



The Trans-Pacific Partnership – The issues for trade professionals

Going against the protectionist trend from some parts of the world, the Trans-Pacific Partnership (TPP) was signed overnight in Chile. While the TPP no longer includes the US, it is still an agreement that will have a big impact on Australian importers and exporters.

Why is this FTA important?

It is true that there is significant overlap between this FTA and Australia's existing FTAs. We already have existing FTAs with 8 of the 10 other TPP members. However, there are the following significant benefits associated with the TPP:

1. opening up of the Canadian and Mexican markets for the first time. With US trade becoming more difficult, for Canada and Mexico trade with Australia may become more attractive, despite the obvious geographic constraints
2. easier certification requirements – it will be easier to qualify for lower duty rates under the TPP than Australia's existing FTAs. This may mean that importers/exporters will use the TPP in circumstances where they would not have used an existing FTA that has greater red tape;
3. improved outcomes with Australia's existing FTA partners – while it will depend on the product, there are a number of instances where the TPP outcome is an improvement on Australia's position under existing FTAs. The biggest benefits are for agricultural exporters to Japan and more generally for exports to Vietnam and Malaysia. Further details on the benefits can be found [here](#)
4. outcomes in areas such as services, investment and government procurement will represent improvements over the positions negotiated under existing FTAs
5. the TPP partners are not fixed. New countries can join the TPP and Taiwan, Thailand, Indonesia and the Philippines have all expressed interest. The more countries that join, the more likely it is the TPP could become the default FTA, with other FTAs only considered if the TPP outcome is not duty free entry

When will it start

Now that the agreement is signed, the TPP will commence once 6 countries have completed their domestic ratification. When it commences, the TPP will only apply to those countries that have completed domestic ratification.

In respect of Australia the ratification process involves parliamentary review into the FTA and enabling legislation is required to be passed through parliament. While the TPP originally had support from both major parties, the Labour party is now requesting economic modelling of the impact of the agreement. Such requests may slow down the ratification process. Despite this, commencement by the end of 2018 is possible.

There are some disadvantages

There is no doubt that the TPP worsens the FTA noodle bowl. Australia will now have 3 different FTAs with New Zealand, Singapore and Malaysia and 2 different FTAs with Japan, Vietnam, Peru,

Chile and Brunei. The impact of this overlap will be more pronounced with the TPP as it is relatively different to Australia's existing FTAs.

The TPP may also weaken the advantage Australia had gained over other countries by aggressively pursuing bilateral FTAs. For instance, not all TPP members had existing FTAs with Japan. The concessions in the Australia Japan FTA were hard won. However, with the entry into force of the TPP, Australia will again be on level pegging with the other TPP members.

Certificates of origin

Certificates of origin under the TPP will be self-certified. This means that they can be completed by the manufacturer, exporter or importer. While there will be specified data fields, there will be no set format. Additionally, the document can be in paper or electronic form.

Adding more flexibility, the certificates of origin will be able to cover multiple consignments of identical goods and can be in electronic form.

While self-certification does make FTA use easier, it places a lot of responsibility on the exporter or other party issuing that document. The need to have checks and balances in place to ensure FTA compliance is heightened. This is not a reason to avoid the TPP or self-certification, but it is a risk that needs to be managed.

The biggest issue for customs brokers is the fact that there is not an official template document. This means that each exporter may issue a certificate of origin in a different form. It will be important for customs brokers to ensure that each certificate of origin has all the mandatory information.

Rules of origin

The TPP does have many similarities with Australia's other FTAs in respect of rules of origin. However, there are some key differences. The major differences exist in relation to textiles and automotive components. It is important to note that there is generally an increased use of the regional value content rule and for some classification, this rule is applied in a unique way.

Be on top from day one

It is unclear whether the TPP allows for certificates of origin to be retrospectively issued. Our view is that it does. However, the power is not express and this can create some doubt. When speaking to clients it should not be assumed that a failure to have a certificate of origin at the time of entry can be cured at a later date.

What to do now

If they haven't already, companies should start to take the TPP outcomes into account when developing supply chain strategies and undertaking long term planning.

The TPP documents are publically available and set out all of the tariff commitments of each country. Customs brokers can access this information and model the TPP outcomes for their clients.

Now is also the time to review instances where there has been an underutilisation of existing FTAs with TPP members. If the reason for this underutilisation relates to documentation, plans can be made for how to remedy this position under the TPP.

Once enabling legislation is introduced, brokers should start to plan for transitional arrangements concerning the start of the TPP. Attention needs to be paid to which shipment will be covered given

that that text of the TPP provides that it will apply to goods that "arrive" in a country after the commencement of the TPP. The term "arrives" should be contrasted to the term "imported". Usually, the Australian legislation provides that a new FTA applies to goods entered for "home consumption" after commencement of the TPP.

Hunt & Hunt has extensive experience with implementing FTAs and ensuring FTA compliance. Please contact us if you would like to discuss how the TPP will affect you and your clients.

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