

AANZFTA carries benefits - but there are important issues, too

ALTHOUGH it already has been the subject of some media coverage, we are pleased to provide the following reminder as to the commencement of the ASEAN-Australia-New Zealand Free Trade Agreement ("AANZFTA") on 1 January 2010.

The AANZFTA establishes the "ASEAN-Australia-New Zealand Free Trade Area" and confers a number of advantages on importers and exporters dealing with those countries.

While there is a significant degree of information available through the websites of both DFAT and the Australian Customs and Border Protection Service, that information is general in nature and needs to be specifically adopted for those importing, exporting or providing services to those traders. There are also a number of traps to be avoided and a number of steps which should now be taken to ensure parties secure the benefits of the AANZFTA from start-up at 1 January 2010. Clearly, we would be delighted to assist your company with those arrangements. However, some issues to consider are as follows.

* You need to make sure that the AANZFTA has commenced in relation to the countries with which you or your clients are trading. Not all countries have passed enabling legislation to enable the AANZFTA to commence on 1 January 2010. At the moment, AANZFTA is to commence for Australia, New Zealand, Brunei, Myanmar (Burma), Singapore, Vietnam and Malaysia.

* You should be aware of tariff reductions and other concessions for both imports and exports made available under the AANZFTA. Not all tariffs for goods go to zero immediately on commencement of the AANZFTA. In particular, there remains some "phasing" of import tariffs in ASEAN countries.

* If you or your clients already trade under the benefit of the Singapore and Australia Free Trade Agreement or the

Thailand and Australia Free Trade Agreement or use tariff preferences relating to developing and to less-developed countries, then parties can still use those arrangements rather than the AANZFTA. It would be worth checking the costs and benefits in changing over to the benefits under the AANZFTA.

* The Rules of Origin to apply to goods to qualify under the AANZFTA will be determined by the tariff classifications for those goods and the contents of those goods. Clarifying the application of the AANZFTA will be relatively simple for some goods but may be more complicated for other goods, particularly where there are specific process requirements or where the goods include items from "non-originating countries" (ie countries which are not parties to the AANZFTA).

* Australian exporters will need to apply for and hold Certificates of Origin that their goods qualify under the AANZFTA. To do so will require registration with one of the two authorities in Australia that (currently) are authorised to issue such Certificates of Origin (being AIG and ACCI). The importer of those goods will need to hold that Certificate of Origin to claim preferential status at the point of making the Import Declaration.

* Australian importers will need to hold correct Certificates of Origin issued by ASEAN authorities at the time of making their Import Declarations to claim preferential treatment under the AANZFTA for goods where their FOB value exceeds A\$1,000. This may be difficult given that only certain Government authorities in ASEAN countries will be authorised to issue such Certificates of Origin. It is important that Certificates of Origin are held at the time of making the Import Declaration as there are only limited provisions for refunds for goods for which AANZFTA status is claimed after making the Import Declaration.

* There are potential penalties associated with an incorrect claim of preferen-



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tial status under the AANZFTA. These will apply in addition to denial of preferential status and the requirement to repay any duty underpaid based on incorrect claims of preference.

* Parties will need to be careful in considering their supply chain for goods from the ASEAN region. For example, if goods qualify for preferential treatment under the AANZFTA, but those goods are then shipped via China or Hong Kong and packing or other work is done in those non-ASEAN countries, then the goods could lose their preferential status.

* Necessary records must be kept for at least three years (and five in the case of Australian traders). There are extensive verification provisions for Customs authorities under AANZFTA to ensure claims of preference are made correctly.

As always, there are benefits as well as risks with any new commercial arrangements. Proper due diligence and planning need to be undertaken. We are ready to assist with those matters and look forward to being of assistance to you and your clients to secure the benefit of the preferential arrangements under the AANZFTA at the earliest opportunity.