

Furnishing industry

Country of origin and the
Trade Practices Act

March 2003



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Important notice

Please note that this guideline is a summary designed to give you the basic information you need. It does not cover the whole of the Trade Practices Act (TPA) and is not a substitute for professional advice.

Moreover, because it avoids legal language wherever possible there may be some generalisations about the application of the TPA. Some of the provisions referred to have exceptions or important qualifications. In most cases, the particular circumstances of the conduct need to be taken into account when determining the application of the TPA to that conduct.

While it refers to other legislation, such as the *Commerce (Trade Descriptions) Act 1905*, the purpose of this guideline is only to outline the relevant principles to country of origin representations under the TPA. Issues and queries arising out of other legislation should be raised with either the relevant government body charged with administering that legislation (in the above example, Customs) or with independent legal advisers.

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Disclaimer

This guide is designed to help the furnishing industry understand the provisions of the *Trade Practices Act 1974* (TPA) that relate to making country of origin representations. It aims to provide businesses and industry groups with information that will help them develop strategies to improve compliance with the TPA.

This paper cannot be relied upon as stating ‘the law’ on country of origin claims.

While this guide reflects the Australian Competition and Consumer Commission’s current views, they may well change as courts make rulings on cases, or government regulations are made or changed. Ultimately, interpretation of the law will always be up to the courts. Prudent businesses will take legal advice to ensure they stay abreast of developments in the law.

This statement of the ACCC’s views also constitutes a statement of its current enforcement policy for country of origin claims.

Private actions

Businesses should be aware that people other than the ACCC (such as competitors or customers) are sometimes able to start private legal proceedings to enforce ss. 52 or 53(a) and 53(eb) of the TPA. The ACCC generally has no say about the types of private actions that might be brought to the courts. Private litigants are not required to take the ACCC’s views, expressed in this publication, into account.

Except in limited circumstances, only the ACCC can institute legal proceedings for criminal offences under Part VC of the TPA, including ss. 75AZC(1)(a) and 75AZC(1)(i).

State and territory laws

The TPA is Commonwealth legislation. State and territory fair trading acts generally mirror the obligations set out in the consumer protection provisions of the TPA, including the general provisions relating to country of origin claims contained in ss. 52, 53(a) and 53(eb) of the TPA. Businesses may, therefore, have obligations under state and/or territory laws in addition to the TPA.

The defences set out in the August 1998 provisions of the TPA (ss. 65AA to 65AN) which only apply to ss. 52 and/or 53(eb) and 75AZC(1)(i) are not, at the time of publication, mirrored in state and territory legislation.

The ACCC understands that state and territory legislation will be amended eventually.

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Introduction and background

Furnishing industry profile

The furnishings manufacturing sector supplies both household and commercial markets. It includes wooden furniture and upholstered seat manufacturing, sheet metal furniture manufacturing and mattresses manufacturing. Also included is some made-up textile manufacturing such as blinds and awnings.

The furnishing industry is dispersed throughout all states and territories. Manufacturers tend to be situated in the established industrial areas of the major cities, particularly in the outer suburbs, and in some of the larger regional centres.

Tariff protection has decreased significantly in this industry over the past 10 years or so, falling from 30 per cent in 1988 to 5 per cent today, encouraging the industry to improve its competitiveness.

The furniture industry is focused on the domestic market for both its inputs and outputs. Domestic inputs comprise 82 per cent of all inputs, and the industry supplies 86 per cent of the goods and services available to the Australian market. About 2 per cent of Australian production is exported.

Value added stands at 37 per cent of production. The industry mainly produces finished goods—80 per cent of available supply is used by households, business and government, with relatively little being used as input by other industries.

Major material inputs are sawmill and other wood products, iron and steel, plastic products, textile fibres, yarns and fabrics, fabricated metal products and paints. Wholesale trade is the major service input.

Turnover in the furnishing industry has seen steady growth of around 4 per cent per year for the period 1996–97 to 1999–2000. Employment has remained level, however, and exports have declined in real terms in the four years to 2000–01.

The growth in R&D expenditure for this industry sector, totalling 50 per cent between 1996–97 and 1999–2000, is encouraging and, in the long term, may go some way to stem the decline in exports with new products tailored to overseas markets.

