

**National Interest Analysis [2016] ATNIA 4
With attachments**

**Trans-Pacific Partnership Agreement between the Government of Australia and
the Governments of:**

**Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand,
Peru, Singapore, the United States of America and Vietnam**

and associated side letters

(Auckland, 4 February 2016)

[2016] ATNIF 2

Attachments:

Attachment I	Consultation
Attachment II	Analysis of Regulatory Impact on Australia
Attachment III	Fact Sheet: Trans-Pacific Partnership Agreement Outcomes at a glance
Attachment IV	Trans-Pacific Partnership Agreement: Summary of Chapter Outcomes

NATIONAL INTEREST ANALYSIS: (CATEGORY 1 TREATY)

SUMMARY PAGE

Trans-Pacific Partnership Agreement between the Government of Australia and the Governments of:

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Nature and timing of the proposed treaty action

1. The proposed treaty action is notify to the Depository (New Zealand) in writing the completion of Australia's legal procedures to implement the Trans-Pacific Partnership Agreement between the Government of Australia and the Governments of Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States of America and Vietnam (TPP/the Agreement), which was signed by the Governments of Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States of America and Vietnam on 4 February 2016.
2. This proposed treaty action has been tabled for consideration by the Joint Standing Committee on Treaties (JSCOT) at the earliest available opportunity following signature of the Agreement.
3. Article 30.5.1 (Entry into Force) of the TPP provides that the TPP will enter into force 60 days after the date on which all original signatories have notified the Depository in writing of the completion of their applicable legal procedures. Article 30.5.2 provides that in the event that not all original signatories have notified the Depository in writing of the completion of their applicable legal procedures within a period of two years of the date of signature of the Agreement, it shall enter into force 60 days after the expiry of this period if at least six of the original signatories, which together account for at least 85 per cent of the combined gross domestic product of

the original signatories in 2013,¹ have notified the Depository in writing of the completion of their applicable procedures within this period. It is proposed that Australia provide such notification as soon as practicable following consideration by JSCOT, the passing of legislative amendments and the enactment of any necessary regulations. The Government of Australia and the Governments of Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States of America and Vietnam are working towards entry into force of the TPP as soon as their respective domestic legal procedures will allow, in order to maximise the economic advantages to all Parties to the Agreement.

4. Through a number of side letters entered into with TPP Parties, entry into force of the TPP will terminate or alter a number of existing treaties or treaty obligations. These are detailed below at paragraph 48.

5. Australia will also lodge a notification, expressly permitted under Article 29.5, electing to prevent any and all Investor-State Dispute Settlement (ISDS) challenges to Australia's tobacco control measures under the TPP.

Overview and national interest summary

6. The TPP will significantly boost Australia's economic relationships through the region: creating seamless preferential supply chains with the TPP Parties; bolstering relations with those with whom we already have existing Free Trade Agreements (FTAs) (bilateral or regional); and, in the case of Canada, Mexico and Peru, by becoming preferential trading partners for the first time.

7. The TPP will give Australian exporters significantly improved market access in goods and services to a free trade area accounting for around 40 per cent of global GDP. It will eliminate or significantly reduce tariffs on a wide range of Australian goods exports including beef, dairy, sugar, rice, cereals, wine, horticulture, and resources, energy and manufactured products.

8. Beneficiaries of the Agreement will include Australian service suppliers across a range of sectors including: education, financial, mining-related, professional, telecommunications and transport and logistics services. Australian business and consumers will enjoy cheaper imports, notably for elaborately transformed manufactures which are produced through TPP regional supply chains, but also for goods produced in Australia's new FTA partners of Mexico, Canada and Peru. Expanded liberalisation of trade is likely to stimulate further economic activity in Australia, leading to job creation.

9. The TPP will also protect Australia's competitive position in the markets of the TPP Parties. Market access gains under the TPP will be delivered more quickly than any other current multilateral or plurilateral negotiations underway such as in the World Trade Organization (WTO) or in the Regional Comprehensive Economic Partnership (RCEP).

¹ For the purposes of this provision, the gross domestic products shall be based on data of the International Monetary Fund using current prices (U.S dollars).

