

TPP IMPACT: TRANSPARENCY AND ANTI-CORRUPTION

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Legal Briefings - By **Leon Chung**

The TPP seeks to provide greater transparency and certainty to businesses seeking to trade with and invest in TPP Parties, and to combat corruption and bribery of public officials and other acts of corruption that adversely affect international trade and investment.

It is a part of the regulatory structural framework (together with measures such as investor state dispute mechanisms) which is intended to allow investors to engage in international trade and investment with greater certainty that the market is not being distorted.

TRANSPARENCY

TPP Parties must ensure that laws, regulations, procedures and administrative rulings of general application regarding matters covered by the TPP are publicly available. Parties must also, to the extent possible, publish proposed measures and allow interested parties to comment on them before they are adopted. This requirement is particularly strict in relation to proposed regulations that are likely to affect trans-Pacific trade or investment. With respect to such regulations, TPP Parties must also, to the extent possible, provide an explanation of the purpose of, and rationale for, the proposed regulation and consider comments received from interested parties.

TPP countries have agreed to ensure particular due process rights for TPP stakeholders in relation to administrative proceedings regarding matters covered by the agreement, including establishing or maintaining avenues of independent and impartial review and appeal for parties to a proceeding.

Further to its aim of promoting good governance, and thereby promoting international trade and investment, the TPP incorporates provisions about the provision of information. The agreement requires each Party to inform other Parties of any measures, proposed or actual, which could substantially affect those Parties' interests under the agreement. Each Party also has the right to request and receive information regarding any proposed or actual measures by another Party which the requesting Party believes may affect the operation of the TPP.

ANTI-CORRUPTION

The TPP reflects a commitment to eliminating bribery and corruption in international trade and investment and promoting integrity in both the public and private sectors.

TPP Parties have agreed to adopt or maintain laws criminalising the following acts of corruption:

- offering bribes to public officials, including foreign officials;
- for public officials, accepting such bribes; and
- aiding or abetting, or conspiracy in the commission of these acts.

These offences will be liable to sanctions that take into account the gravity of the offence. To supplement them, TPP countries have agreed to adopt or maintain measures regarding the maintenance of books and records, financial statement disclosures, and accounting and auditing standards.

The TPP recognises the right of each Party to exercise discretion with respect to the enforcement of its anti-corruption laws; however, it stresses the importance of international cooperation to enhancing the effectiveness of law enforcement actions to combat corruption.

The TPP contains a number of provisions aimed at promoting integrity among public officials, which should further encourage international trade and investment. It specifies measures that the Parties should adopt to strengthen integrity among public officials and members of the judiciary. The Parties have also committed to considering adopting or maintaining standards of conduct for public officials, and procedures for disciplining or removing officials who violate those standards.

With respect to the private sector, the TPP provides for promoting the participation of enterprises (and other private sector groups) in combating corruption in matters affecting international trade and investment. TPP countries may adopt or maintain:

- measures to encourage professional associations in assisting enterprises to develop internal controls, ethics and compliance programs or measures for preventing and detecting bribery and corruption; and
- measures to encourage company management to publicly disclose the measures it has adopted to combat bribery and corruption.

TPP countries have also committed to encouraging private enterprises to develop and adopt sufficient internal auditing controls and to ensure that their accounts and financial statements are subject to appropriate auditing and certification.

ANNEX TO CHAPTER 26

Additionally, the TPP contains provisions that promote transparency and procedural fairness with respect to listing and reimbursement for pharmaceutical products or medical devices.

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

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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