

Customs and Global Trade Update

October 2014



Five hot trade topics in two minutes

It has been a long time since customs issues featured so prominently in the news. With the G20 meeting around the corner and suggestions that the Australia - China Free Trade Agreement negotiations will be concluded around the same time, customs and global trade is likely to remain a hot topic. To help you stay on top of the latest developments, below is a summary of five topical issues.

1. AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE'S ANNUAL REPORT

The Australian Customs and Border Protection Service (ACBPS) has released its annual report which contains some very interesting statistics:

- » More than 90% of revenue targeted audits resulted in a revenue adjustment of greater than \$1,000
- » A significant control breach was identified in 71% of targeted import/export declaration lines assessed post-transaction

- » Only 21% of tariff, valuation and origin advices were completed within the client service standard. This was mainly due to an increase in applications for tariff advices - the average time for which is now 42 days.

If increased penalties and potential liability for brokers is not incentive enough, the requirement to be compliant in order to take advantage of the proposed Trusted Trader Scheme should motivate importers and exporters to increase customs compliance levels.

2. KOREA FREE TRADE AGREEMENT

The Australian legislation implementing the Korea Australia FTA has been passed. The legislation has a start date of 1 December 2014. However, this can only occur if Korea passes its enabling legislation. The Korean legislation is before their parliament, but is one of 7,000 bills caught up in a backlog. Before that backlog can be cleared there is the Korean budget to be dealt with.

Against this backdrop, commencement of the FTA in 2014 seems unlikely. Should the FTA fail to commence, it would result in the loss of the double tariff reduction much desired by Australian agriculture exporters.

Please see our [Korea-Australia Free Trade Agreement](#) update on steps to take to prepare for the FTA.

3. TRANS PACIFIC PARTNERSHIP NEGOTIATIONS

While there is a lot of enthusiasm about a possible China FTA, there should also be excitement about the fact that the Trans Pacific Partnership (TPP) negotiations are close to concluding. The TPP involves 12 nations including the US, Japan, Canada, Mexico and Australia and covers 40% of the world's GDP.

While it was hoped that negotiations would be concluded by the end of 2013, negotiations in Australia this week put the finish line firmly in sight. Stumbling blocks seem to be agriculture and automotive negotiations between the US and Japan.

Given we in Australia have, or will have, individual FTAs with most TPP members, the main benefits of the TPP will be non-tariff issues such as trade in services, international investment and consistency of standards.

While negotiations have progressed, parties stress that "nothing is agreed until everything is agreed".

4. DUMPING – WINS FOR AUSTRALIAN INDUSTRY

The Anti-Dumping Review Panel (ADRP) has upheld findings by the Anti-Dumping Commission (ADC) that dumping duties be imposed on wind towers from Korea and China and prepared or preserved tomatoes from Italy. In both cases there were significant additional factors that could have caused injury to the Australian industry, such as the high AU dollar and cheap non-dumped imports.

The approach by both the ADC and the ADRP demonstrates the difficulty exporter/importers face to prove that dumping (regardless of the margin or other contributing factors) did not cause material injury to the Australian industry. Exporters must put significant effort into the exporter questionnaire and, if possible, prove that dumping has not occurred. Short of protracted legal battles, this seems the only way to avoid dumping duties.

The decisions by the ADRP are consistent with the lessons learned from the power transformer investigation, as detailed in our recent update, [Power Transformer Anti-Dumping Investigation update](#).

Authors:

Russell Wiese, Partner

Lynne Grant, Special Counsel

Fran Smyth, Lawyer

5. AUSTRALIAN CUSTOMS AND BORDER PROTECTION SERVICE'S CURRENT APPROACH TO USE OF TARIFF CONCESSION ORDERS

From discussions with brokers and our engagement with the Australian Customs and Border Protection Service (ACBPS) we have noticed a much stricter approach by the ACBPS when it comes to importers relying on tariff concession orders (TCOs). This approach is characterised by the ACBPS clamping down on the application of broadly worded TCOs and ruling that any product that is wider than the TCO wording or comes with additional features or accessories is not covered by the TCO.

The difficulty for importers is that for many years they have been permitted to use wide scope TCOs without issue. A witness from the ACBPS admitted in a 2013 Administrative Appeals Tribunal case that previously officers had been instructed to make TCOs with "super generic" wording and the approach had been changed to require a detailed description of the goods.

While TCOs can be used by the world at large for any product that fits within the terms of the TCO, we recommend that importers identify the TCOs they use the most and either obtain a tariff advice that the TCO covers their particular import or apply for a new TCO that describes the features of their particular product. Obtaining a ruling will not stop prevent inconsistency by the ACBPS, but it will bind the ACBPS in respect of past imports.

To learn more about the Hunt & Hunt Customs and Global Trade team please see our [national capability document](#).

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