifying materials".

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## APPENDIX 7

### SUMMARY AND EXAMPLES OF QUALIFYING EXPENDITURE ON MATERIALS

#### FIC Exports to Australia

Allowable expenditure on materials includes cost of materials except in the following circumstances:

- (a) If the last process of manufacture of imported materials is performed outside the qualifying area
  - allowable expenditure is limited to the cost of cartage of materials from the port/airport to the factory/plant in a FIC.
- (b) If the materials are materials of mixed origin which are manufactured in Australia or the preference claim country
  - allowable expenditure represents the cost of the materials of mixed origin less the cost of the imported materials.

*Special exception to (b) - enhanced mixed origin*

Where materials of mixed origin are made in Australia and/or the preference claim country and the cost of the imported materials is 50% or less than the cost of the materials that are manufactured the qualifying expenditure is 100%.

#### FIC Exports to New Zealand

##### 1. FIC Qualifying Materials

- (a) Materials which are "wholly obtained" in a FIC (see definition in Appendix 3):
  - 100% qualifying expenditure, eg, fruits, vegetables, sugar cane, trees grown in a FIC; lead extract from motor vehicle batteries collected in a FIC.

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- (b) Materials of mixed origin being materials manufactured in a FIC which incorporate imported content:
- 50% or more qualifying area content = 100% qualifying expenditure, eg, textile labels manufactured in a FIC from Korean fabric where the labels are used in the manufacture of garments;
  - Less than 50% area content - qualifying expenditure is proportional to the actual percentage of local content of the factory cost of the material - see Example 2 under "Materials of Mixed Origin". An example would be shoe soles manufactured in a FIC and which does not achieve the 50% requirement and is used in the FIC for the manufacture of shoes.

### 2. New Zealand Qualifying materials

- (a) Unmanufactured raw products of New Zealand:
- 100% qualifying expenditure, eg, New Zealand grown trees, fruit, vegetables, greasy wool.
- (b) Materials wholly manufactured in New Zealand from unmanufactured raw products of New Zealand or Australia:
- 100% qualifying expenditure, eg, arm rests for furniture made in New Zealand from New Zealand grown trees.
- (c) Materials of mixed origin being materials manufactured in New Zealand which incorporate imported content:
- 50% or more ANZCERTA (Australian/New Zealand) content = 100% qualifying expenditure, eg, fabric made from New Zealand grown wool;
  - Less than 50% ANZCERTA (Australian/New Zealand) content - qualifying expenditure is proportional to the actual percentage of ANZCERTA content of the factory cost of the material, eg, screws made in New Zealand from expensive German made wire.

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### 3. Australian Qualifying Materials

- (a) Unmanufactured raw products of Australia:
- 100% qualifying expenditure, eg, copper ore mined in Australia; Australian grown grain, rice, fruits.
- (b) Materials wholly manufactured in Australia from unmanufactured raw products of Australia or New Zealand:
- 100% qualifying material, eg, copper wire made exclusively from Australian mined copper ore.
- (c) Materials of mixed origin being materials manufactured in Australia which incorporate imported content:
- 50% or more ANZCERTA (Australian/New Zealand) content = 100% qualifying expenditure, eg, fabric made from Australian grown cotton and imported polyester yarn where the fabric has 50% or more ANZCERTA content.

#### Notes:

- (i) Paragraph 3 above where one or more of these Australian qualifying materials are used in manufacture, there must be at least 25% FIC content in the finished goods (see Appendix 6, paragraph No. 2).
- (ii) If the Australian materials do not fall within any of the three classes of materials in paragraph No. 3 above they fall outside of being classed as Australian qualifying materials; the materials are treated as "imported" content.
- (iii) Information on the ANZCERTA Rules of Origin can be obtained from any of the Customs addresses listed under Section 12 - Further Information.
- (iv) In all cases, for the use of any of the qualifying materials listed in this Appendix, the manufacturer must obtain the necessary information from the material supplier to evidence qualifying material status.