Reasons for Australia to take the proposed treaty action

10. The TPP is a comprehensive trade agreement which addresses the contemporary needs and concerns of Australian traders in a dynamic, changing and strategically important region for global commerce which accounts for around 40 per cent of global GDP. Modelling by the World Bank suggests that Australia is set to benefit from the TPP through GDP growth of around 0.7 per cent by 2030. Similar findings were made in modelling by the Peterson Institute for International Economics and the Research Institute of Economy Trade and Industry, which found increases of 0.6 per cent and 1.9 per cent respectively to Australia's GDP, over similar time periods. This will increase as other significant economies in the region join over time with some, such as Indonesia, Korea and the Philippines, already having indicated a desire to do so.
11. The TPP will deliver high quality outcomes that will open substantial new trade and investment opportunities for Australia. It will promote job-creating growth, further integrate our economy into the fast-growing Asia-Pacific region, and promote and facilitate regional supply chains. The TPP forms part of the Government's microeconomic reform strategy to support diversification of our economy in the post-mining boom phase.
12. By setting common international trade and investment standards between member countries, the TPP will make doing business across the region easier, reducing red tape and business costs.
13. Increased and more efficient trade and investment in the region will benefit the Australian economy. Improved market access for Australian goods and services exports and lower import prices will increase capital accumulation, raise productivities and improve utilisation of resources.
14. The TPP includes some of the world's biggest economies (the United States (US), Japan, and Canada) and five of Australia's top 10 goods export destinations (Japan, the US, New Zealand, Singapore and Malaysia). Australia's goods exports to TPP Parties were worth around \$88 billion in 2014 – or 33 per cent of Australia's total goods exports.
15. The TPP will eliminate 98 per cent of tariffs in the TPP region. Tariffs on US\$9 billion (approximately AUD13 billion²) of Australia's dutiable exports to TPP countries will therefore be eliminated under the TPP.
16. The TPP market access outcomes build on existing access Australia has with its FTA partners of Japan, the US, Chile, New Zealand, Malaysia, Singapore, Brunei and Vietnam. The TPP also creates valuable new market access opportunities for Australian exporters in the three TPP countries where Australia does not have a FTA, namely Canada, Mexico and Peru.
17. The key outcomes and impacts are set out in detail in **Attachment II** (Analysis of Regulatory Impact on Australia) and **Attachment III** (Fact Sheet) to this National Interest Analysis (NIA). Sectoral outcomes are summarised below.

Agriculture

² Based on exchange rate of 1.456 AUD as at 18 January 2016.

18. Australia exported around \$15 billion worth of agricultural goods to TPP countries in 2014, representing close to 33 per cent of Australia's total exports of these products. Australia enjoys a reputation as a reliable high quality producer of agricultural commodities and processed foods in the region. The TPP will eliminate tariffs on more than \$4.3 billion of Australia's dutiable exports of agricultural goods to TPP countries upon entry into force of the Agreement. A further \$2.1 billion of Australia's dutiable exports will receive significant preferential access through new quotas and tariff reductions. Specific outcomes include:

- (a) **beef:** significant reductions and elimination of tariffs on beef and beef products into Japan (building on the Japan-Australia Economic Partnership Agreement (JAEPA)); elimination of tariffs on beef and beef products into Mexico and Canada over 10 years and elimination of the Australia-United States Free Trade Agreement (AUSFTA) beef safeguard into the US;
- (b) **sugar:** for the first time in over 20 years, guaranteed new access into the US; tariff elimination and levy reduction for high polarity sugar into Japan adding further to the competitive advantage of JAEPA; elimination of the tariff on refined sugar into Canada;
- (c) **rice:** for the first time in over 20 years, quota expansion for Australian rice into Japan and agreement to new administrative arrangements to facilitate trade. Mexico will eliminate its rice tariffs over 10 years and Peru will eliminate its ad valorem tariffs on rice on entry into force;
- (d) **dairy:** elimination of tariffs on a range of cheeses covering over \$100 million in existing trade with Japan, new preferential access for a further estimated \$100 million of trade, building substantially on JAEPA and new quota arrangements for Australia on butter and skim milk powder. In the US, elimination of tariffs on dairy products including milk powders, ice-cream, infant formula and selected cheeses, increased quota access of 9000 tonnes for Australian cheese exports and improved quota administration arrangements. New preferential access into Mexico and the highly-protected Canadian market;
- (e) **cereals:** elimination of tariffs on wheat and barley into Mexico (within 10 years) and Canada (upon entry into force). Reduction of the mark-ups applied to wheat and barley in Japan and the creation of new quota arrangements above and beyond JAEPA;
- (f) **wine:** elimination of tariffs into Mexico (between 3 to 10 years) and Canada (upon entry into force), Peru (within 5 years) and, for the first time, Malaysia (within 15 years) and Vietnam (within 11 years); and
- (g) **seafood:** elimination of all tariffs into Canada, Peru and Vietnam on entry into force, and Mexico and Japan within 15 years.

Risk-based quarantine measures in the Sanitary and Phytosanitary Chapter are not subject to the TPP Dispute Settlement mechanism. The TPP will not affect Australia's risk-based quarantine measures.

Resources, Energy and Manufactured Goods

19. Australian exports of resources, energy, and manufactured products generally face far lower tariff barriers than agricultural goods. Nonetheless, the TPP will eliminate all remaining tariffs on Australian exports of non-agricultural products to TPP countries and create new opportunities for Australian exports.

Resources and Energy

20. Australia's exports of resources and energy products to TPP countries were worth over \$47 billion in 2014, representing around 53 per cent of Australia's total goods exports to these countries. This includes around \$41 billion of resources and energy exports to Japan.

21. While the majority of Australia's major exports, such as coal, iron ore and liquefied natural gas already enter TPP countries duty-free, the TPP has secured additional market access, including:

- (a) immediate elimination of tariffs **on iron ore, copper and nickel** to Peru;
- (b) elimination of tariffs on **butanes, propane and liquefied natural gas** to Vietnam over 7 years; and
- (c) elimination of Vietnam's 20 per cent tariffs on refined petroleum over 10 years – Australian exports were valued at \$11 million in 2014.

