TPP OF THE ICEBERG

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On October 5, an announcement was made that there was an agreement in principle on the Trans-Pacific Partnership ("TPP") trade deal. The draft text of the agreement has not yet been made public, and its details are still sparse, except in certain politically sensitive areas. There remains much below the surface that is not yet known.The TPP seeks to establish a free trade area covering twelve countries. Alphabetically these are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. It has been estimated that the deal will cover 800 million consumers in a combined market of $28.5 trillion, representing 40% of global consumption.

The TPP focuses on free trade in goods and services, with a particular emphasis on removal of tariff barriers and facilitating trade in services. The agreement also contemplates rules for the development of technical regulations, standards and conformity assessment procedures as well as rules for the development, adoption, and implementation of sanitary and phytosanitary measures. In many respects, however, the TPP trade arrangement has more limited coverage than other Canadian trade arrangements such as NAFTA, and the Comprehensive Economic Trade Agreement ("CETA") recently concluded with the European Union. In particular, the provisions for administrative cooperation to standardize rules applicable to mutual recognition of standards and resolving technical barriers to trade seem to be less comprehensive.

The negotiators agreed on a dispute resolution procedure, apparently modeled on arrangements under NAFTA, but it is unclear as to the extent of the scope of panel jurisdiction under the TPP. For example, there are provisions for investor protection, but it is not yet clear how the agreed non-conforming measures will limit investor rights.

The TPP is likely to be beneficial to Canadian exporters, since Canada has had traditionally lower tariffs on imports (other than in the dairy and poultry sectors), compared to many of the potential free trade partners. This means that tariff barriers in certain TPP countries that are much higher than those in Canada will eventually be removed on most goods.

The TPP does seem to contemplate an asymmetrical reduction in tariffs, depending on political sensitivities in each country. The timeline for duty removal varies by country and by product. Some tariffs will be removed immediately, but others are to be phased out over periods ranging up to twenty-five years.

The agri-food business in Canada is seen as a major beneficiary of the agreement, particularly for pulses, grains, beef, and pork products. Other Canadian sectors that may also benefit include financial services, fish and seafood, forestry and value-added wood products, as well as industrial goods and consumer products.

The most vocal concerns in Canada were raised by the supply-managed agricultural sector and the automotive sector. The supply-managed poultry and dairy industries will continue to maintain their ability to control supply (and pricing) in the Canadian market, subject only to small increases in permissible duty free import quotas. While the method of quota allocation is not specified, TPP agricultural exporters will be allowed duty free exports up to 3.25% of the Canadian dairy market, and duty free access for poultry ranging between 1.5% and 2.3% of the Canadian market depending on the nature of the product. These supply-managed industries will be eligible for up to $4.3 billion over fifteen years as income support to offset the "loss" of market share in Canada.

The Canadian automotive sector also expressed reservations about TPP. A prime concern would be Japanese automobiles and the removal of the 6.1% tariff rate over five years. At the same time, "within-TPP" content required for preferential tariff treatment under the agreement would be set at 45%. In other words only 45% of the content for vehicles and key Canadian-produced vehicle parts would have to be from a TPP country to enjoy the new tariff treatment. This compares with the 62.5% content requirement under NAFTA. The 45% rule will reportedly replace the current 62.5% rule for NAFTA on ratification of the TPP. The comparability of these numbers is unclear since the special-accounting method for TPP content has not yet been disclosed.

The concern, particularly amongst Canadian auto parts producers, was that this change would allow for more imported parts in Canadian-built vehicles. This concern, though real, may have been somewhat short-sighted. If Canada had not joined the TPP, its inputs into American and Mexican automobiles would no longer have counted as TPP-qualified content on exports of vehicles from those two countries.

The next step will be ratification in each of the TPP countries. This will obviously require that details of the agreement be finalized and disclosed to the extent necessary to allow informed consent by the legislatures of all twelve countries.

Canada's participation in the TPP is in keeping with its ongoing leadership in the liberalization of global trade. With ratification of the TPP, Canada will have free trade arrangements with 51 different countries covering 60% of the world's economy. As previous trade agreements have demonstrated, every new step in the direction of free trade has brought benefits to Canadian consumers and Canadian industry.

by Geoffrey C Kubrick and Jennifer Hill, Student-at-Law

A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.