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Trade

Australia

1. Customs

Customs laws are regulated by the Department of Immigration and Border Protection (old Australian Customs Border and Protection Service). Customs laws are contained in the *Customs Act 1901* (Cth) and instruments made pursuant to it. There is also a range of legislation regulating specific goods and circumstances.

In 2015 and 2016, we have observed a significant increase by Customs in importer audits and reviews of import documents across a range of goods. The reviews have often resulted in Customs challenging tariff concessions claimed by importers creating financial exposure for the importer for both duties and penalties.

In most cases, the government can review imports in the last four years. The reviews are also taking several months to resolve, creating some uncertainty.

Since the current anti-dumping regime began in 2013, there has been a large increase in anti-dumping investigations and dumping duties imposed. Goods subject to investigations include a large range of steel products, solar panels and some fruit and vegetable products. Several changes to the anti-dumping laws were made in 2015 including to expand the range of activities that can be treated as attempts to circumvent dumping duties and trigger potentially additional dumping measures.

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A. Application of GST to digital products and imported services

From 1 July 2017, digital products, and other imported services supplied to Australian consumers by foreign entities, will be subject to GST in a similar way to equivalent supplies made by Australian entities. A new taxing nexus will be introduced to tax supplies made to a recipient who is an "Australian consumer".

An "Australian consumer" will include any entity which is an Australian resident. Further, the entity must not be registered for GST (or if registered, does not acquire the thing supplied solely or partly for the purpose of an enterprise that the entity carries on). This will effectively include domestic consumers.

B. Australian Trusted Trader (ATT)

The government has been piloting an accredited trusted trader programme (ATT) which seeks to provide trade facilitation benefits to those businesses with strong security practices and a history of compliant behaviour.

From 1 July 2016, it is intended that ATT will be fully operational and open to all participants in the international trade supply chain. Accredited Trusted Traders will have access to benefits like enhanced client service through a dedicated point of contact, fewer examinations, priority service and priority consideration of trade advice rulings and applications. Importers, exporters, transport providers and brokers can all participate in the programme.

The government is also pursuing Mutual Recognition Arrangements (MRAs) with Australia's key trading partners so that ATT benefits could be extended to businesses accredited under equivalent programmes in other jurisdictions.

2. Export controls

Australian law prohibits export of goods listed on the Defence and Strategic Goods List (DSGL) without an export permit. The DSGL reflects the Wassenaar Arrangements list. Permits are issued by Defence Export Controls within the Department of Defence (DEC).

There have been several changes in the past year to export controls. The changes include, new permit forms and processes, commencement of new offences, new broad licences and a large amount of material being made available on the DEC website to assist exporters to assess if items are controlled.

On 2 April 2016, the following new offences took effect:

- It is an offence to transfer from a place inside Australia to another person outside Australia DSGL technology in an intangible form (e.g., via email or an internet download). A key issue with the new laws is understanding the rules on what is a transfer to another person. DEC has released guidance on cloud computing and other topics to assist with understanding the new offences.

- Arranging to supply (brokering) controlled items outside Australia's borders without a permit is an offence. These laws apply to military use items on the DSGL and items intended for a weapons of mass destruction (WMD) program. The test for what is brokering under Australian laws appears to differ to the test applied by other jurisdictions. For the activity to be considered brokering, the person must receive money or a non-cash benefit or advance their political, religious or ideological cause for arranging the supply. Arranging supply between or within certain listed countries is not controlled. Activities such as freight forwarding, providing financial services, insurance, reinsurance, promotion or advertising are not controlled.

- Publishing DSGL military use technology without authorisation is an offence (there is no offence if the content is already in the public domain or part of basic scientific research).

DEC has developed 5 types of Australian General Export Licences or AUSGELs that enable the export of a range of controlled goods, software and technologies to certain countries for certain purposes. AUSGELs are valid for five-years (although licences for longer periods can also be sought). The approved destinations for an AUSGEL licence are Austria, Belgium, Bulgaria, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, United Kingdom and the United States.

