Mr John Williams
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Rules of Origin Study
Productivity Commission
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Dear Mr Williams,

Thank you for providing the Council of Textile and Fashion Industries of Australia (TFIA) with a copy of the interim report of the Productivity Commission's research study into the *Rules of Origin under the Australia-New Zealand CER Trade Agreement*. The comments in this letter address several issues covered in the interim report and complements our initial submission to this study.

The report makes six interim recommendations covering the day-to-day operations of the Rules of Origin (RoO), suggested medium term changes and longer-term modifications. As the Commission notes throughout the paper these recommendations will have the largest impact on Textile, Clothing and Footwear (TCF) goods given that many TCF tariffs will stay in place for some time after those on other manufactured goods have been reduced to zero.

The TFIA is supportive of some parts of the report but out-rightly opposes the findings and recommendations of the majority of the report. Adoption of several of the recommendations would clearly place Australian TCF manufacturers at a significant commercial disadvantage. The TFIA believes that an insufficient argument has been made to justify any significant change to the RoO and we have expanded on this in detail to the Commission at the Public Roundtables in both Melbourne and Canberra. While the suggestions in recommendation 1 have merit even these are limited in the benefits they would provide without modification. The TCF Industry has in place a program of tariff reductions and industry assistance – in line with recommendations from the Productivity Commission and subsequent Federal Government announcements – that are potentially undone through the application of some of these recommendations.

It is interesting that throughout the report the Commission notes that the CER RoO is relatively uncomplicated in its operation. Equally, the point is made several times in the report that with tariffs to be phased to zero in a relatively short-time by both Australia and New Zealand the need and reliance on a RVC calculation continues to diminish.

Bringing these sentiments together the TFIA would suggest that they make a strong argument to leave the fundamentals of the CER RoO – significant manufacture and a regional content value rule – in place ahead of the complete removal or harmonization of tariff regimes between Australia and New Zealand. The changes noted in interim recommendation 1 of the report address, in our view, many of the issues raised by stakeholders following the initial call for comments.

The TFIA would also question the Commission on its considerations in the paper, which seem to attribute factors related much more to tariff differences to that of the RoO. On page 36 of the report the Commission makes the following finding:

> "*RoO for industries such as textiles, clothing and footwear and motor vehicles are often complex and restrict trade in these products.*"

The TFIA would contend that it is the differing tariff schedules that effect trade in TCF products and that the CER RoO are far from complex (as the Commission notes several times in the paper).

Equally, page 42 of the report notes:

> "*RoO can have distorting effects on the economic behaviour of businesses in a manner similar to those of tariffs and taxes*".

These two comments seem to set the tone for the remainder of the report, which assesses the RoO as a tariff, and not a system for assessing and determining the origin of a good. The Terms of Reference for the study specifically refer to the RoO not a consideration of the tariffs between Australia and New Zealand and the CER and the rest of the world. The TFIA believes that it is incorrect for the Commission to analyse the RoO in the same way some of its staff would a tariff.

The RoO is one of the key enablers for the agreement to fulfil its purpose of granting preferential entry to the other member or members of the agreement. The Commission seems to suggest that removing or modifying the current operation of RoO will resolve issues of additional costs and higher prices to the end-consumer. It is not the RoO that is doing this but rather the application of tariffs and other government policies that impact prices.

The TFIA also believes that the Commission has not fully addressed all the issues under its Terms of Reference, particularly in regard to those raised by the TFIA in its original submission around duty drawback provisions and the potential flow on effects to the SPARTECA and developing countries agreements also in place.

INTERIM RECOMMENDATIONS

Interim recommendation 1 relates to the day-by-day operation of the RoO and the three proposals under this recommendation receive the TFIA's qualified support. It is critical to note however that all of these must be in place if they are to fully resolve the issues raised by the TFIA and other stakeholders.

The first of these proposals states:

> *"The 'last place of manufacture' requirement be replaced with one based on the 'principal firm', defined as the firm that performs, or has performed on its behalf, the last process of manufacture in the CER region."*

The TFIA acknowledges that through the officials working group New Zealand has recently changed its definition to encapsulate the concept of the 'principal firm' and is aware that the Australian Government will shortly introduce the necessary legislative change to adopt the same approach under the Australian system.

The TFIA would however argue that while this change does address the issues of contracting and outsourcing of work the Commission must be more definitive on what it is recommending here when read in conjunction with the other two proposals under this recommendation. The TFIA would propose that in addition to changing to the principal firm concept, both countries adopt the rules and definitions equivalent to those established under the Australia-Singapore Free Trade Agreement (SAFTA). In addition the principal firm rule must only apply in conjunction with a Regional Value Content (RVC) threshold maintained at 50% of factory cost.