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### APPENDIX 8

#### DEROGATION - SPECIAL CIRCUMSTANCES PROVISION

##### AUSTRALIA

The South Pacific Regional Trade and Co-operation Agreement (SPARTECA), extends preferential (duty free) access to goods manufactured in the countries party to this agreement.

Rules of origin are the criteria used to determine the country of origin of goods imported into Australia. Under the SPARTECA agreement, goods can only be regarded as originating in a member country where not less than 50 per cent of factory or works cost is incurred in the member country or the preference region and the last process is performed in the country claiming preference.

In special circumstances, the Australian Customs Service (Customs) may determine that the expenditure referred to in paragraph 1(b)(ii) of Article V of the agreement may be less than 50 per cent of the factory or works cost of the goods. Any such determination may be applied to all such goods originating from the Forum Island countries.

In making a determination, the Australian Government shall take into account, *inter alia*, the special problems of the Smaller Forum Island countries and the area content derived from all Forum countries.

##### Legislative Provision

- A. Subsection 153L(4) of the Australian Customs Act empowers the Chief Executive Officer of Customs to determine a lesser percentage of allowable expenditure for a particular class of goods than the 50% that would otherwise apply by virtue of that subsection. The derogation provision will be managed as follows:

##### Requirements for Derogation Requests

As required by the SPARTECA Agreement, requests for derogation:

- must be made by the Government of a Forum Island Country to the Government of Australia;  
and
- the outcome of the request is to be notified as indicated within 3 months of its receipt.

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### **Circumstances in Which Derogations will be Considered**

Requests must meet all of the criteria specified in the SPARTECA Agreement and each case will be considered on its individual merits.

The "special circumstances" referred to in paragraph 4 of Article V of the SPARTECA Agreement may include:

- force majeure;
- natural disaster;
- economic disaster;
- unexpected large currency fluctuations which result in higher prices for materials and therefore significant loss of local content;
- closure in the preference area of traditional source(s) of materials and inability to re-source in the preference area in the short term; and
- unexpected cessation of production of materials in the preference area which have been necessary to attain the local content requirement.

### **Other Matters Taken into Account**

In its considerations, Customs must take into account the views of Australian industry.

A derogation will not be granted where it would be likely to cause or threaten adverse effect to the Australian industry producing like goods. Issues to be considered may include:

- the quantity of the like goods produced or manufactured by the Australian industry;
- the value of the sales of, or forward orders for, like goods produced or manufactured by the Australian industry;
- the level of profits earned by the Australian industry that are attributable to the production or manufacture of the like goods;
- the numbers of persons employed in the Australian industry producing or manufacturing like goods; and
- the share of the market in Australia for like goods produced or manufactured by the Australian industry.

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### **Conditions Relating to the Granting of a Request**

When a decision is made on a derogation request, Customs will directly notify the Department of Foreign Affairs and Trade and the Forum Island Country Customs administration of its decision.

If the beneficiary country decides to take action on the basis of the decision, it must inform Customs of this action.

A derogation will be considered to be operative following an Exchange of Letters between the Chief Executive Officer of the Australian Customs Service and the head of a Forum Island Country Customs administration, subject to the terms and conditions specified in the Exchange of Letters.

The granting of a derogation for particular goods should not be taken as a precedent for granting requests for those goods from other sources or for other derogations from the same source.

A derogation would only ever apply to a country or countries, not to individual firms.

Where a derogation is granted, the maximum time the derogation can remain in place is three years.

The country granting the derogation must review the special circumstances and utilisation of the derogation and report to Customs on the outcome. If the beneficiary country cannot confirm that these special circumstances still exist, the derogation will be revoked.

During the life of the derogation, Customs will consult with the relevant beneficiary country to ensure that adjustments are made so that future production will meet the local content requirement. If, during these consultations, Customs is not satisfied that sufficient steps are being taken to ensure that future production will meet local content requirements, then it may revoke the derogation.

Customs may review, and subsequently revoke, a derogation at any time if it is satisfied that the special circumstances in which the derogation was granted are no longer relevant.

