Fisher & Paykel Appliances Limited
78 Springs Road, East Tamaki
PO Box 58546, Greenmount
Auckland, New Zealand

Telephone: +64-9-273 0600
Facsimile: +64-9-273 0609

www.fisherpaykel.co.nz

2nd March 2004

Mr John Cosgrove
Productivity Commission
PO Box 80
Belconnen
ACT 2616
AUSTRALIA

Dear Sir

RE: INTERIM RESEARCH REPORT: RULES OF ORIGIN UNDER THE ANZCERTA

1 INTRODUCTION

1.1 We refer to our submission of 21 November 2003, and now take the opportunity to comment further following the release of the Commission's Interim Research Report.

1.2 In principle, Fisher & Paykel Appliances (F&PA) endorses the Report and wishes to commend the Commission for the thorough nature of its research to date, and the clarity of its Interim Recommendations.

1.3 There are however issues with which we disagree, and other matters where we feel adjustments to the Commission's conclusions and recommendations are justified.

2 CORRECTIONS TO INTERIM RESEARCH REPORT

2.1 On page 85 of the Interim Research Report comments are attributed to F&PA as follows:

> *"Depreciation of capital equipment is also an allowable expense, but Fisher & Paykel found that the fixed depreciation schedules did not reflect the true life of equipment, especially for machines the company makes itself* (pers.com.)".

F&PA wishes to have this paragraph withdrawn from the Final Report, as it does not reflect the company's views.

2.2 We understand that the Australian interpretation of the Rules allows depreciation to be claimed as qualifying expenditure when it is calculated in accordance with generally accepted accounting principles (GAAP). GAAP allows revaluation of plant where the economic life of that plant is extended

3 WAIVER PROPOSAL

3.1 F&PA endorses this recommendation of the Commission provided that the definition of "manufacture" is sufficiently rigorous to ensure that mere trans-shipment of goods through one country to the other does not achieve qualification for preference.

3.2 We note that the Commission has based its 5% tariff differential threshold on its estimate of average trans-shipment costs between Australia and New Zealand. F&PA believes that this is a fair estimation of these costs, and that this can therefore be used to set the differential threshold.

3.3 In our view, the proposal to use the ANZSIC definitions is flawed. These definitions have been formulated for the purposes of collecting trade statistical data, and should not be used for another purpose for which they are not designed.

3.4 An examination of the ANZSIC definition relating to F&PA's range of manufacture demonstrates the inadequacy of the description for purposes of policing preference, and also raises doubts about the enforcibility by the border authorities.

3.5 The relevant ANZSIC definition C285100 (attached) is loosely worded and, in our opinion, does not provide Customs in either Australia or New Zealand with any means of determining or enforcing the requirement for manufacture that is essential to any preference arrangement.

3.6 We suggest that the Commission drafts a new set of proposals to consider the definition of "manufacture" and submits it to interested parties for comment. These proposals could range from adoption of definitions in existing trade agreements (for example, SAFTA) through to an adoption of relevant case law and precedent from both the Australian and New Zealand jurisdictions.

3.7 F&PA endorses the comment made in the Interim Research Report that once the 5% tariff differential threshold is triggered, that waiver is granted permanently.

4 COSTING PROPOSALS

4.1 F&PA notes the Commission's preference for the Transaction Value Build Down (TVBD) method in the event that a content threshold remains.

4.2 We note that such an approach is subject to manipulation depending upon the selling structure into the export market.

4.3 The TVBD method enables preference to be determined on the basis of distribution and other non-manufacturing costs, which seems to be inconsistent with the philosophy of the ANZCERTA which is to grant preferential treatment for goods manufactured or produced in either country.

4.4 The weakness of the TVBD method is that it can be easily manipulated by exporting structures being changed to vary the FOB value. For example, distribution and warranty costs in an export market might be 20% of the purchase price, and if paid for by the country of origin, the FOB will be higher and the threshold will be more easily achieved.

4.5 We reiterate comments made in our earlier submission regarding the *ad valorem* costing approach, viz:

- There is an allowance for interest in qualifying origin, but not dividends. Dividends represent a cost of capital and should be recognised in qualifying content.

- Telephones and international travel costs are not recognised, but should be included as they represent legitimate manufacturing overhead.

5 TREATMENT OF MIXED ORIGIN MATERIALS AND CONTAINERS

5.1 F&PA endorses the Australian approach outlined on pages 68 and 69 of the Interim Research Report.

5.2 F&PA's experience has been that it is not practical to get a full breakdown of costing information from independent suppliers of materials. The Australian approach obviates the need for this information.

6 INTERMEDIATE INPUTS

6.1 One of the incremental amendments noted in the Joint Ministerial Statement of 28 August 2003, was that of "imported intermediate goods".

6.2 Our understanding of this proposal was that the cost of imported componentry not available in either Australia or New Zealand would be completely removed from the "factory or works cost".

6.3 We withheld comment on this proposal pending the release of the Interim Research Report. The Report noted that this issue is being dealt with by Australian and New Zealand officials, and no further analysis was therefore undertaken. F&PA's understanding is that consideration by officials has stalled, and we encourage the Commission to provide its analysis of this matter.

6.4 In our view, the resolution of this issue is important as it will avoid the penalising of manufacturers who are forced to import componentry which is not otherwise available from either Australian or New Zealand manufacturers.

6.5 We acknowledge that an administrative regime is required that will ensure that only qualifying components can be taken into account, and that domestic manufacturers of componentry are not disadvantaged. We reserve the right to comment further on the Commission's proposal.

7 RELEVANCE OF ROO TO ANTI DUMPING PROVISIONS

7.1 Numerous comments were made throughout the Interim Research Report that ROO are only relevant where tariffs exist. This perception overlooks the reality that ROO are also used to determine whether goods traded between Australia and New Zealand are eligible for the exemption from the dumping provisions in each country.

7.2 As tariffs reduce, the dumping regimes in both Australia and New Zealand remain the only mechanism by which F&PA and other manufacturers, can deal with unfairly traded goods.

7.3 Should the waiver proposal be introduced without a rigorous definition of "manufacture", a method would be provided to third country exporters by which anti-dumping measures in place in both Australia and New Zealand could be easily avoided.

7.4 The current anti dumping measures in New Zealand against washing machines and refrigerators from Korea is a case in point. If origin was conferred on the basis of the 5% tariff differential, without a requirement for "manufacture", Korean appliances could be trans-shipped through Australia to New Zealand, thereby avoiding the anti dumping duties.

7.5 We submit that the Final Report makes recognition of this fact and comments accordingly.

8 CONCLUSION

8.1 We are happy to provide any further information or explanation that the Commission may require in order to finalise its Report.

Yours faithfully

John Bongard
Managing Director

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