

Exchange of Letters constituting an Agreement with New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement

Background

ANZCERTA

- 2.1 The *Australia New Zealand Closer Economic Relations Trade Agreement* (ANZCERTA)¹ that came into effect in 1983 is one of the world's most comprehensive bilateral free trade agreements. It is now the main instrument governing economic relations between Australia and New Zealand.²
- 2.2 Australia and New Zealand are strongly committed to the integration of their respective economies to create a more favourable climate for trans-Tasman business.³ In addition to ANZCERTA, 28 other

1 The Human Rights Sub Committee of the Joint Standing Committee on Foreign Affairs, Defence and Trade, is currently inquiring into Australia's trade and investment relations under the New Zealand Closer Economic Relations (CER) Trade Agreement.

2 Regulation Impact Statement (RIS), p. 27.

3 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, pp. 32-33.

agreements negotiated between Australia and New Zealand support this economic relationship.⁴

2.3 The objectives of ANZCERTA are to:

- strengthen the broader relationship between the two countries
- develop closer economic relations through a mutually beneficial expansion of free trade between New Zealand and Australia
- eliminate barriers to trade between the countries in a gradual and progressive manner under an agreed timetable and with minimum disruption
- develop trade between the countries under conditions of fair competition.⁵

2.4 ANZCERTA seeks to achieve these objectives through the elimination of tariffs on trade between Australia and New Zealand. Since 1990, all goods that meet ANZCERTA Rules of Origin (ROO) requirements can be traded duty-free between Australia and New Zealand.⁶

Australia's trade relationship with New Zealand

2.5 Trade between Australia and New Zealand has increased at an average of almost 10 per cent per annum since the inception of ANZCERTA. Australia is New Zealand's largest trading partner, providing 23 per cent of its merchandise imports and receiving 21 per cent of its exports.⁷

2.6 New Zealand is Australia's fifth largest trading partner with approximately A\$9.2 billion of Australian merchandise exports in 2004-2005. In 2004-2005, total bilateral merchandise trade was A\$14.4 billion, trade in services was valued at A\$4.7 billion and bilateral investment stood at A\$61.8 billion.⁸

Productivity Commission assessment of ANZCERTA ROO

2.7 Over the last twenty-two years, the context of ANZCERTA has been considerably altered with changes to the Australian and New Zealand economies.⁹

4 NIA Background Information, Political Brief on New Zealand, para. 4.

5 RIS, p. 27.

6 RIS, p. 27.

7 NIA Background Information, Political Brief on New Zealand, para. 5.

8 NIA Background Information, Political Brief on New Zealand, para. 5.

9 RIS, p. 27; Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 33.

- 2.8 Progressive policies of tariff reduction and structural reform have led to changes in the range and types of products manufactured in each country. Changes to industry have led some businesses, particularly in New Zealand, to claim that ANZCERTA ROO act as a barrier to growth and trade.¹⁰
- 2.9 In 2003, following further discussion about possible changes to ANZCERTA with New Zealand, the Australian Government announced that the Productivity Commission would conduct a study into the economic and administrative problems associated with ANZCERTA ROO. New Zealand also conducted its own study into ANZCERTA ROO.¹¹
- 2.10 The Productivity Commission in its study, released in May 2005, on ANZCERTA ROO concluded that it was outdated and constrained trade. The Productivity Commission found that ROO had not kept pace with technological change and the organisation of production, which had the effect of reducing efficiency and increasing economic costs.¹²
- 2.11 In relation to action taken as a result of the findings of the Productivity Commission's report, the Department of Foreign Affairs and Trade informed the Committee:

In light of the [Productivity Commission] report, Australian and New Zealand officials, again, discussed options for updating CER ROO¹³ and, in particular, this time considering the possibility of adopting a change of tariff classification approach. Our recent experience in negotiating FTAs with the US and Thailand confirmed that rules which confer origin through a change of tariff classification are simpler, cheaper and more friendly to business. Australian industry groups were consulted extensively in the development of the proposal and supported it.¹⁴

10 RIS, p. 27.

11 RIS, p. 28.

12 RIS, p. 28; Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 33.

13 Closer Economic Relations Rules of Origin under ANZCERTA

14 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 33.

