

The Trans-Pacific Partnership

Issues for customs brokers

December 2018

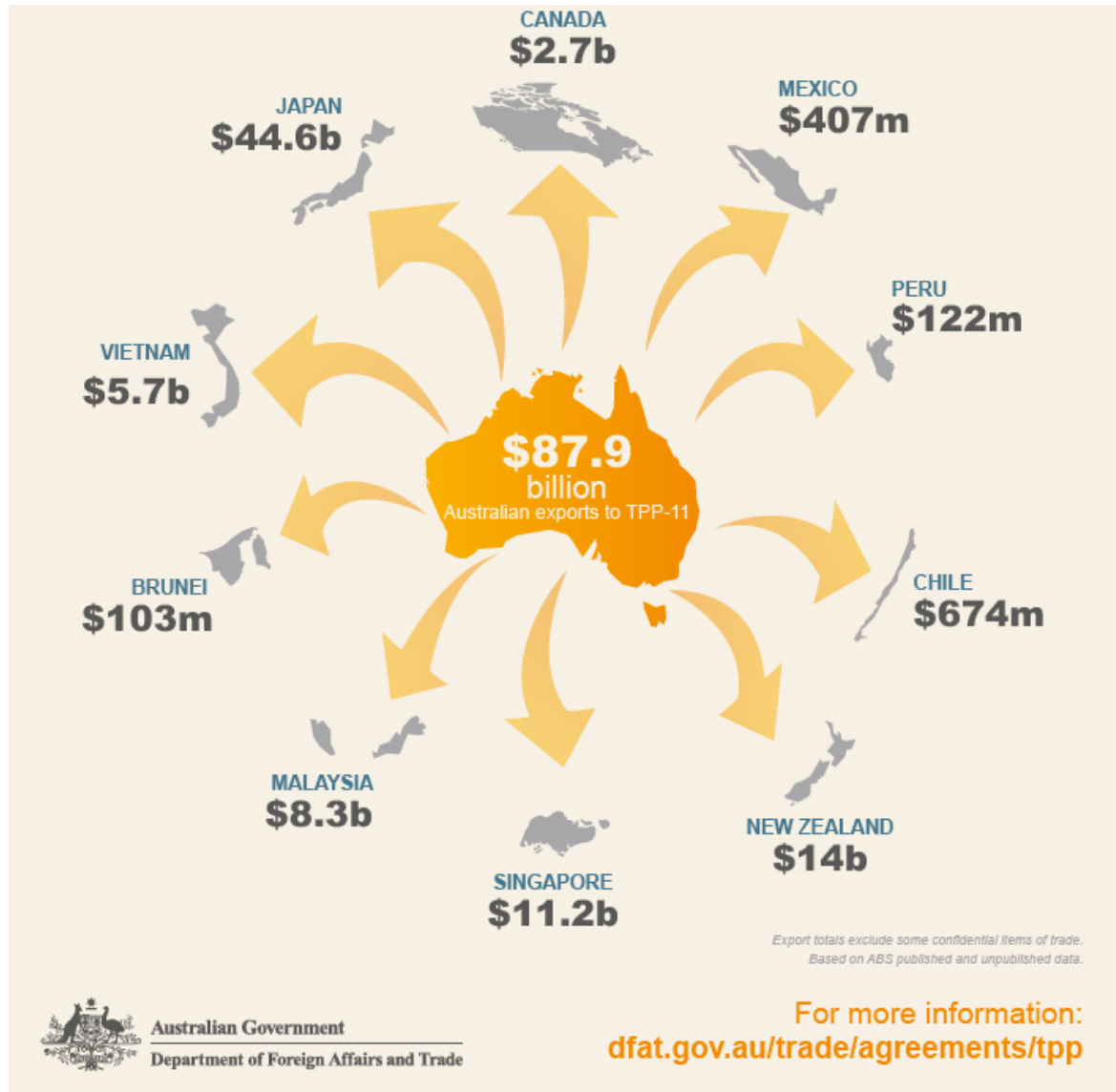


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Topics

1. About the TPP
2. TPP outcomes
3. CoO and RoOs
4. Technical issues
5. Steps to take now
6. TPP Compliance and challenges
7. Other FTAs

