

Australia and New Zealand sign FTA agreement with ASEAN nations

IN August 2008, there were announcements that Australia and New Zealand had struck a deal to establish a Free Trade Agreement with the ASEAN nations (AANZFTA). We issued an update which can be found on our website.

In the ensuing period, there were additional negotiations to try and resolve outstanding issues and finalise the AANZFTA. From media reports, it seems most of those negotiations focused on Australia's efforts to secure additional tariff reductions for those in the Australian automotive industry. Subsequent reports suggested that while tariff reductions had been secured within ASEAN for Australian car components and small vehicle manufacturers, Australia would still need separately to press for concessional treatment for large passenger cars in Indonesia and Malaysia. Those concessions will be sought in the current Free Trade Agreement negotiations with Malaysia and through separate trade negotiations with Indonesia. In very recent times, Australia has increased its efforts to engage with Indonesia on trade matters including a forum conducted by Government officials in Australia.

However, the deal has now been completed and the AANZFTA was signed in Thailand on 27 February 2009.

The AANZFTA is a huge document and I have yet to review it in detail. However, according to material provided by DFAT, the AANZFTA will include the following.

- "MFN" status for Australia across ASEAN. If ASEAN countries provide better treatment to another country than that provided to Australia under AANZFTA, then Australia can insist on that better treatment.

- The ability for Australian pharmaceutical companies across the region to export to ASEAN countries with almost total reduction in tariffs.

- Significant reductions in tariffs on Australian beef, live cattle exports, sheep and goat meat to countries such as the Philippines, Indonesia and Vietnam.

- Lower tariffs on Australian aluminium exports to Indonesia and reduction of

Malaysian tariffs on aluminium tanks, vats, nails and screws (over the next four years).

- A dispute resolution provision so that Australian firms investing in ASEAN countries will have access to arbitration against ASEAN countries if their investments are adversely affected by action by those countries in breach of AANZFTA commitments. This will expand current protection currently made available in Indonesia, Laos, the Philippines and Vietnam.

- A general commitment to certainty and transparency for Australia service providers. In addition, a number of Australian service industries have received specific commitments to improve their market access in ASEAN including benefits for lawyers.

- Rules of origin generally constructed on "co-equal" access to rules based on either "Change in Tariff Classification" (CTC) or "Regional Value Content" (RVC) tests. For most goods, there will be the option of using either test although some goods will need to fit one test.

- The use of a "Certificate of Origin" regime for those wishing to claim preference. These Certificates will be issued by relevant approved bodies (as in our Thai Free Trade Agreement).

- A recognition by Australia that Vietnam has achieved "Market Economy Status". This has consequences for dumping and countervailing investigations.

- A Chapter on Customs Procedures where the parties commit to adopt WTO procedures and work together to facilitate trade in the region.

As at the date of publication of this article, I have yet to review details of Australia's concessions to ASEAN nations. However, as many would be aware, current Australian tariffs are already low on nearly all imports from all countries.

We will continue to provide details on the AANZFTA as they become available. The AANZFTA will only commence once Australia, New Zealand and four of the ASEAN nations have passed implementing legislation. Current estimates suggest a commencement date of 1 January 2010.



ANDREW HUDSON
Partner, Hunt & Hunt Lawyers.

Our relationships through the Interlaw network of legal firms (www.interlaw.org) will enable us to assist you and your clients with advice on all aspects of the AANZFTA in all affected countries as well as providing assistance on all other trade and investment-related issues. Interlaw has member firms across the ASEAN region and during our recent Asia-Pacific Regional Meeting, member firms committed to ensure that clients of Interlaw member firms will be provided with the best and most efficient advice throughout the region to secure the best benefits.

Canada loosens ownership rules

THE EUROPEAN Union and Canada have agreed an 'open skies' agreement.

The agreement removes restrictions on routes, prices and the number of weekly flights between the EU and Canada and not only allows European airlines to operate flights from anywhere in the European Union to anywhere in Canada, it also allows foreign investors to buy up to 49 per cent of voting equity of Canadian airlines, compared to 25 per cent now.

The EU hopes the Canadian agreement can be used as a template for further 'open skies' negotiations with the USA.