Purpose of the Agreement

- 2.12 The Amending Agreement¹⁵ will change the method Australia and New Zealand use to determine whether goods imported from the other country meet ROO requirements and whether goods may enter the domestic market duty free.
- 2.13 The Amending Agreement changes the primary method of ROO assessment to a Change of Tariff Classification (CTC) approach with the option of using the existing regional value methodology for a further five-year transition period.¹⁶
- 2.14 CTC approach to ROO benefits Australian Government and business by:
- enhancing transparency
 - simplifying the administration of ROO
 - reducing compliance costs
 - enhancing efficiency and
 - facilitating increased trade.¹⁷
- 2.15 In addition, adoption of the CTC approach to ROO is consistent with ANZCERTA objectives to enhance opportunities for trans-Tasman trade. The CTC also reflects an increasing global trend towards using this ROO type. The CTC will improve consistency between Australia's Free Trade Agreements including the Australia-United States and Thailand-Australia Free Trade Agreements. Further, the Committee was informed that Australian industry supports the CTC approach to ROO.¹⁸

Rules of origin assessment under the current Agreement

- 2.16 The current ROO assessment to determine whether goods may enter Australia and New Zealand duty free involves identifying whether goods have been 'substantially transformed'. Substantial transformation is defined by ANZCERTA ROO as:

15 The full title of the treaty action is: *Exchange of Letters constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983*

16 NIA, para. 2; Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, pp. 35-36.

17 NIA, para. 2; Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 33.

18 NIA, para. 2.

- the last process of manufacture of the goods must take place in Australia or New Zealand (last place of manufacture) and
- at least 50 per cent of the cost of producing the goods is incurred in Australia or New Zealand (ex factory cost method).¹⁹

The change of tariff classification under the Amending Agreement

- 2.17 Amendment to Article 3 of ANZCERTA addresses the issues identified by the Productivity Commission by changing the primary method of determining ROO to a CTC approach.²⁰
- 2.18 Under the CTC approach, substantial transformation is demonstrated when goods undergo a specified change in tariff classification which differs from the original classification of their component materials after production. This is consistent with the World Customs Organization's Harmonized system of Tariff Codes (HS Code).²¹ The HS Code does not specify the way in which CTC occurs, although it may be implicit in the required change of classification. In some cases, processing is specified for products where there is an accepted transformation (such as a chemical reaction) which changes the product, or a standard change of tariff classification would allow minor processing to confer origin.²²
- 2.19 In a limited number of tariff lines (including vehicles, vehicle parts, men's and boys' suits and structured apparel), a secondary requirement of Regional Value Content (RVC) will be applied. The RVC is included where substantial transformation may not result in a change of tariff classification or where it is agreed that a change of tariff classification is insufficient to confer origin.²³
- 2.20 The Amending Agreement provides for a transition and adjustment period between the current and new agreements by allowing the last place of manufacture requirement under the current agreement to continue until 31 December 2011 (or five years from the date of

19 NIA, para. 3.

20 NIA, para. 5.

21 The HS Code used by most customs agencies worldwide (including Australia and New Zealand) is an international system for classifying goods. HS Code is used to classify goods according to specificity of description (ie. where they are best described) and the essential character of the goods. RIS, p. 36.

22 RIS, p. 31.

23 NIA, para. 5; Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, pp. 33-34.

implementation of the Agreement). Until that date, Australia and New Zealand will be obliged to allow imports to enter duty free if the goods meet ROO requirements under either the CTC or ex-factory cost methods.²⁴

- 2.21 The transition period ensures a limit to the potential costs arising from the Amending Agreement by ensuring industry can familiarise itself with the CTC approach to ROO while having recourse to current ROO.²⁵

Entry into force, withdrawal and review

- 2.22 The Amending Agreement will enter into force on the exchange of diplomatic notes.²⁶ The anticipated date of implementation is 1 January 2007. Under the Vienna Convention on the Law of Treaties, either Party may withdraw from the Agreement with the consent of the other Party.²⁷
- 2.23 Australia and New Zealand must complete a review of Article 3 within three years of the Amending Agreement's entry into force.²⁸

Consultation

- 2.24 Relevant consultation about the proposal to adopt a CTC approach and the associated schedule was undertaken with certain Government departments.²⁹ Further, the proposal was promoted on the websites of the Department of Foreign Affairs and Trade and the Department of Agriculture, Fisheries and Forestry. The proposal was also advertised in *The Australian* and the *Australian Financial Review* on 16 and 22 July 2005.³⁰

24 NIA, para. 5; RIS, p. 38; Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 34.

25 RIS, p. 38.

26 NIA, para. 1.

27 NIA, para. 22.

28 NIA, para. 16.

29 The Department of Foreign Affairs and Trade (DFAT), the Department of Industry, Tourism and Resources, Department of Agriculture, Forestry and Fisheries (DAFF) and the Australian Customs Service. NIA Consultation Annex, para. 1.

