

Trans- Pacific Partnership (TPP) Trade Agreement

Article Insurance Day

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At the Annual Meeting of the Property Casualty Insurance Association of America (PCI) in Florida this week (October 25-28) more than 1,000 insurers, reinsurers and brokers will gather to discuss this year's theme "*Designing the Future: Leadership, Innovation and Change.*"

They do so in the wake of the historical conclusion of the Trans-Pacific Partnership (TPP) trading agreement, and no doubt it will be high on the discussion agenda. If it is implemented it will have significant ramifications for the insurance market and their clients in the countries concerned in terms of liability due to the Agreement's impact on regulatory requirements. It will also open up new opportunities to assist companies that the Agreement seeks to support.

TPP was agreed on 5th October after 5 years of negotiation. The agreement is between the US and 11 other countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore the US and Vietnam. The Agreement's aim is to further and deepen trade and investment as Asia-Pacific is

already a key destinations for US manufactured goods, agricultural products and service suppliers. It seeks to lower trade barriers such as tariffs, establish a common IP framework, enforce labour law and environmental law standards and establish an investor-state dispute settlement mechanism.

Its agreement comes as Europe enters into the 10th round of its negotiation of the Trans-Atlantic Trade and Investment Partnership with the US and much of the terms of TTIP and that Agreement's ramifications will be similar so Europe will be watching TPP closely and listening to the discussions this week in Florida.

Dave Snyder, vice president, international policy at PCI issued the following statement this month:

“PCI commends the negotiators for concluding work on the Trans-Pacific Partnership Trade Agreement. Ambitious trade agreements establish the long term certainty needed by insurers to invest in foreign markets,” said Snyder. “Trade agreements that open markets to U.S. insurers and reinsurers provide mutual benefits of increasing revenues and employment here and help create a culture of risk identification, risk based pricing, and risk prevention in the host countries.”

PCI's stated aim is to promote and protect the viability of a competitive private insurance market for the benefit of consumers and insurers. PCI is composed of nearly 1,000 member companies, representing the broadest cross section of insurers of any national trade association. PCI members write more than \$195 billion in annual premium, 35 percent of the US's property casualty insurance. Member companies write 42 percent of the U.S. automobile insurance market, 28 percent of the homeowners market, 33 percent of the commercial property and liability market and 35 percent of the private workers compensation market.

Of course much of the above mentioned markets involve Lloyd's of London underwriters, as do the Markets in the Pacific Rim countries subject to the Agreement. The London Market is also of course concerned with the European Countries that will be subject to TTIP, as no doubt is the PCI whose members also underwrite companies in Europe that will be subject to TTIP.

In relation to Product liability / product re call policies different laws and regulations between the US and the individual countries can lead directly to liability claims against insureds. At present we know there is a significant divergence between the approach adopted in the US and some of the counter-party countries in the TPP agreements, and under TTIP with the European Union. This can have significant legal ramifications if Insureds do not understand this and policies do not cater for the legal consequences.

By way of an example if we look at the recording of telephone calls we see that some US states permit a party or parties to a telephone conversation to record the call without obtaining the consent of the other party or parties to do so (often referred to as "one party consent states"), whilst other states require all parties to consent (often referred to as "two party consent states"). The prevalent judicial view is that the location of the customer determines the applicable law, not the location of the call centre. This is particularly relevant for businesses that operate or utilise call centres and, in doing so, record customer calls.

Failure to comply with the law of the state or country where the customer is based can result in a civil claim (including potentially wide-ranging class actions) or even criminal sanctions. Such claims may typically be covered under a general or public liability policy - insurers therefore need to be alive to the additional exposures associated with insureds carrying out business of this nature within the US and other countries counterparty countries with similar legal ramifications.

If Pacific Rim Counter Party Insureds businesses record calls and they are subject to a fine per call this can open the insured up to a huge class actions in the US. These sort of issues and the legal ramifications will also apply to liability potential under TPP and TTIP for breach of different regulatory requirements in relation to food and manufacturing safety and so on. Under TPP the extent of these concerns are obvious as there are specific sectoral agreements in the following areas:

- Textiles;
- Chemicals;
- Pharmaceuticals;
- Cosmetics;
- Medical devices;
- Cars;
- Electronics / ICT;
- Machinery / Engineering; and
- Pesticides

Products Guarantee insurance is another potential area where differences in laws and regulations may expose insurers to greater financial risk. Such policies typically cover insureds for the removal, repair, replacement, alteration, treatment or replacement of products which fail to perform their intended function. A product which may conform with the laws and regulations applicable in the country of manufacture may not necessarily meet higher standards applicable abroad. Such non-conformity may mean that a perfectly satisfactory product in one jurisdiction is practically worthless in another – resulting in costs associated with the removal and replacement of the “defective” part. Manufacturers shipping goods between the Counter Party Countries and the US and vice versa need to be alive to this issue but, equally, insurers should be aware of the additional risks associated with manufacturing business carrying out transatlantic trade.

Of course, in spite of the successful negotiations, the deal still has to be ratified by law makers in each country that is subject to the TPP Agreement. The opportunities are great for both the insurance market and their clients, but the ramifications of getting it wrong are huge too. Indeed it will be interesting to see how the Voltswagon scandal plays out, which may help to clarify some of these issues for Insurers and Insureds who are involved in business that will be subject to TPP and TTIP.

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