When applying for an AUSGEL, there is no requirement to list the goods and end-users as you would in an ordinary export application, as the item type and approved end-user destination countries are already on the pre-approved licence.

DEC will conduct a compliance history assessment of the AUSGEL applicant before an AUSGEL can be issued.

3. Sanctions

Australia implements United Nations Security Council (UNSC) sanctions and autonomous sanctions. Sanctions apply to doing business directly or indirectly with designated individuals and entities as well as sanctioned imports, exports, services and commercial activities. It is an offence to engage in sanctioned conduct without a permit. These are issued by the Department of Foreign Affairs and Trade (DFAT).

In 2014 and 2015, Australia introduced a range of sanctions targeting Russia, Crimea and Sevastopol. The sanctions target designated individuals and entities as well as certain sectors (in particular, defence, oil and gas, energy, mining, transport, telecommunications sectors and related commercial and investment activities). These sanctions measures closely follow the measures applied by the European Union (EU).

In 2016, Australia has lifted many sanctions against Iran in line with the lifting on UNSC sanctions and the sanctions lifted by the European Union.

On 27 February 2016, Australia lifted the financial countermeasure sanctions against Iran. These sanctions required financial institutions to obtain a permit from DFAT if they were handling funds above AUD 20,000 with a Iranian connection.

4. WTO/FTA

Australia is a member of the WTO and has FTAs and bilateral investment treaties with numerous countries.

The current federal government has been active in concluding FTAs. Since being in government they concluded:

- The Korea Australia Free Trade Agreement (KAFTA) which entered into force on 12 December 2014.
- The Japan Australia Economic Partnership Agreement (JAEPA) which entered into force on 15 January 2015.
- The China Australia Free Trade Agreement (ChAFTA) which entered into force on 20 December 2015.
- The Trans Pacific Partnership Agreement (TPP) which has been signed and is currently going through the Parliamentary approval process before legislation is passed to implement TPP commitments.

Only a few laws need to be changed in Australia to implement TPP commitments. For example, laws on tariffs and to allow government procurement disputes to be heard by a designated body. There is potential controversy on if Australian patent laws

need to be amended to reflect TPP commitments agreed on data exclusivity for biologics.

A main area of controversy for Australia's recent FTA negotiations (including the TPP) has been whether Australia should agree investor state dispute settlement (ISDS) provisions which would allow private parties to make claims for government breach of investment chapter obligations in agreements. ISDS has been a controversial issue in Australia for several years due to the plain packaging arbitration case brought by Philip Morris relying on ISDS provisions in a bilateral investment treaty between Australia and Hong Kong. The main concern has been whether private party use of ISDS provisions could adversely affect the operations of government. The current government is considering ISDS on a case by case basis.

In the APAC region, Australia is also pursuing bilateral FTAs with India and Indonesia as well as the Regional Comprehensive Economic Partnership.

Australia is a keen participant in the Trade in Services Agreement (TiSA) currently under negotiation. Australia is also negotiating an FTA with the EU.

Australian applied in 2015 to become a member of the WTO Government Procurement Agreement.

5. Country of origin food packaging laws

The *Country of Origin Food Labelling Information Standard 2016* (Information Standard) will commence on 1 July 2016, with a two year transition period for compliance and full stock-in-trade allowance. The Information Standard is issued under the Australian Consumer Law.

The purpose of the Information Standard is to provide clearer, more consistent, more informative and easier to find country of origin labels for food—so that consumers can make more informed choices about the food they buy. This Information Standard also aims to provide businesses with greater certainty and clarity about the claims they can make about the country of origin of the food they supply, and to do so without imposing excessive costs on those businesses.

The other elements of the origin labelling package (amendments to the Competition and Consumer Act (CCA) and repeal of the origin labelling requirements in the Food Standards Code) is to also occur.