2009/264

Customs and Excise (Rules of Origin) Amendment Regulations 2009

Anand Satyanand, Governor-General

Order in Council

At Wellington this 21st day of September 2009

Present:
His Excellency the Governor-General in Council

Pursuant to the Customs and Excise Act 1996, His Excellency the Governor-General, acting,—

(a) insofar as these regulations, in accordance with section 65(a)(ii) of the Customs and Excise Act 1996, prescribe goods deemed to be the produce or manufacture of a country or group of countries for the purposes of the Tariff Act 1988, on the recommendation of the Minister of Customs made after consultation with the Minister of Commerce; and

(b) on the advice and with the consent of the Executive Council,—

makes the following regulations.

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Regulations

1 Title

These regulations are the Customs and Excise (Rules of Origin) Amendment Regulations 2009.

2 Commencement

These regulations come into force on 22 October 2009.

3 Principal regulations amended

These regulations amend the Customs and Excise Regulations 1996.

Provisions relating to Australia

4 Interpretation

(1) Paragraph (b)(vi)(G) of the definition of **allowable expenditure**, in relation to overheads, in regulation 32 is revoked.

(2) Paragraph (b) of the definition of **allowable expenditure**, in relation to overheads, in regulation 32 is amended by revoking subparagraphs (vii) to (xx) and substituting the following subparagraphs:

"(vii) the cost of leasing of plant and equipment:

"(viii) the cost of energy, fuel, water, lighting, lubricants, rags, and other materials and supplies not

directly incorporated in goods manufactured in the territory of the exporting party:

"(ix) the cost of storing goods at the place or places in which a process, operated by the principal manufacturer in Australia, is performed:

"(x) 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:

"(xi) the cost of subscriptions to standards institutions, and industry and research associations:

"(xii) the cost of the provision of medical care, cleaning services, cleaning materials and equipment, training materials, and safety and protective clothing and equipment:

"(xiii) the cost of the disposal of non-recyclable waste:

"(xiv) the cost of subsidising a cafeteria in the place or places in which a process, operated by the principal manufacturer in Australia, is performed, to the extent not recovered by financial returns:

"(xv) the cost of security in the place or places in which a process, operated by the principal manufacturer in Australia, is performed:

"(xvi) the cost of computer facilities allocated to the process of manufacture of the goods:

"(xvii) the cost of contracting out, within the territories of either or both parties, part of the manufacturing process, including any associated transport or storage costs:

"(xviii) the cost of employee transport:

"(xix) the cost of vehicle expenses:

"(xx) the cost of any fringe benefits tax or tax of a similar nature:

"(xxi) the cost of transporting goods in Australia between places in which 1 or more processes are performed by, or on behalf of, the principal manufacturer; and".

5 Goods where value of non-originating materials is 10% or less

(1) The heading to regulation 35 is amended by inserting "**that do not satisfy required change in tariff classification**" after "**non-originating materials**".

(2) Regulation 35 is amended by inserting "wholly or" before "partly".

(3) Regulation 35(a) is amended—

(a) by inserting "and that are non-originating materials that do not satisfy a change in tariff classification required by Schedule 7" after "all non-originating materials used or consumed in the production of the goods"; and

(b) by omitting "good" and substituting "goods".

6 Regional value content

Regulation 36(3) is amended by omitting "33(2)(f)(ii)," and substituting "(e)(ii),".

7 Treatment of indirect materials

Regulation 39C(2) is amended by omitting "by the method referred to in regulation 33(2)(f)" and substituting "in accordance with regulation 33(2)(e)".

Provisions relating to Thailand

8 Originating goods

Regulation 51G(3)(a) is amended by inserting "and that do not satisfy a change in tariff classification required in accordance with Schedule 3" after "non-originating materials used in their production".

Provisions relating to Trans-Pacific Strategic Economic Partnership Agreement countries

9 Originating goods

Regulation 51O(3)(a) is amended by inserting "and that do not satisfy a change in tariff classification required by Schedule 5" after "non-originating materials used in their production".

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 22 October 2009, are made under the Customs and Excise Act 1996. They amend Part 6 of the Customs and Excise Regulations 1996. That Part contains "rules of origin" regulations relevant to the determination of the country of produce or manufacture of specified goods or types or classes of goods. The amendments (which affect provisions relating to Australia, Thailand, and Trans-Pacific Strategic Economic Partnership Agreement countries) are for the following purposes:

- to ensure general tolerance provisions in regulations 35(a), 51G(3)(a), and 51O(3)(a) operate as intended (by ensuring goods are taken to originate from a country even though a small amount of imported inputs used in their production do not satisfy a required change in tariff classification, and so continue to be classified under the same tariff heading or subheading as the goods) (*see regulations 5(1) and (3), 8, and 9*):
- to ensure the general tolerance provision relating to Australia in regulation 35 applies to goods even if they are wholly produced from imported inputs (*see regulation 5(2)*):
- to ensure allowable expenditure on overheads, as defined in regulation 32, includes the cost to the principal manufacturer of leasing plant and equipment to process goods in Australia even if that cost is not incurred in respect of real property used, in Australia, in manufacturing the goods (*see regulation 4*):
- to correct and make clearer cross-references in regulations 36(3) and 39C(2) (*see regulations 6 and 7*).

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These regulations are administered by the New Zealand Customs Service.

Wellington, New Zealand:
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