

TPP trade deal advances without the United States

On the side-lines of the recent Asia – Pacific Economic Cooperation (APEC) Leader’s Summit in Vietnam, the remaining 11 member countries of the Trans-Pacific Partnership (TPP) (Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam) have agreed to proceed with a “new” trade pact, named the Comprehensive and Progressive Agreement for the TPP (CPTPP). The countries have managed to reach an agreement on the core elements of the legal text and will continue with discussions for conclusion of the restructured agreement.

What is different in the new agreement?

The new CPTPP suspends 20 provisions within the original agreement, most of which are related to intellectual property rights, rules and measures in Chapter 18. These provisions may be reinstated in the future. However, at present, member countries will not be required to implement these rules at a domestic level. A summary of the suspensions is as follows:

Ch	Topic	Suspended Articles	Main Changes
5	Trade facilitation	(1 provision) Article 5.7.1 (f) Express shipments	Suspend second sentence on review of thresholds for express shipments
9	Investment	(1 provision) Article 9.1, 9.19, 9.22, 9.25 Investment Agreement and Investment Authorisation	Removal of two types of investment agreements (for mining and oil investments) from coverage
10	Services	(1 provision) Article 10, Express delivery services	Suspend paragraph 5 and 6 of Annex 10B
11	Financial services	(1 provision) Article 11.2 Minimum standard of treatment	- Suspend sub-paragraph 2(b), footnote 3, Annex 11(e) - Removal of Annex stipulating different treatment for Brunei, Chile, Mexico and Peru for a set period of time
13	Telecommunication	(1 provision) Article 13.21.1(d) Resolution of Telecommunications Disputes	Suspension of section on reconsideration
15	Government Procurement	(2 provisions) - Article 15.8.5 Conditions for participation - Article 15.24.2 Further Negotiations	- Suspension of Labour as a condition for procurement - Suspension of sentence” no later than three years after the date of entry into force of the agreement”
18	Intellectual property	(11 provisions) - Article 18.37.2, Article 18.37.4 Patentable subject matter - Article 18.46 and 18.48 Patent term adjustment - Article 18.50: Protection of undisclosed test or other Data - Article 18.51 Biologics - Article 18.63 Terms of protection for Copyright and related rights - Article 18.68, 18.69, 18.79, 18.8, 18.82 Annex 18E and 18F: Technology protection measures	- Suspension of 2 new rules of pharma patents: Patent test data and biologics - Suspension of patent term adjustment provisions - Suspension of terms of protection for copyright and related rights - Suspension of new rules for technology protection including technological protection measures (TPMs), rights management information, encrypted satellite and cable signals and safe harbours for internet service providers
20	Environment	(1 provision) Article 20.17.5 Conservation and Trade	Suspend “or another applicable law” and footnote 26
26	Transparency	(1 provision) Annex 26 Article 3: Procedural fairness for pharmaceutical products and medical devices	Suspend Article 3 of Annex 26A on procedural fairness – removed section on how national health systems handles medical devices

Other than the above suspended provisions, no changes have been made to any of the current tariff schedules or commitments in areas such as market access for goods, services, investments, government procurement or state-owned enterprises. Chapters such as e-commerce, data flows, intellectual property, services and investments remain as they were in the new agreement. Thus, despite the withdrawal of the U.S., the quality and content of the CPTPP is expected to remain essentially identical to the original agreement.

From a customs and trade perspective, the CPTPP provides the following benefits to businesses:

Benefits of the CPTPP	What this means for businesses
1) Tariff reduction schedules <ul style="list-style-type: none">• Upon entry into force, tariff rates on almost 90% of all tariff lines will be zero. Remaining tariffs will be reduced to zero within 5-7 years or 10 years from entry into force• Tariff lines for agricultural products are also included in the tariff reduction schedules	Opportunity to leverage on reduced tariff rates to reduce costs of import
2) Rules of Origin <ul style="list-style-type: none">• Product – specific rules of origin• Cumulation available under the CPTPP	A single set of rules apply throughout the member countries. Once product – specific rules of origin are met, products can enjoy preferential tariff treatment upon import into any and all of them.
3) Streamlining of customs procedures and reducing red tape <ul style="list-style-type: none">• Requires all customs laws, regulations and procedures to be published online;• Expedited customs treatment for express shipments;• Strengthen cooperation among member customs services against illegal trade;• Provision of advance rulings on valuation;• Streamlining of customs processes and paperwork	More efficient and transparent processes result in fewer shipment delays on arrival and quicker customs clearance times for imports and exports

What comes next?

Four areas in the agreement, including state-owned enterprises and dispute settlement, are still under negotiation by member countries. They are also proceeding with domestic public consultation procedures. Once the legal texts and tariff schedules are finalised, the CPTPP can enter into force following ratification by at least six out of the eleven member countries. The agreement is expected to be signed in early 2018, and leaders are aiming for the CPTPP to enter into force by late 2018 or early 2019.

What does this mean and how will this affect you?

The new CPTPP continues to be relevant and important for companies in the region. With reduced tariff rates, more efficient and transparent customs procedures, harmonised product specific rules of origin, and the liberalisation of trade in goods, services and investment, the CPTPP is expected to further boost exports, open up new opportunities and provide increased market access. On a global scale, the CPTPP, given its large scale, will likely impact the direct trading partners and competitors of businesses in member and non-member countries, as well as the productivity and competitiveness of existing regional and global value chains.

It is therefore important for businesses to plan ahead and be prepared for the implementation of the CPTPP. This includes understanding the effects of the CPTPP on your global supply and value chains, identifying potential opportunities and challenges, and developing detailed analyses and action plans to take advantage of opportunities or mitigate risks post implementation.

If you have any thoughts or inputs relating to the CPTPP, you can also look out for opportunities to raise them during public consultations.

Conclusion of the CPTPP will put pressure on the RCEP negotiators to conclude their negotiations as soon as possible, with a target for conclusion next year. Perhaps all that talk about protectionism and the end of global trade was premature. What an interesting year it will be!

Let's talk

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