Background to guide

Following the production, in December 1999, of a guide specifically for the complementary health care industry, the ACCC decided to progressively convene joint working parties in the textile, clothing and footwear (TCF), electrical and whitegoods, food and beverage, furniture and furnishings, and toy industries, to produce guidelines for each industry. The TCF guide was published in December 2001 and the food and beverage guide in August 2002.

Furnishings working party

The ACCC set up and led the furnishings working party. The Furnishing Industry Association of Australia (FIAA) was represented by its national project manager and other key personnel in different capital cities. Government representation also included an officer from the Industry Competitiveness Division of the Department of Industry, Tourism and Resources. The working party visited several furniture and furnishing companies to gain an understanding of industry specific manufacturing processes. These companies are listed at the end of the guide.

Manufacturing processes

Processes in the following manufacturing sectors were considered by the working party:

- Mattresses
- Timber/dining
- Upholstery sofas—fabric
- Upholstery sofas—leather
- Flat panel
- Joinery
- Kitchens
- Commercial seating
- Commercial workstations

Note: Manchester and soft furnishings are included in the TCF guide.



Country of origin claims

Revised provisions for country of origin representations came into effect on 13 August 1998.

A country of origin representation is any labelling, packaging, logo or advertising that makes a statement, claim or implication about which country goods come from.

The most common claims are 'Made in Australia' and 'Product of Australia'—or similar claims about goods from other countries.

Under the TPA it is not mandatory for companies to state where goods are from, but if they do then the claims must be accurate. The revised provisions are therefore not proscriptive but clarify the steps that firms may take to ensure that their country of origin labelling or promotions do not breach the TPA. Sections 65C, D and E provide for the Commonwealth to proscribe product safety and information standards.

Companies may be obliged to state where goods are from under other pieces of legislation such as the *Commerce (Trade Descriptions) Act 1905*. Queries about these requirements should be directed to Customs or independent legal advisers. In addition, the fair trading acts in WA and Queensland require that all furniture manufactured or assembled outside Australia be labelled or conspicuously stamped or embossed with the name of the country and the word 'imported'.

The law

The TPA contains provisions of relevance to country of origin claims made by businesses.

Section 52 provides a general prohibition against conduct that misleads or deceives or is likely to mislead or deceive. Only civil proceedings may be brought for a breach of s. 52.

Section 53(eb) provides a specific prohibition against making a false or misleading representation about the place of origin of goods. (See p. 9 for an explanation of the differences between 'place' of origin and 'country' of origin).

Section 53(a) provides a broad prohibition against making a false representation that goods, among other things, have a particular history.

Sections 75AZC(1)(a) and 75AZC(1)(i), contained in Part VC of the TPA, mirror ss. 53(a) and 53(eb) respectively.

Breaches of ss. 53(a) and 53(eb) give rise to **civil** action. Breaches of ss. 75AZC(1)(a) and 75AZC(1)(i) give rise to **criminal** sanctions.

Sections 53(a) and 75AZC(1)(a) are relevant because a representation as to the country of origin of goods is a representation of the history of those particular goods.

In August 1998 Division 1AA of Part V of the TPA—country of origin representations, ss. 65AA to 65AN, was added. These provisions set out

defences (also called safe harbours) to the prohibitions in ss. 52, 53(eb) and 75AZC(1)(i). This means that where certain tests are met, claims about the origin of goods do not breach ss. 52, and/or 53(eb) or 75AZC(1)(i) of the TPA. These defences are explained below. It is important to note that these defences are not available for proceedings brought under ss. 53(a) or 75AZC(1)(a) of the TPA.

'Made in Australia' defence

The first defence, or safe harbour, is for general country of origin claims that may include:

- Made in ...
- Australian Made
- Manufactured in ...

The defence has two components that must be met:

- the goods must have been substantially transformed in the country claimed to be the origin
- 50 per cent or more of the costs of production must have been carried out in that country.

This defence does not apply to claims that goods are the 'product of' a particular country. These now come under the 'Product of Australia' defence.

