

TEXT OF THE REVISED TRANS-PACIFIC PARTNERSHIP AGREEMENT RELEASED

23 February 2018 | Pacific South East Asia, The Americas
Legal Briefings - By **Donald Robertson, Leon Chung**

The Department of Foreign Affairs and Trade has released the final text of the revised Trans-Pacific Partnership.

Following the withdrawal of the United States in early 2017, a new agreement was reached between Australia and 10 other Pacific Nations in late January 2018. The new agreement has been named the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (**CPTPP**). The CPTPP will be signed in Chile in March. Each signatory then will undertake the necessary ratification processes within their own state.

The CPTPP incorporates the provisions of the original Trans-Pacific Partnership (**TPP**) as signed in 2016. Without the US as a signatory, however, it has suspended or amended a number of provisions.

The relevant changes include:

- Suspending an obligation on parties to review the threshold value for goods exempt from customs duties. This threshold is set by a Party's domestic law, and under the original TPP Parties were obliged to periodically review this amount.
- Narrowing the scope of Investor-State Dispute Settlement (**ISDS**) mechanisms set out in chapter 9. Provisions that allowed foreign investors to make a claim for breach of an "investment agreement" made with a government, or for breach of an investment authorisation granted by a government, have been suspended. Investors can, however, still bring an ISDS claim for a breach of the substantive standards set out in the CPTPP.
- Foreign investors in the Australian financial services sector are no longer protected by

the 'minimum standard of treatment' obligations that are granted to other foreign investors.

- Telecommunication regulatory bodies can no longer be petitioned to reconsider their decisions that adversely affect the interests of an enterprise.
- A number of requirements with respect to intellectual property rights have been suspended. These include obligations regarding providing new use patents, adjusting patent terms if there was an unreasonable delay in granting a patent, protecting data provided to a regulatory body in support of a pharmaceutical product, and establishing a legal framework requiring an internet service providers to cooperate with a copyright holder to prevent infringement. Australia already complies with most of these obligations from the original TPP even though they have been suspended under the CPTPP.
- Further delaying an obligation on Parties to negotiate commitments in their government procurement practices. Originally, states were required to commence negotiations within three years of the TPP coming into force. Now the requirement is to begin negotiations within five years of the CPTPP coming into force.

There is no indication whether and when the suspended obligations will be reinstated.

The CPTPP will enter into force 60 days after half of the parties have provided notice that their applicable ratification procedures have been completed. For Australia, this requires the text of the CPTPP to be tabled in Parliament and the Joint Standing Committee on Treaties to provide a full report.

The CPTPP continues to be a high quality investment agreement, containing provisions that will open up markets within the region. The economic and legal institutional arrangements that support the globalisation of world markets are changing rapidly. The CPTPP is a step towards a greater goal set by APEC of a Free Trade Area of the Asia Pacific.

Further analysis and commentary on this very important step in the continued globalisation of world markets will soon appear.

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