



Australian Government
**Department of Immigration
and Border Protection**

INSTRUCTIONS AND GUIDELINES
PREFERENTIAL RULES OF ORIGIN

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PREFERENTIAL RULES OF ORIGIN

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SUBJECT: Origin issues as they relate to Australia's preferential trade arrangements.

PURPOSE: To specify the rules that need to be satisfied under Australia's preferential agreements which are used to determine if a good is an originating good and therefore eligible for a free or preferential duty rate the arrangements.

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CATEGORY: Operational Procedures

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The electronic version published on the intranet is the current Instruction and Guideline.

SUMMARY OF MAIN POINTS

This Instruction and Guideline specifies the rules of origin under Australia's preferential trade arrangements.

INTRODUCTION

This Instruction and Guideline deals with origin issues as they relate to the preferential trade arrangements Australia has entered in to.

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Division 1: Introduction

1. Coverage of Instruction and Guideline

- 1.1. This Instruction and Guideline deals only with Origin issues. They cover all trade arrangements that Australia has entered into which provide a preferential tariff except those specifically covered by their own specific Instructions and Guidelines such as AUSFTA, SAFTA, TAFTA, ANCERTA, and ACI-FTA.
- 1.2. Instructions and Guidelines - AUSFTA deals exclusively with matters relative to the Australia-United States Free Trade Agreement (AUSFTA).
- 1.3. Instructions and Guidelines - SAFTA deals exclusively with matters relative to the Singapore-Australia Free Trade Agreement (SAFTA).
- 1.4. Instructions and Guidelines - TAFTA deals exclusively with matters relative to the Thailand-Australia Free Trade Agreement (TAFTA).
- 1.5. Instructions and Guidelines - ANZCERTA deals exclusively with matters relative to the Australia New Zealand Closer Economic Trade Agreement (ANZCERTA).
- 1.6. Instructions and Guidelines – ACI-FTA deals exclusively with matters relative to the Australia-Chile Free Trade Agreement (ACI-FTA).

Division 2: Legislation

Section 1: Origin Legislation

1. General outline of legislation

The following legislative provisions give instruction on how to interpret and implement the rules of origin as they apply to Australia's trading partners:

- ***Combined Australian Customs Tariff Classification and Statistical Nomenclature "Introduction"***
 - pages 1 and 2 (Application of Rates of Duty)
- ***Customs Tariff Act 1995 (the Tariff Act)***
 - Part 1 - Preliminary: sections 3, 12, 13 and 14
 - Part 2 - Duties of Customs: sections 15, 16, and 18
 - Schedule 1 (Forum Island, Least Developed and Developing Countries and places)
 - Schedule 3 (general and preferential rates for tariff classifications)

- Schedule 4 (general and preferential rates for concessional items)
- **Customs Act 1901 (the Customs Act)**
 - Section 4 (definition of “unmanufactured raw products”)
 - Division 1A of Part VIII (sections 153A to 153T) – “Rules of origin of preference claim goods”
- **Customs Regulations 1926 (the Regulations)**
 - Regulations 105A and 105B
 - Regulations 107A and 107B.

2. Operation of the legislation

Section 14 of the Tariff Act specifies particular rates of duty to preference countries and places through designated country or place codes. Where the abovementioned places are not specific e.g., Developing Countries, these are specified in Schedule 1 to the Tariff Act vide section 12 of that Act.

3. Legislation for related trade arrangements

- 3.1. Certain goods the produce or manufacture of Australia’s External Territories (Christmas, Cocos (Keeling) and Norfolk islands) gain duty-free entry through acts of Parliament other than the Tariff Act. The rules of origin governing access to the duty-free entry provided by these enactments are contained in Division 1A of part VIII of the Customs Act.
- 3.2. The South Pacific Regional Trade and Economic Cooperation Agreement (TCF Provisions) Scheme (SPARTECA TCF) was developed as an adjunct to SPARTECA. It provides duty free entry for certain textiles, clothing and footwear products manufactured in Forum Island Countries where those products do not meet the value-added requirements for duty free entry under SPARTECA. Duty free entry is provided by item 68 of Schedule 4 to the Tariff Act. The legislative provisions in Division 1A of Part VIII of the Customs Act that apply to goods claimed to be the manufacture of Forum Island Countries under SPARTECA are used to determine the value-added (or local area content) under the Scheme.

Section 2: Rules of origin

1. Concept

- 1.1. Conditions for entitlement to preferential rates of duty spring, in most cases, from trade agreements and may be reciprocal or non-reciprocal. Although trade agreements tend to refer to the underlying conditions for preferential rates of duty as the 'Rules of Origin', this expression is not specifically found in the legislation, which refers to "goods the produce or manufacture of" a country. The purpose of Division 1A of Part VIII of the Customs Act is to provide the criteria for determining the origin of goods based on "produce or manufacture of" a country.
- 1.2. The principal objective of setting rules of origin in relation to the administration of a preferential trade agreement is to ensure that the benefits created by the agreement are applied only to those goods which originate, and are traded within, the particular preferential area.
- 1.3. The criteria adopted in this respect take account of the objectives of the trade agreement, which are normally related to a desire to encourage area development and optimise the use of area resources. The spirit of particular trade agreements, as contained in the aims and objectives of the agreement, will be the basis (subject to the constraints of legal provisions) of administering preference provisions.
- 1.4. Rules of origin are also established for non-preference countries and Australia's External Territories (Christmas, Cocos (Keeling) and Norfolk Islands) (see 9.1.3).

Section 3: Countries Eligible for Preference

1. Trade Agreements

Subsection 3(1) of the Tariff Act defines a preference country as:

- (a) New Zealand; or
- (b) Papua New Guinea; or
- (c) a Forum Island Country; or
- (d) a Least Developed Country; or
- (e) a Developing Country; or
- (f) Canada; or
- (g) Singapore.

Canada was first given preferential treatment in 1925 as part of the then existing British Commonwealth preferential system. Canadian preferential rates of duty were extended under the provisions of the Canada Australia Trade



Agreement (CANATA), which entered into force on 12 February 1960. While this agreement does not include rules of origin, Australia continues to offer preferential rates based on the rules of origin that governed the British Commonwealth preference system.

Papua New Guinea gained access to preferential rates of duty in 1926. On 1 February 1977, an Agreement on Trade and Commercial Relations between Australia and Papua New Guinea (PATCRA), which included provisions on rules of origin, entered into force. This agreement has subsequently been superseded by a replacement agreement, known as PATCRA II, which entered into force on 20 September 1991. PATCRA II includes rules of origin, and refers to additional preferential treatment under the South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA) for Forum Island countries.

Forum Island countries are specified in Part 1 of Schedule 1 to the Tariff Act. Preferential rates of duty were extended to these countries following the entry into force of SPARTECA on 30 June 1982. Australian and New Zealand Customs and the Forum Secretariat jointly produced a booklet 'A Reference Handbook for Forum Island Country Exporters', and Australian and Fiji Customs have jointly produced a booklet 'Protocol on Customs Procedures for Rules of Origin Under SPARTECA' to assist in developing business and trade relationships between each country. These booklets are available on the Internet at <http://www.border.gov.au>.

SPARTECA TCF was introduced in March 2001 as an adjunct to SPARTECA following the demise of the Import Credit Scheme. SPARTECA TCF operates as a Schedule 4 Concession, rather than as a preferential trade arrangement. Provided certain circumstances are met, this Scheme provides duty free entry (under item 68 of Schedule 4 to the Tariff Act) for certain textiles, clothing and footwear products manufactured in Forum Island Countries where those products have a lower level of value-added (or local area content) than required under SPARTECA. The Department of Innovation and Science, and Research administers the Scheme.

Both the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) encourage the provision of special treatment to developing countries, especially those nominated by UNCTAD as 'least developed countries' (LDCs).

Many nations, including Australia, offer Generalised System of Preferences (GSP) Schemes for developing countries under a framework developed by UNCTAD. As GSP Schemes are applied on a non-reciprocal basis, there is no underlying agreement governing conditions of entitlement. Each nation that offers a GSP Scheme is free to specify its own rules of origin.

Australia first extended preferential rates to developing countries unilaterally in 1976 under the Australian System of Tariff Preferences (ASTP). Over time, Australia reduced preferences under the ASTP, in line with UNCTAD's graduation principles. In 1991, Australia commenced phasing-out preferences for Hong Kong, the Republic of Korea, Singapore and Taiwan. The phasing-out of preferential rates for most other developing countries commenced in 1993 and was extended in 1994. Generally, the full margin of developing country preference is now limited to imports from LDCs and certain South Pacific islands (including Forum Island countries where the goods do not meet the SPARTECA rules of origin).

On 1 July 2003, Australia granted duty free entry to goods originating in LDCs. Duty free entry for LDCs is conditional on the goods meeting more stringent rules of origin than those devised for the purposes of the 5% margin of preference. These rules are aimed at ensuring that the benefits of duty free entry flow primarily to LDCs rather than to other Developing Countries.

While the LDC rules allow materials from all Developing countries, Forum Island countries and Australia to count as local content, the level of materials from non-LDC that can count as local content is limited to 25% of the total factory cost of the goods.

Section 4: Origin criteria – Classes of Goods

1. General

1.5. There are three different classes of goods that may enter Australia as the produce or manufacture of a particular country viz:

- (i) goods wholly the produce of the country (e.g. unmanufactured raw products);
- (ii) goods wholly manufactured in the country from specific materials; and
- (iii) goods partly manufactured in the country.

2. Criteria for preferential trade arrangements

2.1. The criteria governing entitlement to preference for goods are dealt with in this Instruction and Guideline in Sections 1 to 4, and Section 7, as outlined below:

- (a) Value-Added:
 - Criteria (Section 1)
 - Elements of the Criteria (Section 2)
 - Variations to the Criteria (Section 3)
- (b) Other Criteria (including Last Process of Manufacture) (Section 4)
- (c) Direct Shipment (for goods the produce or manufacture of Canada) (Section 7)

- 2.2. The rules for unmanufactured and wholly manufactured goods are dealt with in Section 5 and Section 6 respectively. Unmanufactured and wholly manufactured goods produced in Canada are subject to the same direct shipment provisions that apply to goods partly manufactured in that country, as set out in Section 7.
- 2.3. Sections 8 to 10 deal with administrative and miscellaneous issues associated with preferential trade arrangements.

Division 3: Origin

Section 1: Partly Manufactured Goods – Value-Added Criteria - overview

1. Factory or Works Cost

- 1.1. The primary criterion used to ascertain the origin of imported goods is the minimum value-added requirement. This measure is dealt with in this section under the general heading of factory or works cost. In general, 'allowable factory cost' as a percentage of 'total factory cost' (defined terms - see section 153B of the Customs Act) provides the decisive test in satisfying this criterion. Minimum percentages of value-added required are set out in Division 1A of Part VIII of the Customs Act as follows:
- **Papua New Guinea & Forum Island Countries: subsection 153L(4) - 50%; and under subsection 153LA(1) - in special circumstances the Comptroller-General may substitute 48% for 50%**
 - **Particular Developing Country:** under section 153M - 50%
 - **Other Developing Country:** under section 153N- 50%
 - **Least Developed Country:** under section 153NA - 50%
 - **Canada:** under subsections 153P(4) - 25% or 75%, depending on whether the goods are of a kind commercially manufactured in Australia
 - **Non-preference countries:** under subsections 153Q(3) - 25% or 75%, (other than External Territories) depending on whether the goods are of a kind commercially manufactured in Australia
 - **External Territories:** under subsections 153Q(4) - 25% or 50%, depending on whether the goods are of a kind commercially manufactured in Australia
- 1.2. The Customs Act refers in subsection 153A(3) to diagrams and explanatory notes in Schedule VII of the Customs Act which illustrate the operation of the factory and works cost criterion. These diagrams and notes are reproduced in Appendix 3.3 for easy reference.
- 1.3. Under SPARTECA TCF, the value-added (or local area content) requirement for textiles, clothing and footwear products manufactured in Forum Island

Countries is not less than 25% but less than 50%. Under SPARTECA TCF, local area content is worked out using the same methodology contained in the value-added provisions of Division 1A of Part VIII of the Customs Act.

