

## What is the TPP-11?

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) is a new free trade agreement (FTA) between Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore and Vietnam signed on 8 March 2018 in Chile. This Agreement is a separate treaty that incorporates, by reference, the provisions of the Trans-Pacific Partnership (TPP) Agreement (signed but not yet in force), with the exception of a limited set of provisions to be suspended. The 11 countries have a shared vision of the Agreement as a platform that is open to others to join if they are able to meet its high standards.

Importantly for Australia, the TPP-11 ensures that the substantial market access package secured in the original TPP is maintained (i.e. covering goods and services market openings and commitments on regulations on foreign investment). This market access package will be implemented among the TPP-11 Parties, delivering major new opportunities for Australian exporters, investors and firms engaged in international business. The outcome maintains the ambitious scope and high quality standards and rules of the original TPP.

### Benefits for Australian exporters of goods

The Agreement will eliminate more than 98 percent of tariffs in the free trade area. Highlights include:

- new reductions in Japan's tariffs on **beef**, (Australian exports worth \$2.1 billion in 2016-17);
- new access for **dairy** products into Japan, Canada and Mexico, including the elimination of a range of cheese tariffs into Japan covering over \$100 million of trade;
- new **sugar** access into the Japanese, Canadian and Mexican markets;
- tariff reductions, and new access for our **cereals and grains** exporters into Japan, including, for the first time in 20 years, new access for **rice products** into Japan;
- elimination of all tariffs on **sheepmeat, cotton and wool**;
- elimination of tariffs on **seafood, horticulture and wine**; and
- elimination of all tariffs on **industrial products (manufactured goods)**.

### Benefits for Australian exporters of services

The Agreement will enhance the level of transparency and predictability for Australian services exporters across the board, reducing some regulatory risks these firms confront internationally. Highlights include:

- **recent reforms in the professional services** sector in the TPP-11 countries, for example in legal, architectural, engineering and surveying services, will be legally guaranteed and enforceable;
- **mining equipment services and technologies and oilfield** service providers will benefit from energy sector reforms in Mexico and Vietnam, and new rules on large State-Owned Enterprises, which will help Australian providers to compete on an equal footing;
- **financial services** companies may provide the following cross-border services in Parties' markets: (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;
- **preferential temporary entry arrangements** for Australian business people (and their spouses) into key markets, including provision for the waiving of work permits and work rights for spouses in Brunei Darussalam, Canada and Mexico;

- **universities and vocational education** providers will have legally guaranteed access to Brunei Darussalam, Japan, Malaysia and Mexico, and will be able to supply online education services across the region;
- the phasing out of foreign equity limits in Vietnam's **telecommunications** sector five years after the entry into force of the Agreement and the ability to apply to wholly-owned telecommunications ventures in Malaysia; and
- providers of **private health and allied services** will benefit from greater certainty regarding access and operating conditions in Malaysia, Mexico and Vietnam.

The Agreement will provide new opportunities for Australian businesses to bid for **government procurement** services contracts, including:

- **accounting, auditing and taxation** services in Brunei Darussalam, Canada, Malaysia, Mexico and Vietnam;
- **management consulting** services in Brunei Darussalam, Malaysia and Mexico;
- **computer** and related services offer by all Parties, along with maintenance of office machinery in Brunei Darussalam, Canada, Malaysia, Mexico and Vietnam;
- **architectural engineering** and other technical services in Brunei Darussalam, Canada, Malaysia and Mexico;
- **telecommunication** and related services in Brunei Darussalam, Canada and Malaysia;
- **environmental protection** services in Brunei Darussalam, Canada, Malaysia, Mexico and Vietnam;
- **education** services in Brunei Darussalam, Canada, Japan, Malaysia and Mexico; and
- **health and social** services in Brunei Darussalam and Malaysia.