Substantial transformation

The provisions define substantial transformation as:

a fundamental change ... in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

Ultimately it is the court's view that is important. The court will usually

arrive at a view on whether a substantial transformation has occurred by considering the average consumer's perspective of any label claim, and whether goods are new or different.

The federal government can make regulations stating that certain changes (i.e. unsophisticated processes) are not considered to be fundamental changes for the purposes of the legislation. Currently there are no such regulations.

Costs of production

The provisions set out how to calculate the cost of production or manufacture of goods. Three broad categories of costs are considered: expenditure on materials, labour and factory overheads.

What does that mean?

Generally, costs of materials are straightforward to calculate. They can be allocated to the final goods fairly easily. But labour and overheads count towards costs only where they can reasonably be allocated to the final goods.

Under the law the government can make regulations to allow or disallow certain costs from being counted towards production and manufacturing costs. Currently there are no such regulations.

The ACCC will, however, accept the 50 per cent rule criteria contained in the attached edited extract from ANZCERTA (as at June 2001) joint Australia/New Zealand Customs information booklet on *Rules governing entitlement to preferential rates of duty for trans-Tasman trade*.

'Product of Australia' defence

'Product of ...' is the premium claim about a good's origin.

The defence, or safe harbour, for claims that a good is a product of a certain country is more demanding than the 'Made in Australia' defence.

For goods to qualify, two rigorous criteria must be met:

- the country of the claim must be the country of origin of each significant ingredient or significant component of the goods
- all, or virtually all, processes involved in the production or manufacture must have happened in that country.

These criteria apply to any variations of the words 'product of', such as 'produce of' and 'produced in'.

Logos

Logos are frequently used to promote goods to build brand recognition, or to associate the goods with desirable characteristics that may include their origin.

The law allows for a country of origin logo or logos to be prescribed by regulation. A prescribed logo will signify that both substantial transformation and a certain percentage of costs (above 50 per cent) of producing the goods occurred in a given country. No regulations have yet been made to prescribe any logos.

What if you don't want to use a safe harbour?

In circumstances where a product cannot meet the requirements of the 'Product of ...' or 'Made in ...' defences, a qualified claim that implies a lesser connection with the country represented may be used. Examples might be 'Packaged in Australia', 'Assembled in Australia', 'Australian Owned' or 'Made/Manufactured in Australia from imported fabric'.

If goods do not qualify for the defences, claims made about country of origin will be assessed on their merits. Manufacturers then run the risk of challenge and potential legal action by the ACCC or any person who is able to commence private legal action.

Place of origin claims

Sections 53(eb) and 75AZC(1)(i) refer to 'place of origin' claims. 'Country of origin' claims are a subset, and are distinct from place claims.

A place of origin claim can be that a good originates from a narrower or more localised region than a country. For instance, 'Made in Melbourne' or 'Product of Tasmania'.

All false and misleading claims about the place of origin are prohibited by ss. 53(eb) and 75AZC(1)(i). If the claim is place only, and not also a country of origin claim, the August 1998 changes do not affect it. Place only claims will be assessed on their merits. They may also use the qualified claims that might imply a lesser connection with the place, such as 'Assembled in Melbourne' or 'From Tasmanian Timber'.

The August 1998 Part V Division 1AA defences—the safe harbours—specifically relate only to country of origin claims.

Issues raised by the industry

Made in Australia

Manufacturing processes and substantial transformation

As stated earlier the TPA provisions define substantial transformation as:

a fundamental change ... in form, appearance or nature such that the goods existing after the change are new and different goods from those existing before the change.

Furnishing manufacture requires the application of several processing steps and results in some form of transformation.

Although it is not possible to outline in detail the processes applied to each and every type of furnishing, listed below is a brief description of a number of individual processes. These may be combined in different

ways and at different stages in the overall processing to prepare furnishings for delivery to the retailer. While a single manufacturing process may not result in substantial transformation, several processes in combination may produce substantial transformation.

The following categorisation of processes is intended to provide guidance to companies in assessing the origin claims they can make about their products. It reflects a considered assessment by the ACCC, with industry advice, of the likelihood of the process to satisfy the substantial transformation test. However, whether or not these processes impart substantial transformation is ultimately decided by the courts.