Manufactured and Other Goods

22. Australia's exports of **manufactured goods** to TPP countries were worth an estimated \$23 billion in 2014. New market access outcomes include:

- (a) immediate elimination of tariffs on **iron and steel products** into Canada and into Vietnam within 10 years;
- (b) elimination of **ship tariffs** into Canada over 5 to 10 years;
- (c) elimination of tariffs on **pharmaceuticals, machinery, mechanical and electrical appliances, and automotive parts** to Mexico within 10 years;
- (d) elimination of duties on **paper and paperboard** to Peru over 10 years;
- (e) elimination of tariffs on **automotive parts** to Vietnam over 10 years;
- (f) a requirement for Malaysia to cease providing excise tax credits for locally produced automotive parts, which had favoured the use of Malaysian components over parts imported from Australia; and
- (g) Australian businesses will now be able to bid for tenders to supply goods (such as pharmaceutical products, electronic components and supplies) used for government purposes in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam.

Services

23. TPP countries account for 24 per cent of the world's trade in services, with Australian services exports to TPP countries worth over \$20 billion in 2014 (almost 35 per cent of total Australian services exports).

24. The TPP will contribute to a significant expansion and diversification of Australian services exports to Asia-Pacific countries by liberalising key barriers, providing more transparent and predictable operating conditions in TPP countries, and capturing future services sector reforms. Examples include:

- (a) **mining equipment, technologies and services (METS) and oilfield service providers:** major new commercial opportunities for our world class service providers, including through:

- (i) Mexico's historic liberalisation of its energy sector;
 - (ii) Vietnam opening its mining investment regime;
 - (iii) Brunei Darussalam and Vietnam locking in future reforms to local content regimes or otherwise committing to a level playing field between Australian and foreign suppliers providing goods and services in the mining, oil and gas sectors; and
 - (iv) new rules on large state-owned enterprises such as PEMEX in Mexico, VINACOMIN and PETROVIETNAM in Vietnam, which will help ensure that Australian goods and service providers can compete fairly for contracts;
- (b) **professional services:** Malaysia has locked in recent reforms to the legal, architectural, engineering and surveying services sectors, removing a number of restrictions that have long been of concern to Australian businesses;
 - (c) **financial services:** new opportunities for Australian exporters to TPP countries, with guaranteed ability to provide the following cross-border services: (i) investment advice and portfolio management services to a collective investment scheme; and (ii) insurance of risks relating to maritime shipping and international commercial aviation and freight, and related brokerage;
 - (d) **temporary entry of business persons:** preferential temporary entry arrangements for Australian business people and their spouses into key TPP markets, including the waiving of work permits and provision of work rights for spouses in Brunei Darussalam, Canada and Mexico. Reciprocal TPP commitments on temporary entry of skilled business persons will support greater trade and investment opportunities in the Asia-Pacific region. The ability of business persons to move across borders is an integral feature of modern business and a crucial contributor to growth in Australia's commercial relations;
 - (e) **education services:** Australian universities and vocational education providers will benefit from guaranteed access to a number of existing and growth markets in Brunei Darussalam, Japan, Malaysia, Mexico, Peru and Vietnam. Australian providers will also be well placed to supply online education services across the region;
 - (f) **transport services:** Australian freight and logistics companies stand to benefit from enhanced commitments that support integrated logistics supply chains. Australian providers of transport and logistics services in Malaysia and Vietnam will gain strong trade and investment protections for the first time. The TPP will capture future liberalisation of investment regulations in aviation in Vietnam and freight trucking in Malaysia and Vietnam, which are key markets for our airlines and logistics providers;
 - (g) **telecommunications services:** Australian companies stand to benefit from the phasing out of foreign equity limits in Vietnam's telecommunications sector five years after the entry into force of the TPP and the ability to apply to wholly-own telecommunications ventures in Malaysia;
 - (h) **health services:** Australian providers of private health and allied services will benefit from greater certainty regarding access and operating conditions in Malaysia, Mexico and Vietnam; and
 - (i) **hospitality and tourism services:** Australian suppliers of travel agency and tour operator services will benefit from guaranteed access in Brunei Darussalam, Canada, Chile, Japan, Mexico and Peru; and greater certainty

regarding access and operating conditions in Malaysia and Vietnam. Increased trade and investment among TPP countries will also increase demand for domestic tourism services and support the development of Australia's tourism sector, particularly in regional Australia.

Government procurement

25. New opportunities for Australian businesses to bid for government procurement services contracts, such as:

- (a) accounting, auditing and taxation services in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam;
- (b) management consulting services in Brunei Darussalam, Malaysia, Mexico and Peru;
- (c) computer and related services offers by all TPP Parties, along with maintenance of office machinery in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam;
- (d) architectural engineering and other technical services in Brunei Darussalam, Canada, Malaysia, Mexico and Peru;
- (e) land and water transport services in Brunei Darussalam, Malaysia and Peru;
- (f) telecommunication and related services in Brunei Darussalam, Canada, Malaysia and Peru;
- (g) environmental protection services in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam;
- (h) education services in Brunei Darussalam, Canada, Japan, Malaysia, Mexico and Peru; and
- (i) health and social services in Brunei Darussalam, Malaysia and Peru.

26. For the first time, Australian METS and oilfield service suppliers will also be eligible to bid for government procurement opportunities with Mexico for PEMEX and with Peru for PETROPERU, along with other entities in Peru's government-owned electricity and hydro power sectors.