30 NIA Consultation Annex, para. 1; Mr Hans Saxinger, *Transcript of Evidence*, 8 May 2006, p. 38.

- 2.25 State and Territory Governments were consulted through the Commonwealth – State/Territory Standing Committee on Treaties (SCOT). The Australian Government advised SCOT of past, present and prospective activity, in relation to the Amending Agreement in January 2005, July-August 2005 and February 2006 respectively. SCOT was also advised of the Amending Agreement in September 2004. No requests for further information were received.³¹ As the Agreement does not have any regulatory implications, further consultation with the States and Territories was not required.³²
- 2.26 Australian Industry Groups³³ were consulted during the development of the proposal. Most parties were satisfied that the proposal resolved a number of issues of concern involving the treatment of goods obtaining preferential duty without undergoing substantial transformation.³⁴
- 2.27 Two industry groups were initially opposed to the Agreement: the Federal Chamber of Automotive Industries (FCAI) and the Textile, Clothing and Footwear Industry (TCF).³⁵
- 2.28 FCAI argued that there was not a strong case for change as industry had no difficulty with current ANZCERTA ROO. Further, the change would not really provide additional consistency as the Australia-United States Free Trade Agreement (AUSFTA) and Thailand-Australia Free Trade Agreement (TAFTA) ROO were not harmonised. FCAI requested that if a CTC approach was adopted, that a 50% regional value content requirement be imposed. After further consultation, Ministers agreed that consistent with TAFTA, a RVC of

31 Department of Foreign Affairs and Trade, *Submission 4*, p. 1.

32 NIA Consultation Annex, para. 5.

33 Business and industry groups consulted include: Australian Electrical and Electronic Manufacturers Association, Australian Food and Grocery Council, Australian Industry Group, Australian Plantation Products and Paper Industry Council, Australian Pork Limited, Australian Seafood Industry Council, Australian Wine and Brandy Corporation, Carpet Institute of Australia, Confectionary Manufacturers of Australasia, Council of Textile Fashion Industries of Australia, Dairy Australia, Distilled Spirits Industry Council of Australia, Federal Chamber of Automotive Industries, Federation of Automotive Products Manufacturers, Footwear Manufacturers Association of Australia, Horticulture Australia, National Association of Forest Industries, National Farmers Federation, Plastics and Chemicals Industry Association, Queensland Sugar, Winemakers Federation of Australia.

34 NIA Consultation Annex, para. 2.

35 NIA Consultation Annex, para. 3.

40% should apply to vehicles and vehicle parts under ANZCERTA. New Zealand has no vehicle manufacturing industry and its parts manufacturers are well integrated within the Australian industry.³⁶

- 2.29 The Committee was informed that FCAI is now comfortable with the proposed change to CTC.³⁷
- 2.30 After further consideration, TCF, represented by the Council of Textile Fashion Industries of Australia (TFIA) and the Footwear Manufacturers Association of Australia, agreed to the proposal and requested that no RVC requirements be imposed.³⁸
- 2.31 Manufacturers of men's and boys' suits were opposed to a CTC approach to ROO and argued for the sector to be quarantined from any proposal. After further consideration, they agreed to a CTC approach, subject to secondary RVC requirements being imposed.³⁹
- 2.32 The RVC for men's and boys' suits will have a 50 percent ex-factory cost requirement (reducing to 45 percent in 2010). Most finished textile products have an alternative rule to allow for a more liberal CTC with an RVC of 55 per cent build-down.⁴⁰ CTC in this case would allow for the production of blankets and sheeting from dyed and finished fabrics, which would not normally be considered manufacture.⁴¹