Companies also need to recognise that acceptability of an origin claim must also satisfy the local production cost test (50 per cent for 'made in'). While substantial transformation may be achieved by a process, unless the local production cost test is also satisfied an unqualified 'made in' claim cannot be made.

Manufacturing processes—timber and wood panel furniture

(1) Primary machining

- a. Dock to length, cut to size components or mould (shape) from sawn timber or panel feedstock
- b. Sub-assemble wide (solid) panels, frames etc., edge composite panels
- c. Machine detailed joints, bore for hardware (hinges, connectors)
- d. Machine sand components.

(2) Assembly

- a. Pick components for assembly
- b. Fit connectors, hinges etc., and assemble, gluing as required
- c. Clean and final sand.

- (3) **Polishing**
 - a. Inspect and remove all dust
 - b. Apply sealer coat and/or stain
 - d. Check for imperfections and fill as required
 - e. Sand and apply top-coat(s).
- (4) **Upholstery**—seat and back as applicable.
- (5) **Fit-up**
 - a. Inspect and fit
 - i. Hardware (catches, handles and knobs, shelves etc.)
 - ii. Fit mirrors and glass
 - b. Check and adjust
 - c. Label
 - d. Pack and prepare for dispatch.

Step (1)a–d is considered to constitute the principle elements of substantial transformation (ST) for this category. Steps (2) to (5)b add to or supplement the substantial transformation but do not constitute substantial transformation on their own.

Manufacturing processes—upholstered furniture (lounges)

- (1) **Frames**

Generally as per timber furniture parts (1) and (2) and can be manufactured in-house or sourced externally. Note: manufacture of a frame does not constitute substantial transformation on its own.
- (2) **Cutting**
 - a. Cut fabric to pattern
 - b. Cut lining.

(3) **Sewing**

- a. Sew covers, adding trims, piping and reinforcing as required
- b. Ditto for cushions.

(4) **Upholstery**

- a. Prepare frame
 - i. Fit springing and suspension (incl. sofa or recliner mechanisms)
 - ii. Fit interlinings, hessian etc.
 - iii. Fit foam and/or other filling
- b. Cover frame, including linings
- c. Fit loose cushions, slip covers and other fittings if applicable
- d. Label
- e. Fit protective fittings and cover (plastic).

Steps (2) to (4)c are considered to be the principle elements of substantial transformation for this category.

Manufacturing processes—mattresses and bases

(1) **Foundation**

- a. Form surround and springing from wire or similar
- b. Manufacture timber base frame (if applicable)
 - i. Dock to length, cut to size components or mould (shape) from sawn timber or panel feedstock
 - ii. Sub-assemble frames and fit hardware.

Note: Foundations (box springs or similar) and base frames can be manufactured in-house or sourced externally. Manufacture of these components does not constitute substantial transformation on their own.

(2) Cutting

- a. Cut ticking to pattern
- b. Cut linings and other internal materials.

(3) Sewing

- a. Sew covering, adding trims, piping, vents, handles and reinforcing as required.

(4) Assembly

- a. Prepare foundation
 - i. Fit internal trims and fittings
 - ii. Fit interlinings, hessian, comfort layers etc.
- b. Fit ticking sewing etc. as required
- c. Label
- d. Fit protective fittings, pack legs and/or castors and protective cover (plastic).

Steps (2) to (4)b are considered to constitute the principle elements of substantial transformation for this category.

It should be remembered that the process of substantial transformation does not, of itself, enable furnishings to meet the 'Made in' defence. The test of 50 per cent or more of the costs of production must also be met.

Minimum 50 per cent production cost

Specifically the following provisions would apply:

- All inputs into the manufacturing process (other than those materials treated as overheads) are to be treated as materials entering that process.

- Qualifying expenditure on materials is 100 per cent when the material is an unmanufactured raw product of Australia, e.g. timber.

Subject to later qualifications, the following overhead costs associated with manufacturing functions may form part of qualifying expenditure:

energy, fuel, water, lighting, lubricants, rags and other materials and supplies not directly incorporated in manufactured goods.