TPP 11



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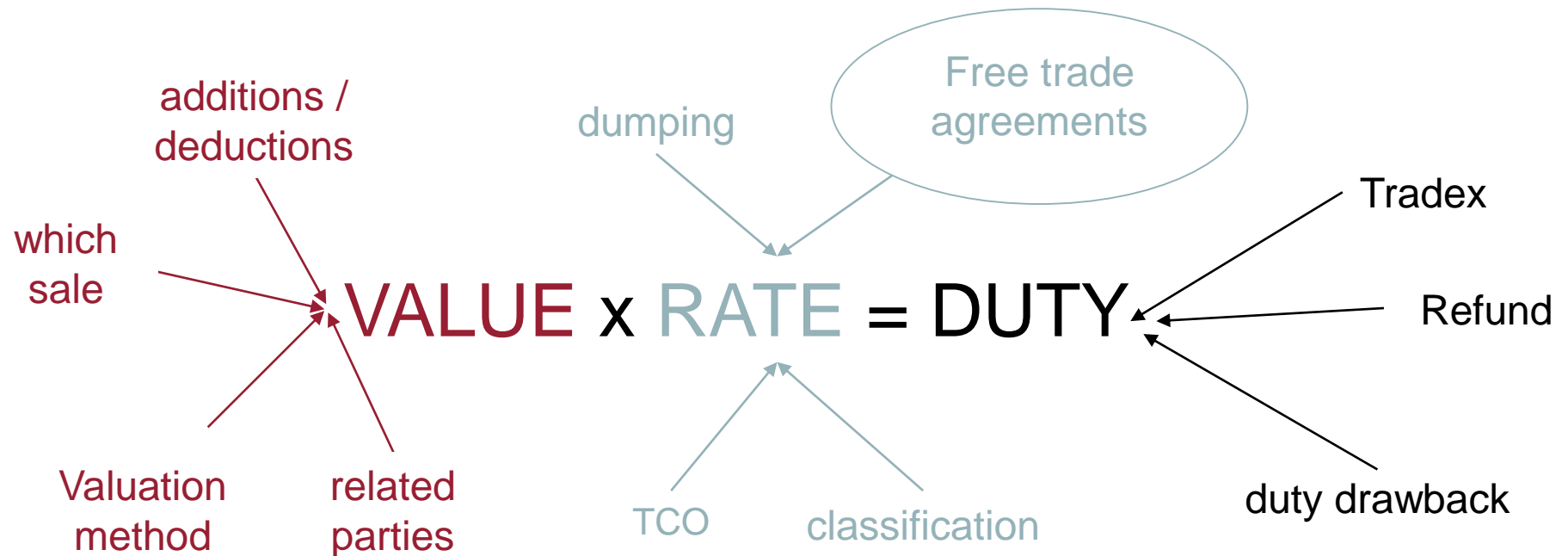
TPP – a long journey

- Obama's pathway into Asia
- Trump quit the TPP on his first day in the White House
- TPP 11 or Comprehensive and Progressive TPP
- Other than no US – TPP mostly unchanged
- Signed on 8 March
- Australia ratified October 2018

Commencement

- 30 December 2018 for:
 - Australia, New Zealand, Mexico, Japan, Singapore, Canada
- Mid January 2019 for Vietnam
- Brunei, Chile, Malaysia, Peru – 60 days after notification of ratification
- A country is not treated as a TPP member until after the 60 day period. Relevant for:
 - Peru (no other FTA yet)
 - transshipment
 - assessing origin

The Customs Equation ... where do FTA's fit?



Of course we need 3 FTAs with New Zealand

Country	Current status	Future FTA	Comment
Canada	Limited	No	New Market
Mexico	DCS	Pacific Alliance	New Market
New Zealand	2 FTAs	RCEP	Little benefit
Singapore	2 FTAs	RCEP	Little benefit
Vietnam	ASEAN	RECP	Improved
Malaysia	2 FTAs	RCEP	Improved
Chile	Bilateral	Pacific Alliance	Little benefit
Japan	Bilateral	RCEP	Improved
Peru	DCS	PAFTA / Pacific Alliance	Improved
Brunei	ASEAN	RCEP	Little benefit

Noodle bowl?