Impact of the Amending Agreement

- 2.33 According to the Regulation Impact Statement, amending ANZCERTA is expected to:

36 NIA Consultation Annex, para. 3.

37 Mr Peter Hooton, *Transcript of Evidence*, 8 May 2006, p. 34.

38 NIA Consultation Annex, para. 4.

39 NIA Consultation Annex, para. 4.

40 The build down method is a formula used to calculate RVC where substantial transformation cannot be defined through product specific rules. In such cases CTC rules are supported by this RVC test. RVC under the Build Down method is determined by subtracting the value of non-originating materials from the adjusted value – the FOB value of the exported product and expressing the remainder as a percentage of adjusted value. Department of Foreign Affairs and Trade, viewed 12 October 2006, www.dfat.gov.au.

41 RIS, p. 38.

- lower compliance costs for businesses attempting to prove conformity with ROO requirements to attain preferential market access
 - reduce incentives for inefficient production processes by business in order to meet ROO requirements
 - improve consistency of treatment and interpretation of ROO by customs agencies in both countries
 - improve consistency between Australia's free trade agreements.⁴²
- 2.34 Approximately 2 per cent or A\$183 million worth of Australia's exports to New Zealand do not enter duty free and face non preferential tariff rates from 5 per cent to 19 per cent. For imports from New Zealand, approximately 2 per cent or A\$106 million do not enter Australia duty-free. The figure of A\$183 million represents the upper limit of current trade potentially affected by the changes to ANZCERTA.⁴³
- 2.35 Exports currently subject to tariffs include: plastics and chemicals, paper and paper products, fabrics, ceramic products, glass and glassware, metals, electrical machinery and equipment.⁴⁴
- 2.36 The Committee received evidence that the compliance costs for CTC ROO are estimated to be far less expensive than the current method.⁴⁵
- 2.37 The Committee was also informed that there is no quantitative data available on the level of trans-Tasman trade that would benefit from the proposed changes as it is unlikely that all trans-Tasman trade currently subject to duty would enter duty-free under the Amending Agreement. In addition, it is not possible to estimate the level of trade foregone by producers who do not export because the tariff differential would make their product uncompetitive and where seeking preferential tariff treatment is considered complex or administratively onerous.⁴⁶

42 RIS, p. 31.

43 RIS, p. 32.

44 RIS, p. 32.

45 RIS, p. 32.

46 RIS, p. 32.

- 2.38 The Committee was informed that the changes to ROO liberalise and where possible maintain current arrangements for the most sensitive areas.⁴⁷

Tariff lines maintaining RVC

- 2.39 In addition to the exceptions (where RVC will continue to apply) of passenger motor vehicles and some clothing and finished textile goods, there will be a limited number of tariff lines covering agricultural and processed food products where an RVC will also apply. For fruit juice, fruit and vegetable preparations, fats and oils an RVC of 40 per cent on a build-down basis or 30 per cent on a build-up⁴⁸ basis, in conjunction with the CTC approach will apply. New Zealand proposed this approach and it is supported by relevant Australian industries.⁴⁹

Impact on competition

- 2.40 Albright and Wilson (Australia) (A&W), a \$100 million chemical company, employing approximately 130 people and Australia's leading surfactant and phosphate supplier provided evidence to the Committee indicating that it was opposed to the CTC approach to ROO under the Amending Agreement. A&W stated that the Amending Agreement will negatively impact on its Yarraville factory operations and could result in the potential loss of 65 jobs.⁵⁰
- 2.41 A&W produces a key component of washing detergents, sodium tripolyphosphate (STPP). A&W exports \$7 million worth of STPP to a New Zealand detergent manufacturer (Unilever Australasia) who then exports the finished detergents packed for retail sale back to Australia.⁵¹
- 2.42 When the Amending Agreement comes into force, A&W has stated that it is likely that the New Zealand detergent manufacturer would source its STPP more cheaply from China (probably purchased at

47 RIS, p. 38.

48 The build-up method is a formula used to calculate RVC where substantial transformation cannot be defined through product specific rules. In such cases CTC rules are supported by this RVC test. RVC under the Build Up method is determined by expressing the value of originating materials as a percentage of the adjusted or FOB value of the exported good. Department of Foreign Affairs and Trade, viewed 12 October 2006, www.dfat.gov.au.