The SAFTA sets out clear requirements for goods to be determined as originating from either Australia or Singapore and reflects the arrangements that would be required by the TFIA and its members to support the proposed change. Article 3 of the RoO chapter of the SAFTA contains details on originating goods. Goods partly manufactured in one of the countries are considered to be of origin provided the following conditions are met (sub point (i) has been omitted as it is not relevant to this point.)

> *"(ii) that in relation to any goods other than those specified in Annex 2C (List of Goods which Must be Subject to the Last Process of Manufacture within the Territory of a Party):*
>
> *(A) one or more processes of manufacture was or were performed in the territory of that Party by, or on behalf of, the principal manufacturer;*
>
> *(B) one or more processes was or were performed in the territory of that Party by, or on behalf of, the principal manufacturer immediately prior to export of the goods to the territory of the other Party;*
>
> *(C) the principal manufacturer in that Party incurred all the costs associated with any process performed in the territory of a non-Party; and*
>
> *(D) the allowable cost to manufacture the goods is not less than the percentage of the total cost to manufacture the goods specified below:*
>
> *(I) 30% for the goods specified in Annex 2D (List of Goods Subject to 30% Threshold); or*
>
> *(II) 50% for all other goods."*

Item D is the critical part for the TFIA (excluded from the Commission's discussion) as it specifies a RVC level that goods must meet. The Commission must be more explicit in noting that such a change to the primary source of the product should be accompanied by a RVC rule. While under SAFTA a separate list of products exists for a lower threshold, the TFIA notes that none are TCF products and it would not support the inclusion of any TCF products on such a list for the CER. However it recognises that other industry sectors may wish to nominate products for a lower threshold.

The second part of Interim Recommendation 1 states:

> *"The valuation and coverage of eligible costs in Australia and New Zealand be aligned to achieve a single set of rules implemented according to uniform practices"*

As noted in our original submission the treatment of eligible and ineligible costs is a considerable concern for our members and this part of the recommendation is strongly supported by the TFIA. In many respects the TFIA would see this as the first issue that needs to be overcome, regardless of the other recommendations, as a failure to address these definitional differences reduces the benefits of the other interim recommendations and as such, it asks that additional emphasis be given to this part of the recommendation.

Failure to do so will continue to see those Australian companies exporting to New Zealand facing tougher requirements than their New Zealand counterparts to meet origin requirements. This will continue regardless of whether it is measured at the manufacturer or 'principal firm'. The TFIA would propose that the Commission suggest a system and process be put in place to address definitional issues ahead of any other recommendations or changes being made to the CER RoO.

The TFIA also seeks clarification from the Commission on the term valuation used in the recommendation. In its discussion ahead of this recommendation it does not clearly outline what it means by valuation. Does this refer to the customs valuation Transaction Value Build-Down (TVBD) approach or the factory cost approach of the current system?

The TFIA would oppose this part of the recommendation if it were the former as this becomes even more susceptible to manipulation and abuse than the current system. The TVBD also requires a new threshold to be determined and could cause companies considerable financial and resource costs to adapt to.

The TFIA opposes the final point of this recommendation and rejects the Commission's contention that the definition of manufacture is only a minor consideration in the context of the study. The definition of manufacture used in the rules of origin is one of the most fundamental parts of an efficient RoO that works to protect both partners in the CER.

The Commission is proposing that the ANZSIC definition of manufacturing be used to determine if an activity is a manufacturing activity. The TFIA has three concerns relating to the use of this system. Firstly, it could allow activities with minimal transformation and value add to be sufficient to meet RoO criteria. Secondly, the ANZSIC system is a statistical classification system that puts activities into one of 17 categories, which make it extremely susceptible to manipulation.

Finally, the ANZSIC system is as the name suggests a construct between Australia and New Zealand and hence its suitability to be replicated into other agreements should Australia wish to do so would be difficult. While there is a relationship between ANZSIC and the Standard International Trade Classification (SITC) numerous differences do exist between the systems. Equally, SITC also being a statistical classification system, experiences the same problems already noted for ANZSIC in terms of defining manufacturing activity.