Investment

27. The TPP will create new investment opportunities and provide a more predictable and transparent regulatory environment for investment.

28. Australian investment in TPP countries reached \$868 billion in 2014, representing an increase of 16 per cent from 2013, and doubling since 2004. Australian investment in TPP countries is 45 per cent of all outward investment. Investment in Australia from TPP countries more than doubled in the last decade to reach \$1,109 billion in 2014, an increase of 10 per cent over the previous year. Investment from TPP countries is 40 per cent of all foreign investment in Australia.

29. The TPP will promote further growth and diversification of Australian outward investment by liberalising investment regimes in key sectors for which the TPP region accounts for a major share of global investment, such as mining and energy, telecommunications and financial services. Mining and energy exploration efforts are centred on the Asia-Pacific region: the five TPP Parties from the Americas (Canada, Chile, Mexico, Peru and the US) accounted for an estimated 40 per cent of worldwide exploration budgets in 2014 and Australia a further 12 per cent. Under the TPP, Canada will allow Australian investors to apply for an exemption from the 49 per cent foreign equity limit on foreign ownership of uranium mines, without first seeking a Canadian partner. Australian investors will also benefit from preferential investment screening thresholds. Australian investments into Canada below CA\$1.5 billion and into Mexico below USD\$1 billion will not be screened. Australian investors will also benefit from commitments offered by Japan, Vietnam and Brunei Darussalam to only impose conditions on foreign investment on the initial sale of interests or assets owned by the government.

30. The TPP will also promote further growth and diversification of foreign investment in Australia by liberalising the screening threshold at which private foreign investments in non-sensitive sectors are considered by the Foreign Investment Review Board (FIRB), increasing it from \$252 million to \$1,094 million for all TPP Parties.

31. Under the TPP, Australia has retained the ability to screen investments in sensitive sectors to ensure they do not raise issues contrary to the national interest. All investments by foreign governments will continue to be examined and lower screening thresholds will apply to investments in agricultural land and agribusiness.

32. The TPP's investment obligations include high quality, modern rules governing the treatment of investors and their investments, balanced with robust safeguards to preserve the right of the Government to continue regulating in the public interest. Investment obligations can be enforced directly by Australian and other TPP investors through an ISDS mechanism.

33. A number of important safeguards are built into the rules guiding ISDS, making this one of the most protective treaties in existence worldwide in terms of its protections for legitimate regulation. Procedural safeguards in the TPP provide enhanced levels of transparency in the management of ISDS claims. In addition, specific Australian policy areas are carved-out from certain ISDS claims including: social services established or maintained for a public purpose, such as social welfare, public education, health and public utilities; measures with respect to creative arts, Indigenous traditional cultural expressions and other cultural heritage; and Australia's foreign investment policy, including decisions of the Foreign Investment Review Board. Australia's tobacco control measures as defined under the TPP will not be able to be challenged.

Lowering the Cost of Doing Business

34. The TPP includes additional commitments which will **lower the costs of doing business**. Highlights include:

- (a) more transparent and efficient **customs procedures** making it easier for Australian companies to export and do business in the region. For example,

TPP Parties will be required to provide an advance ruling on the tariff classification of a good, how it should be valued, whether a good is originating and how to claim preference;

- (b) regional **rules of origin** and a single set of documentary procedures for products traded under the TPP. These arrangements will support the development of regional supply chains by encouraging ‘cumulation’, which permits inputs used in the production of a good from one TPP Party to be treated as the same as inputs from any other TPP Party when making a good. The arrangements will also allow businesses to save on administrative costs by allowing them to trade under the one set of rules, rather than under existing multiple bilateral FTAs;
- (c) **duty-free temporary admission of pallets and containers**. This TPP commitment will provide significant cost and administrative savings for Australian businesses engaged in providing transport logistics services in the Asia-Pacific;
- (d) mechanisms to address **non-tariff barriers** (NTBs) impeding trade, which will give Australia an important avenue to address NTBs affecting our exports in the region. The TPP will enhance transparency, cooperation and promote good practice with regard to establishment and maintenance of technical regulations. A better understanding of each Party’s regulatory systems will improve public safety and benefit Australian consumers; and
- (e) simplified rules and **technical requirements** for several products, including wine and spirits. For example, the Australian wine industry will be able to use the same label on bottles of wine for export to all TPP countries, saving money on marketing and distribution costs.

35. As a regional FTA, the TPP will create additional and longer term benefits for consumers and businesses that are not possible to achieve under a bilateral FTA. Even though Australia has relatively low tariffs, products created via an international supply chain are taxed at the borders over which they pass before they get to our shores. Under the TPP, producers will be able to use inputs from any of the 12 participating countries and trade the good under the TPP preferential trading arrangements. This means lower tariff rates on inputs as well as the final product.