- No doubt it confuses matters
- Need to make sure ROO, certification and benefit are aligned
- Long term – Could improve the situation
- If more countries join, TPP could become the primary FTA
- How much trade would be covered by these 4 FTAs:
 - US
 - TPP
 - RCEP
 - EU

Outcomes



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Tariff outcomes - Exports

- Better GDP growth for Australia without the US included
- Beef and beef products:
 - Further reductions in Japan
 - Elimination over time of tariffs into Mexico and Canada
- Sugar
 - Reduction of tariffs of high polarity sugar into Japan
 - Elimination of tariff on refined sugar into Canada
- Rice – improved access to Japan
- Dairy
 - Japan – elimination of a range of tariffs on Cheese, new access for butter/skim milk powder
 - New access to Mexico and highly protected Canada

Tariff outcomes - Exports

- **Cereal**
 - Elimination of tariffs into Mexico (10 years) and Canada (immediate)
 - Improved access to Japan
- **Wine**
 - New access to Canada, Mexico and Malaysia
 - Improved access to Vietnam and Peru
- **Seafood**
 - Improved access to Peru, Vietnam and Japan
 - New access to Canada (immediate) and Mexico (over 15 years)
- **Resources**
 - Improved access for iron ore, copper and nickel to Peru
 - Improved access for gases and petroleum to Vietnam
- **Manufactured goods**

Summary of tariff outcomes - Exports

- Significant new access:
 - Canada
 - Current trade agreement required direct shipment
 - Limited tariff reductions
 - ROO were complex and difficult
 - Mexico
 - DCS rates
 - Limited benefits
- Improvements in agricultural goods for Japan
- Some improvements for Vietnam
- Miscellaneous improvements for other countries

Imports

- Almost all goods reduced to zero on entry
- Other than Canada, Mexico and Peru most will already be zero

Non-tariff outcomes

- Services
- Government procurement
- Investment
- Customs procedures
- Ecommerce
- Intellectual property
- Environmental protection
- Labour laws

RoO and CoO



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Rules of origin

- Usual wholly obtained/produce – but includes content from all TPP countries
- Increased use of regional value content
 - Focused value method – excludes certain non originating material from the calculation – see PSR
 - Build down/build up – Standard – used on other FTAs
 - Net cost method – for automotive – excludes profit, sales promotion, marketing, shipping and packing costs
- Extremely complicated rules for vehicles and textiles

Rules of origin - Sets

Article 3.17 specifically deals with sets of goods

- If classified by IR 3(a) (heading with the most specific description) or 3(b) (essential character) product specific rule that applies to the set
- If classified by IR 3(c) (numerical order) – each good in the set must be originating
- 10% de minimus rule applies

This will make use of the TPP very difficult for sets

Example RVC

8466.94	<p>A change to a good of subheading 8466.94 from any other heading; or</p> <p>No change in tariff classification required for a good of subheading 8466.94, provided there is a regional value content of not less than:</p> <ul style="list-style-type: none">(a) 35 per cent under the build-up method; <p>or</p> <ul style="list-style-type: none">(b) 45 per cent under the build-down method; or(c) 55 per cent under the focused value method taking into account only the non-originating materials of heading 84.66.
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Example RVC

2004.90	<p>A change to a preparation of a single vegetable of subheading 2004.90 from any other chapter, except from subheading 0703.10, 0709.60, 0713.10 or 0713.32 through 0713.40;</p> <p>A change to any other good of subheading 2004.90 from any other chapter, provided that the value of non-originating materials of subheading 0703.10, 0709.60, 0713.10 and 0713.32 through 0713.40 does not exceed 40 per cent of the value of the good.</p>
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Certificate of origin

- Can be completed by the exporter, producer or importer
- Each country can set its own requirements about importer COO
- No set format
- Can be electronic
- Must specify that the goods are originating and meets ROO
- Must contain minimum data requirements
- Can apply to multiple shipments of **identical** goods within a period specified in the COO (up to 12 months)
- Valid for 12 months from date of issue