Given these issues the ANZSIC definition applied alone fails to meet the legitimacy test. For instance the sewing of buttons onto a suit or a shirt is under ANZSIC classified as a manufacturing activity. This is correct and the TFIA is not arguing that it is not, however any reasonable person would acknowledge that the sewing of buttons onto a suit or shirt is hardly a substantial transformation. The purpose of the CER is to allow preference to Australian and New Zealand goods that have a substantial percentage of their manufacturing content built from either country. It is not to benefit third country operators who through a lax definition like ANZSIC could effectively tranship products.

While the TFIA accepts that the retention of a regional value content threshold could prevent the button example above – although as noted in one of the roundtables if the buttons were pure gold it may satisfy 50%; this is of course extremely unlikely –

the ANZSIC does not provide the TFIA nor its members with sufficient confidence that it would prevent transhipment.

The TFIA would argue instead that the most appropriate definition of manufacturing lies again with the SAFTA rules which clearly define what activities can and cannot be classed as manufacture. The TFIA would consider that at a minimum the activities listed in Article 1, Paragraph (g) of the RoO Chapter in the SAFTA be used in the CER. These note:

> *"(g) "manufacture" means the creation of an article essentially different from the matters or substances that go into such manufacture. Manufacture does not include the following activities, performed alone or in combination with each other:*
>
> *i. Restoration or renovation processes such as repairing, reconditioning, overhauling or refurbishing;*
> *ii. Minimal operations such as pressing, labelling, ticketing, packaging and preparation for sale, conducted alone or in combination with one another; or*
> *iii. Quality control inspections;"*

This definition of manufacturing is for the large part in line with that of the New Zealand-Singapore Closer Economic Partnership Agreement, which states:

> *"….last process of manufacture can be best understood by the concept of an article which is different from the component parts or materials."*[1]

The TFIA notes that there are differences between what can and cannot be included in this definition of manufacturing however it would only support adoption of the SAFTA definition in its entirety.

In addition the SAFTA rules put down on paper a large part of what are considered manufacturing activities under the current CER system. Without these rules the Commission's proposal merely makes it easier for companies to manipulate the RoO under the CER.

While discussed in the paper no recommendations are made in respect of compliance monitoring and enforcement of the RoO and these issues become critical should this change be enacted. In recommending a change to the 'principal firm' the Commission must also recommend that sufficient enforcement and monitoring practices be established supported by sufficient Government resources. This would stipulate such things as record keeping requirements and companies reporting obligations.

It would make further sense that the documentation and records required to be kept be the same as those in the SAFTA to ensure consistency for companies and Customs dealing with each agreement.

Interim recommendation 2 relates to the proposed 'Waiver' approach to RoO and is stated as follows:

- *A simple 'waiver' rule be introduced to provide automatic duty free entry to any goods:*
  - *Manufactured within Australia or New Zealand (as defined in recommendation 1 above); and*

[1] Taken from the text of the *Agreement between New Zealand and Singapore on a Closer Economic Partnership*, Annex 1, Section 4 - Additional notes.

- *For which the difference between the Australian and New Zealand Most Favoured Nation (MFN) tariff rate is 5% or less*

In its original submission the TFIA indicated that the current method of determining preferential treatment for goods – final significant process of manufacture and the 50% rule remains the TFIA's preferred option and it maintains this position. As such the TFIA does not support the Commission's proposal to implement a waiver on goods where the MFN tariff difference is 5% or less.

Based on a brief review of the tariff schedules for both New Zealand and Australia the TFIA estimates that under current tariff levels around 60% of TCF items at the eight digit harmonised tariff code level would fall under the waiver. Factoring in the changes to tariff rates due to occur in Australia in 2005 and New Zealand in 2006 this share would move to around 84%. By 2009 the year where tariffs diverge significantly only 45% of products would be subject to the waiver. A rough estimate however of the situation post 2010 would suggest that more than 95%[2] of TCF tariff items would be under the waiver despite many still having significant tariffs to the non-CER world.

The TFIA notes the Commission's underlying presumption for this recommendation is that the cost of trans-shipment would be greater than a 5% tariff differential and therefore not a consideration. This in the TFIA's view is a poor basis on which to make such a recommendation. While it may be true at the macro level the situation could be very different at the individual firm level where bulk cargos minimise all costs including those of trans-shipment.

It is not sufficient to assume that the waiver will work because the cost of compliance and shipment will outweigh the tariff difference. For bulk cargos – as the Commission has noted – it is possible to achieve exceptionally low rates of freight costs. In addition the other problems relating to intermediate inputs and duty drawbacks work to further reduce the costs of producers in one country compared with those in the other country. This appears to have been ignored in the deliberations leading to the recommendation of a waiver approach.

