22 April 2004
Ref: PG/GCC 09-22Ap04

Paul Gretton
A/g Assistant Commissioner
Productivity Commission
PO Box 80
Belconnen ACT 2601.

Dear Paul

## Re: Rules of Origin and the CER Agreement

A few weeks ago I mentioned my interest in the Commission's study into rules of origin (RoO) under the Closer Economic Relations Agreement (CER) between Australia and New Zealand. I had hoped to attend the Commission's roundtable in Canberra on 24 February but that was not possible. When we spoke later, you suggested I consider commenting in writing and that is the purpose of this letter.

My comments will be very brief. In case there is any doubt, let me state that I am commenting on my own behalf, rather than on behalf of my employer, ACIL Tasman Pty Ltd, or any of its clients past or current.

I think the Commission's interim research report offers a useful analysis of the RoO issue both generally and in a specific CER context. It is a mine of information and I would guess that the final report will become a standard reference document on RoO for trade analysts. In addition, the Commission's two suggested approaches to liberalisation are sensible. On the grounds that it will soon cover more goods and will draw officials into fewer judgements, I marginally favour the option of applying a waiver to provide free entry for goods which face small trans-Tasman tariff differences (as does the Commission itself). The other option the Commission proposes (reducing the local content threshold) is less attractive. Local content is not a straightforward thing to estimate, as the paper amply explains.

My real interest in your study relates to my longstanding preoccupation with the phenomenon known as "administered assistance." The term came to be used in the late 1970s and early 1980s, with credit for its popularity mostly going to Mike Finger, the US economist. Early references to administered assistance can be found in the IAC's 1981-82 annual report (Ch 3). The theme was repeated in several subsequent IAC reports and submissions and continues to be an important element, explicitly or implicitly, in explanations of protection policy here and overseas.

RoO can be viewed as forms of administered assistance. By that I mean, essentially, they have the potential to serve as mechanisms which in purely administrative guise, actually

deliver assistance selectively to industries, quietly and without any national interest test. The little Krishna quotation which you include on page 36 of your interim research report captures the issue well:

> "… agents who stand to lose from an FTA can undo its effects without, for the most part, even being seen as doing so" (Krishna 2002, pp6-7)

I also consider the conclusions set out on page 39 of the interim report to be very appropriate.

The features that RoO have in common with other forms of administered assistance, especially certain other Customs measures, are readily identified. Typical of all forms of administered assistance, RoO require technical expertise to apply. That means they are subject to detailed administrative guidelines. Indeed, more detail is often added as time passes in the name of combating undue discretion by administering officials - a tactic bound to backfire to some degree because the extra detail will mean that fewer outside people can afford to master their intricacies. Meanwhile, at Parliamentary level and amongst consumers and producers generally, little is likely to be understood about them. Thus they become non-transparent devices, making them ideal targets of influence and attractive mechanisms for delivering advantage.

I think it would contribute to better public understanding of the role and function of RoO if this perspective on them were presented explicitly in the Commission's final report.

There are plenty of other things to be concerned about with preferential trade agreements, but RoO are less recognised as protectionist elements than they should be.

Yours sincerely

[SIGNED]

Greg Cutbush
(Economist)