

TPP IMPACT: ENVIRONMENT

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Legal Briefings

The objectives of Chapter 20 – Environment include the promotion of mutually supportive trade and environmental policies, high levels of environmental protection and effective enforcement of environmental laws, and enhancement of the capacities of the signatories to address trade-related environmental issues, including through cooperation. The signatories also recognise the importance of mutually supportive trade and environmental policies and practices to improve environmental protection in the furtherance of sustainable development.

Given the nature of the TPP as a trade agreement, the TPP environmental provisions focus on the need to balance environmental protection mechanisms against the promotion of trade, investment and sustainable development. This is achieved by a focus in the TPP on ongoing cooperation between the signatories in relation to recognised trade-related environmental issues.

CRITICISMS MADE

The Chapter has been criticised for not containing legally binding environmental protection measures. However, a lack of such measures is unsurprising given that a trade agreement such as the TPP would not ordinarily be considered the appropriate vehicle for measures of this nature.

The investor-state dispute settlement processes (ISDS) found in chapter 9 of the TPP1 have also been criticised. The concern is that these provisions will be used by individuals and corporations to sue TPP signatories over changes to environmental laws or policies that cause harm to investment. However, there are several checks and balances in the TPP concerning potential compensation or other remedies in relation to harm suffered as a result of changes to environmental law or policy. For example, Article 20.3(2) of the TPP recognises the sovereign right of each signatory to establish its own levels of domestic environmental protection and its own priorities, and to establish, adopt or modify its environmental laws or policies accordingly. Also, Article 20.3(3) requires each signatory to strive to ensure that its environmental laws and policies provide for, and encourage, high levels of environmental protection and to continue to improve its respective levels of environmental protection. There is no doubt that such provisions will ensure that the success or otherwise of any compensation claim will be highly dependent on the particular circumstances of the case.

There has also been criticism of the statement in Article 20.2(3) of the TPP that it is inappropriate for TPP signatories to establish or use their environmental laws or other measures in a manner which would constitute a disguised restriction on trade or investment between the signatories. The concern is that these provisions will expose new and possibly existing environmental laws to legal challenge on the basis that they restrict trade or investment. But, again, the checks and balances just mentioned would appear to override these concerns.

There has been criticism that the words 'climate change' have not been included in the TPP. While there is no direct reference to climate change, Article 20.15 acknowledges that collective action is required in the transition to a low emissions economy and identifies a number of areas where the signatories must cooperate to address matters of joint or common interest in this transition. These areas include energy efficiency, development of cost-effective, low emissions technologies and alternative, clean and renewable energy sources, sustainable transport and urban infrastructure development, addressing deforestation and forest degradation, emissions monitoring, market and non-market mechanisms, low-emissions, resilient development and sharing of information and experiences. Further, signatories must, as appropriate, engage in cooperative and capacity-building activities related to transitioning to a low emissions economy.

For more information or if you have any questions please contact the sector experts listed below.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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