The premise of this recommendation and much of the report is that the RoO are not in the economy's or consumer's best interests as they inflate the final cost of goods to consumers. The TFIA would draw the Commission's attention to its final report into the Review of TCF Assistance where it argued for and recommended the continuation of tariffs for TCF products until 2010 and 2015 for several clothing and finished textile products. Moreover, the Government accepted this reasoning and has implemented a tariff phasing scheme in line with the Commission's recommendations.

In reaching that decision the Commission noted:

> *"In summary, the Commission prefers a reduction to five per cent by 2010 for goods other than apparel and certain finished textiles; a reduction to five per cent by 2015 for those latter goods; with tariff reductions made at the end of each relevant five year period....This would best meet the goal of enhancing overall community welfare while giving the sector time to adjust and minimising the risk of excessive disruption"*[3]

[2] Assuming that the 2006 review of New Zealand tariffs does not recommend that tariffs be increased.
[3] Productivity Commission 2003, *Review of TCF Assistance*, Report No. 26, Canberra. Page 111

Under the proposed waiver approach the Commission is now recommending that TCF products competing with products shipped from New Zealand do not have an entitlement to these tariff adjustments that the Commission has previously judged best meets the goal of enhancing overall community welfare and gives the sector sufficient time to adjust with minimal disruption.

The TFIA would also question the Commissions reasoning that lower prices are better for the community in the CER. While no doubt consumers may receive goods at lower prices the Commission must accept that several companies will cease their operations or significantly scale back staff if ways of manipulating the waiver system are found that allows near completed products from non-CER countries to enter as preferential goods. The Commission should note that in studies conducted in Australia a majority of TCF workers that lose their jobs do not find equivalent re-employment.

A report commissioned by the Victorian Government[4] on the retrenchment experiences of displaced TCF workers found that only 54% of those surveyed had found work and only one in five had found a position broadly commensurate with their former TCF job. The mean time since retrenchment was just over three years.

Likewise the Commission in its final report on the review of TCF assistance noted that labour mobility is low in the TCF sector given that generally TCF workers are older, female and have strong ethnic backgrounds where English is more often than not a second language.[5] Given these factors few workers in either country are likely to move to the other country and even unlikely to move to a different region or locality. Therefore the TFIA asks whether the benefits discussed by the Commission would be as large when higher unemployment and increased unemployment benefits are introduced.

Finally, in respect of this recommendation the waiver approach does not address the issues of intermediate goods or issues around duty drawback. In our initial submission we raised the concern of members that New Zealand producers were able to gain a cost advantage through the purchase of cheaper intermediate and raw material goods due to the differences in the tariff levels between Australia and New Zealand and/or the application of duty drawback.

The waiver would apply only to finished goods and not the materials going into them. As a result the potential cost advantage for New Zealand producers is enhanced placing the Australian industry at a significant disadvantage. This is due to the fact that on a material input the tariff difference in the TCF sector between Australia and New Zealand may be significant such as 10 or 15 percentage points even though the final product may only differ by 5% or less. Clearly the producer in the country that has the lower tariff or access to duty drawback and a larger target export market is at an advantage compared to the producer in the domestic market. The supplementary submission from the Department of Industry, Tourism and Resources clearly illustrates this point in its appendix. The TFIA would refer the Commission to this submission and register its support for the argument presented in that appendix.

[4] Centre for Work and Society in the Global Era, *The Long Goodbye: TCF workers, unemployment and tariff deregulation*, Melbourne, August 2003
[5] Productivity Commission 2003, *Review of TCF Assistance*, Report No. 26, Canberra. Pages 46 - 48

Equally, as the waiver removes the RVC requirement it may be that New Zealand producers buy in near completed product (below the cost of Australia), undertake a process to meet the principal firm rule and export to Australia with no concern on meeting an RVC threshold. This would equate to trans-shipment, an undesirable result for a preferential trade agreement and a further reason to retain the 50% RVC.

Interim recommendation 3 calls for the reduction of the RVC from 50% to 40% immediately, with a further reduction to 30% in 2010. The Commission claims that this timing is in line with proposed tariff reductions and that while some companies may suffer overall the impact of this change in its entirety would not be detrimental to the Australian economy.

The TFIA strongly opposes this recommendation as a either a stand alone approach or in conjunction with Interim recommendation 2. The Council continues to support the retainment of the 50% threshold which continues to provide an adequate level for regional content to reach under the agreement. While the TFIA agrees that a 10% lowering of the threshold would address many of the issues raised in submissions regarding exchange rate movements and costs for instance, this is a soft option that does not address the other problems of the system. Instead it lowers the bar for a range of companies and allows a whole new raft of companies whose products would just miss the 40% threshold to make similar claims as those that have difficulty currently meeting the 50% threshold.

