

Customs Trade and Transport Update

10 May 2011

Release of Australian Trade Policy Statement casts light on Government's intentions

Introduction

The release of the Federal Government's Trade Policy Statement ("**Statement**") in April has revealed some details of the state of the Australian trade agenda.

The Statement entitled "*Gillard Government Trade Policy Statement: Trading our way to more jobs and prosperity*" contains details of the gains and benefits from Australia's previous trade liberalisation, the principles to guide Australia's trade policy, the "disciplines" to achieve Australia's trade policy as well as details on the Government's trade negotiating agenda.

The policy has been expressed to be consistent to the Government's response to the recommendations of the Productivity Commission Report on Bilateral and Regional Trade Agreements.

Some details are set out below.

Five Principles

The Statement sets out five principles which are intended to guide Australia's trade policy. These are summarised as follows.

- Unilateralism.
- Non-discrimination.
- Separation.
- Transparency.
- Indivisibility of trade policy and economic reform.

Disciplines in Australia's trade policy

According to the Statement, the principles guiding Australia's trade policy logically give rise to a set of disciplines and policies governing the negotiations of trade agreements and their content. The disciplines and policies are summarised as follows:

- Multilateral agreements offer the largest benefits.
- Regional bilateral agreements must not weaken the multilateral system – they must be genuinely liberalising, eliminating or substantially reducing barriers to trade.
- Australia will not seek to entrench preferential access – simply to compete on equal terms to others.
- Australia will not allow foreign policy to dictate parties to and content of, trade deals.
- The public is to be well informed about negotiations for, and the content of, proposed trade agreements and have the opportunity for input.
- Australia will press ahead with domestic economic reform irrespective of whether other countries agree to reform their economies.

- Trade policy **MAY** be used to help achieve labour, environmental, health and community safety objectives (non-trade objectives). However it is not to be used as a "backdoor" means to impose trade barriers to protect local industries.
- Australia will not pursue "Investor State" Dispute Resolution provisions in trade agreements.

Of these, the issue which has created the most surprise is the abandonment of the position reporting the inclusion of "Investor State" resolution provisions in trade agreements. In my view, the suggestion that those trading need to undertake their own assessment as to the sovereign risk and other risks associated with trading in another economy overlooks the practical problems of imperfect knowledge and is inconsistent with the aims to encourage trading. All traders will experience difficulties in assessing risks in trading in other economies and no amount of due diligence will assist if a party to a trade agreement suddenly refuses to observe the terms of such an agreement. Such traders will then need to rely upon the "State/State" dispute resolution provisions and hope that the Federal Government will consider the issue of significant importance to support the position of the traders.

The Government's Trade Negotiating Agenda

To quote from the Statement, the Government's trade strategy appears to be as follows:

"Applying the principles and disciplines of the Gillard Government's trade strategy – and consistent with the Productivity Commission's 2010 report on trade agreements – the Government's negotiating agenda will steer a middle course of championing and protecting the multilateral system while seeking to negotiate high-quality, truly liberalising sectoral, bilateral and regional trade deals that do not detract from but support the multilateral system".

Based on this philosophy, the Statement refers to the following negotiating agenda.

- The primary aim being the pursuit of a successful completion to the Doha Round of negotiations for the WTO.

- Continued work within the APEC region including the long-term aim of a free trade area spanning all APEC economies.
- Continued negotiations on the Trans-Pacific Partnership.
- Completion of negotiations on a Korea-Australia Free Trade Agreement in 2011.
- Possible completion of the Japan-Australia Free Trade Agreement in 2011.
- Further efforts to re-invigorate the negotiations for the China-Australia Free Trade Agreement.
- Possible completion of negotiations of the Malaysia-Australia Free Trade Agreement by March 2012.
- Negotiations to advance a comprehensive Economic Partnership Agreement with Indonesia.

At the same time, the Government has advised that negotiations with the Gulf Co-Operation Council ("GCC") have paused while the GCC undertakes its own review of its trade agreement policy.

Conclusions

In one sense, the abandonment of efforts to include an "Investor State" dispute resolution process could facilitate the negotiation of further bilateral or regional trade agreements as no Government would be subject to disputes with individual investors of the other countries. Further, while the Government continues to support the notion of multilateral agreements, it seems to recognise that the current Doha Round of negotiations are unlikely to be completed. At the same time, the Government has also adopted an ambitious program for potential completion of other free trade agreements and we will closely monitor negotiations and developments with those free trade agreements.

As always, we will keep you informed of developments.



Contact us

For further information, please contact:

Andrew Hudson, Partner
T +61 3 8602 9231
F +61 3 8602 9299
E ahudson@hunthunt.com.au

Disclaimer: The information contained in this update is not advice and should not be relied upon as legal advice. Hunt & Hunt recommends that if you have a matter that is legal, or has legal implications, you consult with your legal adviser. If you no longer wish to receive this e-alert or any other publication from Hunt & Hunt, please email us at unsubscribe@hunthunt.com.au.