



THE CUSTOMS REGULATIONS 1968, AMENDMENT NO. 36

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 19th day of December 1994

Present:

THE HON. DOUG KIDD PRESIDING IN COUNCIL

PURSUANT to sections 148 and 306 of the Customs Act 1966, Her Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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Provisions Relating to Forum Island Countries

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- 72CD. Qualifying inner containers
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- 4. Calculation of factory or works cost
- 5. Goods entering into commerce of another country
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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Customs Regulations 1968, Amendment No. 36, and shall be read together with and deemed part of the Customs Regulations 1968* (hereinafter referred to as the principal regulations).

(2) These regulations shall come into force on the 28th day after the date of their notification in the *Gazette*.

2. Grouping of countries—(1) Regulation 69(1) of the principal regulations (as substituted by regulation 8(1) of the Customs Regulations 1968, Amendment No. 13 and as amended by regulation 5(1) of the Customs Regulations 1968, Amendment No. 16) is hereby amended by omitting the expression “70, 71, 72, 72A, 72B, and 72c”, and substituting the expression “70 to 72CG”.

(2) Regulation 69(1) of the principal regulations (as substituted by regulation 8(1) of the Customs Regulations 1968, Amendment No. 13) is hereby amended by revoking paragraph (f) (as added by regulation 5(2) of the Customs Regulations 1968, Amendment No. 16), and substituting the following paragraph:

“(f) Group VI: Forum Island Countries, the produce or manufacture of which are entitled to be entered under the Tariff in accordance with paragraph (e) of section 7(1) of the Tariff Act 1988.”

3. New heading and regulations substituted—(1) The principal regulations are hereby amended by revoking regulation 72c (as substituted by regulation 6 of the Customs Regulations 1968, Amendment No. 16), and substituting the following heading and regulations:

“Provisions Relating to Forum Island Countries

“72c. **Interpretation**—In regulations 72CA to 72CG of these regulations, unless the context otherwise requires,—

“‘Factory or works’ means the place in a Forum Island Country where the last process in the manufacture of the goods was performed:

“‘Factory or works cost’, in relation to any goods manufactured in a factory or works, means any expenditure—

*S.R. 1968/169 (Reprinted with Amendments Nos. 1-9: S.R. 1975/284)

Amendment No. 10: S.R. 1976/331

Amendment No. 11: S.R. 1977/69

Amendment No. 12: S.R. 1977/146

Amendment No. 13: S.R. 1978/278

Amendment No. 14: S.R. 1979/97

Amendment No. 15: S.R. 1980/190

Amendment No. 16: S.R. 1980/238

Amendment No. 17: S.R. 1981/163

Amendment No. 18: S.R. 1981/238

Amendment No. 19: S.R. 1981/303

Amendment No. 20: S.R. 1982/136

Amendment No. 21: S.R. 1983/143

Amendment No. 22: S.R. 1983/183

Amendment No. 23: S.R. 1984/277

Amendment No. 24: S.R. 1986/282

Amendment No. 25: (Revoked by S.R. 1988/236)

Amendment No. 26: S.R. 1986/383

Amendment No. 27: S.R. 1987/94

Amendment No. 28: S.R. 1988/21

Amendment No. 29: S.R. 1988/236

Amendment No. 30: S.R. 1989/129

Amendment No. 31: S.R. 1989/244

Amendment No. 32: S.R. 1992/340

Amendment No. 33: S.R. 1992/389

Amendment No. 34: S.R. 1994/146

Amendment No. 35: S.R. 1994/238

“(a) That either—

“(i) Is incurred directly by the manufacturer in the production of the goods; or

“(ii) Can reasonably be allocated to the production of the goods; and

“(b) Is determined in accordance with regulation 72CB of these regulations:

“ ‘Inner containers’—

“(a) Includes any container or containers into or on which any goods are packed on importation into New Zealand; but

“(b) Does not include any container, pallet, or similar article carried by any ship or aircraft:

“ ‘Manufacturer’, in relation to any goods, means the person who operates the factory or works where the last process in the manufacture of the goods is performed:

“ ‘Materials’—

“(a) Means all inputs into the manufacturing process (other than materials treated as overheads) used or consumed in the production of the finished goods, in the form in which they are received at the factory or works; and

“(b) Includes unmanufactured raw products:

“ ‘Other duties’ includes sales tax, goods and services tax, anti-dumping duty, and countervailing duty:

“ ‘Qualifying area content’, in relation to any goods, means the expenditure by the manufacturer on the items specified in regulation 72CA (1) (b) (ii) of these regulations:

“ ‘Unmanufactured raw product’—

“(a) Means any product that is both—

“(i) A product of any farm, mine, forest, fishery, or similar activity; and

“(ii) A product that is in its natural form or has undergone such basic processing as is customarily required to prepare the product for marketing in substantial volume in international trade; and

“(b) Without limiting the generality of paragraph (a) of this definition, includes—

“(i) Animals; and

“(ii) Bones, hides, skins, and any other part of any animal; and

“(iii) Greasy wool and scoured wool; and

“(iv) Plants and parts of plants, including (without limitation) raw cotton, fruit, nuts, vegetables, grains, seeds (cleaned and graded), and green coffee beans; and

“(v) Logs of timber with branches removed but otherwise unworked; and

“(vi) Minerals in their natural form and ores; and

“(vii) Crude petroleum.

“72CA. **Forum Island Countries**—(1) The following shall be the classes of goods entitled to be entered under the Tariff at the rates and exemptions provided for Forum Island Countries, namely:

“(a) The following goods wholly obtained in any of the Forum Island Countries:

“(i) Mineral products extracted from its soil or from its seabed:

“(ii) Vegetable products harvested there:

“(iii) Live animals born and raised there:

“(iv) Products obtained there from live animals:

“(v) Products obtained by hunting or fishing conducted there:

“(vi) Products of sea fishing and other products taken from the sea by its vessels:

“(vii) Products made on board its factory ships exclusively from the products referred to in subparagraph (vi) of this paragraph:

“(viii) Used articles collected there fit only for the recovery of raw materials:

“(ix) Waste and scrap resulting from manufacturing operations conducted there:

“(x) Products obtained there exclusively from products specified in subparagraphs (i) to (ix) of this paragraph:

“(b) Goods partly manufactured in any Forum Island Country, subject to the following conditions:

“(i) That the last process in the manufacture of the goods was performed in a Forum Island Country; and

“(ii) That, in respect of the goods, and subject to regulations 72cc to 72cf of these regulations, the expenditure by the manufacturer—

“(A) On labour and factory overheads (as defined in regulation 72cb of these regulations) incurred in a Forum Island Country, or in New Zealand, or in a Forum Island Country and New Zealand; or

“(B) On qualifying materials (as defined in regulation 72cc of these regulations); or

“(C) On qualifying inner containers (as defined in regulation 72cd of these regulations); or

“(D) Partly on such materials and partly on such other items of factory or works cost (including inner containers),—

is not less than 50 percent of the factory or works cost of the goods in their finished state.

“(2) Notwithstanding subclause (1) (b) of this regulation,—

“(a) With respect to any specific goods (being goods referred to in that provision), the Minister may determine that the expenditure referred to in that provision shall be less than 50 percent of the factory or works cost of the goods in their finished state:

“(b) With respect to any goods (being goods referred to in that provision) that are classified in the Tariff (as set out in the First Schedule to the Tariff Act 1988) under the following Tariff headings, Tariff sub-headings, or Tariff items, namely,—

“(i) 3926.20.22, 3926.20.31, 3926.20.41, 3926.20.61:

“(ii) 4015.90.00:

“(iii) 4203.10, 4303.10.09:

“(iv) 61.01, 61.02, 61.03, 61.04, 61.05, 61.06, 61.07, 61.08, 61.09, 61.10, 61.11, 61.12, 61.13, 61.14, 61.15:

“(v) 62.01, 62.02, 62.03, 62.04, 62.05, 62.06, 62.07, 62.08, 62.09, 62.10, 62.11, 62.12,—

the reference in that provision to 50 percent shall be read as reference to 45 percent.

“(3) Where—

“(a) A qualifying material is an unmanufactured raw product of Australia (within the meaning of regulation 70A of these regulations); or

“(b) A qualifying material is wholly manufactured in Australia from unmanufactured raw products of Australia or New Zealand (within the meaning of regulation 70c of these regulations); or

“(c) The last process in the manufacture of a qualifying material occurred in Australia and regulation 70c (3) (a) of these regulations applies to that material,—

then, unless the Minister in any particular case permits otherwise, in addition to the requirements of subclauses (1) (b) (ii) and (2) (b) of this regulation, not less than 25 percent of the factory and works cost of the goods in their finished state shall comprise—

“(i) Labour and factory overheads incurred in a Forum Island Country; or

“(ii) Qualifying materials referred to in paragraph (c) or paragraph (f) of regulation 72cc (1) of these regulations; or

“(iii) Qualifying inner containers referred to in regulation 72cd of these regulations where the last process of manufacture occurs in a Forum Island Country; or

“(iv) Partly of such materials and partly of such other items of factory or works cost (including inner containers) specified in subparagraph (i) or subparagraph (ii) or subparagraph (iii) of this paragraph.