To the extent that any of the listed costs:

- are incurred by the manufacturer of the goods
- relate directly or indirectly to the production of the goods
- can reasonably be allocated to the production of the goods
- are not specifically excluded (see exclusions under overhead) and
- are not included elsewhere, e.g. under overhead

they may be included, in whole or in part, within qualifying expenditure. In other words no cost, like water, may be taken into account more than once.

Qualified claims

Businesses unable or unwilling to make an unequivocal claim of 'Made in Australia' for their product may wish to consider making a qualified claim.

A qualified claim gives more information than the general claim. For example, 'Made in Australia' is an unqualified claim, while 'Made in Australia from local and imported materials' is a qualified claim. A qualified claim may have several levels of qualification like 'Made from a blend of local and imported materials subject to availability'.

Care must be taken to ensure the contents of the products correspond with the claims made in the packaging of the products.

National enforcement

The Trade Practices Act does **not** require you to make an origin claim. However, if you do, it must be accurate and correct.

On the other hand the fair trading regulations in Queensland and Western Australia mandate origin labelling as follows.

Queensland

Fair Trading Regulation 2001 prescribes information standards for textile goods, leather goods products, shoes, furniture and cosmetics.

Section 7 required that **furniture, other than custom-made furniture**, must be permanently stamped, embossed or labelled with the following information.

- If furniture is manufactured or assembled entirely or partly in Australia, it must have
 - the name of the manufacturer or assembler and
 - the address at which the furniture was manufactured or assembled.

- If the furniture is manufactured or assembled entirely or partly in a country outside Australia, it must have
 - the name of the country and
 - the word 'imported'.

Western Australia

The Fair Trading (Furniture–Product Quality Standard) Regulations 1988 set out requirements for the stamping and labelling of furniture.

More specifically, section 4 declares that where any furniture **imported** into the state for the purpose of sale is:

- (a) fully assembled when imported or
- (b) intended to be sold in unassembled form

the importer, consignee or buyer for the purpose of resale shall, within 48 hours after the furniture first comes into his possession, cause to be affixed to the furniture a stamp or label containing the expression 'Made in ...' followed by the name of the **country of origin** and the words 'Imported by ...'.

When the furniture is imported in unassembled form for the purpose of being assembled in the state before sale, in addition to 'Made in (country of origin)', the product must be stamped or labelled with 'Assembled by ...' followed by the name and address of the person assembling the furniture (section 5).

Section 3 requires that a **person who in the state manufactures or prepares**, either wholly or partly, any furniture for the purpose of sale shall cause to be affixed to the furniture a stamp or label containing the expression 'Made by...' and the address or **place** where the furniture was manufactured or prepared.

Sections 6, 7, 8 and 9 provide requirements regarding the size, visibility, location and the manner of affixing the stamp or label.

Commonwealth

As stated earlier, ss. 65C, D and E of the TPA provide for the Commonwealth to proscribe product safety and information standards. Examples on the ACCC's website relevant to the furnishing industry include safety standards in respect of household cots and an information standard on care labelling of clothing and textile products.

Also, the Customs-administered *Commerce (Trade Descriptions) Act 1905* and the *Commerce (Imports) Regulations 1940* require imported 'textile products ...' and 'goods made from leather or a material resembling leather' to have and maintain origin labelling. The *Commerce (Trade Descriptions) Act* and *Regulations* are currently under review.

The ACCC has previously agreed that claims such as 'Made in Australia from local and imported materials' do **not** have to use or meet in full the requirements for the substantial transformation and 50 per cent production cost defences. It also encourages the use of qualified claims

when the extra information provided is accurate, relevant and useful and does not give a false or misleading impression. For example, where the imported content of a product is greater than the local content, the label claim should read e.g. 'Made in Australia from imported and local materials' or where the local content is greater, 'Made in Australia from local and imported materials'.

For claims with several levels of qualification like 'Made from a blend of quality local and imported materials subject to availability', it is the ACCC's view that the qualifier 'subject to availability' means that:

- the relative proportions of local and imported materials depend on the availability of local and imported materials and not other factors including price
- the manufacturer as far as possible uses local materials when local materials are available
- the manufacturer is not absolved from having to include both local and imported materials at all times. Relative proportions may vary from time to time but there must be a substantial local content at all times.