2. The Concept of Factory Cost

- 2.1. Section 153B of the Customs Act defines 'allowable factory cost' and 'total factory cost' in terms of materials, labour and overhead. Sections 153D and 153E of the Customs Act establish rules for calculating the total expenditure and allowable expenditure respectively in regard to materials received at the factory.
- 2.2. Allowable labour and overhead costs are defined in sections 153F and 153G of the Customs Act, respectively, and rely on Regulations to prescribe costs that are to be taken into account. Allowable expenditure is limited to costs so prescribed.

3. Total Factory Cost

Statutory Provisions

Section 153B of the Customs Act defines 'total factory cost' for the purposes of Division 1A of Part VIII of the Customs Act as follows:

total factory cost, in relation to preference claim goods, means the sum of:

- (a) the total expenditure of the factory on materials in respect of the goods, worked out under section 153C; and
- (b) the allowable expenditure of the factory on labour in respect of the goods, worked out under section 153F; and
- (c) the allowable expenditure of the factory on overheads in respect of the goods, worked out under section 153G.

4. Allowable Factory Cost

Statutory Provisions

- 4.1. For the purpose of ascertaining whether minimum specified percentages of factory cost have been met, section 153B of the Customs Act defines that proportion of total factory cost that represents 'allowable factory cost' as follows:

allowable factory cost, in relation to preference claim goods and to the factory at which the last process of their manufacture was performed, means the sum of:

- (a) the allowable expenditure of the factory on materials in respect of the goods worked out under section 153D; and
- (b) the allowable expenditure of the factory on labour in respect of the goods worked out under section 153F; and
- (c) the allowable expenditure of the factory on overheads in respect of the goods worked out under section 153G.

Policy and Practice

Whereas total factory cost includes both allowable and non-allowable costs of materials, allowable factory cost only includes allowable materials. Labour and overheads are limited to allowable expenditure in each case. Examination of allowable costs of the factory must now turn to each element viz., materials, labour and overhead. This is dealt with in Section 2.

Section 2: Partly Manufactured Goods – Value-Added Criteria - Key Elements

1. Materials – General

Statutory provisions

Materials are defined in section 153B of the Customs Act as follows:

materials, in relation to preference claim goods, means:

- (a) if the goods are unmanufactured raw products—those products; and
- (b) if the goods are manufactured goods—all matter or substances used or consumed in the manufacture of the goods (other than that matter or those substances that are treated as overheads); and
- (c) in either case—the inner containers in which the goods are packed.

2. Total Expenditure on Materials

Statutory provisions

2.1 These are to be found in sections 153C and 153E of the Customs Act and are:

153C Total expenditure of factory on materials

The total expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of the materials in the form they are received at the factory, worked out under section 153E.

153E Calculation of the cost of materials received at a factory

Purpose of section

- (1) This section sets out, for the purposes of sections 153C and 153D, the rules for working out the cost of materials in the form they are received at a factory.

General rule

- (2) Subject to this section, the cost of materials received at a factory is the amount paid or payable by the manufacturer in respect of the materials in the form they are so received.

Customs and excise duties and certain other taxes to be disregarded

- (3) Any part of the cost of materials in the form they are received at a factory that represents:
 - (a) a customs or excise duty; or
 - (b) a tax in the nature of a sales tax, a goods and services tax, an anti-dumping duty or a countervailing duty;

imposed on the materials by a country in the qualifying area is to be disregarded.

Comptroller-General may require artificial elements of cost to be disregarded

- (4) If the Comptroller-General is satisfied that preference claim goods consist partly of materials added or attached solely for the purpose of artificially raising the allowable factory cost of the goods, the Comptroller-General may, by written notice given to the importer of the preference claim goods, require the part of that cost that is, in the Comptroller-General's opinion, reasonably attributable to those materials, to be disregarded.

Comptroller-General may require cost over normal market value to be disregarded

- (5) If the Comptroller-General is satisfied that the cost to the manufacturer of materials in the form they are received at a factory exceeds, by an amount determined by the Comptroller-General, the normal market value of the materials, the Comptroller-General may, by written notice given to the importer of preference claim goods in which those materials are incorporated, require the excess to be disregarded.

Comptroller-General may determine cost of certain materials received at a factory

- (6) If the Comptroller-General is satisfied:
 - (a) that materials in the form they are received at a factory are so received:
 - (i) free of charge; or
 - (ii) at a cost that is less than the normal market value of the materials; and
 - (b) that the receipt of the materials free of charge or at a reduced cost has been arranged, directly or indirectly, by a person who will be the importer of preference claim goods in which those materials are incorporated;

the Comptroller-General may, by written notice given to the importer, require that an amount determined by the Comptroller-General to be the difference between the cost, if any, paid by the manufacturer and the normal market value be treated as the amount, or a part of the amount, paid by the manufacturer in respect of the materials.

Effect of determination

- (7) If the Comptroller-General gives a notice to the importer of preference claim goods under subsection (4), (5) or (6) in respect of materials incorporated in those goods, the cost of the materials to the manufacturer must be determined having regard to the terms of that notice.

Policy and practice

- 2.2 The calculation of the cost of materials received at a factory in accordance with section 153E of the Customs Act has implications both for total expenditure and allowable expenditure on materials. Section 153C of the Customs Act states that the total expenditure of the factory on materials is calculated by reference to section 153E.
- 2.3 Subsection 153E(2) provides that the cost of materials is the amount paid or payable by the manufacturer in respect of the materials in the form they are so received. This cost includes all costs of acquisition into the manufacturer's factory. The emphasis on the form in which the materials are received into the factory is intended to make clear that in determining the origin and cost of particular materials to the manufacturer, it is the origin and cost of materials in that particular form that is important rather than what might be the raw ingredients of the material received into the factory.
- 2.4 The cost of materials will include such items as overseas and internal freight, insurance, port and clearance charges and any financial accommodation that is a part of the CIF, FOB or other price paid. The use of the words 'in respect of' is intended to embrace all acquisition costs including the price paid or payable. Where materials are imported, the relevant price paid will be the actual amount paid in the currency of the country. The rate of exchange, therefore, will be the actual rate applicable to the transaction, even if it is a forward rate. Alternatively, average rates of exchange based on actual rates over a period

may be used. Labour costs incurred in the procurement of materials are not to be included as a cost of materials. Such costs are to be included as a labour cost of management of the process of manufacture.

- 2.5 Costs should, in all instances, be actual costs. Standard costs should not be used except where they are an accurate reflection of a manufacturer's operations.
- 2.6 Subsection 153E(3) specifies particular charges that do not form part of the cost of materials. As it is common for the goods and services tax liability of an enterprise to be accumulated separately from the company's ordinary accounts, it is unlikely that this tax will need to be removed from the cost shown in the accounts. Nevertheless, given the variability of company accounting systems, the question must always be addressed and resolved.
- 2.7 Where certain materials have been added to goods merely to raise the allowable factory cost of those goods, subsection 153E(4) enables the Comptroller-General to require the costs associated with those materials to be disregarded.

Where the cost of materials to the manufacturer is excessive, subsection 153E(5) enables the Comptroller-General to require the excess to be disregarded. The determination of the excess is based on the normal market value of the materials. The normal market value will generally be ascertained by recourse to other sellers of like materials in the relevant market. Where materials are, or would be, obtained from overseas sources, official rates of exchange may be applied to ascertain the price that would have been paid or payable in that overseas market.

- 2.8 Where materials are provided to an overseas manufacturer free of charge or at a reduced cost by the eventual importer of the finished products, subsection 153E(6) allows the Comptroller-General to determine an amount to be treated as the amount paid by the overseas manufacturer for those materials. The amount determined by the COMPTROLLER-GENERAL is based on the difference between the normal market value and the cost incurred. This provision is aimed at non-arms length dealing between a manufacturer and an Australian importer as well as Cut, Make and Trim (CMT) contracts between an importer and a manufacturer in a preference country. The normal market value will be interpreted in a similar manner to subsection 153E(5).
- 2.9 Copies of the forms of the different notices prepared pursuant to section 153E are set out at Appendix 2.

3. Allowable Expenditure on Materials

Statutory Provisions

- 3.1 The allowable expenditure of the factory on materials is set out in section 153D of the Customs Act as follows:

153D Allowable expenditure of factory on materials

General rule for determining allowable expenditure of a factory on materials

- (1) Subject to the exceptions set out in this section, the allowable expenditure of a factory on materials in respect of preference claim goods is the cost to the manufacturer of those materials in the form they are received at the factory, worked out under section 153E.

Goods wholly or partly manufactured from materials imported from outside the qualifying area

- (2) If:
 - (a) preference claim goods (other than goods wholly manufactured from unmanufactured raw products) are manufactured, in whole or in part, from particular materials; and
 - (b) those particular materials, in the form they are received at the factory, are imported from a country outside the qualifying area;

there is no allowable expenditure of the factory on those particular materials.

Goods claimed to be the manufacture of a Least Developed Country—special rule

- (2A) If:
 - (a) goods claimed to be the manufacture of a Least Developed Country contain materials that, in the form they were received by the factory, were manufactured or produced in Developing Countries that are not Least Developed Countries; and
 - (b) the allowable expenditure of the factory on those materials in aggregate would, but for this subsection, exceed 25% of the total factory cost of the goods;

that allowable expenditure on those materials is taken to be 25% of the total factory cost of the goods.

Inland freight rule

- (3) If:
 - (a) preference claim goods are manufactured, in whole or in part, from particular materials; and
 - (b) the preference country is Papua New Guinea or a Forum island Country; and
 - (ba) the goods are claimed to be the manufacture of Papua New Guinea or a Forum Island Country; and
 - (c) those particular materials:
 - (i) were imported into the preference country from a country outside the qualifying area; or

- (ii) incorporate other materials (contributing materials) imported into the preference country from a country outside the qualifying area;

then, despite subsection (2), the allowable expenditure of the factory on those particular materials includes:

- (d) the cartage of those particular materials; or
- (e) the part of the cost of those particular materials that is attributable to the cartage of those contributing materials;

from the port or airport in the preference country where those particular materials or contributing materials are first landed to the factory or to the plant where they are processed or first processed.

Goods wholly or partly manufactured from materials imported from outside the qualifying area—intervening manufacture

(4) If:

- (a) preference claim goods are manufactured, in whole or in part, from particular materials; and
- (b) other materials (**contributing materials**) have been incorporated in those particular materials; and
- (c) those contributing materials were imported into a country in the qualifying area from a country outside the qualifying area; and
- (d) after their importation and to achieve that incorporation, those contributing materials have been subjected to a process of manufacture, or a series of processes of manufacture, in the qualifying area without any intervening exportation to a country outside that area;

the allowable expenditure of the factory on those particular materials in the form they are received at the factory does not include any part of the cost of those particular materials to the manufacturer, worked out under section 153E, that is attributable to the cost of those contributing materials in the form in which the contributing materials were received by the person who subjected them to their first manufacturing process in the qualifying area after importation.

Intervening export of contributing materials

(5) If contributing materials within the meaning of subsection (4) are, after their importation into a country in the qualifying area and before their incorporation into the particular materials from which preference claim goods are manufactured, subsequently exported to a country outside that area, then, on their reimportation into a country



in the qualifying area, subsection (2) or (4), as the case requires, applies as if that subsequent reimportation were the only importation of those materials.

(6A) If:

(a) goods claimed to be the manufacture of Papua New Guinea or a particular Forum Island Country are manufactured, in whole or in part, from particular materials; and

(b) if the qualifying area for that country consisted only of that country and Australia—under subsection (4), the allowable expenditure of the factory on those particular materials, after excluding any costs required to be excluded under subsection (4), would be at least 50% of the total expenditure of the factory on those particular materials worked out in accordance with section 153C;

then, despite subsection (4), the allowable expenditure of the factory on those particular materials is taken to be that total expenditure.