“(4) The entitlement that arises under subclause (1) of this regulation applies to goods exported from a Forum Island Country, whether directly or indirectly, and whether or not the goods have entered the commerce of another country after shipment from a Forum Island Country and before importation into New Zealand.

“(5) Where any goods referred to in subclause (1) (a) of this regulation are wholly obtained from a particular Forum Island Country, any inner containers in which the goods are packed shall be regarded as having the same origin as the goods they contain.

“72cb. **Calculation of factory or works cost**—(1) For the purposes of regulation 72ca of these regulations, the factory or works cost of any goods shall be the sum of the following items:

“(a) Subject to regulation 72cf of these regulations, the cost to the manufacturer of bringing materials into the factory or works, including any freight and similar costs, but excluding any Customs duty or excise duty or other duties paid or payable in respect of those materials:

“(b) Labour costs, namely—

“(i) Manufacturing wages and benefits; and

“(ii) Other factory or works labour costs incurred in connection with any of the following:

“(A) The management of the process of manufacturing;

“(B) The receipt of materials;

“(C) The storage of materials;

“(D) Supervision;

“(E) Training;

“(F) Quality control;

“(G) The packing of goods into inner containers:

“(H) The handling and storage of the goods within the factory:

“(c) Factory overhead expenses, being costs incurred in connection with any of the following:

“(i) Inspecting and testing materials and the goods:

“(ii) Insuring real property, plant, equipment, and materials used in the production of the goods; insuring work in progress and finished goods; liability insurance; accident compensation; and insurance against consequential loss from accident to plant and equipment:

“(iii) Dies, moulds, tooling, and the depreciation, maintenance, and repair of plant and equipment, without regard to whether such items originate in a Forum Island Country or New Zealand:

“(iv) Interest payments for plant, equipment, and wages:

“(v) Research, development, design, and engineering:

“(vi) Rent, leasing costs, mortgage interest, depreciation on buildings, maintenance, repair, rates, and taxes in respect of real property used in the production of the goods:

“(vii) Leasing of plant and equipment, without regard to whether such items originate in a Forum Island Country or New Zealand:

“(viii) Materials and supplies, not being directly incorporated in the manufactured goods, including (without limitation) energy, fuel, water, lighting, lubricants, and rags, without regard to whether such items originate in a Forum Island Country or New Zealand:

“(ix) Storage of the goods at the factory:

“(x) 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:

“(xi) Subscriptions to standards institutions, and industry and research associations:

“(xii) Factory security, the provision of medical care, cleaning services, cleaning materials and equipment, training materials, the disposal of non-recyclable waste, safety and protective clothing and equipment, and the subsidisation of a factory cafeteria to the extent not covered by returns:

“(xiii) Computer facilities allocated to the process of manufacture of the goods:

“(xiv) Contracting out of part of the manufacturing process within a Forum Island Country or New Zealand:

“(xv) Employee transport, factory vehicle expenses, and any tax in the nature of a fringe benefits tax payable on a cost specified in paragraph (b) or paragraph (c) of this subclause:

“(d) The costs of inner containers.

“(2) In calculating the factory or works cost under subclause (1) of this regulation and in calculating the expenditure on any item of factory or works cost, none of the following items shall be included or considered, except to the extent that they are specified in subclause (1) of this regulation:

“(a) Costs relating to the general expense of doing business, including (without limitation) the cost of providing executive, financial,

sales, advertising, marketing, accounting and legal services, or insurance:

“(b) Costs for telephone, mail, and other means of communication:

“(c) The cost of shipping containers or any cost of packing the goods into them:

“(d) The cost of conveying, insuring, or shipping the goods after their manufacture is completed:

“(e) Royalty payments related to a licensing agreement to distribute or sell the goods:

“(f) Rent, mortgage interest, depreciation on buildings, property insurance premiums, maintenance, repair, taxes, or rates in respect of real property used by personnel charged with administrative functions:

“(g) International travel expenses, including fares and accommodation:

“(h) Manufacturer’s profit, or the profit or remuneration of any trader, agent, broker, or other person dealing in the goods after their manufacture:

“(i) Any other costs and expenses incurred after the completion of the manufacture of the goods.