Industry

The Furnishing Industry Association of Australia (FIAA) is developing an industry code of conduct which will contain enforcement provisions. Until the code is put into effect, the FIAA would prefer to see firms in the industry using an incremental approach to disputes including:

- direct discussion with the other firm
- mediation by the FIAA
- referral by the FIAA to the appropriate state/territory or Commonwealth regulatory agency.

Product of Australia

Eligibility to use the premium claim of 'Product of Australia' is not well understood but is not a big issue in the industry which prefers the 'Made in Australia' claim. However, there is still some uncertainty regarding the tests for this defence, particularly the first one: 'each significant ingredient (or component) of the good must originate from the country of the claim'.

The question of 'significant ingredient' or 'significant component' is not necessarily related to the percentage that the ingredient makes up of the good in question. In the explanatory memorandum to the amending legislation, the following example was given:

... for an apple and cranberry juice to be able to carry a 'produce of Australia' label, both the apple and the cranberry juice would have to be sourced from Australia. This is despite the cranberry juice being, on average, about 5 per cent of the total volume of the product. If, however, a local source can be found for the apple juice and the cranberry juice then it would be legitimate to employ a 'product of Australia' label, even if, say, a preservative was added to the juice and the preservative was imported. This is because the preservative does not go to the nature of the good.

This would make claims of 'Product of Australia' difficult to sustain for any product with a significant imported ingredient or component. This may be particularly relevant to a number of furnishing products. For example, any furnishing product that depended on an imported component or material for its specific nature would not be eligible for the 'Product of Australia' defence. However, it is unlikely that drawer runners or hinges would be classified as significant.

Furnishings are often complex products. They may undergo a series of processes and may require a range of components and materials. The processing may be carried out at different locations, even overseas, and the components/materials may also come from different sources. If any processing locations or sources of components/materials are not in Australia, it would be difficult to justify using the 'Product of Australia' claim.

General

Misleading and deceptive conduct

There is no definitive description of what may constitute misleading and deceptive conduct in the furnishing industry. Common sense is the most important guide. The general rule of thumb for manufacturers and importers should be to consider taking steps to eliminate doubt or confusion about the origin of furniture that they are manufacturing or importing. The manufacturer or importer should put themselves in the consumer's shoes and ask the question: If I were purchasing this furniture could I be misled or deceived by the labelling or lack of labelling?

Example 1

An Australian manufacturer produces furniture in the 'Italian style'. The manufacturer then wishes to evoke the imagery associated with the style by, for example:

- describing the furniture range as the 'Roma', 'Gondola' or 'Da Vinci'
- colouring the label in the red, white and green colours associated with the Italian flag or
- describing the furniture as 'Italian style'.

Example 2

A foreign manufacturer produces furniture in an Australian style. An importer may wish to evoke the imagery associated with the style by, for example:

- describing the furniture range as the 'Sydney', 'Drover' or 'Ned Kelly'
- colouring the label in the blue background and white stars associated with the Australian flag or
- describing the furniture as 'Australian Style'.

Example 3

A furniture manufacturer advertises the fact that it produces furniture out of a wood whose name is associated with a country other than the country of manufacture:

- an Australian manufacturer advertises furniture made from New Zealand pine
- an importer of Chinese furniture advertises furniture made from Victorian ash.

None of the above actions by themselves may constitute misleading or deceptive conduct. However, any combination of the above may be misleading or deceptive especially in conjunction with any other imagery invoking a country other than that of the country of manufacture.

In all the above examples the best practice for a manufacturer or importer is to avoid any possible unintended misleading or deceptive conduct by voluntarily taking the step of clearly labelling the furniture with appropriate country of origin information.

Silence

In some circumstances failure to disclose important information can be misleading. If the overall impression is misleading in any way, then more information needs to be provided or the representation needs to be made clearer. The misleading impression must be corrected at the same time and with the same impact as the initial representation. While there is no general duty of disclosure in the TPA, including origin claims, it is up to a business to make sure that the combination of what is said and what is left unsaid does not give consumers the wrong overall impression.