Waste or scrap

(7) If:

- (a) materials are imported into a country; and
- (b) the subjecting of those materials to a process of manufacture gives rise to waste or scrap; and
- (c) that waste or scrap is fit only for the recovery of raw materials;

any raw materials that are so recovered in that country are to be treated, for the purposes of this section, as if they were unmanufactured raw products of that country.

Transshipment

(8) If, in the course of their exportation from one country to another country, materials are transhipped, that transshipment is to be disregarded for the purpose of determining, under this section, the country from which the materials were exported.

3.2 The qualifying area differs for each preferential arrangement and is defined in section 153B of the Customs Act as follows:

qualifying area, in relation to particular preference claim goods, means:

- (b) if the goods are claimed to be the manufacture of Canada—Canada and Australia; or

- (c) if the goods are claimed to be the manufacture of Papua New Guinea—Papua New Guinea, the Forum Island Countries, New Zealand and Australia; or
- (d) if the goods are claimed to be the manufacture of a Forum Island Country—the Forum Island Countries, Papua New Guinea, New Zealand and Australia; or
- (e) if the goods are claimed to be the manufacture of a particular Developing Country—the Developing Country, Papua New Guinea, the Forum Island Countries, the other Developing Countries and Australia; or
- (f) if the goods are claimed to be the manufacture of a Developing Country but not a particular Developing Country—Papua New Guinea, the Forum Island Countries, the Developing Countries and Australia; or
- (fa) if goods are claimed to be the manufacture of a Least Developed Country—the Developing Countries, the Forum Island Countries and Australia; or
- (g) if the goods are claimed to be the manufacture of a country that is not a preference country—that country and Australia.

3.3 Diagrams and explanatory notes illustrating the operation and effect of Division 1A of Part VIII, and this section in particular, are set out in Schedule VII to the Customs Act (see subsection 153A(3))

Policy and Practice

3.4 The qualifying area that applies to a preference country is an important consideration when calculating allowable expenditure on materials. The qualifying area may comprise a number of countries. Where materials used or consumed in the manufacture of goods within a preference country were themselves manufactured or produced in countries from within the qualifying area, those materials can be included in the allowable expenditure on materials for the goods, subject to the provisions contained in section 153D. The provisions of the relevant preferential trade arrangement determine the countries that are included within a qualifying area. Some countries are included in the qualifying areas for more than one preferential trade arrangement. Australia is included in the qualifying area for all preferential trade arrangements.

3.5 Where a country is covered by more than one preferential trade arrangement, goods manufactured in that country can be eligible for preference under one arrangement but not under another simply because the arrangements may have differing qualifying areas. For example, goods manufactured in Fiji from Chinese materials may not meet the SPARTECA 50% allowable factory cost requirement under section 153L, because China is not within the SPARTECA qualifying area. The same goods may, however, meet the Developing Country 50% allowable factory cost requirement under section 153N, due to the broader qualifying area under Developing Country arrangements.

- 3.6 Subsection 153D(2) provides for no allowable expenditure where materials are sourced from outside the qualifying area notwithstanding that such materials may have some qualifying area content incorporated in them, e.g. area content wool in woven fabric or gold in gold chain.
- 3.7 The emphasis on the form in which the materials are received into the factory is intended to make clear that in determining the origin and cost of particular materials to the manufacturer, it is the origin and cost of materials in that particular form that is important rather than relating to what might be the raw ingredients of the material received into the factory. It also means that, where a material changed hands after importation, but did not change form, it is still considered to have been imported into the qualifying area rather than locally sourced.
- 3.8 Subsection 153D(2), by exclusion, provides that the cost to the manufacturer of unmanufactured raw products is allowable expenditure in total, regardless of the origin of those products, provided no other materials are used in the manufacture of the goods. The cost to the manufacturer of unmanufactured raw products is to be ascertained in accordance with section 153E.
- 3.9 The qualifying area for Least Developed Countries includes all Developing Countries. Subsection 153D(2A), however, limits the amount of expenditure on materials manufactured or produced in Developing Countries (that are not also Least Developed Countries) that can be included in the allowable expenditure on materials for the purpose of determining whether goods are the manufacture of a Least Developed Country. Where that expenditure exceeds 25% of the total factory cost of the goods, only 25% of the expenditure can be included as allowable.
- 3.10 Subsection 153D(3) provides that, where the preference country is Papua New Guinea or a Forum Island country, and the goods are claimed to be the manufacture of that country, the cost of freight incurred in transporting materials from the port or airport in the country to the factory where the preference claim goods are made is to be regarded as area content of materials.
- 3.11 Subsection 153D(4) deals with materials of mixed origin. In summary, the circumstances are:
- (ii) Material A is brought into a preference country from outside the qualifying area; and
 - (iii) Material A is further manufactured into Material B in the qualifying area and sold to the 'manufacturer' (as defined in section 153B).

The allowable expenditure in the sale to the manufacturer is the cost of the Material B calculated in accordance with section 153E, less the cost of Material A to the first processor in the country (also calculated in accordance with section 153E). This subsection also embraces contract work.

- 3.12 Notwithstanding the special treatment of unmanufactured raw materials used in the manufacture of wholly manufactured goods (see Section 6), there is no special treatment as to origin accorded to unmanufactured raw materials processed prior to manufacture in accordance with subsection 153D(4).
- 3.13 Subsection 153D(5) provides that if, after commencement of intervening manufacture in the qualifying area in accordance with subsection 153D(4), materials are exported outside the qualifying area and are subsequently re-imported, subsection 153D(2) or 153D(4), as appropriate, applies to the re-imported materials.
- 3.14 All of the circumstances of subsection 153D(4) are picked up by the opening words of paragraph (b) of that subsection, which then goes on to provide that if the allowable expenditure is at least 50% of the total expenditure of the factory on those materials, the allowable expenditure is taken to be the total expenditure.
- 3.15 With respect to subsection 153D(6A), it is important to note that this subsection applies only to goods of Papua New Guinea or a Forum Island Country origin. All of the circumstances of subsection 153D(4) are picked up by the opening words of paragraph (b) of that subsection, which then goes on to provide that if the qualifying area for that country consists only of that country and Australia and if the allowable expenditure is at least 50% of the total expenditure of the factory on those materials, the allowable expenditure is taken to be the total expenditure.
- 3.16 The allowable expenditure is to be calculated in terms of subsection 153D(4), i.e. total expenditure (Plants 3 and 6 of Schedule VII to the Customs Act) of \$45 less expenditure on materials from outside the qualifying area of \$20 (Plant 3 of Diagram 2) = \$25. In this case allowable expenditure is greater than 50% of total expenditure ($\$25/\45) and therefore allowable expenditure becomes total expenditure, i.e. \$45 through the operation of this subsection.
- 3.17 Subsection 153D(7) applies to materials:
- imported from outside the qualifying area; and
 - reduced to waste or scrap as a result of a process of manufacture.
- 3.18 Where that waste or scrap is fit only for the recovery of the same original raw material and is re-processed in the preference country to yield the same, the

cost of the recovered raw material is to be treated as an unmanufactured raw product and as if it were materials of the country. Note that this provision applies only to materials that may be re-processed into the same original raw material, e.g. plastic or metal but not, for instance, off-cuts of leather.

Scrap or waste which is generated as an ordinary consequence of manufacture is usually reflected in standard usage specifications which govern costs of material charged to production. Thus, if three lineal metres of material off a roll are required for a garment but only 2.7 metres will actually be reflected in the garment, production will, nevertheless, be charged with 3 metres of material.

3.19 Subsection 153D(8) allows transshipment to be disregarded in determining origin of material for the purposes of this section. In administering this provision, any source of manufactured materials other than the source where the last process of manufacture occurred, will be disregarded.

3.20 This provision is for 'the purposes of the section' only and that it does not derogate from the explicit direct shipment rules which apply to Canada alone vide section 153P.

3.21 Subsection 153D(8) would relate to a chemical manufactured in country A which is shipped to country B and stored in bulk tanks before being sold to Australia in smaller lots by a selling agent in country B. Note that if product from other countries is stored in the entrepot tanks, positive identification of the source of the material exported to the preference country for further manufacture may not be possible.

3.22 Where raw materials are written-down below cost to reflect current market value by a manufacturer and sold to another manufacturer for manufacture into preference claim goods, the written-down value (whether allowable or non-allowable) is to be taken into account.

4. Factory labour

Statutory provisions

4.1 The 'allowable expenditure of the factory on labour' is defined in section 153F as:

153F Allowable expenditure by the factory on labour

Calculation of allowable expenditure of factory on labour

- (1) Allowable expenditure of a factory on labour in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:
 - (a) that is incurred by the manufacturer of the goods; and

- (b) that relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and
- (c) that can reasonably be allocated to the manufacture of the goods.

Regulations may specify manner of working out cost

- (2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

Policy and practice

4.2 Section 153F sets out basic requirements with respect to relevant (allowable) labour costs. Such costs are prescribed in the Regulations in accordance with the power conferred by subsection 153F(2).

4.3 Paragraph 153F(1)(a) imposes an 'incurred by the manufacturer' test. 'Manufacturer' is defined in section 153B to mean the person undertaking the last process in the manufacture of the goods. The significance of the word 'incurred' is that the cost or charge must be paid or payable by the manufacturer and not incurred independently by another party without recompense by the manufacturer. Further, it must be an actual cost and not a standard (budgeted), hypothetical, imputed or opportunity cost.

4.4 Paragraph 153F(1)(b) establishes the linkage between cost and manufacture. There must be a clear connection with production before any such expenditure can be considered allowable. In order for costs incurred by a production facility to be treated as direct costs of processing, those costs must be directly incurred in the production of the exported goods and not merely associated with the production facility as peripheral costs necessary to operate the facility.

4.5 Paragraph 153F(1)(c) implies two essential requirements, viz:

- adequate records and information must be available; and
- a reasonable and appropriate method of allocation to production must be available.

Regulations

4.6 The Regulations define allowable expenditure of the factory on labour as follows:

107A Prescribed costs of factory labour—section 153GF of the Customs Act



For the purposes of subsection 153F(1) of the Customs Act, each of the following costs, to the extent that the cost relates to labour, is prescribed:

- (a) the cost of wages and employee benefits;
- (b) the cost of supervision and training;
- (c) the cost of management of the process of manufacture;
- (d) the cost of receipt and storage of materials;
- (e) the cost of quality control;
- (f) the cost of packing of goods into inner containers;
- (g) the cost of handling and storage of goods within the factory.

Policy and practice

- 4.7 Manufacturing wages and benefits will include the cost of labour that can be identified or associated directly or indirectly with goods produced, i.e. production line workers and other factory personnel. Examples are base pay, overtime pay, incentive pay, shift differentials and employee benefits such as vacation pay, public holidays, medical insurance and government required social program contributions.
- 4.8 The cost of wages in paragraph 107A(a) of the Regulations is to be interpreted to include the cost of interest payments on bank loans to finance wages. For this entitlement to be established, it must be clear from the loan documentation that the purpose of the loan is specifically for the financing of wage payments and that borrowed funds have, in fact, been used for that purpose. Indirect labour, although attributable to factory overhead, is prescribed in this area.
- 4.9 Labour costs incurred in connection with supervision would be limited to the factory foreman or supervisor. Labour associated with training would encompass in-house training, particularly on-the-job training.
- 4.10 Management of the process of manufacture would include the direct costs of factory management such as the production manager as well as the factory cost accountant. The question as to whether layers of management beyond the production manager should be included depends on the structure and size of the company and the circumstances of the particular case. It would have to be shown, for instance, that the connection with manufacture is not too remote as envisaged by the exclusion of the general expense of executive services in paragraph 107A(a) of the Regulations.
- 4.11 Indirect costs in the form of labour costs for material purchasers, production planning and scheduling would also be included in the 'Management of the Process of Manufacture' heading. Labour associated with the receipt and storage of materials would relate to personnel employed in the materials store.
- 4.12 Labour incurred in quality control refers to the cost of inspecting and testing the goods prior to transfer off-line to ascertain whether they meet particular standards or specifications. Packing into inner containers refers to labour costs incurred in that function only. Inner containers are defined in section 153B as including any container into which preference claim goods are packed, other than a shipping or airline container, pallet or similar article. Labour related to other containers must therefore be excluded from allowable costs. Labour costs incurred in handling and storage of the goods within the factory will include the labour costs of personnel employed in the finished goods store. This cost is the only exception to the general rule that allowable costs are limited to those incurred to the point of completion of manufacture.