“(3) In calculating any item of cost included in subclause (1) of this regulation, a cost incurred by the manufacturer of the goods shall be included once only in the calculation of the factory or works cost.

“(4) Depreciation of plant, equipment, and buildings shall be calculated in accordance with generally accepted accounting principles, as applied by the manufacturer.

“72cc. **Qualifying materials**—(1) For the purposes of regulation 72CA (1) (b) (ii) (B) of these regulations, a material is a qualifying material if—

“(a) It is an unmanufactured raw product of Australia or New Zealand; or

“(b) It is wholly manufactured in Australia or New Zealand, or in Australia and New Zealand, from unmanufactured raw products of Australia or New Zealand; or

“(c) It is wholly obtained in a Forum Island Country and is a material referred to in regulation 72CA (1) (a) of these regulations; or

“(d) It is a qualifying material as defined in regulation 70c of these regulations and meets the 50 percent threshold requirement specified in regulation 70A (1) (c) of these regulations; or

“(e) It is a qualifying material as defined in regulation 70c of these regulations and the last process in the manufacture of the material occurred in New Zealand, but the material does not meet the 50 percent threshold requirement specified in regulation 70A (1) (c) of these regulations; or

“(f) The last process in the manufacture of the material occurred in a Forum Island Country.

“(2) For the purposes of the said regulation 72CA (1) (b) (ii) (B), the total expenditure by the manufacturer on the materials referred to in any of paragraphs (a), (b), (c), and (d) of subclause (1) of this regulation shall be treated as expenditure on qualifying materials.

“(3) For the purposes of the said regulation 72CA (1) (b) (ii) (B), the total expenditure by the manufacturer on the materials referred to in paragraph (e) of subclause (1) of this regulation shall be treated as expenditure on qualifying materials only to the extent that it would be treated as

expenditure on qualifying materials under regulation 70c (3) (b) of these regulations.

“(4) For the purposes of the said regulation 72CA (1) (b) (ii) (B), the total expenditure by the manufacturer on the materials referred to in paragraph (f) of subclause (1) of this regulation shall be treated as expenditure on qualifying materials in the following manner:

“(a) Where the material would qualify in its own right under regulation 72CA (1) (b) (ii) if it were to be imported into New Zealand from a Forum Island Country, then 100 percent of the expenditure on that material shall be treated as expenditure on qualifying materials:

“(b) Where the material would not qualify in its own right under the said regulation 72CA (1) (b) (ii) if it were to be imported into New Zealand from a Forum Island Country, then the percentage of the expenditure on that material that may be treated as expenditure on qualifying materials shall be equal to the percentage of qualifying area content in the factory or works cost of that material.

“72CD. **Qualifying inner containers**—For the purposes of regulation 72CA (1) (b) (ii) (C) of these regulations, a container is a qualifying inner container if—

“(a) The last process in the manufacture of the container occurred in a Forum Island Country or New Zealand; and

“(b) It contains not less than 50 percent qualifying area content.

“72CE. **Waste, scrap, and recycled materials**—For the purposes of regulation 72CA (1) (b) (ii) (B) of these regulations,—

“(a) Expenditure on waste and scrap resulting from manufacturing or processing operations conducted in a Forum Island Country or Australia or New Zealand; and

“(b) Expenditure on used articles collected in a Forum Island Country or Australia or New Zealand, and fit only for the recovery of raw materials; and

“(c) Expenditure on raw materials recovered from the waste, scrap, or used articles specified in paragraph (a) or paragraph (b) of this regulation,—

shall be treated as if it were expenditure on materials wholly obtained in a Forum Island Country.

“72CF. **Special provisions for allocation of expenditure**—(1) Where any material has been supplied free of charge or at a reduced cost, the amount to be determined as expenditure on that material shall be determined—

“(a) In accordance with clause 3 (1) (a) (iii) of the Ninth Schedule to the Act; and

“(b) By adding thereto the costs of freight, insurance, packing, and all other costs incurred in transporting the materials into the factory or works, whether or not those costs have been incurred by the manufacturer.

“(2) For the purposes of subclause (1) of this regulation, where the person supplying the material is not the buyer of the goods in their finished state,—

“(a) The supply shall be treated as if it were a supply by such a buyer; and

“(b) The provisions of subclause (1) of this regulation shall apply to that supply accordingly; and

“(c) Where the Collector is satisfied that the circumstances of any particular case so require, the Collector may apply those provisions to any earlier supply of any material on a free of charge or reduced cost basis.

