

16 November 2011

Customs, Trade and Transport Law e-alert

High hopes for a Trans-Pacific Partnership

Recent discussions on Australia's Free Trade Agenda have come to include reference to the conclusion of the "Trans-Pacific Partnership Agreement" ("TPP").

The origins of the TPP can be found in the earlier Trans-Pacific Strategic Economic Partnership Agreement (described as the "P4") between Brunei Darussalam, Chile, New Zealand and Singapore which entered into force in 2006.

Subsequently, the original "P4" parties together with Australia, Peru, the US, Vietnam and Malaysia have joined to consider the establishment of the TPP. The Australian Federal Government has publicly described the TPP as the Federal Government's highest regional trade negotiating priority.

Wider international interest in the TPP has increased at the same time as an increase in interest from the United States which now perceives the TPP as a means to support and expand the US economy as well as the regional economy. Broader US support for trade liberalisation can be seen from the very recent Congressional approval for other US Free Trade Agreements which, while negotiated and completed some years ago, have only recently been passed by the US Congress with approval for implementation.

From an Australian perspective, it is hoped that the TPP would build on existing liberalisation through bilateral Free Trade Agreements ("FTA") with New Zealand, Singapore, Thailand and Chile as well as the regional FTA with the ASEAN nations. There is also a wider hope that the TPP could be a precursor to a broader APEC free trade zone.

The parties to the TPP have been engaged in extensive negotiation and prior to the current meeting of APEC leaders, the parties negotiating the TPP released a statement to the effect that they had agreed, in principle, to the content of the TPP.

The release identified a number of areas where agreement in principle had been reached to allow completion of the TPP. These included the following (in general):

- Comprehensive market access (ie. reductions in tariffs and other non-tariff barriers).
- Regional Agreement.
- "Cross-cutting" trade issues (including regulatory coherence, competitiveness and business facilitation, SME assistance, customs clearance and economic development).
- To assist new trade challenges.
- That the TPP should be a "living" agreement.

These are all largely consistent to the outcomes of any FTA (whether bilateral or regional). This reference to SME assistance is welcome as small and medium sized businesses can often "miss out" on FTA benefits through lack of resources or complexity in implementation of the FTA.

It is also reported that Mexico, Japan and South Korea are being approached to join the TPP. However, at this stage, the PRC does not appear to be engaged and it has expressed concerns as to its apparent specific exclusion from negotiations. Clearly, there is significant merit in expanding the TPP to additional countries. However, there is always the fear that the broader the base for an agreement, the more difficult it would be to secure significant concessions from that broader group of countries.

While the spread of regional trade liberalisation is to be supported, the merits of any agreement would depend upon the precise terms of the TPP, any specific exceptions and the degree to which it represents an improvement on existing FTA. It also needs to be remembered that any agreement such as the TPP must first be finalised and agreed between negotiating countries and it then needs to be approved by and implemented in each of those negotiating countries. That can all take time and may lead to further compromises. Given the proposed timeframes (which suggests the TPP could be completed by the end of 2012), the TPP would also need to secure bilateral political support in all negotiating countries as future changes to the Governments of negotiating countries could have adverse outcomes for the completion and comprehensive adoption of the TPP.



To date, we have also yet to see any developments on the announcement of completion of an Australian FTA with Korea. Recent comments from the Federal Government suggested that an announcement of completion of an FTA with Korea would be made during the course of November.

As always, we will keep you informed of developments and assist with the implementation of the TPP or any other FTA.

Contact:

Andrew Hudson, Melbourne

+61 3 8602 9231

ahudson@hunthunt.com.au