5. Factory overheads

Statutory provisions

5.1. The allowable expenditure of the factory on overheads is defined in section 153G as follows:

153G Allowable expenditure of factory on overheads

Calculation of allowable expenditure of factory on overheads

- (1) Allowable expenditure of a factory on overheads in respect of preference claim goods means the sum of the part of each cost prescribed for the purposes of this subsection:
 - (a) that is incurred by the manufacturer of the goods; and
 - (b) that relates directly, or indirectly, and wholly or partly, to the manufacture of the goods; and
 - (c) that can reasonably be allocated to the manufacture of the goods.

Regulations may specify manner of working out cost

- (2) Regulations prescribing a cost for the purposes of subsection (1) may also specify the manner of working out that cost.

Policy and practice

5.2. Section 153G sets out basic requirements with respect to relevant (allowable) overhead costs. Such costs are prescribed in the Regulations in accordance with the power conferred by subsection 153G(2). This subsection allows for costs to be prescribed and for the manner of calculating such costs to be specified.

5.3. Paragraph 153G(1)(a) imposes an 'incurred by the manufacturer' test. 'Manufacturer' is defined in section 153B to mean the person undertaking the last process in the manufacture of the goods. The significance of the word 'incurred' is that the cost or charge must be paid or payable by the manufacturer and not incurred independently by another party without recompense by the manufacturer. Further, it must be an actual cost and not a standard (budgeted), hypothetical, imputed or opportunity cost.



5.4. Paragraph 153G(1)(b) establishes the linkage between the cost and manufacture. That is, there must be a clear connection with production before any such expenditure can be considered allowable.

- 5.5. In any commercial undertaking, overheads will include both production overheads and 'other' overheads. Overheads which relate to general administration, finance, marketing, selling and distribution to customers are specifically excluded from prescribed costs by paragraph 107B(2)(a) of the Regulations - see below. The classification of overheads to isolate that portion related to production only, would take the function of the overhead as its distinguishing characteristic (e.g., whether it is a function of production, marketing, selling, finance, or administration).
- 5.6. Thus, the costs of general management as distinct from functional management are not directly or indirectly related to current production and are therefore excluded from the cost of production. Such costs are typically not attributable to any operation or product and their only association with the production facility may be as peripheral costs necessary to operate the facility.
- 5.7. Paragraph 153G(1)(c) implies two essential requirements, viz:
- adequate records and information must be available; and
 - a reasonable and appropriate method of allocation to production must be available
- 5.8. An example of paragraph 153G(1)(c) may arise where materials are transported in the manufacturer's vehicle and large numbers of substantially different types of materials arrive at the factory in the same consignment. Where all materials are sourced in the qualifying area, it may be easier to treat the cost of freight inwards as an overhead cost, provided it can reasonably be allocated to the goods. Where materials are sourced from countries outside the qualifying area, however, care must be taken to ensure that the cost of transport of such goods between the wharf and the manufacturer's premises is attributed to the materials to which it relates and does not form part of qualifying overheads.

Regulations

- 5.9. The Regulations define allowable expenditure of the factory on overheads as follows:

107B Prescribed costs of factory overheads—section 153G of the Act

- (1) For the purposes of subsection 153G(1) of the Customs Act, each of the following costs is prescribed:
- (a) the cost of inspection and testing of materials and goods;
 - (b) the cost of insurance of the following kinds:
 - (i) insurance of plant, equipment and materials used in the production of the goods;

- (ii) insurance of work in progress and finished goods;
- (iii) liability insurance;
- (iv) accident compensation insurance;
- (v) insurance against consequential loss from accident to plant and equipment;
- (c) the cost of dies, moulds, tooling and depreciation, maintenance and repair of plant and equipment;
- (d) the cost of interest payments for plant and equipment;
- (e) the cost of research, development, design and engineering;
- (f) the cost of the following items in respect of real property 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;
- (g) the cost of leasing of plant and equipment;
- (h) the cost of energy, fuel, water, lighting, lubricants, rags and other materials and supplies not directly incorporated in manufactured goods;
- (i) the cost of storage of goods at the factory;
- (j) the cost of 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;
- (k) the cost of subscriptions to standards institutions and industry and research associations;
- (l) the cost of the provision of medical care, cleaning services, cleaning materials and equipment, training materials and safety and protective clothing and equipment;
- (m) the cost of the disposal of non-recyclable waste;
- (n) the cost of subsidisation of a factory cafeteria to the extent not covered by returns;
- (o) the cost of factory security;
- (p) the cost of computer facilities allocated to the process of manufacture of the goods;
- (q) the cost of contracting out part of the manufacturing process within Australia or New Zealand;
- (r) the cost of employee transport;
- (s) the cost of vehicle expenses;
- (t) the cost of any tax in the nature of a fringe benefits tax.

- (2) In working out a cost for the purposes of subregulation (1), the following costs are not included:

- (a) 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);
 - (b) the cost of telephone, mail and other means of communication;
 - (c) the cost of international travel expenses, including fares and accommodation;
 - (d) the cost of 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;
 - (e) the cost of conveying, insuring or shipping the goods after manufacture;
 - (f) the cost of shipping containers or packing the goods into shipping containers;
 - (g) the cost of any royalty payment relating to a licensing agreement to distribute or sell the goods;
 - (h) the manufacturer's profit and the profit or remuneration of any trader, agent, broker or other person dealing in the goods after manufacture;
 - (i) any other cost incurred after the completion of manufacture of the goods.
- (3) For the purposes of paragraph (1)(c) and (f), the cost of depreciation of plant, equipment or buildings must be worked out in accordance with generally accepted accounting principles, as applied by the manufacturer."
- (4) Despite subregulation (2), if preference claim goods are claimed to be the manufacture of Papua New Guinea or a Forum Island Country the following costs, in addition to the costs prescribed by subregulation (1) are prescribed for subsection 153G(1) of the Act:
- (i) 25% of telecommunications costs; and
 - (ii) the cost of international travel expenses incurred to allow 1 person to travel, in a year, to attend 1 trade fair or to purchase equipment.
 - (iii) the cost of contracting out part of the manufacturing process within Papua New Guinea or a Forum Island Country.

- 5.10. Subsection 153G(1) of the Customs Act provides that allowable expenditure means “the sum of the part of each cost prescribed...”. Costs are therefore prescribed in subregulations 107B(1) and 107B(4) subject to the requirements of subsection 153G(1) of the Customs Act. Subregulation 107B(1) is also subject to subregulations 107B(2) and (3). That is to say, subsection 153G(1) narrows the scope of costs prescribed in subregulations 107B(1) and (4) to the relevant part of each cost that is to form allowable expenditure, and subregulation 107B(1) is further narrowed by the exclusions in subregulations 107B(2) and (3). Costs that are not prescribed are not to form part of allowable expenditure.
- 5.11. The isolation of expenses that bear (in whole or in part) a direct or indirect relationship to manufacture will always require careful analysis. This analysis must address the question of whether the particular cost can be identified directly or indirectly with the function of producing goods. The costs of general management are typically not attributable to any operation and their association with the production facility may be as peripheral costs necessary to operate the facility.
- 5.12. Paragraph 107B(2)(a) of the Regulations provides that costs or expenses relating to the general expense of doing business are not to be included as a prescribed cost. The intention of this paragraph is to exclude general expenses that are not related to the manufacture of particular preference claim goods. In normal circumstances, these expenses would be treated as ‘other’ overheads rather than ‘production’ overheads and would, therefore, not appear in the manufacturing accounts. The costs listed in paragraph 107B(2)(a) illustrate this principle. Other examples are bank charges, donations, corporate expenses, audit expenses, entertainment, printing and stationery and personnel costs including staff advertising.
- 5.13. No account is to be taken of the origin of the energy, plant, machinery, royalties or other such costs incurred by the manufacturer in the production of goods when determining whether or not particular goods are the produce or manufacture of a country. For example, the payment by the manufacturer of a royalty to a recipient in a country outside the qualifying area, for a process developed in that country, does not provide grounds for denying inclusion of the cost in allowable expenditure.
- 5.14. Subregulation 107B(3) limits depreciation charges to those that are ascertained in accordance with generally accepted accounting principles as applied by the manufacturer. These principles will apply whether or not they are applied by the manufacturer.
- 5.15. Allowable expenditure on factory overhead is to include re-work costs on faulty manufacture whether or not such defects are discovered post sale.

6. Other costs – Labels/Tickets

- 6.1 Materials and labour will be expended on these items. Generally, items which are required by law and/or which identify the goods, their origin, characteristics, brand name, fabric codes, care instructions and material composition may be included in allowable expenditure. However, items that are of a promotional nature in relation to particular manufacturers or generic goods should not be treated as allowable expenditure on the grounds that they represent selling or marketing expenses which are specifically excluded by Customs Regulation, paragraph 107B(2)(a).

7. Other Costs – Inner Containers

Statutory Provisions

- 7.1. Inner containers are defined in section 153B as follows:

- inner container includes any container into which preference claim goods are packed, other than a shipping or airline container, pallet or other similar article.

Policy and practice

- 7.2. Inner containers shall include any item of packaging, container or containers into or onto which the goods are packed but shall not include shipping containers (including pallets and like articles or air containers that are used by carriers for cargo conveyancing).
- 7.3. Inner containers are not mentioned specifically as an element of allowable factory cost in the definition of that term in section 153B. Costs associated with inner containers will be represented under the three categories of materials, labour and overhead.
- 7.4. Section 153B includes the cost of inner containers in the definition of 'materials' for the purposes of Division 1A of Part VIII.
- 7.5. In prescribing labour costs which represent allowable expenditure in labour under subsection 153F(2), the Regulations include labour costs incurred in packing goods into inner containers [paragraph 107A(f) of the Regulations].

7.6. Overhead costs associated with packing would be considered allowable insofar as they relate to the labour cost entitlement and are specified in paragraph 107B(1)(i) of the Regulations.

8. Other Costs – Scrap and Waste Material

8.1 As scrap and waste arise essentially in relation to material, this matter has been dealt with earlier in this section [refer 3.2.1.3 (2) – paragraphs 14-16].

Other Costs – Double Counting

Statutory provisions

8.1. Division 1A of Part VIII of the Customs Act includes a proscription against any double counting (section 153S), in the following terms:

153S Rule against double counting

In determining the allowable factory cost or the total factory cost of preference claim goods, a cost incurred, whether directly or indirectly, by the manufacturer of the goods must not be taken into account more than once.

Policy and practice

8.2. Given the variability of accounting practice, there is considerable scope for double counting of particular costs. Care will need to be taken, for instance, to ensure that indirect labour costs, which in some circumstances can form part of total payroll costs, are not counted in direct labour as well as manufacturing overhead when costs are determined on a per unit basis.

Section 3: Partly Manufactured Goods – Value-Added Criteria - Variations

1. Goods Not Commercially Manufactured in Australia

Statutory Provisions

1.1. In certain circumstances, alternative minimum value-added thresholds are applicable where goods are of a kind not commercially manufactured in Australia. Relevant provisions are:

- Canada: subsection 153P(4);

- Non-preference countries: subsection 153Q(3);
- Christmas, Cocos (Keeling) and Norfolk Islands: subsection 153Q(4).

1.2. Section 153R provides determination powers in relation to such goods as follows:

153R Are goods commercially manufactured in Australia?

COMPTROLLER-GENERAL may determine that goods are, or are not, commercially manufactured in Australia

- (1) For the purposes of sections 153P and 153Q, the COMPTROLLER-GENERAL may, by *Gazette* notice, determine that goods of a specified kind are, or are not, commercially manufactured in Australia.

Effect of determination

- (2) If such a determination is made, this Division has effect accordingly.