49 RIS, p. 38.

50 A&W, *Submission 6*, p. 1; Mr John Leith, *Transcript of Evidence*, 14 August 2006, p. 29.

51 A&W, *Submission 6*, p. 1.

dumped prices), and the finished products would still qualify for duty free entry into Australia.⁵²

- 2.43 A&W requested that the current RVC method for determining ROO be retained for the tariff line pertaining to its detergent products (3402.20).⁵³
- 2.44 A&W also informed the Committee that it believes that UA is not disadvantaged by current ROO requirements as UA has significant market share and power and so is able to absorb any costs associated with complying with current ROO requirements. A&W stated that the share of the Australian detergent market held by UA has varied over the last five years from between 26 per cent to 34 per cent. There are also two other large producers of detergent in Australia, as well as a number of smaller producers.⁵⁴
- 2.45 A&W stated that the Amending Agreement would have the effect of A&W losing its sales to New Zealand and the flow on effect would be:

... to reduce trade across the Tasman. We will no longer be exporting sodium tripolyphosphate-and this is valued at about \$7 million a year at the moment. It will bring about the closure of our factory at Yarraville and the loss of 65 direct jobs, and of course the loss of further indirect jobs in maintenance, service contractors and so on. It will harm Albright and Wilson (Australia) Ltd's suppliers because they will no longer be supplying raw material to our company-and the larger suppliers include Penrice in South Australia. It would put Australian detergent manufacturers at an unfair disadvantage in comparison to the New Zealand competitor, which would have access to duty free and unfairly priced raw materials from outside the region yet would still benefit, under the proposed rules of origin, from the duty-free access of its products to the Australian market.⁵⁵

52 A&W, *Submission 6*, p. 1; Dr Richard Thwaites, *Transcript of Evidence*, 14 August 2006, p. 30.

53 Tariff line 3402.20 specifically relates to organic surface-active agents (other than soap); surface-active preparations, washing preparations (including auxiliary washing preparations) and cleaning preparations, whether or not containing soap, other than those of heading 3401. A&W, *Submission 6*, p. 1; Mr John Leith, *Transcript of Evidence*, 14 August 2006, p. 29.

54 Dr Richard Thwaites, *Transcript of Evidence*, 14 August 2006, p. 30.

55 Dr Richard Thwaites, *Transcript of Evidence*, 14 August 2006, p. 30.

2.46 In response to A&W's submission, the Committee also received evidence from Unilever Australasia (UA)⁵⁶ (the purchaser of STPP from A&W), a leading global foods, household and personal care products company, and its peak industry organisation the Australian Food and Grocery Council (AFGC) supporting the Amending Agreement.⁵⁷

2.47 UA informed the Committee that its detergent arm had been operating under a financial disadvantage in comparison to its major competitor in relation to the sourcing of STPP as a result of the RVC method for determining ROO under the current ANZCERTA. The disadvantage arises because UA's major competitor manufactures in Australia and New Zealand and UA has only one factory supplying both Australia and New Zealand. As a result UA is subject to the RVC method for its products if it sources its raw materials from a country other than Australia or New Zealand. To balance the requirements under the current ROO under ANZCERTA, UA sources 40 per cent of its STPP from China and 60 per cent from Australia. Of this requirement, UA has stated:

This has lead to a significant financial disadvantage to Unilever, in both countries, with the need to source more expensive STPP from A&W, including unnecessary inefficiencies in our supply chain. Notably we have to utilise two completely different handling systems for the different source of material. The administrative and operational burden faced by our business in constantly monitoring local content levels, along with increased logistical and factory costs have only compounded the impact to our business.⁵⁸

2.48 UA gave evidence to the Committee that it would not be purchasing STPP at 'dumped prices' and that its major competitor currently had access to competitively priced STPP:

Our major competitor at the moment, already has access to competitively priced STPP. There is no question that this product is dumped in Australia. At the moment we are at a

56 Unilever Australasia is the local operating unit of Unilever. Unilever is an Anglo-Dutch company producing: Streets ice creams, Lipton tea, Flora margarine, Continental soups and meal bases, Omo, Surf, Domestos, Jif, Rexona, Dove, Sunsilk, Lux, Lynx and Vaseline. UA, *Submission 7*.