Addressing contemporary trade challenges

36. The TPP tackles new trade challenges by promoting innovation, productivity, and competitiveness by addressing issues which are emerging and changing the way business is conducted. These include:

- (a) commitments ensuring **state-owned enterprises and government designated monopolies** engaged in commercial activities make purchasing and sales decisions on a commercial basis and do not discriminate against Australian suppliers of goods and services. These rules will promote competition, trade and investment in TPP Parties and ensure Australian exporters will be able to compete on a level playing field;

- (b) high quality standards for **government procurement** that are robust, transparent and allow suppliers to participate fairly in procurement processes. The rules will ensure that governments do not discriminate against foreign suppliers when assessing tenders and awarding contracts. Governments must follow world-class procurement processes that provide increased levels of transparency and greater certainty for businesses, big and small, across TPP Parties. All Parties will be required to establish a review mechanism so that suppliers (both foreign and domestic) can challenge government procurements that do not follow proper processes;
- (c) state of the art **e-commerce** provisions driving the information economy and facilitating trade among TPP Parties. For the first time, certainty for business about their ability to move information across borders and make investment decisions about data storage facilities. Australia's regulatory framework, including the *Privacy Act 1988*, will not be affected;
- (d) **enhancing the online environment for consumers in TPP markets**, including commitments to personal information protection, enforceable consumer rights and addressing 'spam'. Under the TPP, Australia will have a forum to exchange views with other TPP countries about the experiences of Australian consumers when accessing products and services offered online;
- (e) for the first time, a provision seeking to address the high costs of **international mobile roaming**. Parties will work cooperatively to promote transparent and reasonable rates for international mobile roaming services. The Agreement also ensures TPP countries are able to enter into arrangements to regulate rates and conditions for wholesale international mobile roaming services, should they wish to do so;
- (f) assisting **small and medium-sized enterprises** (SMEs) to reap the benefits of the TPP, with an emphasis on moving to paperless trading, making customs and export delivery more effective and efficient, user-friendly websites targeted at SMEs to provide easily accessible information about the TPP as well as only requiring one certificate of origin for exports to all TPP markets which can be self-certified;
- (g) promoting high levels of **environmental protection**, including by liberalising trade in environmental goods and services, and ensuring TPP Parties effectively enforce their domestic environmental laws. TPP Parties must also take measures in relation to a number of important environmental challenges, such as protecting the ozone layer, protecting the marine environment from ship pollution, combatting illegal wildlife trade and combatting overfishing and illegal fishing. Subsidies for fishing that negatively affect overfished stocks and subsidies for vessels engaged in illegal fishing will be prohibited;
- (h) recognition and emphasis by TPP parties on the importance of internationally-recognised **labour rights**. Each Party is required to adopt and maintain in its legislation and practices the rights contained in the International Labour Organization Declaration, such as elimination of forced labour, abolition of child labour, freedom of association and the right to collective bargaining. The TPP will also enhance cooperation and consultation on labour issues, and effective enforcement of labour laws in TPP Parties; and

- (i) encouraging Parties to address **corruption** through the promotion of integrity, honesty and responsibility among its public officials and to adopt a range of related measures, including: training of individuals in public positions considered especially vulnerable to corruption; promoting transparency amongst officials in the exercise of their public functions; identifying and managing actual or potential conflicts of interests; requiring senior and other public officials to make public declarations on relevant matters including their outside investments, assets or gifts received; and facilitating reporting by public officials of corruption to appropriate authorities.

Intellectual Property

37. The TPP establishes a common set of rules on intellectual property protection and enforcement which aim to encourage investment in new ideas, support creative and innovative industries, address and prevent piracy and counterfeiting, and promote the dissemination of information, knowledge and technology. These rules will help streamline intellectual property transactions, increase transparency and lower the costs of doing business, and support Australia's creative and innovative industries by promoting certainty and opportunities for trade and investment in the region. Australian businesses and consumers will also benefit from increased access to legitimate products and services.

38. The intellectual property provisions of the TPP affirm and build on the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement), covering: copyright, trade marks, geographical indications, patents, industrial designs, confidential information, plant variety protection, and civil, border and criminal enforcement. The TPP also includes pharmaceutical intellectual property provisions, and covers 21st century issues such as cybersquatting of domain names, technological protection measures, trade secrets theft, protection of satellite and cable signals and internet service provider (ISP) liability.

39. The TPP Intellectual Property Chapter is consistent with Australia's existing intellectual property regime and will not require any changes to Australia's legislation. Minor regulatory changes relating to encoded broadcasts will be required to extend to Malaysia, Singapore, Brunei Darussalam and New Zealand the benefits in Part VAA of the *Copyright Act 1968* that Australia already extends to parties to the *International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations 1961* (the Rome Convention) (see paragraph 63 below).

40. The TPP does not require an increase in the term of **copyright protection** in Australia, nor any other changes to Australia's copyright regime, including with respect to technological protection measures. The TPP standard with respect to ISPs is consistent with Australia's existing ISP liability regime and will not require ISPs to monitor, report or penalise copyright infringement.

41. The TPP outcome will not require any changes to Australia's **patent system**, including the term of protection. The TPP also does not require any changes to Australia's regulatory data protection arrangements, including the length of data protection for pharmaceutical products or agricultural chemical products. The TPP

will not have any impact on Australia's Pharmaceutical Benefits Scheme or timely access to affordable medicines.

42. For the first time in a trade agreement, the TPP contains measures relating to **biologics** which are rapidly evolving classes of medicines that treat difficult to cure diseases and illnesses such as cancer. Importantly, the TPP will not require changes to be made to Australia's existing five years of data protection for biologics or any other part of our health system and will not increase the cost of medicines for Australians under our public health system.