Minimum data requirement

- Nominate the party – importer, exporter or producer
- Certifier's name, address, telephone number, email address
- Exporter details – not required for producer COO
- Producer details:
 - can have one COO for multiple producers
 - can keep confidential
- Importer details if known
- Description of the good and 6 figure HS code
- Invoice number (for single shipment)
- Origin criteria
- Blanket period
- Authorised signature and date

COO issued by an authorised body

- There is the right for an exporting country to require COOs be certified by:
 - A competent authority; or
 - An approved exporter
- Such arrangements can only be in place for 12 years
- No indication as to what each country will do – DFAT of DHA were not aware of any country requiring this
- No right for an importing country to required COO by an authorised body

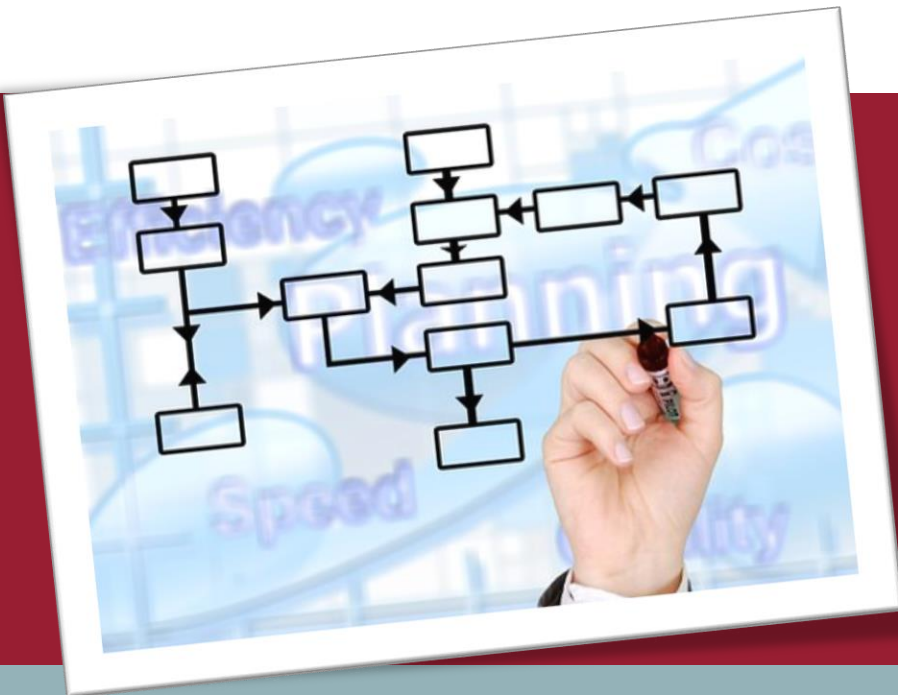
Obligations on the importer

- Must only produce a COO based on documents that prove the goods are originating or reasonable reliance on information provided by the exporter or producer
- If the importer has reason to believe that the COO is based on incorrect information that **could** affect the validity of the COO, the importer will correct the import document and pay any duty and penalties
- No penalty if an importer identifies the issue and voluntarily corrects it and pays the duty prior to the discovery of the error by the customs authority

Obligations on the exporter

- Can base COO on information provided by the producer provided that reliance is reasonable
- Countries have the option of making exporters as liable as an importer for false statement as to origin – duty and penalties
- If an exporter or producer provides a COO that it believes is incorrect, it shall promptly notify every person to whom it provided the COO

Technical issues



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Consignment

- Can pass through another party and not lose status
- Non-party usual rules:
 - Does not undergo any operation other than unloading, reloading, separation from a bulk shipment, storing, labelling or marking as required by the importing party, or any other operation necessary to preserve it in good condition – so no discretionary repacking or relabelling
 - Remains under customs control
 - **Be careful of goods shipped from a US port**
 - NZ case on customs control
 - Improvement on ASEAN FTA

Transition

- Text of agreement - TPP Shall apply to goods that **arrive** in the territory on or after the date of entry into force
- Australian legislation:
 - applies to goods imported after commencement; and
 - applies to goods imported before commencement where the time for working out the rate of duty has not occurred prior to commencement
- What does this mean – goods can arrive before 30 Dec and be warehoused until after 30 Dec (or even better, 1 Jan)
- For pre-arrival entry the key date is the arrival at the first Australian port – not the discharge port

Transition – it doesn't stop there

- You will need a COO at the time of entry
- DHA and DFAT say you cannot issue a COO prior to commencement of the TPP
- COOs can be issued electronically – We suggest that they are issued on 30 December and emailed to the importer
- There is no requirement that the COO has to be issued before export
- Can you just fix it with retrospective COOs.....