Internet assistance

On its website at < <http://www.accc.gov.au> > the ACCC has a country of origin page with an interactive question and answer segment that will provide an email response within 48 hours to any issues or queries not already covered there or in this guide.

Other relevant websites are at:

- Customs for rules of origin covering imports at < <http://www.customs.gov.au> > and
- Industry, Tourism and Resources at < <http://www.industry.gov.au/labelling> > .

Companies inspected

For the working party's terms of reference it was agreed that a representative range of the industry's manufacturing processes would be inspected to help determine if they would satisfy the tests relating to country of origin representations. The FIAA arranged the following program of visits.

New South Wales

Fantastic Lounge Factory, upholstery lounges
Premier Furniture, commercial/office furniture
Casco Displays, dining suites
AH Beard, mattresses and bases

Victoria

Coringle Furniture, bedroom and small/home office furniture
Davis Furniture, dining and occasional furniture
RC Roberts, bedroom suites
Eaststyle Australia, upholstery lounges
Molmic Furniture, upholstery lounges
Schiavello Commercial Interiors, commercial/office furniture
Eagle Remac, bedroom and dining suites
Wentworth Furniture, bedroom suites

South Australia

Design Furniture Co, upholstery lounges

Lanfranco Furniture, upholstery lounges

Pfitzner Furniture, dining suites

Queensland

Janda Furniture, upholstery lounges

Pesha Furniture, dining suites

Sealy of Australia, mattresses and bases

Stockman Furniture, dining suites

Western Australia

Clarecraft Industries, outdoor furniture

Stuart's House of Bedding, mattresses and bases

Burgtec Australasia, commercial/office furniture

Southland Furniture, bedroom suites

Attachment

Edited extract from ANZCERTA as at June 2001

Joint Australia/New Zealand Customs information booklet, *Rules governing entitlement to preferential rate of duty for trans-Tasman trade.*

The 50% rule-criteria

What is the setting for the 50% and who must incur it?

The scheme of current Australian legislation is built around 'the factory' which is defined as the place where the last process in the manufacture of the goods was performed. It is important to understand that the manufacturer is defined as the person undertaking the last process in the manufacture of the goods. Manufacture of the goods must take place in Australia. When put together, the significance of these concepts is that:

- all inputs into the manufacturing process (other than those materials treated as overheads) are to be treated as materials entering that process
- all expenditure forming part of the 50% requirement must be incurred by the manufacturer of the goods.

Another important aspect of the 50% calculation is that no cost may be taken into account more than once.

How is the 50% calculated?

The 50 per cent rule is a value added test and is based on the formula:

$$\frac{\text{qualifying expenditure (Q/E)}}{\text{factory cost (F/C)}} \%$$

Q/E = Qualifying expenditure on materials + qualifying labour and overhead (includes inner containers)

F/C = Total expenditure on materials + qualifying labour and overhead (includes inner containers)

The elements of factory cost vis. material, labour and overhead and inner containers are dealt with next.

Elements of the 50%

Materials

Total expenditure on materials includes all directly attributable costs of acquisition into the manufacturer's store.

This will **include**:

- the purchase price
- overseas freight and insurance
- port and clearance charges
- inward transport to store

but **excludes**:

- customs duty
- anti-dumping or countervailing duty
- excise duty

- sales tax
- goods and services tax

incurred by the manufacturer in Australia.

Where materials:

- are provided free of charge or at a cost which is found to be more or less than normal market value
- are added or attached to goods to artificially raise qualifying expenditure

the ACCC may determine a value which will apply.

Qualifying expenditure on materials

Qualifying expenditure on materials is 100% where:

- the material is an unmanufactured raw product of Australia or
- the material is wholly manufactured in Australia from the unmanufactured raw products of this country.

Materials of mixed origin

These are materials which incorporate both imported and Australian content. Australia treats materials of mixed origin which reach 50% or more local content as 100% qualifying materials. Australia calculates the percentage of local content as the sale price of the material minus the imported content.