43. The TPP will not require any changes to Australia's **industrial designs** system or **trade mark** system, including with respect to how Australia protects geographical indications. The TPP will not require the introduction of new **civil remedies** or **criminal penalties** for intellectual property infringement in Australia, including with respect to the protection of trade secrets. The Intellectual Property Chapter does not impose any new restrictions on Australia's ability to allow for **parallel imports**.

Key Australian Commitments

44. Consistent with other Australian FTAs and our trade policy settings, Australia's tariff elimination schedule is ambitious, with 93 per cent of all tariff lines eliminated or bound at zero tariff rates upon entry into force of the Agreement. Virtually all remaining tariffs, covering those sectors where tariffs still provide some level of protection against imports, are eliminated in either three or four years. This includes tariffs of mostly 5 per cent on plastics and rubber, textiles, clothing and footwear, iron and steel, motor vehicle components and some machinery and furniture tariffs. The phased elimination of these tariffs aligns with existing FTAs and will not undercut any existing tariff phasing arrangements for sensitive products with existing FTA partners.

45. The only tariffs in Australia's offer that are not eliminated are those on used car imports. Although the 5 per cent ad valorem tariff is eliminated immediately, consistent with our FTAs with Korea and Japan, the larger \$12,000 specific tariff is maintained. These tariffs represent only 0.1 per cent of Australia's total tariff lines.

46. Australia will increase FIRB screening thresholds for private investors from TPP countries from \$252 million to \$1,094 million for investments in non-sensitive sectors. Australia has retained the ability to screen investments in sensitive sectors, including media, telecommunications and defence-related industries at lower levels and reserved policy space to screen proposals for foreign investment in urban land, agricultural land (at \$15 million or above) and in agribusiness (at \$55 million or above).

47. Australia offered commitments to business persons from those TPP countries that will bind similar levels of access for Australian business persons in equivalent categories. Australia's TPP commitments are consistent with Australia's existing immigration framework and the approach taken in other FTAs.

48. Alongside the TPP, Australia has negotiated 27 bilateral side letters with TPP Parties. Of the 27 side letters, the following 17 are of treaty status and are legally binding between the parties:

- (a) Agreement between Australia and Chile reaffirming provisions in the Australia-Chile Free Trade Agreement regarding distinctive products;
- (b) Agreement between Australia and Japan outlining the process by which access to Japan's rice market shall be determined;
- (c) Agreement between Australia and Mexico establishing protections for distinctive Mexican products;
- (d) Agreement between Australia and Peru establishing protections for distinctive Peruvian products;
- (e) Agreement between Australia and the US suspending provisions in AUSFTA providing tariff rate quotas for beef and dairy and agricultural safeguards, and confirming that the applicable tariff rate quotas are those set out in the TPP;
- (f) Agreement between Australia and the US providing for future consultations to consider the possibility of modifying access into the US sugar market;
- (g) Agreement between Australia and Mexico terminating the bilateral Investment Promotion and Protection Agreement signed in 2005;
- (h) Agreement between Australia and New Zealand providing that provisions in the TPP regarding trade remedies and ISDS do not apply between the two parties; and limiting the scope of a provision in the TPP allowing for New Zealand to provide non-commercial assistance to state-owned airlines;
- (i) Agreement between Australia and Peru terminating the bilateral Investment Promotion and Protection Agreement signed in 1995;
- (j) Agreement between Australia and Vietnam terminating the bilateral Investment Promotion and Protection Agreement signed in 1991;
- (k) Agreement between Australia and Vietnam providing for the establishment of a process for Vietnam to clarify the operation of its foreign investment regime for Vietnamese airlines;
- (l) Agreement between Australia and Vietnam permitting Vietnam to require that cross-border electronic payment services be supplied through a gateway operated by a national switching facility licensed by the State Bank of Vietnam;
- (m) Agreement between Australia and Chile confirming that government procurement thresholds in the TPP supersede those in the Australia-Chile Free Trade Agreement;
- (n) Agreement between Australia and the US confirming that government procurement thresholds in the TPP supersede those in AUSFTA;
- (o) Agreement between Australia and the US confirming that notwithstanding the TPP, provisions in AUSFTA permit the public non-commercial use of patents;
- (p) Agreement between Australia and the US confirming that provisions in the TPP regarding certain aspects of intellectual property supersede those in AUSFTA; and
- (q) Agreement between Australia and the US reaffirming provisions in AUSFTA regarding transparency and procedural fairness for pharmaceutical products and medical devices.

A further 10 side letters are of less-than-treaty status:

- (a) Agreement between Australia and Canada confirming that Australian dairy products can be utilised in dairy processing in Canada;
- (b) Agreement between Australia and Canada establishing protections for distinctive Canadian products;
- (c) Agreement between Australia and Canada establishing protections for Australian wine and spirits;
- (d) Memorandum of Understanding between Australia and Japan regarding the extension of the term of protection for copyright and related rights in Japan under the TPP;
- (e) Memorandum of Understanding between Australia and Malaysia regarding access to traditional knowledge;
- (f) Memorandum of Understanding between Australia and Peru regarding access to traditional knowledge;
- (g) Agreement between Australia and Peru clarifying the meaning of the term ‘high-quality healthcare’ in the TPP Annex on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices;
- (h) Agreement between Australia and the US extending any additional future commitments it may make on the protection of personal information of foreign nationals to Australian citizens and permanent residents;
- (i) Memorandum of Understanding between Australia and Vietnam setting out arrangements for Australia to provide technical assistance to Vietnam regarding distance and blended education, and for a pilot program under which Australian universities will deliver online education into Vietnam; and
- (j) Memorandum of Understanding between Australia and Vietnam on enhancing the Work and Holiday Arrangement and streamlining Viet Nam’s work permit regime.

