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TPP AGREEMENT FINALLY REACHED

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Legal Briefings

Agreement has been reached on the Trans-Pacific Partnership. It is a transformational agreement - Read our summary and link to the official details.

The TPP is expected to impact on most industry areas and is relevant to almost every key sector of the economy.

The Trans-Pacific Partnership (TPP) deal has been done. The TPP is the largest mega-regional trade and investment deal made, encompassing approximately 40% of global GDP and worth approximately USD 28 trillion.

It has enormous political, economic and legal implications. It turns our attention not just to Asia-Pacific but to the whole of the Pacific Region, including importantly, the United States of America and South America.

As stated in the Communique of the Trade Ministers, this is an ambitious, comprehensive and high standard agreement but it is complex in its scope of coverage and the number of nations covered. It is more than a free trade deal. It is a new breed of document suited to a globalising world that is full of global value chains. It is a document that is a wide-ranging and intrusive document concerning the economic governance of the region. It touches upon many industries specifically, and contains many general provisions. It deals with important and controversial issues such as e-commerce and data retention, biologic patents, human rights issues such as child labour and labour standards and with more “traditional" trade issues in a wide range of industries. Of enormous importance is the inclusion of Investor-State Dispute Settlement (**ISDS**) provisions, with implications for the structuring of transactions within the Pacific region.

Click here for the Trade Ministers Communique

Click here for the USTR summary of the TPP

WHAT DOES THIS MEAN?

We will not have access to the full text of the TPP for some weeks. However, we have provided a summary of the likely key implications and impacts for each sector on our hub page.

In summary, this will mean:

- This is the largest mega-regional trade and investment agreement ever made, encompassing approximately 40% of global GDP and worth approximately USD 28 trillion. It has enormous political, economic and legal consequences. It is not the only one on the table in the Pacific region, with the recent coming into being of the ASEAN Economic Community and the start of negotiations on the Regional Comprehensive Economic Partnership (**RCEP**) – which includes China.

- It is prompted in part by a number of factors: first, the failure of the WTO Doha round, which has bogged down in its effort to secure a global free trade agreement; second, the changing face of "globalization" which is no longer just about importing and exporting goods and services from one country to another, but about the creation and sustaining of global value chains, by which goods and services "intertwine" the economies of a number of different countries – the Pacific Rim is a cluster of global value chains and intertwined marketplaces; third, the growth impetus from the deal will aid in achieving at least some of the new sustainable development goals, such as the elimination of poverty, just agreed in New York at the UN.

- It is not so much a "free trade" agreement as an agreement dealing with "economic governance" of the member state markets – a form of economic constitution. It is the most modern of its kind, responding to the factors just mentioned. So, for example, it contains strong rules in relation to protection of intellectual property and also the way in which the TPP states will regulate their markets. Those strong rules are important because of the need for consistent treatment of property rights and regulation of markets if the global value chains are to be sustained.

- The TPP gives great opportunities to companies. The new access given to markets are there for companies to seize. They can also better manage their risk in cross-border investments. The Investor-State Dispute Settlement (**ISDS**) provisions are important safeguards of the economic governance provisions, at the same time preserving the public interest in regulating markets and activities that affect the public interest. Companies need to take advantage of the mechanisms and safeguards put in place by the TPP.

- Criticisms of the TPP (especially the ISDS provisions) that they interfere with the sovereignty of nation states is misplaced. It is true that any form of constitution regulates the sovereign powers of the member states. But this blurring of the lines of states and their autonomy is a necessary consequence of globalization and the intertwining of the regional economies, not of the TPP itself.

- There will likely be a parallel agreement between the parties in relation to currency manipulation, in order to address concerns about the potential for the parties to reduce the impact of the removal of tariffs on their own producers by manipulating the value of their currency. It was a point of controversy during the negotiations as to whether the TPP should cover this issue, but it was ultimately carved out to be addressed in the form of a separate agreement which is currently being negotiated by the parties' finance ministers and central bank governors. This agreement, which has not yet been finalised, reportedly seeks to commit the parties not to engage in competitive currency devaluations in order to create advantages for their own exporters. The enforceability of any such commitments is thought to remain an area of disagreement.
- There is a long process yet to be followed of each state individually ratifying the TPP before it comes into effect. This usually requires a parliamentary vote. The TPP will not come into effect until well into 2016. The full text will not be released for a few weeks.

Please refer back to our hub for further developments and sector insights which will be updated as they occur.