Proposed reply on the finding made on Austria and relative to the export of class II and III products.

The present text of the Airworthiness manual states (paragraph 5.3.4):
The regulations issued by the CAA concerning exports should normally provide that any exporter or an authorized representative may obtain an export airworthiness approval.
This leads ICAO to ask the following question in the protocol:

GM Doc 9760 Vol. I 5.3 & App. D 2, 3 & 4	AIR 5.241 Has the State developed regulations for the export approval of aeronautical products?	□ Yes □ No	➢ Review regulations to ensure that they address all aeronautical products: 1. Class 1 2. Class 2 3. Class 3

It is assumed that the basis for the finding is the note of paragraph 3.2.4 of Annex 8 Part II that states:
Note. — Some Contracting States facilitate the transfer of aircraft onto the register of another State by the issue of an "Export Certificate of Airworthiness" or similarly titled document. While not valid for the purpose of flight, such a document provides confirmation by the exporting State of a recent satisfactory review of the airworthiness status of the aircraft. Guidance on the issue of an "Export Certificate of Airworthiness" is contained in the Airworthiness Manual (Doc 9760).

The status of notes is clarified in the status of Annex components included into the foreword of annex 8:
Notes included in the text, where appropriate, to give factual information or references bearing on the Standards or Recommended Practices in question but not constituting part of the Standards or Recommended Practices.

Based on the above and the actual wording of the note ('facilitate'), there is no ICAO binding requirement that oblige a State to develop specific regulations for export of products (including class II and III products). In addition the note speaks only of export certificates.

This interpretation is shared by the Airworthiness Panel. The panel had to provide advice on the request from the Air navigation Commission based on Member States comments to raise the note at the level of a recommendation. The reply of the Airworthiness Panel is included into the AIRP 2 report and is repeated verbatim hereafter:

4.4 ***ANC REQUEST NO. 3***
In Annex 8, Part II, paragraph 3.2.4, Note, the AIRP is to consider upgrading the Note, related to Export of Certificate of Airworthiness, to a Recommended Practice and to develop a definition and format for the certificate.

4.4.1 ***Airworthiness Panel Response***

4.4.1.1 AIRP is of the opinion that the Note concerning the Export Certificate of Airworthiness should not be upgraded to a Recommended Practice, and further that the Certificate of Airworthiness (C of A) should be retained as the primary document for transfer of aircraft between States. As guidance to States in this regard, a form for an Export C of A is introduced in the Airworthiness Manual (Doc 9760).

4.4.1.2 The C of A is proof that the State of Registry/exporting State has satisfactory evidence that the aircraft complies with the design aspects of the appropriate airworthiness requirements and that the continuing airworthiness of the aircraft is determined.

4.4.1.3 The Export C of A is normally based on an agreement between the importing and exporting State. The agreement defines the nature, the meaning of the document to be issued by the export of aircraft as well as the situation for use of the document. The Export C of A may contain statements related to differences in the Airworthiness Codes of the States concerned. All this makes an Export C of A, or similar type of document, flexible and results in a reduction of administrative burden for the parties involved. A high-level rule that defines the document in terms of content, meaning and necessity of use, however, will enlarge the administrative burden for the parties involved in export of aircraft.

4.4.1.4 Newly produced aircraft may be exported without being registered in the State of Manufacture. In such cases, the State of Manufacture may use an Export C of A, or a similar type of document, to communicate the airworthiness condition of the aircraft and the applicable Airworthiness Code. In cases where the Airworthiness Codes of the related States differ, the aircraft may not be entitled to a C of A of the State of Manufacture.

4.4.1.5 According to Annex 8, paragraph 3.2.4, the importing country may or may not accept the C of A of the exporting country as sufficient evidence that the aircraft complies with the applicable airworthiness requirements of that State. It should be at the discretion of the importing State as to what form any additional required evidence should take. While an Export C of A may satisfy such a need the Panel does not consider that it should be mandatory.

4.4.1.6 Not all countries use an Export C of A, or a similar type of document, when exporting aircraft. Introduction of a Recommended Practice, and application of the same by these States, would enlarge the administrative burden for these States, specifically in cases where the importing State finds the C of A issued by the exporting State sufficient evidence for the airworthiness of the aircraft.

RSPP ***Recommendation 4/2 – Response to requests of the Air Navigation Commission (ANC) and States' comments***

- *That the Note in Annex 8 — Airworthiness of Aircraft, Part II, paragraph 3.2.4, related to the Export Certificate of Airworthiness not be upgraded to a Recommended Practice.*

The discussion centres on export certificates of airworthiness but the arguments developed there are equally applicable to other kind of products. One of the most powerful one is that in accordance with Annex 8 the State of Registry is responsible of the airworthiness of the aircraft on its register.

Finally, paragraph 3.4 of Part III of the draft airworthiness manual developed by AIRP 2 concentrates on the export certificate of airworthiness and contain the following guidance relative to the classes I, II and III:

3.4.5 Export Certification of Products other than a Complete Aircraft

Some States may have adopted more detailed export airworthiness approval procedures, covering not only the issue of an Export Certificate of Airworthiness for a complete aircraft but also encompassing the issue of export certifications for engines, propellers and other component parts. For the purpose of such procedures, the item being exported may be placed within a particular "Class", for example:

a) Class I product – a complete aircraft, engine or propeller which has been type certificated in accordance with the appropriate airworthiness requirements and for which the necessary Type Certificate Data Sheets or equivalent have been issued.

b) Class II product – a major component of a Class I product such as a wing, fuselage, empennage surface, etc., the failure of which would jeopardize the safety of a Class I product or any part, material or system thereof.

c) Class III product – any part or component which is not a Class I or Class II product or a standard part.

For products other than a Class I product, the export airworthiness certification may be issued in the form of certificates or identification tags, which will confirm that the product in question meets the approved design data, is in a condition for safe operation and complies with any special requirements as notified by the importing State.

Two points are worthwhile to be highlighted:

- The guidance starts by indicating that some states have developed more detailed guidance for classes of products. This tends to indicate that it is not a general practices.
- The guidance refers to certificates or identification tags. Part-21 requires such certificate that is called the Form 1 but it only confirms that the part is conform to an approved design and is in condition for safe operations

Consistent with the logic developed by the Airworthiness Panel, Part-21 does not contain provisions for export. Acceptance of foreign certificates is possible based on bilateral agreements. If an importing State would require the EASA system to issue an export certificate of airworthiness, this would be included in such Bilateral. One can say that the bilateral agreement will contain the necessary legislation that will be adapted to the requests of the other State.

Conclusion:

Taking into account the above, it is proposed to take note of the finding. However the associated recommendation should not be accepted. The EASA does not intend to develop generic legislation for export as such legislation will be included in each bilateral agreement