PLAYING BY
THE RULES

Playing by the rules

While Rules of Origin seem simply enough in principle, as the number of Free Trade Agreements amplifies, so does the problem of compliance. Domini Stuart reports.

It sounds simple enough - Rules of Origin (RoO) determine the country from which goods originate for the purpose of international trade.

Preferential Rules of Origin ensure that only goods from countries with an active trade agreement attract the negotiated benefits, such as reduced rates of duty.

Non-preferential Rules of Origin are not discriminatory, and may be used for the application of tariffs or anti-dumping measures, or to compile trade statistics.

In reality, RoO are almost impenetrably difficult.

“The first thing I would say to anyone dealing with RoO is talk to a broker, an export lawyer or a customs expert,” says Andrew Hudson, a partner in Melbourne legal firm Hunt & Hunt and a specialist in customs and international trade.

“Rules are negotiated individually for every Free Trade Agreement and there’s a great deal of variation in the way they’re structured, often reflecting the political and economic climate. For example, the US is particularly concerned that Asian textiles could get into their country through Australia, so the Free Trade Agreement negotiated recently has a totally separate set of rules for clothing and textiles.

“There are also countries, including Thailand and Singapore, which demand a separate, valid Certificate of Origin for each shipment of goods attracting a preference,” he continues. “You really need to know the precise requirements of each country you export to.”

Where was it *really* made?

It can also be surprisingly difficult to establish exactly where goods are made.

"It's still relatively straightforward if you're exporting bulk items, like coal or sheep," says Hudson, "but modern manufacturing processes make the country of origin a lot harder to assess." So hard that the Australian Chamber of Commerce and Industry is concerned that RoO could become so impenetrable that they actively undermine competitive and merit-based international trade.

How these kinds of issues affect trade between Australia and New Zealand was recently investigated by the Productivity Commission in a research report commissioned by the Federal Government. The Report focused on the RoO under the Australia–New Zealand Closer Economic Relations (CER) agreement.

The current CER RoO state that anything which is wholly produced in Australia or New Zealand is entitled to preferential tariff rates without further conditions. However, goods manufactured in Australia and New Zealand using imported components are only entitled to preferential tariff rates if:

- the 'last process of manufacture' was performed in either Australia or New Zealand; and
- not less than 50 per cent of the factory costs associated with the process (including materials, labour and overheads) were incurred in Australia or New Zealand.

In the world of RoO, these are relatively 'clean' and simple – but they have changed very little since the CER Agreement came into force 20 years ago.

"When the CER was introduced, the 'last place of manufacture' was relatively easy to establish because manufacturing processes tended to be integrated," says a Commission spokesman. "Nowadays, manufacturers are more likely to use specialised production systems relying on contracted-out and commissioned work. That makes it a lot more difficult for them to satisfy the criterion without sacrificing competitiveness."

Many companies are also struggling to achieve the 50 per cent rule. Clothing manufacturers using high-value imported materials find it particularly difficult, and measures to overcome this problem – such increasing local content by using higher-cost or lower-quality inputs – are another threat to staying competitive. Compliance can also vary according to the exchange rate, and other factors beyond their control.

Under consideration

Recommendations outlined in the Research Report include some relatively minor changes aimed at reducing operational problems. There are also more major changes, liberalising the current rules with the intention of reducing compliance costs and improving cost efficiency.

A spokesperson for Australian Trade Minister Mark Vaile confirms that “the Government is consulting with Australian industry and the New Zealand Government about the possibility of changing the basis for determining the RoO under the CER agreement.” One model under consideration is replacing the current value content method with the tariff classification approach. At its simplest, this allows that a substantial transformation has taken place if the finished product has a different tariff classification from that of the elements used in its production – but not all manufacturers are convinced of its value.

Whatever the final outcome, any changes are likely to be felt more keenly in New Zealand than Australia. The value of our exports to New Zealand has risen from less than A$220 million in 1970 to nearly A$8 billion in 2002 but the increase is minimal in terms of our total trade. New Zealand still accounts for little more than 6 per cent of our exports, while 20 per cent of New Zealand’s exports are destined for Australia.

This doesn’t mean we should resist the changes. New Zealand typically occupies a small share of the Australian market for individual products. Competitive pressure on local industries will almost certainly be greater from other exporters such as Asia, the EC and the US.

“We shouldn’t be sidetracked by the CER agreement,” says Dianne Tipping of Power House, a company specializing in international transport, logistics, customs brokerage and consultancy. “New Zealand is not a major market – we should probably be looking more to Asia and the US. For many exporters, there would be more exciting opportunities in these areas.”

Australian Made

Australia’s certification trade mark, a significant marketing tool for exporters, is also facing a challenge. Currently, every product carrying the Australian Made logo must undergo substantial transformation in Australia and incur at least 50% of the production costs here. However, if the logo is to continue as the official mark for Australian Made in global marketplaces, this may need to change.

“The federal Government is supporting a 3 year programme to re-position the logo as an export brand,” says Ian Harrison, Chief Executive of the Australian Made Campaign Limited. “An important part of this is determining how we might vary our criteria to accommodate the various FTAs.”

Maintain a focus

Whichever country or region an exporter may target, RoO need to be taken seriously. Non-compliance with any Free Trade Agreement can attract heavy financial penalties.

The process isn’t likely to get any easier. As the number of trade agreements continues to rise, complexity and compliance costs rise along with them. But, as Andrew Hudson points out, there’s no need to see this as a barrier to trading internationally.

“There’s an awful lot you *don’t* need to worry about,” he says. “Just pick out the bits that apply to your business, focus on your own goods and the demands of your own trading partners – and, of course, listen to the experts.”