### Benefits for Australian firms investing overseas

The Agreement will include important elements which will deliver a more liberalised and predictable regime for the regulation of foreign investment, including in key sectors such as mining and resources, telecommunications and financial services. For example:

- **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 investments into **Canada** below CAD1.5 billion and into **Mexico** below USD1 billion will not be screened; and
- 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.

The Agreement will also promote productive 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 \$261 million to \$1,134 million. Under the Agreement, the Treasurer retains the ability to screen investments in sensitive sectors to ensure they do not raise issues contrary to the national interest.

The Agreement's investment obligations can be enforced directly by Australian and other Parties' investors through an **Investor-State Dispute Settlement (ISDS) mechanism**. That mechanism includes a wide range of safeguards that protect the Government's ability to regulate in the public interest, such as for public health. Australia's tobacco control measures cannot be challenged.

## TPP-11 suspensions explained

The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) is a treaty that incorporates the provisions of the original Trans-Pacific Partnership Agreement, except for a limited number which TPP-11 countries agreed by consensus to suspend. These provisions remain part of the TPP-11 Agreement, but they will have no application under international law. The text of the original TPP Agreement is available on the DFAT website.

### Can the provisions be unsususpended?

The provisions will remain suspended until TPP-11 countries decide otherwise by consensus.

### What are the suspended provisions?

Chapter (number)	Suspended Provision	Effect of the suspension
Customs Administration and Trade Facilitation (5)	Article 5.7.1(f): Express Shipments <i>Suspend second sentence</i>	Each TPP-11 Party has agreed not to assess customs duties on express shipments valued at or below a fixed amount as set under its domestic law. That amount is currently set at \$1,000 under Australian law.  There will no longer be an obligation for Parties to review the threshold below which no duties on express shipments are charged.
Investment (9)	<ul style="list-style-type: none"> <li>9.1 Definitions <i>Suspend "investment agreement" and "investment authorisation" and associated Footnotes (5 - 11)</i></li> <li>9.19.1 Submission of Claim to Arbitration <i>a(i) B and C; (b)(i) B and C (investment authorisation or investment agreement), chausette, footnote 3</i></li> <li>9.19.2 Submission of Claim to Arbitration <i>Footnote 32</i></li> <li>9.19.3 Submission of Claim to Arbitration <i>(b) delete investment authorisation or investment agreement</i></li> </ul>	<p>This narrows the scope of Investor-State Dispute Settlement (ISDS). Foreign investors can no longer make an ISDS claim for violation of private investment contracts with the Government, or investment authorisations.</p> <p>Foreign investors can still bring an ISDS claim for a violation of an investment obligation, such as expropriation or the minimum standard of treatment.</p> <p>Expropriation is where a government takes over, or nationalises, an investor's property.</p> <p>The minimum standard of treatment means a government has to treat a foreign investor fairly, such as giving them due process in a local court.</p>

Chapter (number)	Suspended Provision	Effect of the suspension
Cross-Border Trade in Services (10)	Express Delivery Services - Annex 10-B <i>Suspend paragraph 5 and 6</i>	Parties are no longer obliged to refrain from cross-subsidising express delivery services with revenues derived from monopoly postal services. There will no longer be a requirement for each Party to ensure that its postal monopoly refrain from abusing its monopoly position when supplying express delivery services. This provision would not have required Australia to make any legislative or competition policy changes.
Financial Services (11)	Minimum Standard of Treatment in Article 11.2 <i>Suspend sub-paragraph 2(b); footnote 3 and Annex 11-E</i>	Foreign investors in the Australian financial services sector will not be able to bring an ISDS claim against Australia for violating the minimum standard of treatment obligation.
Telecommunications (13)	Resolution of Telecommunications Disputes - Article 13.21.1(d)	This suspends a process for reconsideration of decisions made by telecommunications regulatory bodies.
Government Procurement (15)	Conditions for Participation - Article 15.8.5 <i>Suspend commitments relating to labour rights in conditions for participation</i>	The suspended provision clarifies that procuring entities may promote compliance with international labour rights as part of their procurement processes. Australia's government procurement processes are not affected.
	Further Negotiations - Article 15.24.2 <i>Suspend "No later than three years after the date of entry into force of this Agreement" <sup>1</sup></i>	TPP-11 countries have agreed to delay the TPP's in-built agenda to enhance government procurement commitments by two years. That is, instead of commencing negotiations within three years from the entry into force of the Agreement, the Parties will commence negotiations five years after entry into force.
Intellectual Property (18)	Article 18.8: National Treatment Footnote 4 <i>Suspend final two sentences</i>	This suspension relates to technical aspects of non-discriminatory treatment obligations with respect to copyright works, phonograms and performances. This provision would not have required Australia to make any legislative changes.

