

Client Alert

October 2015

Update on the Trans-Pacific Partnership Free Trade Agreement - U.S. LNG Export Restrictions on Japan and other Pacific Rim Countries may be Liberalized

Exports of liquefied natural gas (LNG) from the United States require authorization from the United States Department of Energy (DOE).

Applications to export LNG to countries with which the United States has a free trade agreement covering trade in natural gas (FTA countries) are required by law to be approved without modification or delay.

Applications to export LNG to other countries (non-FTA countries) are subject to public comment, are closely reviewed by the DOE in the public interest and may be denied. In extraordinary circumstances, export authorizations may be revoked (or modified) after being granted. For this reason, customers in non-FTA countries like Japan have long been concerned about the risk of the revocation of export authorizations as they consider participating in U.S. LNG projects and in entering into long-term LNG supply agreements.

1. TPP

On 5 October 2015, Japan, the United States, and ten other Pacific Rim countries finalized the terms of the Trans-Pacific Partnership Free Trade Agreement (TPP). The text of the TPP is not yet public, but should be available by November 2015.

If the TPP text provides that each TPP country will treat foreign-sourced natural gas (including LNG) the same as domestically produced natural gas and is approved by each of the TPP parties, then Japan and the other TPP countries will be regarded as FTA countries for purposes of the DOE export authorization process. Consequently, exporters and customers would not face the risk of the revocation of export authorization.

2. Implications for Current LNG Export Arrangements to Japan

Several Japanese companies are customers of U.S. LNG export projects. If the TPP is approved by all the parties with the appropriate national treatment for natural gas, can the Japanese companies who are currently non-FTA customers (and subject to export authorization revocation risk) switch over to FTA customer status and thereby avoid revocation risk?

The mechanics of how a current LNG customer can take LNG as an FTA customer will have to be arranged with the relevant LNG export authorization holder from whom it purchases LNG. This is because DOE authorizations for exports to FTA customers and non-FTA customers are volume-bound. Current non-FTA customers will need to confirm with their exporter whether there is sufficient capacity within the authorized FTA volumes to

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accommodate exports to new FTA customers. It is likely that exporters have built in an adequate capacity buffer in their FTA export authorizations to export to customers in new FTA countries.

Further Updates

Upon publication, the text of the TPP will be examined to confirm that TPP countries will be treated as FTA countries for the purposes of U.S. law. In addition, each country must still approve the TPP under its relevant governmental process (which may not occur until spring 2016), including approval by the U.S. Congress.

We will continue to monitor developments concerning the text of the TPP and its consideration by Japan and the U.S. and provide further updates as warranted.

For more information, please contact [Anne Hung](#) or [Samir Desai](#).