Policy and practice

1.3. The concept behind this provision is that trade should not be impeded where there is no threat to Australian industry. In such cases, goods may enter at preferential rates with a lower minimum value-added threshold than would otherwise apply.

1.4. The absence of Australian manufacture is generally indicated by the presence of a general duty rate of free or by the existence of a Tariff Concession Order made pursuant to Part XVA of the Customs Act. Reconditioned or reconstructed machines do not gain the benefit of the lower thresholds.

1.5. The kinds of goods considered not to be commercially manufactured in Australia are set out by Gazette notice. An example of the type of notice is set out in Appendix 5.

2. Tolerance in Minimum Value-Added

Statutory Provision

2.1. Section 153LA provides for a lower value-added content in certain circumstances with respect to goods originating in Papua New Guinea or a Forum Island country.

153LA Modification of section 153L in special circumstances

When 50% in subsection 153L(4) can be read as 48%

- (1) If the COMPTOLLER-GENERAL is satisfied:
 - (a) that the allowable factory cost of preference claim goods in a shipment of such goods that are claimed to be the manufacture of Papua New Guinea or a Forum Island Country is at least 48% but not 50% of the total factory cost of
 - (b) that the allowable factory cost of those goods would be at least 50% of the total factory cost of those goods if an unforeseen circumstance had not occurred; and
 - (c) that the unforeseen circumstance is unlikely to continue;

the COMPTOLLER-GENERAL may determine, in writing, that section 153L has effect:

- (d) for the purpose of the shipment of goods that is affected by that unforeseen circumstance; and
- (e) for the purpose of any subsequent shipment of similar goods that is so affected during a period specified in the determination;

as if the reference in subsection 153L(4) to 50% were a reference to 48%.

Effect of determination

- (2) If the COMPTOLLER-GENERAL makes a determination, then, in relation to all preference claim goods imported into Australia that are covered by the determination, section 153L has effect in accordance with the determination,

COMPTOLLER-GENERAL may revoke determination

- (3) If:
 - (a) the COMPTOLLER-GENERAL makes a determination; and
 - (b) the COMPTOLLER-GENERAL becomes satisfied that the unforeseen circumstance giving rise to the determination no longer continues;

the COMPTOLLER-GENERAL may, by written notice, revoke the determination despite the fact that the period referred to in the determination has not ended.

Definition of similar goods

- (4) In this section:

similar goods, in relation to goods in a particular shipment, means goods:

 - (a) that are contained in another shipment that is imported by the same importer; and
 - (b) that undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.

Policy and Practice

- 2.2. Allowable labour and overheads would generally be based on a 12 month period coinciding with the annual reporting period of the manufacturer. For this reason, such costs are unlikely to be affected by this provision, which relates to short-term aberrations.
- 2.3. The provision will, however, apply directly to materials in circumstances where a short-term variation is experienced through, for example, exchange rate fluctuations. Where this variation directly affects the cost of production of each individual unit produced, it will come within the ambit of this provision. In ordinary circumstances, the short-term would not be expected to exceed three months.
- 2.4. Where use of this provision is contemplated, application should be made to the Director Valuation and Origin, 5 Constitution Avenue, Canberra ACT 2601, well before the goods are to be entered for home consumption, so that sufficient time is allowed to consider the application and, where appropriate, to make a determination. The application should include all material required to support the claim.
- 2.5. The form of the determination contemplated by section 153K is set out in Appendix 3.

3. Special provisions allowing variation of minimum value-added

Statutory Provisions

- 3.1. Special provisions exist to permit a lower minimum value-added threshold where the COMPTROLLER-GENERAL has made a determination. This is commonly referred to as 'derogation'. These provisions are set out in paragraph 153L(4)(b) for Papua New Guinea and Forum Island countries.

Policy and Practice

- 3.2. Several derogation requests have been received from Forum Island countries, the most recent being the request by the Government of Samoa in relation to wiring harnesses for passenger motor vehicles. In response to this request, a decision was made to reduce the minimum value-added threshold for these goods to 40% from 24 December 2003 to 23 June 2005.
- 3.3. In 1995 relevant Ministers agreed to implement a policy framework for the consideration of derogation requests under SPARTECA. This policy was published in Appendix 8 to the booklet, SPARTECA – A Reference Handbook for

Forum Island Country Exporters, which is available on the Internet at <http://www.border.gov.au>.

3.4. A sample form of determination is set out in Appendix 5.

Section 4: Partly Manufactured Goods – Other Criteria

1. Additional Requirements

Aside from minimum value-added thresholds, there are other conditions that must be met before goods are considered to be the produce or manufacture of a particular country. These are:

- last process of manufacture;
- direct shipment.

2. Last Process of Manufacture

Statutory provisions

2.1. The following provisions require that the last process in the manufacture of preference claim goods be performed in the preference country concerned:

- Papua New Guinea/Forum Island: 153L(2)(a)
- particular Developing Country: 153M(a)
- Developing Country but not a particular Developing Country: 153N(a)
- Canada: 153P(3)(a)
- non-preference country including Australian External Territories: 153Q(4).

Policy and Practice

2.2. All work undertaken in respect to the goods prior to that undertaken by the manufacturer (as defined in section 153B of the Customs Act) of preference claim goods at the factory (as defined in section 153B) will represent materials in that (final) process. Manufacture requires the creation of an article essentially different from the component parts or materials that go into such manufacture. Further, the manufacturer of the preference claim goods must perform the final process in the manufacture of those goods.

2.3. What is 'manufacture' in any particular case must be determined on a case-by-case basis with due regard being paid to the nature of the goods concerned and the processes to which they have been subjected.

- 2.4. Processes such as repairing, overhauling or re-furbishing do not constitute manufacture as they are restoration processes (see Regal Holdings Ltd and Chief Executive Officer of Customs (1997) 46 ALD 373).
- 2.5. In keeping with the above, minor processing operations such as pressing, labelling, ticketing, packaging, preparation for sale and quality control inspections are not considered to be processes of manufacture in their own right.
- 2.6. Generally, minor processing operations are considered to be part of overall manufacture, provided there is a single continuous line of production at the factory from primary materials to finished goods ready for sale.

3. Direct shipment

Direct shipment is a requirement for goods the produce or manufacture of Canada. As this provision relates to all goods, whether unmanufactured, partly or wholly manufactured, it is dealt with separately in Section 7 of this Division.

Section 5: Unmanufactured Goods

1. Unmanufactured Goods Criteria

Statutory provision

1.1. Section 153H provides as follows:

153H Unmanufactured goods

Goods claimed to be the produce of a country are the produce of that country if they are its unmanufactured raw products.

1.2. Section 4 provides 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 crude petroleum.

Policy and Practice

- 1.3. Goods claimed to be covered by this provision must not have been subjected to any process of manufacture (however minor) which would remove them from their raw state. For instance, in the case of peanuts, the process of shelling would place such goods outside this provision.
- 1.4. However, where the process is limited to cleaning, grading and the like to maintain the state of the product for international trade, such products will continue to be regarded as raw, unmanufactured products.
- 1.5. Goods covered by section 153H are declared to be the produce of the country concerned. They are not, therefore, subject to conditions of entitlement applicable to partly manufactured goods, such as last process of manufacture and minimum value-added.

2. Direct Shipment

Direct shipment is a requirement for unmanufactured raw products of Canada. As this provision relates to all goods, whether unmanufactured, partly or wholly manufactured, it is dealt with separately in Section 7 of this Division.

Section 6: Wholly Manufactured Goods

1. Wholly Manufactured Goods Criteria

Statutory provisions

- 1.1. Provisions relating to goods that are wholly manufactured in a preference country are set out in the following subsections:
- Papua New Guinea: 153L(1);
 - Canada: 153P(2);
 - non-preference country (including External Territories): 153Q(1).

Policy and practice

- 1.2. Wholly manufactured provisions apply in respect of goods produced in Papua New Guinea, Canada and non-preference countries (including Australia's External Territories of Christmas, Cocos (Keeling) and Norfolk Islands). They do

not apply to goods produced in Least Developed Countries, Developing Countries or Forum Island countries (other than Papua New Guinea).

1.3. All provisions require wholly manufactured goods to be made from materials falling into one or more of three basic classes, as follows:

- unmanufactured raw products;
- materials wholly manufactured in the relevant country or Australia;
- materials imported into the relevant country from a country other than Australia that are determined by the COMPTOLLER-GENERAL to be the manufactured raw materials of the relevant country.

1.4. Australia recognises that small quantities of imported manufactured materials may be used to produce otherwise wholly manufactured goods. Generally, the wholly manufactured provisions are, therefore, administered with a tolerance of 3%.

2. Materials - unmanufactured raw products

Contrary to the provisions for unmanufactured raw products imported into Australia without further manufacture, dealt with in Section 5, there is no limitation placed on the origin of unmanufactured raw products used as materials in wholly manufactured goods imported into Australia. Goods will be the manufacture of the country concerned notwithstanding that they may be made from unmanufactured raw products from outside the qualifying area.

3. Determined manufactured raw materials (DMRM)

3.1. Where goods would be wholly manufactured in a relevant country but for materials that are not available from within Australia or the exporting country, the COMPTOLLER-GENERAL may determine those materials to be the produce or manufacture of the exporting country.

3.2. While there is no formal agreement between Australia and other countries on the operation of DMRM, Australia adopts procedures similar to those agreed to with New Zealand under the Australia New Zealand Closer Economic Relations Trade Agreement. This includes consideration of the general duty rate applicable to imports of the material into Australia, eligibility for a duty concession and the publication of a Gazette notice that allows Australian manufacturers of the material for which a DMRM is sought 21 days in which to object to the granting of a DMRM.

3.3. In this process, consideration is limited to the extent to which the material for which a DMRM is sought can be made locally. No consideration is given to the extent to which local firms can manufacture the complete goods to be made using that material.

3.4. A list of DMRM, effective at 1 July 2008, is at Appendix 7. For further information please contact www.border.gov.au

4. Direct shipment

Direct shipment is a requirement for wholly manufactured products of Canada. As this provision also relates to unmanufactured and partly manufactured goods, it is dealt with separately in Section 7 of this Division.

Section 7: Direct Shipment (Canada)

1. Direct Shipment Criteria

Statutory provision

1.1. Direct shipment rules apply for Canada through subsection 153P(1). This provision provides:

153P Manufactured goods originating in Canada

General rule

- (1) Despite section 153H and subsections (2) and (3), goods claimed to be the produce or manufacture of Canada are not the produce or manufacture of that country unless:
 - (a) they have been shipped to Australia from Canada; and
 - (b) either:
 - (i) they have not been transhipped; or
 - (ii) the COMPTOLLER-GENERAL is satisfied that, when they were shipped from Canada, their intended destination was Australia.

Policy and Practice

1.2. This direct shipment provision is to ensure that the benefits of the preference go to the seller in the exporting country. This may not be so if goods enter the commerce of another country before importation into Australia. Thus, transhipment is only permissible where, in the words of the Customs Act, the COMPTOLLER-GENERAL was satisfied that the intended destination was Australia.

- 
- 1.3. This provision recognises geographical barriers to direct shipment, e.g. landlocked countries, provided the intended destination was Australia. However, it does not allow for situations where the goods are shipped to and stored in another country before the ultimate destination of the goods is known, or where goods are shipped to another country for further processing (for example, packaging), prior to being shipped to Australia.