Each of these bilateral side letters will enter into force or take effect, as appropriate, on the date that the TPP enters into force for both Australia and the Party with which it has negotiated the side letter. The only exception is the side letter between Australia and the US regarding protection of personal information, which takes effect on the day the reply letter is signed.

Obligations

49. The text of the TPP comprises 30 Chapters, with associated Annexes and schedules, and four separate Annexes (including Schedules of Commitments for all TPP Parties). For Australia, the TPP is accompanied by 28 side letters as detailed at paragraph 48 above. The text of the TPP was made available to the public on 5 November 2015.

50. A Chapter-by-Chapter summary of key obligations contained in the Agreement is provided at **Attachment IV** to this NIA. A brief overview of key obligations is below.

51. The TPP is a broad and comprehensive agreement that will liberalise and facilitate trade and investment between all TPP Parties. Upon entry into force, or over time, each Party is required to eliminate or reduce specified tariffs and non-tariff barriers or restrictive policies on imports of goods from the other Parties. The elimination and reduction of tariffs on goods (Chapter 2) that meet the agreed Rules

of Origin³ criteria (Chapter 3) is in accordance with each Party's Schedule of tariff commitments to Annex 2-D, and with Tariff Rate Quotas specified in Appendix A of each Parties' Schedules in Annex 2-D. Article 2.4.3 (Elimination of Customs Duties) affords any one or more of the Parties with the ability to request consultations with a view to accelerating tariff elimination as set out in their respective Schedules as set out in Annex 2-D. Under Chapters 10 and 11 of the TPP, Parties will also be required to eliminate barriers or restrictive policies on foreign services and service suppliers.

52. Under the Investment (Chapter 9), Cross-Border Trade in Services (Chapter 10) and Financial Services (Chapter 11) chapters, each Party is required to grant market access and non-discriminatory treatment (known as national treatment⁴ and most favoured nation (MFN) treatment⁵) to investments and services from the other Parties. In Australia's case, national and MFN treatment will apply unless otherwise specified in the non-conforming measures annexes to the TPP (Annexes I and II). In the Investment Chapter, each Party is also required not to expropriate or nationalise a covered investment unless in certain circumstances; and to treat a foreign investor or investment in accordance with customary international law, including fair and equitable treatment and full protection and security.⁶

53. The TPP also contains the Parties' commitments and disciplines on:

- (a) Textiles and Apparel (Chapter 4);
- (b) Customs Administration and Trade Facilitation (Chapter 5);
- (c) Trade Remedies (Chapter 6);
- (d) Sanitary and Phytosanitary Measures (Chapter 7);⁷
- (e) Technical Barriers to Trade (Chapter 8);
- (f) Temporary Entry of Business Persons (Chapter 12);
- (g) Telecommunications (Chapter 13);
- (h) Electronic Commerce (Chapter 14);
- (i) Government Procurement (Chapter 15);
- (j) Competition Policy (Chapter 16);
- (k) State-Owned Enterprises and Designated Monopolies (Chapter 17);
- (l) Intellectual Property (Chapter 18);
- (m) Labour (Chapter 19);
- (n) Environment (Chapter 20);
- (o) Cooperation and Capacity Building (Chapter 21);
- (p) Competitiveness and Business Facilitation (Chapter 22);
- (q) Development (Chapter 23);

³ Rules of Origin (ROO) establish the criteria for determining whether goods will qualify for preferential treatment under the TPP (that is, whether a good originates within the territory of a TPP Party).

⁴ National treatment means Australia must treat investors from other TPP Parties and goods and services providers no less favourably than it treats Australian investors and goods and services providers in like circumstances, and vice versa.

⁵ Most favoured nation treatment means Australia must treat the investors and services providers from other TPP Parties no less favourably than it treats investors and services providers of third countries in like circumstances, and vice versa.

⁶ Expropriation is permitted if it is undertaken in a non-discriminatory manner, for a public purpose and upon payment of prompt, adequate, and effective compensation.

⁷ Sanitary and phytosanitary (SPS) measures are measures such as quarantine to protect human, animal or plant life or health from pests or diseases.

- (r) Small and Medium-Sized Enterprises (Chapter 24);
- (s) Regulatory Coherence (Chapter 25);
- (t) Transparency and Anti-corruption (Chapter 26); and
- (u) Administrative and Institutional Provisions (Chapter 27).

54. Chapter 28 (Dispute Settlement) of the TPP contains a binding State-to-State dispute settlement mechanism modelled on previous FTAs and the WTO system. Most substantive obligations under the TPP will be subject to this mechanism, except those in the chapters on Competition Policy, Cooperation and Capacity Building, Competitiveness and Business Facilitation, Development, Small and Medium-Sized Enterprises, and Regulatory Coherence, and Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices) to the Transparency and Anti-Corruption Chapter. As noted in paragraphs 32 and 33 above, there is also an ISDS Mechanism.