<sup>1</sup>The Parties agree that negotiations referred to in Article 15.24.2 shall commence no earlier than five years after entry into force of the TPP-11 Agreement, unless the Parties agree otherwise. Such negotiations shall commence at the request of a Party.

Chapter (number)	Suspended Provision	Effect of the suspension
Intellectual Property (18)	Article 18.37: Patentable Subject Matter <i>Suspend Paragraph 2 and Paragraph 4, second sentence</i>	There will no longer be a requirement that patents be made available for either new uses of known product, new methods of using a known product or new processes of using a known product. Also there will no longer be a requirement that patents be available for inventions derived from plants. These provisions would not have required Australia to make any legislative changes.
	Article 18.46: Patent Term Adjustment for Unreasonable Granting Authority Delays	There will no longer be a requirement to adjust, upon request, a patent's term of protection to compensate the patent owner if there are unreasonable delays in a patent office's issuance of patents. This provision would not have required Australia to make any legislative changes.
	Article 18.48: Patent Term Adjustment for Unreasonable Curtailment	There will no longer be a requirement to adjust a pharmaceutical patent's term of protection to compensate the patent owner for unreasonable curtailment of the effective term of a patent as a result of the marketing approval process for a pharmaceutical product. This provision would not have required Australia to make any legislative changes.
	Article 18.50: Protection of Undisclosed Test or Other Data	There will no longer be a requirement for five years of protection for test or other data submitted to a regulatory authority for the purposes of obtaining regulatory approval to market a pharmaceutical product. This provision would not have required Australia to make any legislative changes.
	Article 18.51: Biologics	There will no longer be a requirement for five years of protection for test or other data submitted to a regulatory authority for the purposes of obtaining regulatory approval to market a biologic pharmaceutical product, along with other measures. This provision would not have required Australia to make any legislative changes.
	Article: 18.63: Term of Protection for Copyright and Related Rights)	There will no longer be a requirement for a copyright term of protection for the life of the author plus 70 years. This provision would not have required Australia to make any legislative changes.

