TPP IMPACT: ENERGY

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Legal Briefings – By **Sharon Wilson** and **Robert Merrick**

IN BRIEF

- The Trans-Pacific Partnership (TPP) will impact the energy sector in a number of ways, including the elimination of tariffs, opening up of new countries for investment and supporting arrangements the subject of bilateral investment treaties.
- The 12 participating countries of the TPP are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States.
- The TPP will help to create a more transparent regulatory environment for investment and operations in the petroleum, oil, gas, LNG and power industries of the participating countries.
- It will be some time before the TPP is implemented. The next steps are the translations of the text and ratification by each of the participating countries.

OPPORTUNITIES FOR THE ENERGY SECTOR

Whilst the energy sector does not have a dedicated chapter in the TPP, it is covered as 'goods and services' in the trade and investment provisions and is indirectly covered by other provisions, including tariff elimination, labour, environment and dispute settlement. The net effect is; a broad range of opportunities will emerge for companies in the energy sector, including:

Diversification of the sector through the elimination of tariffs

The participating countries have committed to the widespread removal of tariffs. For example:

- Vietnam has committed to removing import tariffs on butanes, propane and LNG within 7 years of the TPP coming into force;
- Peru has committed to removing import tariffs on iron ore, copper and nickel; and
- Australia has committed to removing 98% of tariffs across all sectors, including tariffs on crude oil, coal and natural gas.

The TPP also places a prohibition on the creation of new export taxes for any goods destined for the territory of another participating country. This will ultimately benefit companies who are trading and transporting energy products between TPP countries, through eliminating barriers and facilitating a more competitive offering for TPP countries.

Removal of barriers for the provision of energy services

The TPP will facilitate the provision of sector-related services, including:

- exploration;
- extraction;
- engineering;
- power generation;
- environmental management; and
- training within participating countries.

Reforms to local content requirements have also been put in place, to balance the playing field and ensure that foreign companies are not discriminated against when tendering for exploration, production and operating contracts. The benefits will flow from opportunities where countries, such as Vietnam, are expanding offshore exploration and production and require a range of services to fulfil this expansion.

Regulation of state-owned enterprises

Participating countries will be prevented from providing financial support or other unfair preferential treatment to State Owned Enterprises (SOEs). CODELCO, PETRONAS and PETROVIETNAM are examples of energy-sector SOEs that will be regulated by the TPP. The anticipated effect of this is an increase in commercial opportunities for companies who, in the past, would not have been considered for lucrative contracts.

Balancing the playing field

The TPP's objective of balancing the playing field between the participating countries will affect the energy market. Countries which previously benefited from a geographic or regional advantage in exporting products, for example LNG, will now face increased competition through the removal of barriers. For example, Australia will have to compete with the US and Canada for Japan's LNG market.

Of note, is the emergence of the US as a major competitor to the other exporting TPP countries. The TPP is expected to fast-track future LNG exports from the US because it removes the requirement for the Department of Energy to decide whether or not it is in the public interest to export LNG, which has previously stalled or delayed project sponsors from taking FID. This is of importance because the cost of production per tonne of LNG differs significantly between countries.

New opportunities in Government procurement markets

Suppliers will now have the option to bid for service contracts in certain government procurement markets, examples are:

the opening up of Peru's state-owned electricity and hydro-power sector; and
Mexico's oil and gas and electricity sector, which will allow suppliers to bid for government procurement contracts with PEMEX.

This liberalisation will encourage inbound investment in markets that have previously been inaccessible.

Relaxation of foreign investment screening

TPP participant countries have agreed not to introduce new foreign investment screening or to increase existing thresholds, which will also increase the opportunity for growth of foreign investment in the energy sector. Australia has committed to increase the screening threshold for foreign investments in the energy sector from AU$252 million to AU$1,094 million, however this will not include uranium and plutonium extraction and nuclear facilities. Japan, Brunei and Vietnam have committed to only impose conditions on foreign investment in relation to the initial sale of interests owned by government.

Temporary entry for business people

Provisions allowing the right of entry and temporary stay for business persons will allow companies to manage risk and have better oversight of projects by permitting their trained employees to be on site. More accessible face-to-face contact will also assist in creating better relationships between foreign investors and local companies, regulators and governments.

Investor protections

The TPP includes an Investor State Dispute Settlement (ISDS) mechanism that gives foreign investors the opportunity to bring claims against governments of the participating countries if they fail to uphold the provisions of the TPP. Examples of this include where a host state seizes an asset or varies the fiscal or legal regime which affects the value of the asset without providing adequate compensation. The ISDS is yet another example of investor protection to provide ease of mind to financiers and energy companies moving into new or developing markets.

KEY MESSAGE

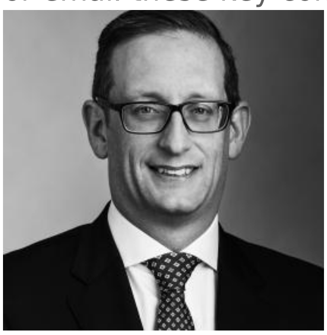
The TPP stands to create new opportunities for players in the energy sector, by liberalising markets, removing barriers to entry, improving the competitiveness of TPP countries and providing significant investor protections. The full effect of the opportunities will not be seen for some time, as the TPP needs to be translated and passed in domestic law. However, investors should begin to consider their future options with the opening up of new energy markets across the participating countries.

This page was co-authored by Sharon Wilson, Partner and Emma Tormey, Solicitor, Perth.

For more information or if you have any questions please contact the sector experts listed on the side.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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