55. Chapter 29 (Exceptions and General Provisions) is consistent with the approach taken in other FTAs in setting out several WTO-style general and security exceptions which apply to a number of chapters of the TPP. Such exceptions ensure FTA obligations do not unreasonably restrict government action in key policy areas, including action to protect essential security interests, the environment and health.

56. Chapter 30 (Final Provisions) provides for matters such as entry into force, amendments, accession, withdrawal and the Depository of the TPP.

57. The TPP is consistent with and supplementary to Australia's obligations at international law, including those under the *Marrakesh Agreement Establishing the World Trade Organization*. Chapter 1 (Initial Provisions and General Definitions) also provides that the TPP will coexist with Parties' rights and obligations in other agreements to which they are also a party.

Implementation

58. Following JSCOT consideration and prior to the treaty action being taken, Australia will need to pass a number of legislative amendments in order to implement the obligations in the TPP. The *Customs Act 1901*, the *Customs Tariff Act 1995* and relevant customs regulations will need to be amended to incorporate the preferential tariff rates that will apply to goods imported from TPP countries under the Agreement. In addition new customs regulations will be need to be enacted for the rules of origin set out in Annexes 3-D and 4-A of Chapters 3 and 4 respectively.

59. The *Foreign Acquisitions and Takeovers Regulations 2015* will also require amendment to incorporate the new thresholds for screening investment proposals by investors from Brunei Darussalam, Canada, Malaysia, Mexico, Peru, Singapore and Vietnam.

60. New legislation will need to be introduced to implement the domestic review obligations in the TPP Government Procurement Chapter. This will involve a mechanism for suppliers to raise complaints about the conduct of procurements in which they have an interest. The Government has identified the Federal Circuit Court

(FCC) as the preferred entity to implement the domestic review obligation, and the new legislation will need to vest the necessary jurisdiction in the FCC.

61. A legislative instrument under the *Public Governance Performance and Accountability Act 2013* will need to be made to replace the Commonwealth Procurement Rules (July 2014) to increase the goods and services threshold and other changes required to meet the TPP obligations.

62. A Ministerial determination will need to be made under section 140GBA of the *Migration Act 1958* to exempt from labour market testing the intra-corporate transferees, independent executives and/or contractual service suppliers of those TPP Parties to which Australia extended temporary entry commitments.

63. Minor regulatory changes relating to encoded broadcasts will be required in order to extend benefits in Part VAA of the *Copyright Act 1968* that Australia already extends to parties to the Rome Convention and AUSFTA to broadcasts from Malaysia, Singapore, Brunei Darussalam and New Zealand.

Costs

64. The estimated loss of tariff revenue for Australia from the TPP is approximately \$25 million in 2016-2017 and \$135 million over the forward estimates period. This estimate assumes the TPP will enter into force in early 2017. These cost estimates, however, do not take into account the potential domestic economic growth that the TPP is expected to generate and any additional taxation revenue resulting from such growth. Overall, given the scale of Australia's trade and investment relationships with the 11 other TPP Parties, the tariff reductions and increased market access Australia will gain under the TPP and the strong support for the TPP from the business community, it is assessed that the TPP represents a net gain to the Australian economy.

Regulation Impact Statement

65. An Analysis of Regulatory Impact on Australia, certified by the Department of Foreign Affairs and Trade as an independent review that undertook a process and analysis equivalent to a Regulation Impact Statement, as required by the Office of Best Practice Regulation, is attached to this NIA (**Attachment II**).

Future Treaty Action

66. Article 30.2 (Amendments) of the Agreement provides that the Parties may agree in writing to amend the Agreement. Any future amendments will be subject to Australia's domestic treaty-making requirements and would enter force 60 days after the date on which all Parties have notified the Depository in writing of the approval of the amendment in accordance with their respective applicable legal procedures, or on such other date as the Parties may agree.

Accession by other States

67. Article 30.4 (Accession) provides that the Agreement is open to accession by any State or separate customs territory that is a member of APEC and such other State or separate customs territory as the Parties may agree. The TPP Commission established under Chapter 27 (Administrative and Institutional Provisions) can agree to establish a working group to negotiate the terms and conditions for the accession. Membership of the working group shall be open to all interested Parties. The process for considering and negotiating an acceding country's accession is analogous to the process used in the WTO. Agreement among the Parties to an accession would require treaty action and be subject to domestic legal processes which, once complete, would need to be notified to the Depository in writing. Australia's obligations contained within the TPP, subject to Australia's schedules and reservation would then extend to the new Parties.

Withdrawal or denunciation

68. Article 30.6 (Withdrawal) allows any Party to withdraw from the Agreement by providing written notice of withdrawal to the Depository. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through established contact points in each TPP party. A withdrawal will take effect six months after a Party provides written notice to the Depository, unless the Parties agree on a different period. If a Party withdraws, the Agreement will remain in force for the remaining Parties.

Authentic texts

69. Article 30.8 (Authentic Texts) provides that English, Spanish and French texts of the Agreement are equally authentic. In the event of any divergence between those texts, the English text will prevail.

Contact details

Office of Trade Negotiations
Department of Foreign Affairs and Trade