57 UA, *Submission 7* and AFGC, *Submission 8*.

58 UA, *Submission 7*.

disadvantage to Colgate so we are just bringing in a level playing field.⁵⁹

2.49 A&W informed the Committee that at the end of July 2006, UA gave six months notice that it would terminate its contract for STPP with A&W as a result of the change to ROO requirements.⁶⁰

2.50 It was claimed that A&W offered to assist UA logistically in sourcing STPP from China as it was doing for other customers:

A&W then offered to assist us in sourcing Chinese material as they were already doing this for other customers. A&W then went on to offer us their support in logistics services for the importation of the Chinese STPP, in 'bag in box' format, as they had 15 years previous experience in handling STPP using this format and felt they could offer expertise in this area.⁶¹

2.51 UA stated that it would probably source STPP in the future from a different source regardless of the change in CTC approach to ROO:

With future combinations of variable exchange rates, variable ex China material costs and variable ex A&W material costs it is probable we could cease supply from A&W, despite any changes to the RVC methodology. We cannot afford to continue to support uncompetitive local businesses in the face of international competition. This is contrary to the true spirit of the Australia New Zealand Closer Economic Relations Trade Agreement.⁶²

2.52 The Australian Food and Grocery Council supported UA's stance and informed the Committee that:

Australian manufacturers clearly need to be efficient and innovative to remain viable in international and domestic markets. Global companies that have operations in Australia and the surrounding region have increased capacity to source and distribute products through world-wide networks and alliances. This development has been driven by the significant

59 Mr Kieran Anderson, *Transcript of Evidence*, 9 October 2006, p. 8.

60 Mr John Leith, *Transcript of Evidence*, 14 August 2006, p. 31.

61 UA, *Submission 7*; Mr Kieran Anderson, *Transcript of Evidence*, 9 October 2006, p. 10.

62 UA, *Submission 7*.

price squeeze pressures that are placed on our industry. Organisations must be able to take advantage of lowest cost supply and distribution chains to ensure they remain globally competitive.⁶³

- 2.53 A&W has stated that the Amending Agreement will also impact other Australian detergent raw materials manufacturers:

It should be noted that other Australian exporters of detergent raw materials will probably be similarly affected, and local (Australian) producers of detergents will be disadvantaged by the ability of New Zealand competitors to enjoy lower cost inputs and duty free entry into Australia of finished detergent products.⁶⁴

- 2.54 A representative from the Department of Foreign Affairs and Trade (DFAT) informed the Committee that DFAT had consulted widely during negotiation of the Treaty:

In reality, you cannot pick up 100 per cent of industry in these sorts of processes so you do what is best in terms of industry associations, public, media, et cetera. On this occasion, with ANZCERTA, as you mentioned, we did address a number of issues that were raised by various industry sectors, including the auto and TCF industries, and ... some of the beverage and agricultural sectors. So on balance, for ANZCERTA, we covered as widely as we thought was absolutely possible for us. Unfortunately, this company has come to the process late, but we are looking at that sympathetically to see whether we can do something for them. It is not precluded from the changes to the treaty that will go forward; we can do it outside the overall changes.⁶⁵

- 2.55 A&W confirmed that it had received notification of the impending change to ANZCERTA through its industry association.⁶⁶ Its industry association is ACCORD which represents the personal care market.⁶⁷

- 2.56 In response to A&W's submission, the Committee wrote to the Minister for Trade seeking his consideration of the issues raised by A&W. In addition, the Committee sought clarification on whether the

63 AFGC, *Submission 8*.

64 A&W, *Submission 6*, p. 1.

65 Mr Hans Saxinger, *Transcript of Evidence*, 14 August 2006, p. 37.

66 Mr John Leith, *Transcript of Evidence*, 14 August 2006, p. 31.

67 Mr John Leith, *Transcript of Evidence*, 14 August 2006, p. 31.

change to CTC could potentially negatively affect other Australian companies that have trade contracts with New Zealand companies.