Section 8: Certificates and Declarations of Origin

1. Procedures

- 1.1. Declarations made by the overseas manufacturer of goods imported into Australia may be used to support a preference claim, provided:
 - (a) the declaration clearly identifies the goods to which it applies; and
 - (b) the declaration specifies the particular provisions in Division 1A of Part VIII of the Customs Act that the goods meet; and
 - (c) there is no reason to doubt the veracity or reliability of the declaration.
- 1.2. Certificates of Origin provided to support a claim of origin under the Australian GSP arrangements must meet the requirements of Form A as indicated in the Australian GSP manual. The Australian GSP manual can be found at <http://www.unctad.org/TEMPLATES/Page.asp?intItemID=1423&lang=1>
- 1.3. Australian Border Force (ABF) may seek further evidence of preference entitlement for any specific reason or a simple intuitive selection, irrespective of the existence of a certificate or declaration. Where there is insufficient evidence to establish that preference applies, the general rate of duty is payable.
- 1.4. Where a customs entry states that a preference rate of duty applies, this will be taken to indicate that the owner of the goods possesses evidence that the stated facts are correct. The criteria for eligibility for preference rates of duty are set out in Division 1A of Part VIII of the Customs Act.
- 1.5. If ABF finds that preference is inapplicable or that there is insufficient evidence to justify the claim for preferential rates of duty, there will be a liability for the payment of any Customs duty that has been short paid. In these circumstances, there may also be a liability for an administrative penalty under section 243T of the Customs Act.
- 1.6. If, after the time of entry, evidence becomes available to the owner that the goods are ineligible for preferential rates of duty, the owner should, as soon as practicable after becoming aware of the error, voluntarily tender to ABF any short paid Customs duty. This action may protect the owner from potential penalty under section 243T of the Customs Act if ABF audit action has not commenced.
- 1.7. Declarations which state that the preference criteria of Division 1A of Part VIII of the Customs Act have been met will be recognised by ABF only if signed by the overseas manufacturer. In the case of the People's Republic of China, the term "overseas manufacturer" includes:
 - the China Chamber of International Commerce;

- the China Council for the Promotion of International Trade;
- the Shanghai Import and Export Commodity Inspection Bureau;
- the Guang Dong Import and Export Commodity Inspection Bureau;
- the Yunnan Native Produce Import and Export Corporation; and
- all provincial inspection bureaux.

1.8. For goods manufactured in Hong Kong or the People's Republic of China (and exported through Hong Kong), declarations or certificates may be signed by representatives of the following organisations in Hong Kong:

- the Hong Kong Trade Department;
- the Hong Kong General Chamber of Commerce;
- the Federation of Hong Kong Industry;
- the Chinese General Chamber of Commerce; or
- the Indian Chamber of Commerce (Hong Kong).

1.9. There is no prescribed form for a declaration by the manufacturer. It should, however, describe the goods and refer to the particular provision in Division 1A of Part VIII of the Customs Act that the goods meet. Also, the name of the person signing the certificate or declaration, together with their position and the company or entity represented, should be clearly stated. The declaration may be on the commercial documents or form a separate document. Examples of acceptable declarations are set out in Appendix 6.

1.10. It should be noted that where shipments to Australia are arranged by freight forwarders, the requirement remains that declarations held by the importer must be signed by the overseas manufacturer.

1.11. Where a duty short payment results from incorrectly claimed preferential duty rates, an administrative penalty will not be imposed if, at the time of entry of the goods, the owner had either:

- a declaration from the overseas manufacturer that stated that a particular preference criterion of Division 1A of Part VIII of the Customs Act had been met; or
- evidence of the relevant factory processes and costs of the overseas manufacturer that indicated that the goods in question were eligible for preferential rates of duty.

1.12. The protection from penalty would not apply, however, where:

- other information available to the owner indicated that the statement on the declaration from the manufacturer was incorrect or unreliable;
- the party signing the declaration was not the 'overseas manufacturer' - for instance, ABF would give no weight to a declaration that is from a supplier who was not the manufacturer of the goods; or
- the declaration could not be clearly related to the goods in question.

Section 9: Administrative Procedures

1. Steps for determining preference entitlement

Where preference entitlement is called into question, the following steps will be taken to address the issue:

Canada, LDC and Developing Countries

- Identify the goods on which preference has been claimed.
- Identify the manufacturer producing the goods on which preference has been claimed.
- Research and establish grounds for further action.
- If warranted, forward a questionnaire to the manufacturer to gather data from which entitlement may be determined. A copy of the questionnaire is at Appendix 1.
- Examine the data and consider further action.
- If sufficient information is available within a reasonable period of time, it may be possible to resolve the matter from the information put forward by the overseas manufacturer. Only where this is not possible will the matter become the subject of inquiries by ABF personnel in the country concerned. The object of these inquiries will be to ascertain and verify all relevant data from which assessment of entitlement may be made.

Fiji

- Ministers representing the Governments of Australian and Fiji have signed The Protocol on Customs Procedures for Rules of Origin Under SPARTECA. Under the Protocol, ABF has trained a team of Fijian officials to monitor and to advise on compliance under SPARTECA.
- All questions regarding preference from Fiji under SPARTECA are to be referred to Director Valuation and Origin, Canberra.

Appendix 1

AUSTRALIAN BORDER FORCE

PREFERENTIAL RATES OF DUTY

ORIGIN INFORMATION REQUIREMENTS

A. FOREWORD

1. The purpose of this document is to gather relevant data on the particular goods specified to enable the Australian Border Force (ABF) to ascertain whether particular goods are the produce or manufacture of a country and thus are entitled to entry at preferential rates of duty (preference). ABF may, at its option, wish to visit manufacturers and verify any data provided.
2. Entitlement to preference is determined in accordance with Division 1A of Part VIII of the Customs Act and Customs Regulations 107A and 107B.
3. This document captures the essence of these requirements but should not be seen as a definitive statement.
4. Generally, goods qualify for preference if a specified percentage (generally 50%) of the total factory cost in producing those goods constitutes allowable expenditure in relation to the particular 'qualifying area'.
5. Qualifying areas for the different preference countries are as follows:

Preference Country Qualifying Area

Canada	Canada and Australia
Developing Countries	All developing countries, Papua New Guinea, Forum Island countries and Australia
Forum Island country	Forum Island countries, Papua New Guinea, New Zealand and Australia
Papua New Guinea	Papua New Guinea, Forum Island countries, New Zealand and Australia

Least Developed Countries All least developed countries, Papua New Guinea, Forum Island countries and Australia plus 25% from developing countries.

6. Definitions of terms used in this document are set out in Schedule V.

B. CONFIDENTIALITY OF DATA PROVIDED

Please mark confidential documents appropriately.

(Appendix 1...continued)

C. GENERAL INFORMATION REQUIRED

1. Business Profile

- (a) What is the full name, address, telephone number and facsimile number of your business?
- (b) Is this business associated with the Australian importer or any supplier of materials?
- (c) If so, what are the associations?
- (d) If there is an association, what effect does this have on dealings between the parties, e.g., price discounting, purchasing at a premium, rebates, refunds, commissions, etc.
- (e) Who is the company officer ABF should communicate with?

2. Details of Manufacture

- (a) Describe the finished goods including model/type or style and specifications.
- (b) Describe the materials used in manufacture.
- (c) Describe the manufacturing processes for the finished goods

D. FINANCIAL INFORMATION REQUIRED

1. Form of Presentation

- (a) For preference to apply, allowable factory cost must be equal to or greater than a specified percentage of total factory cost.
- (b) The form at Schedule IV has been designed to summarise all relevant data and show the allowable proportion for each unit/model/style produced.

2. Financial Period

- (a) Costs should be provided based on the most recently completed accounting period of the manufacturer. The relevant period should be indicated on each completed copy of Schedule IV.
- (b) Where any of these costs have changed since the most recently completed accounting period, please show separately which costs have changed and provide reasons for any changes.
- (c) Actual costs are required in all instances.

3. Materials

- (a) The cost of materials at any level in the manufacturing cycle will always include all directly attributable costs of acquisition into the purchaser's store. All material costs chargeable to finished goods on which preference is claimed will form part of total factory cost.
- (b) The allowable part of the total cost of materials is to be determined in accordance with Schedule I.
- (c) Please provide the following information concerning the purchase of material:
 - (i) Who are the suppliers and what is the country of last process of manufacture for those materials? Please list the goods, names, addresses, telephone numbers and facsimile number of suppliers.

Information should be grouped under the following headings:

(Appendix 1...continued)

- (1) Materials manufactured in the qualifying area from materials which have also been manufactured in that area:
- (2) Materials manufactured outside the qualifying area; and
- (3) Materials manufactured within the qualifying area which incorporate materials manufactured outside the qualifying area (materials of mixed origin).
- (ii) Is the supply of any of the above materials restricted (e.g., are they subject to royalties, patents, is there a sole supplier, etc.)?
- (iii) If royalties are payable, what is the basis for the royalty, to whom is it payable and when is it payable?
- (iv) What is the cost of into store acquisition of materials and what are components of this cost?
- (v) Representative invoices or documentation showing the cost of each of these components.
- (d) If the materials are manufactured in the qualifying area from 'contributing' materials (in respect of which the last process of manufacture was performed outside the qualifying area), please advise:
 - (i) cost of materials used in the manufacture of the finished goods; and
 - (ii) cost of 'contributing' materials
- (e) If the costs in (d) above are not available to you from the supplier, please arrange for the supplier to advise ABF direct.

4. Factory Labour and Overheads

- (a) These costs are not allowable expenditure unless they are prescribed in the Schedule III (Overheads).
- (b) Allowable expenditure in terms of the Regulations forms part of both allowable factory cost and total factory cost.
- (c) Prescribed costs set out in Schedule II and Schedule III are subject to three main criteria before the sum of the part of each such cost may form part of allowable expenditure viz.,
 - (i) they must be incurred by the manufacturer of the goods;
 - (ii) they must relate, directly or indirectly, and wholly or partly, to the manufacture of the goods; and
 - (iii) they must be able to be reasonably allocated to the manufacture of the goods.
- (d) With respect to factory overheads in Schedule III, Regulation 107B(2) and Regulation 107B(3) serve to further narrow down the scope of such costs which are prescribed in Regulation 107B(1).

E. SUPPORTING MATERIAL

Copies of supporting documents used to calculate the total factory cost should be submitted with this document such as:

- (a) Company Organisation Chart showing:
 - (i) all work areas within the company;
 - (ii) names of persons working within those areas: and
 - (iii) the position held, title and duties;
- (b) Copy of company wages and salary by person's name
- (c) Internal (management) manufacturing and profit and loss statement
- (d) Depreciation schedule for the factory

(Appendix 1...continued)

- (e) Explanation of any formulae used, in particular how actual costs of:
 - (i) Salaries, Wages; and
 - (ii) Overheads

were derived and an explanation as to how these costs were allocated to the manufacture of the particular goods produced including formulae used and worksheets.

SCHEDULE I

ALLOWABLE EXPENDITURE ON MATERIALS

1. **Materials** means:
 - (a) if the goods are unmanufactured raw products - those products; and
 - (b) if the goods are manufactured goods - all matter or substances used or consumed in the manufacture of the goods (other than that matter or those substances that are treated as overheads); and
 - (c) in either case - the inner containers in which the goods are packed.
2. **Cost of materials** (wherever this term is used) includes all into store costs of the factory but does not include certain Customs duties or taxes such as sales tax or GST which are levied in the qualifying area.
3. **Allowable expenditure** on materials is that part of the cost of materials to the factory worked out as follows:
 - (a) If the materials are the raw products of the qualifying area;
the cost of those materials.
 - (b) If the materials and any materials incorporated therein are wholly manufactured in the qualifying area;
the cost of those materials.
 - (c) If the last process of manufacture of imported materials is performed outside the qualifying area;
none of the cost of those materials.

4. If the materials (materials of mixed origin) are manufactured in the qualifying area from imported materials on which the last process of manufacture was performed outside the qualifying area, the allowable expenditure of the factory is:
 - (a) In the case of all preference countries;
the cost of materials less the cost of the imported materials.
 - (b) (i) where such materials will be incorporated into goods on which New Zealand preference is claimed; and
(ii) the cost of the imported materials is 50% or less than the cost of the materials that are manufactured;
the cost of the materials.

(Appendix 1...continued)

SCHEDULE II

ALLOWABLE EXPENDITURE OF FACTORY ON LABOUR

1. 1. The allowable expenditure of a factory on labour means the sum of the part of each cost that is prescribed that;
 - (a) Is incurred by the manufacturer of the goods; and
 - (b) Relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and
 - (c) Can reasonably be allocated to the manufacture of the goods.
2. The following costs to the extent that they relate to labour are prescribed
 - (a) Cost of wages and employee benefits
 - (b) Cost of supervision and training
 - (c) Cost of management of the process of manufacture
 - (d) Cost of receipt and storage of materials
 - (e) Cost of quality control
 - (f) Cost of packing of goods into inner containers
 - (g) Cost of handling and storage of goods within the factory
3. When submitting the cost of labour please provide the following for each of the prescribed costs listed in above:
 - (a) Costs of labour to make all goods manufactured by the factory; and
 - (b) Costs of labour to manufacture the goods subject to inquiry.