If, during the life of the derogation, the beneficiary country falls below the revised local content requirement, unless "special circumstances" can be proved, the derogation will be revoked.

At the end of the three year period, the beneficiary country can request a continuation of the derogation. Such a continuation would be subject to a full and thorough review by Customs of all relevant issues.

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### **How to Apply for Derogation**

- B. Requests for derogation are to be referred to the Chief Executive Officer of the Australian Customs Service, 5 Constitution Avenue, Canberra City, ACT. 2601 by the Government of the country requesting it.

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### APPENDIX 9

#### DETERMINATION OF ORIGIN - BINDING PREFERENCE RULINGS

##### Australia

A system of Binding Preference Rulings is under consideration and will be established as soon as possible. In the intervening period, the Australian Customs Service will provide such advice as is necessary to assist importers and others to accurately determine their entitlements. Of course, self assessment and verification by the Australian Customs Service Customs would continue after the binding preference rulings system comes in.

Australia and Fiji have developed a Protocol for goods exported from Fiji to Australia where preference is claimed. The Protocol was officially signed on 23 November 1995.

This protocol sets out the responsibilities of the Fiji Government, Fiji manufacturers and Australian importers concerning preference claim goods manufactured in Fiji and exported to Australia.

##### Benefits for FIC manufacturers

Benefits for FIC manufacturers are that the self assessment by the parties involved will enable these parties to check the manufacturing process and costs incurred to ensure that the goods to be exported contain sufficient qualifying expenditure to qualify for preference.

This procedure should ensure that the likelihood of Australia applying General rates of duty is minimised. In addition the procedure will obviate the need to apply on a continuing basis for binding preference rulings.

##### New Zealand

Provisions in the GATT Uruguay Round on the agreement on the Rules of Origin provide for a mechanism to give a binding preference ruling (known in GATT as a determination of origin) on imported goods. Amendments to the Customs Act 1966 (sections 151A to 151J) have been made to give effect to this new provision.

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Simply, a binding preference ruling is written advice by the Comptroller of Customs as to whether or not particular goods meet the Rules of Origin for preferential tariff entry into New Zealand. The ruling provides the exporter and importer with an element of predictability as to the status for preferential rates of duty, subject to the conditions of the ruling being contained.

### **Key points are:**

- any person can make an application for a ruling, including a manufacturer/exporter:
- application can be made before the date of importation into New Zealand or within 6 months of that date:
- application must be on the prescribed form together with the specified additional information:
- a ruling must be made under the provisions of the Rules Of Origin, ie, for FIC manufactures, the SPARTECA Rules of Origin:
- a ruling can only apply to particular specified goods, it cannot be used to apply to a range of goods manufactured by the manufacturer.

### **Benefits for FIC manufacturers are**

- for a manufacturing run such as shirts made from a specific fabric, a ruling can be sought for that specific manufacturing run:
- the ruling provisions ideally suit a manufacturing operation where the manufacturing inputs - material sourcing, labour/overheads, and inner containers, remain constant. As changes to the manufacturing inputs may have the effect to automatically cease the ruling.

Enquiries should be directed to the Customs Head Office in Wellington, address (see Section 12 - "Further Information") where a New Zealand Customs form is available on which the application must be made.

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### DIRECT SHIPMENT RULE

#### **Australia**

Australia does not have a direct shipment rule relating to SPARTECA.

#### **New Zealand**

FIC goods which meet the Rules of Origin now no longer need to be shipped direct to New Zealand in order to access the duty free benefits under SPARTECA.

The clear benefit for FIC exporters to New Zealand of the removal of this direct shipment requirement can be related to where a large consignment of goods, eg, a full container load (FCL) destined mainly for the Australian market also contains goods for the New Zealand market. The FCL is able to be shipped to Australia enter the importer's premises and the goods for New Zealand can be subsequently shipped here and still retain duty free access under SPARTECA. The goods, however, must not be subject to a process of manufacture in Australia, or any other non-FIC country, after the goods have been shipped from the FIC.