

31 July 2008

Customs Trade and Transport Law E-alert

The demise of the Doha round and some immediate consequences

On the assumption that reports of its demise have not, in fact, been greatly exaggerated, the apparent collapse of the Doha round of talks at the WTO will have immediate and far-reaching consequences for those involved in trade whether that be domestically or internationally.

The reasons for the collapse of the Doha round are not simple and will be different depending upon that part of the world in which you reside and your own school of geopolitics. One school of thought is that India (on its own behalf and on behalf of other developing nations) caused the collapse by seeking to impose an unreasonable safeguard regime in relation to imports of agricultural products from developed countries. The alternative view put by India (and many aid agencies) is that it is entirely reasonable for developing countries to have the type of safeguard regime which had been proposed to protect subsistence farmers against the "dumping" of agricultural products from the developed world. The reasons for the collapse still remain relevant both in determining whether any talks can be restarted and also as to their impact on the way in which countries will seek to preserve their own positions in negotiations for bilateral, plurilateral and regional trade agreements.

Many economic purists and supporters of the WTO have been dismissive of international trade agreements other than the multilateral trade agreement at the WTO. Their traditional response is to comment dismissively about the "spaghetti bowl" principle which is the consequence of the multiplicity of these "other" agreements. However, the response which flows from the collapse of the Doha round is that a spaghetti bowl is better than no bowl at all! The collapse of the Doha round, the apparent global economic downturn and the heightened focus on environmental issues will have a number of immediate consequences.

- The current levels of focus on regional, plurilateral and regional trade agreements ("FTA") will increase as countries endeavour to improve their trading positions and reduce barriers to trade. There are already regular reports already of FTAs of various types being entered into between countries. For example, Australia and Chile signed an FTA on 30 July 2008, the very day on which the Doha talks collapsed.
- A number of countries have a number of proposed FTAs under discussion and it is clear that there will now be serious efforts to accelerate those discussions.
- Anecdotal evidence and some academic research suggests that at the time of global economic downturn, there is an increase in the use of trade remedies (such as anti-dumping actions) to restrict the levels of imports of goods perceived as a "threat" to local producers. This may also be seen in the increased use of safeguard measures to protect against certain imports. It will be of interest to see how the United States responds to the expiry of its current safeguard measures on imports of Chinese products and whether it seeks to impose them on goods from other Asian countries such as Vietnam and Cambodia.
- International discussions are continuing on a global emissions trading regime leading up to the conference in Copenhagen next year. Individual countries are wrestling with the adoption of their own compulsory schemes. It is likely that future FTA will include provisions to allow countries and their investors to engage in emission trading. Many countries will now insist that FTA include chapters on environmental standards and this will flow through to provisions regarding emission trading schemes.
- Increased costs associated with transport and logistics (such as fuel and security levies and potential levies in respect of the cost of emissions permits) will place stress on those in the transport and logistics industries and lead to an increased attention on the ability to recover those increased costs.
- The WTO is not the only multi-lateral forum to assist traders. The World Customs Organisation ("WCO") is working through its "SAFE" Framework to facilitate and secure trade nationally and internationally.
- The protection of IP at the border is a real issue and attention is increasing. This has a place with the WTO and the WCO (the SECURE framework). There is also significant focus on ACTA which is being negotiated with great secrecy by a limited number of developed countries and may create new criminal sanctions.
- FTA are not all about trade in goods. An FTA will also facilitate additional financial investment by removing current limits on foreign investment and removing unnecessary regulation. Most importantly, FTA will improve the vital trade in services.

All of these factors will mean that traders of any type need to have access to appropriate expertise from all their consultants including accountants and freight companies but especially from their lawyers. The true benefits from FTA are only secured by those who engage in the political and commercial process of negotiating the FTA and then ensure that they are implemented in an efficient and timely manner. This is where the benefits of the Interlaw network and the Customs Trade Transport and Logistics Special Business Team come to the fore. Each of the members of Interlaw include practitioners with expertise in these issues. For example, at Hunt & Hunt we have been actively involved with government and industry in the development, introduction and use of the Australian FTA agenda. Further, the existence of the network means that traders can come to an Interlaw firm and know that there is expertise in their own jurisdiction and in the other jurisdictions in which they propose to operate throughout the world. That expertise extends to dealings at the multilateral level through the existing WTO arrangements and dealings with other associated bodies such as the WCO.

The professionals within the Interlaw network are already engaged in these areas of practice and look forward to the opportunity to assist traders in all jurisdictions at all times.