SCHEDULE III
ALLOWABLE EXPENDITURE OF FACTORY ON OVERHEADS

1. The allowable expenditure of a factory on overheads means the sum of the part of each cost that is prescribed that:
 - (a) is incurred by the manufacturer of the goods; and
 - (b) relates, directly or indirectly, and wholly or partly, to the manufacture of the goods; and
 - (c) can reasonably be allocated to the manufacture of the goods.

2. Overhead costs are prescribed as follows:

Allowable expenditure of a factory on overheads means the sum of the part of each of the following costs:

- (a) the cost of inspection and testing of materials and goods;
- (b) the cost of insurance of the following kinds:
 - (i) insurance of plant, equipment and materials used in the production of the goods;
 - (ii) insurance of work in progress and finished goods;
 - (iii) liability insurance;
 - (iv) accident compensation insurance;
 - (v) insurance against consequential loss from accident to plant and equipment;
- (c) the cost of:
 - (i) dies, moulds and tooling;
 - (ii) depreciation of plant and equipment;
 - (iii) maintenance and repair of plant and equipment;
- (d) the cost of interest payments for plant and equipment;
- (e) the cost of:
 - (i) research, development and design;
 - (ii) engineering;
- (f) the cost of the following items in respect of real property used in 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;
- (g) the cost of leasing of plant and equipment;

(Appendix 1...continued)

- (h) the cost of energy, fuel, water, lighting, lubricants, rags and other materials and supplies not directly incorporated in manufactured goods;
 - (i) the cost of storage of the finished goods (on which preference is claimed) at the factory;
 - (j) the cost of royalties or licences in respect of:
 - (i) patented machines or processes used in the manufacture of the goods; or
 - (ii) in respect of the right to manufacture the goods;
 - (k) the cost of subscriptions to standards institutions and industry and research associations;
 - (l) the cost of provision of medical care cleaning services, cleaning materials and equipment, training materials and safety and protective clothing and equipment;
 - (m) the cost of the disposal of non-recyclable waste;
 - (n) the cost of subsidisation of a factory cafeteria to the extent not recovered by returns;
 - (o) the cost of factory security;
 - (p) the cost of computer facilities allocated to the process of manufacture of the goods;
 - (q) the cost of contracting out part of the manufacturing process within Australia or New Zealand.
 - (r) the cost of employee transport;
 - (s) the cost of vehicle expenses;
 - (t) the cost of any tax in the nature of a fringe benefits tax.
3. For the purposes of 2 (c) and (f), the cost of depreciation of plant, equipment or buildings must be worked out in accordance with generally accepted accounting principles.
4. Subject to paragraph 5, in working out the allowable cost of overheads in (2) above, the following costs are not to be included:
- (a) 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);
 - (b) the cost of telephone, mail and other means of communication;
 - (c) the cost of international travel expenses, including fares and accommodation ;
 - (d) the cost of 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;

- (e) the cost of conveying, insuring or shipping the goods after manufacture;
 - (f) the cost of shipping containers or packing the goods into shipping containers;
 - (g) the cost of any royalty payment relating to a licensing agreement to distribute or sell the goods;
 - (h) the manufacturer's profit and the profit or remuneration of any trader, agent, broker or other person dealing in the goods after manufacture;
 - (i) any other cost incurred after the completion of manufacture of the goods.
5. If preference claim goods are the manufacture of Papua New Guinea or a Forum Island Country:
- (a) the list of costs in paragraph 2 includes:
 - (i) 25% of telecommunications costs; and
 - (ii) the cost of international travel expenses incurred to allow 1 person to travel in a year to attend 1 trade fair or to purchase equipment
 - (iii) the cost of contracting out part of the manufacturing process
 - (b) paragraph 4 does not apply to the costs referred to in subparagraph (a) above.

(Appendix 1...continued)

**SCHEDULE IV
SUMMARY OF TOTAL FACTORY COST**

NAME of manufacturer of goods exported to Australia:

.....

GOODS exported (include model No., type, etc):

.....

UNIT to which costs apply (one, dozen, kg, etc):

.....

ACCOUNTING Period to which costs apply:

.....

1 List all materials or components and quantity allocated for manufacture Materials of Mixed Origin	2 Name, Address and Facsimile Number of Supplier of materials or components	3 Country of manufacture of material or component	4 Cost of material or component	
			Qualifying (a)	Non Qualifying (b)

TOTAL COSTS OF MATERIALS/COMPONENTS	A	E
FACTORY LABOUR COST (per unit)	B	
FACTORY OVERHEAD COSTS (per unit)	C	
ALLOWABLE FACTORY COST (A+B+C)	D	
TOTAL FACTORY COST (D+E)	F	
Calculation of specified percentage of Total Factory cost:		
$\frac{D}{F} \times \frac{100}{1} =$		%

SCHEDULE V
DEFINITIONS

(Division 1A of Part VIII of the Customs Act)

'allowable factory cost', in relation to preference claim goods and to the factory at which the last process of their manufacture was performed, means the sum of:

- (a) the allowable expenditure of the factory on materials in respect of the goods worked out under section 153D; and
- (b) the allowable expenditure of the factory on labour in respect of the goods worked out under section 153F; and
- (c) the allowable expenditure of the factory on overheads in respect of the goods worked out under section 153G;

'factory', in relation to preference claim goods, means:

- (a) if the goods are claimed to be the manufacture of a particular preference country-the place in that country where the last process in the manufacture of the goods was performed; and
- (b) if the goods are claimed to be the manufacture of a preference country that is a Developing Country but not a particular Developing Country-the place in Papua New Guinea or in a Forum Island country where the last process in the manufacture of the goods was performed;

'inner container', includes any container into which preference claim goods are packed, other than a shipping or airline container, pallet or other similar article;

'manufacturer', in relation to preference claim goods, means the person undertaking the last process in their manufacture;

'materials', in relation to preference claim goods, means:

- (a) if the goods are unmanufactured raw products-those products; and
- (b) if the goods are manufactured goods-all matter or substances used or consumed in the manufacture of the goods other than that matter or those substances that are treated as overheads); and
- (c) in either case-the inner containers in which the goods are packed;

'preference claim goods', means goods that are claimed, when they are entered for home consumption, to be the produce or manufacture of a preference country;

'total factory cost', in relation to preference claim goods, means the sum of:

- (a) the total expenditure of the factory on materials in respect of the goods, worked out under section 153C; and
- (b) the allowable expenditure of the factory on labour in respect of the goods, worked out under section 153F; and
- (c) the allowable expenditure of the factory on overheads in respect of the goods, worked out under section 153G.

Appendix 2

COMMONWEALTH OF AUSTRALIA

Customs Act 1901

NOTICE UNDER SUBSECTION 153E(4)

I, (*state full name of delegate*), delegate of the Chief Executive Officer under subsection 153E(4) of the *Customs Act 1901*, being satisfied that materials being (*describe briefly the materials*) in the form they are received into factory incorporate other materials being (*describe briefly other materials*) solely for the purpose of artificially raising the cost of the first-mentioned materials, hereby notify you, the importer of preference claim goods in which those other materials are incorporated, that, in my opinion, part of the cost being (*state which part*) is reasonably attributable to those other materials and are to be disregarded.

Dated this _____ day of _____ 20_____

.....

Delegate of the
Chief Executive Officer

To:

.....
IMPORTER OF PREFERENCE CLAIM GOODS

COMMONWEALTH OF AUSTRALIA

Customs Act 1901

NOTICE UNDER SUBSECTION 153E(5)

I, (*state full name of delegate*), delegate of the Chief Executive Officer under subsection 153E(5) of the *Customs Act 1901*, being satisfied that the cost to the manufacturer of materials being (*briefly describe materials*) in the form they are received into factory exceeds by (*specify amount determined by delegate*) the normal market value of the materials, hereby notify you, the importer of preference claim goods in which those materials are incorporated, that the excess amount is to be disregarded.

Dated this _____ day of _____ 20_____ .

.....

Delegate of the
Chief Executive Officer

To:

.....
IMPORTER OF PREFERENCE CLAIM GOODS

(Appendix 2...continued)

COMMONWEALTH OF AUSTRALIA

Customs Act 1901

NOTICE UNDER SUBSECTION 153E(6)

I, (*state full name of delegate*), delegate of the Chief Executive Officer under subsection 153E(6) of the *Customs Act 1901*, being satisfied that:

- (a) materials being (*describe materials briefly*) in the form they are received into factory are so received (*free of charge; or at a cost being (specify cost) that is less than the normal market value of the materials - you have to specify one of these*); and
- (b) the receipt of the materials (*free of charge or at a reduced cost - you have to specify one of these*) has been arranged directly or indirectly by you, a person who would be the importer of preference claim goods in which those materials are incorporated

hereby notify you that I have determined the amount of (*specify amount*) is the normal market value and that amount shall be treated as the amount (*or part of the amount*) paid by the manufacturer in respect of the materials.

Dated this _____ day of _____ 20 .

.....
Delegate of the
Chief Executive Officer

To:

.....
(A PROSPECTIVE IMPORTER OF PREFERENCE CLAIM GOODS)

Appendix 3

CUSTOMS ACT 1901

DETERMINATION UNDER SECTION 153K(1) MODIFYING SECTION 153J

I, (*state full name of delegate*), delegate of the Chief Executive Officer under section 153K of the *Customs Act 1901* ('the Act'), being satisfied that:

- (a) the allowable factory cost of the following preference claim goods namely, (*specify the goods*) ('the goods') is (*specify percentage - must be at least 48% but not 50%*) of their total factory cost; and
- (b) the allowable factory cost of the goods would be at least 50% of their total factory cost if (*specify unforeseen circumstance which has occurred*) ('the unforeseen circumstance') had not occurred; and
- (c) the unforeseen circumstance is unlikely to continue.

hereby determine pursuant to section 153K(1) of the Act that section 153J of the Act has effect:

- (i) for the purpose of the shipment of the goods which is affected by the unforeseen circumstance; and
- (ii) for the purposes of any subsequent shipment of similar goods which is so affected during (*specify a period*),

as if the reference in subsection 153J(3) of the Act to 50% is a reference to 48%.

Dated this _____ day of _____ 20____

.....

Delegate of the
Chief Executive Officer

Appendix 5

(Gazette Notice)

NOTICE OF DETERMINATION MADE UNDER PARAGRAPH 153J(3)(b) OF THE CUSTOMS ACT 1901

I, (*state full name of delegate*), delegate of the Chief Executive Officer under paragraph 153J(3)(b) of the *Customs Act 1901* (“the Act”), hereby determine for the purposes of subsection 153J(2) of the Act that:

- (a) the following preference claim goods namely, (*specify the goods*) (‘the goods’) are goods for which another percentage of their total factory cost is appropriate; and
- (b) the specified percentage of the total factory cost for the goods is (*specify the percentage*).

Dated this _____ day of _____ 20 .

.....

Delegate of the
Chief Executive Officer

(Gazette Notice)

NOTICE OF DETERMINATION MADE UNDER PARAGRAPH 153L(4)(b) OF THE CUSTOMS ACT 1901

I, (*state full name of delegate*), delegate of the Chief Executive Officer under paragraph 153L(4)(b) of the *Customs Act 1901* (“the Act”), hereby determine for the purposes of subsection 153L(2) of the Act that:

- (a) the following preference claim goods namely, (*specify the goods*) (‘the goods’) are goods for which a lesser percentage of their total factory cost is appropriate; and
- (b) the specified percentage of the total factory cost for the goods is (*specify the percentage*).

Dated this _____ day of _____ 20 .