The TFIA would argue that with tariffs in Australia and New Zealand moving to zero in the next decade and therefore, as noted by the Commission, the RVC becoming less relevant that the threshold be left at its current level. The changes noted in interim recommendation 1, incorporating the TFIA's suggestions, would resolve many of the issues for companies without having to reduce the threshold level. Additionally, existing mechanisms in the current rules can be modified to account for exchange rate fluctuations as noted below.

The Commission notes that one of the reasons for reducing the RVC level was due to concerns by stakeholders that exchange rate fluctuations would impact the eligibility of products for the RVC. The TFIA would contend that with the New Zealand dollar appreciating against the United States dollar by around 18%[6] since 1993 the value of imports to New Zealand producers has fallen and as such so too the ineligible portion of their expenditure for RoO. Equally, according to Statistics New Zealand labour costs have risen by around 14% since 1994. Even assuming that some of this rise is classed as ineligible, the local content component accounted for by labour costs would have increased. As such the TFIA does not believe that a straight lowering of the threshold level will comprehensively and efficiently resolve the problems raised by other stakeholders.

Interim Recommendation 4 proposes two longer-term suggestions for the CER RoO:

- *Elimination of the CER content threshold with only a 'principal firm' manufacturing test being applied; and*
- *Alignment of remaining non-zero MFN rates in the Australian and New Zealand tariff schedules, so that ultimately*

[6] Based on figures obtained from the Reserve Bank of New Zealand

> *merchandise from all sources enters each jurisdiction on a common basis.*

As longer term suggestions the TFIA believes these have merit but are outside the Terms of Reference for the Commission and hence of not much use to the report. In the absence of tariffs between Australia, New Zealand and the rest of the world a rule based on the 'principal firm' concept with manufacture defined by the SAFTA text would be sufficient to determine origin for a product. As we noted earlier in the paper the RoO in the CER like in any preferential trade agreement are an enabling mechanism for the Agreement to operate. Thus they must remain in some form under the CER if it is to continue functioning. The key issues for the industry are the timeframe for such a change to occur, and the compliance monitoring and enforcement processes in place to support this system.

Given that tariffs on TCF products are likely to be some of the last tariffs to be reduced in both CER countries the TFIA would seek further information from the Commission on what they consider to be long term in the context of these recommendations. The TFIA would not want TCF tariffs to be prematurely reduced to achieve the aims of the CER agreement and thus different products would require different timeframes to change.

If the Commission intends to retain these recommendations in its final report the TFIA would propose that it be changed to allow the RVC requirement to be removed once MFN tariffs on a product or product range have reached 5% in both Australia and New Zealand leaving only the 'principal firm' rule (with SAFTA changes) as the sole means of determining preferential entry. While this may mean that different sectors and products have different rules there should be minimal cost impact on companies to undertake the change, particularly if the definition of 'principal firm' is already being applied when the 50% RVC threshold is in place. Further, provided the timeframe was clearly noted, companies would be better able to factor in these changes and better manage their resources to meet the change.

The second part of this recommendation doesn't recognise the original intent of the CER agreement as it does not address issues around discounted intermediate goods being accessed in one country and not the other. The discount could arise from a range of different causes including dumping, government assistance programs or other market distortions which artificially lower input prices in one country and not the other. A customs union while removing the potential for trans-shipping of products, doesn't remove the potential for manufacturers in one country to access discounted intermediate inputs to the detriment of producers in the other country either through input dumping or duty drawback.

The issue of intermediate goods was raised in the TFIA's original submission and becomes even more relevant under these proposed changes. Given that under the CER both Australia and New Zealand have given up their right to take dumping action against one another they can only rely upon third country anti-dumping actions. This requires that one country's officials launch a dumping case against an exporter on behalf of a company or companies in the other country and its use to date has been limited.

The existing third country dumping system has become particularly cumbersome and difficult to work in. While not strictly in the Commission's Terms of Reference for this study, the Commission does when discussing this recommendation need to assess how it impacts anti-dumping and other anti-competitive behaviour not addressed by its proposed changes.

PC REQUESTS FOR INFORMATION

In the interim report the Commission sought direct comment on a range of issues. The TFIA indicated in earlier comments to the Commission that it and its members were comfortable with the current operation of the system including the operation of the 2% tolerance level for exceptional circumstances. In the Council's view this provides an adequate allowance to adjust material costs and should not be lowered.