The following example illustrates the Australian outcome where the 50% local content is not reached:

	\$
(a) Cost of imported materials	150
(b) Cost of materials manufactured in Australia	20
(c) Labour and factory overhead for manufacture of materials	30
(d) Total factory cost of materials	200
(e) Other overhead and profit	50
(f) Selling price of material to factory	250

Qualifying expenditure on materials

Australian goods exported

Qualifying expenditure (b+ c) = \$50

Qualifying expenditure/total factory cost (d) = $\$50/\$200 = 25\%$

Qualifying expenditure on materials = 25% of f ($\$250$) = $\$62.50$

Materials recovered from waste and scrap

Australia has agreed to the following interpretation of this provision.

Thus, expenditure:

- on waste and scrap resulting from manufacturing or processing operations in Australia and
- on used articles collected in Australia, which are fit only for the recovery of raw materials, shall be treated as qualifying expenditure on materials used in manufacture of goods.

Inner containers

Inner containers includes any container or containers into which any finished goods are packed other than pallets, containers or similar articles which are used by carriers for cargo conveyancing.

Australia treats materials for inner containers in the same manner as any other materials. The effect of this is that where there is less than 50% Australian content, Australia may allow some qualifying expenditure.

Labour

Labour costs associated with the following functions may form part of qualifying expenditure:

- manufacturing wages and employee benefits
- supervision and training
- management of the process of manufacture
- receipt and storage of materials
- quality control
- packing goods into inner containers
- handling and storage of goods within the factory.

To the extent that any of the listed costs:

- are incurred by the manufacturer of the goods
- relate directly or indirectly to the production of the goods
- can reasonably be allocated to the production of the goods
- are not specifically excluded (see exclusions under Overhead below) and
- are not included elsewhere e.g., under Overhead

they may be included, in whole or in part, within qualifying expenditure.

Overhead

Subject to later qualifications, the following overhead costs associated with manufacturing functions **may form part of qualifying expenditure**:

- inspection and testing of materials and the goods
- insurance of the following kinds:
 - plant, equipment and materials used in the production of the goods
 - work-in-progress and finished goods
 - liability
 - accident compensation
 - consequential loss from accident to plant and equipment
- dies, moulds, tooling and the depreciation, maintenance and repair of plant and equipment
- interest payments for plant and equipment
- research, development, design and engineering
- the following real property items used in the production of the goods:
 - insurance
 - rent and leasing
 - mortgage interest
 - depreciation on buildings
 - maintenance and repair
 - rates and taxes
 - leasing of plant and equipment
- energy, fuel, water, lighting, lubricants, rags and other materials and supplies not directly incorporated in manufactured goods
- storage of goods at the factory

- 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
- subscriptions to standards institutions and industry and research associations
- the provision of medical care, cleaning services, cleaning materials and equipment, training materials and safety and protective clothing and equipment
- the disposal of non-recyclable waste
- subsidisation of a factory cafeteria to the extent not covered by returns
- factory security
- computer facilities allocated to the process of manufacture of the goods
- the contracting out of part of the manufacturing process within Australia
- employee transport
- vehicle expenses
- any tax in the nature of a fringe benefits tax.

NOTE: The cost of any depreciation must be worked out in accordance with generally accepted accounting principles applied by the manufacturer.

To the extent that any of the costs included in qualifying expenditure:

- are incurred by the manufacturer of the goods
- relate directly or indirectly to the production of the goods
- can reasonably be allocated to the production of the goods
- are not specifically excluded (see below) and
- are not included elsewhere for e.g. under Labour

they may be included, in whole or in part, within qualifying expenditure.

The following costs are specifically excluded as qualifying expenditure:

- any cost or expense relating to the general expense of doing business (including, but not limited to, any cost or expense relating to insurance or to executive, financial, sales, advertising, marketing, accounting or legal services)
- telephone, mail and other means of communication
- international travel expenses including fares and accommodation
- the following items in respect of real property used by persons carrying out administrative functions:
 - insurance
 - rent and leasing
 - mortgage interest
 - depreciation on buildings
 - maintenance and repair
 - rates and taxes
- conveying, insuring or shipping goods after manufacture
- shipping containers or packing the goods into shipping containers
- any royalty payment relating to a licensing agreement to distribute or sell the goods
- the manufacturer's profit and the profit or remuneration of any trader, agent, broker or other person dealing in the goods after manufacture
- any other cost incurred after the completion of manufacture of the goods.



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