Refunds

- TPP terms - Refund permitted where the goods would have qualified for preferential treatment when it was imported
 - Does this mean you must have held the COO at the time of entry to qualify for a refund?
- FTA allows for refunds within one year of entry
- No express provision for retrospective COOs – does it matter?
- Australian legislation allows:
 - refund where goods would have qualified at the time of import
 - refund where you have a CoO at the time of refund
 - DHA see no issue with retrospective CoOs and refunds

Steps to take now



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How will it affect your clients

What duty are your clients currently paying on imports from TPP countries?

- Look at the past:
 - For countries with existing FTAs – why is duty being paid
 - » Are COOs a limiting factor
 - » Non-qualifying content – consider Japan
 - discuss the future
- Good time now to review past duty and look for refund opportunities – existing TCOs, DCS rates
- Make all clients aware:
 - it may impact their strategy
 - it could avoid a claim against you in the future

What goods will qualify

We have :

- the product specific rules
- duty rates by line

Look at supply chains - especially for Mexican and Canadian goods
– model the costs of keeping the goods under bond in the US

- If exports do not qualify:
 - Model the impact – duty rates will be high for agricultural goods
 - Compare the cost to increasing local content or removing offshore packaging etc

Which FTA to use

- For some countries there are now 3 possible FTAs
- Factors to consider:
 1. RoO – if the good doesn't qualify it is not option
 2. Consignment rule (relevant for offshore packaging, labelling)
 3. Duty rate – Which FTA gives you the best rate
 4. Documentation – which is easiest to satisfy
 5. Retrospective – How far back can you go
- Do you forget the FTA and use a TCO

Compliance

- Self-assessment means high levels of internal compliance required
- Put in place systems of determining whether RoO met
- Review the client's proposed CoO

Compliance concerns



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FTA compliance is an ABF priority

“...we will be looking carefully at revenue evasion through misclassification, undervaluation and non-declaration of goods; false claims for GST exemptions; or improper application for preferential treatment under free trade agreements or duty refunds and concessions”

Australian Border Force news alert 7 February 2018

- Expressly mentioned as a compliance priority in the August goods compliance update

TPP compliance more difficult

- Self-certification brings more risk
- Importer COO must be seen as high risk
- Each COO will look different
 - A template you trust will reduce the compliance burden
 - You could create your own template
 - You need to review each COO against a checklist

Broker liability

An incorrect statement as to origin will often result in underpaid duty

- Potential liability where:
 - The broker caused the incorrect statement
 - Broker merely made the statement, but cannot rely on mistake of fact
- Was belief as to origin reasonable:
 - Anything to suggest not of TPP origin (indirect shipment, non-TPP supplier, inconsistent documentation)
 - What procedures are in place to prevent mistaken belief
- Indemnity from client – what do your terms and conditions say
- FTA liability is a ticking timebomb

Summary of TPP challenges

- Ensure clients are aware of potential benefits
- Parties use the most advantageous FTA
- Parties comply with the RoO and CoO requirements of the relevant FTA and not some other FTA
- Lack of template CoO
- Refunds and retrospective CoOs

Other FTAs



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TPP – the future

- The TPP allows for other countries to join
- Countries that have expressed an interest:
 - UK
 - Taiwan
 - Indonesia
 - Thailand
 - Sri Lanka
 - The Philippines
 - South Korea
 - Colombia
 - Laos
 - Bangladesh
- Key challenge is meeting the high TPP standards on non-tariff issues
- 6 months notice to withdraw

Other developments

- RCEP
- EU
- India
- Indonesia
- Peru
- GCC
- Pacific Trade Alliance
- Hong Kong

Questions



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