Delegate of the
Chief Executive Officer

Appendix 6

MANUFACTURED GOODS DEVELOPING COUNTRIES, FORUM ISLAND COUNTRIES, PAPUA NEW GUINEA (NOT CANADA)

[Preference Rule Type P50]

“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 and the cost of inner
containers of _____, (*Name of relevant preference countries and, if
applicable, Australia*).”

Description of goods:

<u>Item Nos</u>	Marks and Numbers of <u>packages</u>	<u>Quantity</u>	Description <u>of goods</u>	Number and date of <u>invoices</u>
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Signature:

Name:

Position in manufacturing company:

Name of manufacturing company:

Date:

(Appendix 6...continued)

MANUFACTURED GOODS CANADA

[Preference Rule Type P75 or P25*]

“I declare that:

- (a) the last process in the manufacture of the goods described below was performed in Canada;
- (b) not less than 75 % 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 Canada or of Australia and Canada; and
- (c) the goods were shipped to Australia from Canada and either:
 - (i) they were not transhipped;
 - or
 - (ii) when they were shipped from Canada, their intended destination was Australia

Description of goods:

<u>Item Nos</u>	<u>Marks and Numbers of packages</u>	<u>Quantity</u>	<u>Description of goods</u>	<u>Number and date of invoices</u>
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Signature:

Name:

Position in manufacturing company:

Name of manufacturing company:

Date:

[* Preference may be claimed if this figure reads 25 only if the goods are not of a kind commercially manufactured in Australia (for example, if the goods are covered by a Tariff Concession order)]

(Appendix 6...continued)

UNMANUFACTURED RAW PRODUCTS

[Preference Rule Type URP]

“I declare that the goods described below are the un-manufactured raw products of , (*preference country*).”

Description of goods:

<u>Item Nos</u>	Marks and Numbers of <u>packages</u>	<u>Quantity</u>	Description <u>of goods</u>	Number and date of <u>invoices</u>
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Signature:

Name:

Position in manufacturing company:

Name of manufacturing company:

Date:

(Appendix 6...continued)

WHOLLY MANUFACTURED GOODS

[Preference Rule Type WMN if the last box is not ticked; Preference Rule Type WMD if the last box is ticked]

“I declare that the goods described below are wholly manufactured in _____, (*preference country*) from one or more of:

- un-manufactured raw products;
- materials wholly manufactured in one or both of Australia and the preference country; or
- materials imported into the preference country that the COMPTROLLER-GENERAL has determined, by notice in writing published in the Gazette, to be manufactured raw materials of the country.”

*you can place a tick (✓) in more than one box

Description of goods:

<u>Item Nos</u>	<u>Marks and Numbers of packages</u>	<u>Quantity</u>	<u>Description of goods</u>	<u>Number and date of invoices</u>
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Signature:
Name:
Position in manufacturing company:
Name of manufacturing company:
Date:

(Appendix 6...continued)

MANUFACTURED GOODS FROM A FORUM ISLAND COUNTRY - SPARTECA (TCF PROVISIONS) SCHEME [*Preference Rule Type TCF*]

"I declare that the goods described below are Qualifying Goods in accordance with the Terms and Conditions of the SPARTECA (TCF Provisions) Scheme, notably:

- (a) _____, (name of manufacturer) is registered with the Program Administrator to participate in the SPARTECA (TCF Provisions) Scheme; and
- (b) the last process in the manufacture of the goods described below was performed in _____ (preference country); and _____ % (being a percentage of at least 25% and less than 50%) of the total factory cost of the goods is represented by the sum of the allowable expenditure of the factory on materials, labour and overheads and the cost of inner containers of _____ (*names of relevant preference countries and, if applicable, Australia*); and ELAC Points from the manufacturer's ELAC register, equivalent to 30% of the total factory cost of the goods, have been applied to the goods in accordance with the Terms and Conditions of the SPARTECA (TCF Provisions) Scheme. ELAC ID numbers associated with those ELAC Points are:

ELAC ID _____
ELAC ID _____
ELAC ID _____

Description of goods:

Marks and number 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 : _____

(Appendix 6...continued)

**MANUFACTURED GOODS GRANTED LOCAL AREA CONTENT DEROGATION BY THE
COMPTROLLER-GENERAL OF CUSTOMS (FORUM ISLAND COUNTRIES) [Preference
Rule Type Px*]**

“I declare that:

- (a) the last process in the manufacture of the goods described below was performed in _____, (*preference country*); and
- (b) _____ % (being a percentage of at least the percentage determined by the COMPTROLLER-GENERAL of Customs and less than 50%) of the total factory cost of the goods is represented by the sum of the allowable expenditure of the factory on materials, labour and overheads and the cost of inner containers of _____ (*names of relevant preference countries and, if applicable, Australia*)”

Description of goods:

Marks and number 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 :

**x represents the percentage determined by the COMPTROLLER-GENERAL of Customs*

Appendix 7

DETERMINED MANUFACTURED RAW MATERIALS FOR PREFERENCE PURPOSES IN RELATION TO CANADA

A		
CAN	Acetphenetidin (Phenacetin)	
CAN	Acrylic Fibre , for use in carpet yarn	78/04183
CAN	Aluminium Brazing Temper , No 12 'O', as used in the manufacture of vehicle automatic transmission oil coolers	
B		
CAN	Backing, Carpet , spun bonded, non woven, polypropylene	78/04183
CAN	Brazing Temper , Aluminium No 12 'O', as used in the manufacture of vehicle automatic transmission oil coolers	
CAN	2-Bromo-1-Chloro-1,2,2-Trifluoroethane	72/04234
C		
CAN	Carpet Backing , Jute, woven	
CAN	Carpet Backing , spun bonded, non woven, polypropylene	78/04183
CAN	Carpet Fibre , trevira polyester, type 825, bright pentalobel	94/05567
CAN	Carpet Protector , Zepel CSF	
CAN	Casein plastic (Erinoid) sheets	
CAN	Cellulose Acetate Propionate Sheet	
CAN	Citric Acid	90/06433
CAN	Crude Iodine	
CAN	Cullet , glass	
D		
CAN	Discs , rough, for ophthalmic lens	72/05184
CAN	Dyestuffs, Synthetic Organic , other than pigment dyestuffs	70/01198
E		
CAN	Erinoid (Casein Plastic) sheets	
F		
CAN	Fibre, Acrylic for use in carpet yarn	78/04183
CAN	Fibre, Carpet , trevira polyester, type 825, bright pentalobel	94/05567

CAN	Fibre, Polyester Staple , deep dye, in 8 and 16 denier per filament	78/04184
G		
	Glass:	
CAN	Cullet;	
CAN	Discs , rough, for ophthalmic lenses;	72/05184
CAN	Knob tops , moulded for lock sets	
I		
CAN	Incoloy 800 Strip , (Nickel Iron Alloy)	72/08602
CAN	Incoloy 840 Strip , (Nickel Iron Alloy), in any of the following sizes: (a) thickness 0.38mm or greater, but not exceeding 0.76mm (b) width 1.27mm or greater, but not exceeding 50.8mm	
CAN	Iodine, Crude	
CAN	Iron Nickel Alloy Strip , (Incoloy 800)	72/08602
CAN	Iron Nickel Alloy Strip , Incoloy 840 Strip, in any of the following sizes: (a) thickness 0.38mm or greater, but not exceeding 0.76mm (b) width 1.27mm or greater, but not exceeding 50.8mm	
J		
CAN	Jute Carpet Backing , woven	
K		
CAN	Knob Tops , moulded for lock sets	
CAN	Kraft Paper , Saturating unsized, substance of 175 g/m ² or more, designed for use in the manufacture of decorative laminates	
M		
CAN	Methyl Methacrylate	
N		
CAN	Nickel Iron Alloy Strip , (Incoloy 800)	72/08602
CAN	Nickel Iron Alloy Strip , Incoloy 840 Strip, in any of the following sizes: (a) thickness 0.38mm or greater, but not exceeding 0.76mm (b) width 1.27mm or greater, but not exceeding 50.8mm	
CAN	Nylon Yarn , 10 denier, 7 filament	
P		
CAN	Paper and Paperboard , having a grammage exceeding 22 g/m ² , printed with a decorative pattern, not impregnated or coated, designed for use in the manufacture of decorative laminates	
CAN	Paper, Release , designed for use in the manufacture of decorative laminates	
CAN	Paper, Saturating Kraft , unsized, substance of 175 g/m ² or more, designed for use	

	in the manufacture of decorative laminates	
CAN	Paper, Tissue , suitable for the manufacture of carbon paper	
CAN	Phenacetin (Acetphenetidin)	
CAN	Polyester Carpet Fibre , Trevira, type 825, bright pentalobel	94/05567
CAN	Polyester Staple Fibre , deep dye, in 8 and 16 denier per filament	78/04184
CAN	Polypropylene Carpet Backing , spun bonded, non woven	
CAN	Protector, Carpet , Zepel CSF	
R		
CAN	Release Paper , designed for use in the manufacture of decorative laminates	
CAN	Rim Steel , carbon bar stock, in widths of 10, 9.4375 and 9 inches	79/03794
S		
CAN	Saturating Kraft Paper , unsized, substance of 175 g/m ² or more, designed for use in the manufacture of decorative laminates	
CAN	Sodium Bromide	
CAN	Spandex Yarn , 20 denier	
CAN	Stainless Steel Strip , three ply laminated, consisting of two outer layers of stainless steel enclosing a centre of carbon steel	
CAN	Steel Bands, Plates, Sheets, Strips , not tempered, ground or further manufactured than cut to shape, without identical edges, as used in the manufacture of band or circular saws	
CAN	Steel Plates, Bands, Sheets, Strips , not tempered, ground or further manufactured than cut to shape, without identical edges, as used in the manufacture of band or circular saws	
CAN	Steel, Rim , carbon bar stock, in widths of 10, 9.4375 and 9 inches	79/03794
CAN	Steel Sheets, Strips, Plates, Bands , not tempered, ground or further manufactured than cut to shape, without identical edges, as used in the manufacture of band or circular saws	
CAN	Steel Strip , Stainless, three ply laminated, consisting of two outer layers of stainless steel enclosing a centre of carbon steel	
CAN	Steel Tubing , cold drawn, seamless, as used in the manufacture of diamond drill rods	
CAN	Strip, Nickel Iron Alloy , (Incoloy 800)	72/08602
CAN	Strip, Nickel Iron Alloy , Incoloy 840 Strip, in any of the following sizes: (a) thickness 0.38mm or greater, but not exceeding 0.76mm (b) width 1.27mm or greater, but not exceeding 50.8mm	
CAN	Strips, Plates, Bands, Sheets, Steel , not tempered, ground or further manufactured than cut to shape, without identical edges, as used in the manufacture of band or circular saws	
CAN	Strip, Stainless Steel , three ply laminated, consisting of two outer layers of stainless steel enclosing a centre of carbon steel	

T		
CAN	Terephthalic Acid	69/03358
CAN	Theobromine	
CAN	Tissue Paper , suitable for the manufacture of carbon paper	
CAN	Trevira Polyester Carpet Fibre , type 825, bright petalobel	94/05567
CAN	Tri Cresyl Phosphate , in the gel form	94/05567
CAN	Tubing, Steel , cold drawn, seamless, as used in the manufacture of diamond drill rods	
Y		
CAN	Yarn , Nylon, 10 denier, 7 filament	
CAN	Yarn , Spandex, 20 denier	
Z		
CAN	Zepel CSF Carpet Protector	

RELATED POLICIES AND REFERENCES

Instructions and guidelines – AUSFTA

Instructions and Guidelines – ANZCERTA

Instructions and Guidelines – SAFTA

Instructions and Guidelines - TAFTA

Instructions and Guidelines – ACI-FTA

KEY ROLES AND RESPONSIBILITIES

The policy owner of this Instruction and Guideline is:

Director Valuation and Origin Section

Trade Services Branch

Department of Immigration and Border Protection

CONSULTATION

Industry Consultation

Not required.

Internal Consultation

The following internal stakeholders have been consulted in the development of this Instruction and Guideline:

- Customs Legal Unit
- Customs and Border Protection Compliance Division