However, like many other stakeholders the TFIA would support changes to the rules governing the allowance to make it more applicable to the modern trading environment. In its current operation a company must apply to the CEO of Customs well ahead of the event occurring to ensure Customs has enough time to process the application[7]. While this may be fine where there are long-term contracts and events are known, many companies often do not have knowledge of these events in sufficient time.

The TFIA would support changes to the legislation to allow the tolerance level to be applied by companies at the time an unexpected event takes place ahead of an application. This would work in much the same way as an anti-dumping or safeguard action where companies seek preliminary duties ahead of a formal decision. Like an anti-dumping measure if the subsequent assessment does not accept the event as eligible the company would be required to redress the Customs service with the appropriate duty.

This change would benefit firms of all sizes but particularly those small and medium sized enterprises who may not have knowledge of all potential events that may impact their markets. To provide more certainty both Governments and stakeholders could develop a list of eligible events that would allow companies to immediately apply the 2% tolerance level, with anything outside this list required to pursue the existing process. The TFIA would propose such things as unexpected plant closures due to natural disasters, industrial action necessitating the use of more imported material and exchange rate fluctuations may be considered under this proposal.

The Commission notes that many submissions commented on the problems of exchange rate variability and meeting the threshold content level. Exchange rates are by their nature volatile and may move up and down significantly in the course of a day or a week therefore the TFIA would contend that special treatment under the allowance rule be given to exchange rate fluctuations. The TFIA would suggest that the Commission consider the potential to set up a range or band for the Australian/New Zealand, Australia/US and New Zealand/US exchange rates based on a ten-year average of the exchange rate.

Should the currency move above this band (say 10% above or below the average) and remain above it for a period of more than two months, companies would be able to apply the tolerance automatically ahead of making a case to Customs. Recognising the impact a currency movement of 10% or more would have on prices

[7] Productivity Commission 2003, *Rules of Origin under the Australia-New Zealand CER Trade Agreement*, Interim Research Report, page 78

and the RVC level the TFIA would support the allowance being increased to 3% but only in respect to exchange rate fluctuations.

This modification may address many of the currency fluctuation concerns stakeholders expressed without the need to lower the RVC. The TFIA would ask that the Commission give this proposal further consideration as a means of addressing stakeholder concerns.

The Commission also sought stakeholder comment on the potential to expand the Determined Manufactured Raw Materials (DMRM) list. As noted in our original submission the TFIA is opposed to any suggestion that would see the DMRM list further expanded or the tolerance level further increased. To open the DMRM listing to incorporate goods partly manufactured in the country works to effectively lower the regional content threshold.

The TFIA maintains that it is also concerned with the process by which products are placed on the DMRM list, particularly those that are subject to policy by-laws. The Council repeats its calls that Customs provide additional time and promote such listings more broadly than they currently do to ensure all firms have an opportunity to respond.

INTERIM REPORT FINDINGS

The interim report while discussing issues around compliance and enforcement makes no findings or recommendations on this. The data used is based on international figures and the information provided by the Australian Customs Service is not sufficiently detailed. The discussion would suggest that the fundamentals of the enforcement system for RoO in the CER are exceptionally weak and need improvement. The TFIA would suggest that the Commission give additional thought to assessing ways and means of improving the monitoring and enforcement aspects of the CER RoO.

The Commission’s interim report also fails to address the implications for South Pacific Trade and Economic Co-operation Agreement (SPARTECA). The Terms of Reference for the study ask the Commission to consider all relevant international developments of which the TFIA would argue the SPARTCA arrangement falls. As noted originally the SPARTECA provides the same mechanism for determining origin. Of all the SPARTECA members Fiji is by far the most critical in terms of TCF.

Adoption of several of the Commission’s recommendations such as the waiver approach or the reduced threshold has a direct impact on the relationship under this agreement. For instance implementing either of these approaches while leaving the SPARTECA arrangements unchanged unfairly discriminates against SPARTECA members.

TFIA and its members strongly believe that that Commission must consider the impact of these proposed changes in respect to the SPARTECA. Should the Commission wish, the TFIA would be more than happy to speak directly with it on this issue and its relationship to the CER.

Thank you again for the opportunity to comment on the interim report. Please contact Ashley Van Krieken or myself if you require additional information or to arrange further discussions.

Yours sincerely,

Tony McDonald
Executive Director

16 March 2004