- 2.57 In response to A&W's concerns, the Minister for Trade informed the Committee that A&W had also made representations to him and that he had corresponded with the New Zealand Minister for Trade, Mr Goff, who did not accept any changes further to those included in the Amending Agreement:

Mr Goff replied that New Zealand was not in a position to accept the suggestion that the CER ROO for tariff item 3402.20 be negotiated at this stage. Mr Goff highlighted that the negotiations on the new ANZCERTA ROO had been long, complicated and at times sensitive, and had included wide consultations with industry. New Zealand was not fully satisfied with every aspect of the final agreement, but accepted it as a package because the CTC ROO conferred significant benefits on both economies. He noted that one of the key reasons for adopting a CTC-based ROO was to allow manufacturers of finished export products more flexibility to source inputs globally, thus making them more internationally competitive.⁶⁸

- 2.58 In addition, the New Zealand Government informed the Australian Government that the request had implications for extending the implementation date past that of 1 January 2007, which would have a negative impact for business:

Any delay would therefore, have a detrimental impact on firms which had made business decisions, such as investment and purchasing, on the basis of the proposed new ROO.⁶⁹

- 2.59 In view of the New Zealand Government's response, the Minister for Trade stated:

In view of the overall strong benefits of adopting new CTC-based ANZCERTA rules of origin, the advice from the New Zealand Government, and the fact that there is no clear industry view on the request from Albright and Wilson, I believe it is not possible to respond positively to the

68 Minister for Trade, *Submission 10*, p. 3.

69 Minister for Trade, *Submission 10*, p. 3.

company's request to retain exclusively the existing ANZCERTA RVC ROO for tariff item 3402.20.

In am not aware of any other Australian companies with trade contracts in New Zealand that could potentially be negatively affected by the issues raised by Albright and Wilson. As I have said, Australian Industry was consulted extensively during the development of the proposed new ANZCERTA ROO. It is however, not possible to know the individual circumstances of every company in Australia which trades across the Tasman.⁷⁰

- 2.60 The Committee believes it would have been preferable for the issues raised by Albright and Wilson to have been raised much earlier in the negotiation stages as they were in the cases of the automotive industry and men's apparel.
- 2.61 This case highlights how important consultation is for small and medium enterprises. The Committee believes that Austrade should make greater efforts in its pre-negotiation consultation. Albright and Wilson is a large chemical company with significant trade with New Zealand. It should have been consulted on these negotiations. It is important that in negotiations of this nature, Austrade goes beyond the industry associations and ensures that businesses who are likely to be affected are consulted. Austrade has a database of businesses who are engaged in trade and greater effort should have been made to consult businesses involved in trade with New Zealand.

Costs

- 2.62 There will be no financial cost to the Government and compliance costs to industry are expected to decrease.⁷¹

Legislation

- 2.63 The *Customs Act 1901* (Cth) will be amended and new regulations created to implement Australia's obligations under the treaty action.⁷²

70 Minister for Trade, *Submission 10*, p. 3.

71 NIA, para. 18.

72 NIA, para. 17.

Conclusion and recommendation

- 2.64 The Committee acknowledges and understands both the negative and positive implications the CTC approach may have on an individual company as presented by Albright and Wilson (Australia) and Unilever Australasia respectively.
- 2.65 The Committee believes that overall updating ANZCERTA to allow the CTC approach will lead to better economic conditions for the majority of Australian companies to benefit from greater economic efficiency and allow these companies to compete more effectively internationally through the reduction of barriers to trade imposed by existing ROO requirements.
- 2.66 However the Committee is also concerned that a medium size business with significant trans-Tasman trade was unaware of these changes until negotiations were concluded.
- 2.67 The Committee believes it would have been preferable for these issues to be raised during the negotiations so that they could have been included as part of Australia's negotiation position.
- 2.68 On balance, the Committee agrees that the Amending Agreement will increase trade between Australia and New Zealand in a mutually beneficial way and serve to strengthen existing economic ties between the countries.
- 2.69 The Committee believes there should be ongoing negotiation between Australia and New Zealand in order for tariff line 3402.20 to be exempted from the new ROO as was done, for example, for men's suits.

Recommendation 1

The Committee recommends Austrade make greater use of its database of businesses to consult at a business level as was done during the negotiations for AUSFTA.

Recommendation 2

The Committee supports the *Exchange of Letters constituting an Agreement between the Government of Australia and the Government of New Zealand to amend Article 3 of the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) of 28 March 1983* and recommends that binding treaty action be taken.