“(3) Where the Collector is satisfied that materials have been added or attached to the goods solely for the purpose of artificially raising the qualifying area content of the goods, the Collector may exclude expenditure on those materials from the calculation of factory or works cost under regulation 72CB of these regulations.

“(4) If the Collector is satisfied that the cost to the manufacturer of materials exceeds the normal market value of the materials, the Collector may exclude from the calculation of the factory or works cost under regulation 72CB of these regulations the amount determined by the Collector to be the excess.

“72CG. **Application of regulation 72CA (1) (b) where expenditure not less than 48 percent of factory or works cost—**(1) If the Comptroller is satisfied, in relation to any goods, that—

“(a) The qualifying area content of goods in a shipment of such goods that are claimed to originate in a Forum Island Country is 48 percent or more but less than 50 percent of the total factory or works cost of those goods; and

“(b) The qualifying area content of those goods would be at least 50 percent of the total factory or works cost of those goods if an unforeseen circumstance had not occurred; and

“(c) The situation caused by the unforeseen circumstance is unlikely to continue,—

the Comptroller may make a determination in writing to that effect and specify the period in respect of which the determination shall apply.

“(2) Where the Comptroller makes a determination under subclause (1) of this regulation, regulation 72CA (1) (b) of these regulations shall apply to all goods in respect of which that determination has been made,—

“(a) For the purpose of the shipment of goods that is affected by the unforeseen circumstance; and

“(b) For the purpose of any subsequent shipment of similar goods that is so affected during the period determined for the purpose by the Comptroller,—

as if the reference in regulation 72CA (1) (b) of these regulations to 50 percent were a reference to 48 percent.

“(3) The Comptroller may at any time amend or revoke any determination made under subclause (1) of this regulation to reflect changed circumstances.

“(4) For the purposes of subclause (2) of this regulation, the term ‘similar goods’, in relation to goods in a particular shipment, means goods that—

“(a) Are contained in another shipment that is imported by the same importer from the same manufacturer; and

“(b) Contain the same materials and undergo the same process or processes of manufacture as the goods in the first-mentioned shipment.”

(2) Regulation 70F (1) of the principal regulations (as substituted by regulation 2 of the Customs Regulations 1968, Amendment No. 34) is hereby consequentially amended by revoking paragraph (a), and substituting the following paragraph:

“(a) In accordance with clause 3 (1) (a) (iii) of the Ninth Schedule to the Act; and”.

4. Calculation of factory or works cost—Regulation 73 (1) of the principal regulations is hereby amended by omitting the expression “72B, and 72C” (as substituted by regulation 7 of the Customs Regulations 1968, Amendment No. 16), and substituting the expression “, and 72B”.

5. Goods entering into commerce of another country—The principal regulations are hereby amended by revoking regulation 74 (as substituted by regulation 9 (1) of the Customs Regulations 1968, Amendment No. 13), and substituting the following regulation:

“74. (1) Notwithstanding anything in regulations 71, 72, 72A, and 72B of these regulations, but except as provided in regulations 70A (3) and 72CB (3) of these regulations and in subclause (2) of this regulation, or unless the Comptroller otherwise directs and subject to such conditions as he or she in any case approves, goods shall not be deemed to be the produce or the manufacture of a country in the groups mentioned in regulation 69 of these regulations if, after shipment from the country of which they are the produce of, or in which the final process of manufacture to which they have been subjected has been performed, they have entered into the commerce of any other country.

“(2) Unless provided in any agreement or arrangement made by the Government of New Zealand with any other country, this regulation shall not apply to goods the produce or manufacture of a country included—

“(a) In Group I:

“(b) In Group V which, after shipment from that country, have entered into the commerce of any other country included in Group V:

“(c) In Group VI.”

6. Revocations—The following regulations are hereby consequentially revoked:

(a) Regulation 9 of the Customs Regulations 1968, Amendment No. 13:

(b) Regulations 6 to 8 of the Customs Regulations 1968, Amendment No. 16:

(c) Regulation 5 of the Customs Regulations 1968, Amendment No. 34.

MARIE SHROFF,
Clerk of the Executive Council.

EXPLANATORY NOTE

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 28 days after the date of their notification in the *Gazette*, implement new rules of origin for goods of Forum Island Countries and largely follow the regime applying to goods of Australia (as implemented by the Customs Regulations 1968, Amendment No. 34).

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 21 December 1994.

These regulations are administered in the Customs Department.