Chapter (number)	Suspended Provision	Effect of the suspension
Intellectual Property (18)	Article 18.68: Technological Protection Measures	There will no longer be a requirement for civil remedies and criminal penalties for the circumvention of technologies that control access to protected copyright works. This provision would not have required Australia to make any legislative changes.
	Article 18.69: Rights Management Information	There will no longer be a requirement for civil remedies and criminal penalties for altering or removing information attached to a protected copyright work that identifies the work, author or terms of use of the work. This provision would not have required Australia to make any legislative changes.
	Article 18.79: Protection of Encrypted Program-Carrying Satellite and Cable Signals	There will no longer be a requirement for civil remedies and criminal penalties for decoding encrypted satellite signals without authorisation. This provision would have required minor regulatory amendments in Australia.
	Article 18.82: ISP Liability and Annexes 18-E and 18-F	There will no longer be a requirement for a legal framework for online service providers to cooperate with rights holders in deterring online copyright infringement. This provision would not have required Australia to make any legislative changes.
Environment (20)	Conservation and Trade (measures 'to combat' trade) - Article 20.17.5  <i>Suspend "or another applicable law" and footnote 26</i>	There will no longer be a requirement for TPP-11 countries to take measures to combat trade in wild flora and fauna that were taken or traded in another jurisdiction, in violation of the laws of that jurisdiction. This provision would not have required Australia to make any legislative changes.
Transparency and Anti-corruption (26)	Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices  <i>Suspend Annex 26A - Article 3 on Procedural Fairness</i>	This suspension concerns processes to ensure the transparency and procedural fairness of systems related to the listing and pricing of pharmaceutical Products and Medical Devices. This provision would not have required Australia to make any legislative changes.
Annex IV – State-Owned Enterprises and Designated Monopolies	Malaysia  <i>Suspension of: "after signature of this Agreement"</i>	Malaysia is to commence certain commitments with regard to its State-Owned Enterprise, Petronas, from date of entry into force of the TPP-11, rather than from the date of signature.
Annex II – Investment and Cross-Border Trade in Services	Brunei Darussalam - 14 - Coal - paragraph 3  <i>Suspension of: "after the signature of this Agreement".</i>	Brunei Darussalam is to commence certain commitments with regard to coal from date of entry into force of the TPP-11, rather than from the date of signature.

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More information on the Agreement is available at

<http://dfat.gov.au/trade/agreements/tpp/>

## Investment

### Benefits of Foreign Investment to Australia

Foreign investment has enabled Australians to enjoy higher rates of economic growth, employment and standards of living than could have been achieved with domestic capital alone. In 2016, around 13 per cent of the total stock of foreign investment in Australia (valued at approximately \$423.7 billion) was from TPP-11 countries.

Foreign investment helps Australia reach its economic potential by financing new industries and enhancing existing industries, boosting productivity and employment opportunities.

Over one quarter of businesses in Australia with 200 or more employees are majority foreign owned (have greater than 50 per cent foreign ownership). Research has found that a 10 per cent increase in foreign investment in Australia could lead to a more than one per cent increase in GDP by 2020. By creating new businesses with connections in different markets, foreign investment opens up additional export opportunities.

The TPP-11 will promote further foreign investment in Australia by liberalising the screening threshold at which private foreign investments in non-sensitive sectors are reviewed by the Foreign Investment Review Board, increasing the threshold from \$261 million to \$1,134 million for all TPP-11 countries. Under the TPP-11, Australia retains the ability to screen investments in sensitive sectors to ensure they are not contrary to the national interest. Proposed investments by foreign governments will continue to be examined and lower screening thresholds of \$15 million and \$57 million will apply to investment in agricultural land and agribusiness respectively.

### Benefits for Australian investors

Australian investment in TPP-11 countries has been steadily increasing. In 2016, around 15 per cent of the total stock of Australian investment abroad (valued at approximately \$339 billion) was in TPP-11 countries.

The TPP-11 will promote further growth and diversification of Australian outward investment by opening up growing market sectors such as mining and resources, telecommunications and financial services. Australian investors will also benefit from preferential investment screening thresholds in the TPP-11.



The TPP-11 Investment Chapter contains rules that will provide additional protections to Australian investors operating in TPP-11 countries. These protections include a minimum standard of treatment, the right to compensation for certain types of expropriation and protection against discrimination (see below). The Investor-State Dispute Settlement (ISDS) mechanism will provide Australian investors with the ability to enforce these protections in many of Australia's key capital export markets, as well as many of the rapidly growing economies in the Asia-Pacific region.

**Table 1: Total investment in Australia from TPP-11 countries and total Australian investment in TPP-11 countries in 2016**

	Total investment in Australia from TPP-11 countries (\$m)	Total Australian investment in TPP-11 countries (\$m)
Brunei Darussalam	93	50
Canada	42,612	42,406
Chile	NP*	3,057
Japan	213,500	108,309
Malaysia	20,473	8,683
Mexico	336	5,678
New Zealand	46,209	106,905
Peru	NP*	563
Singapore	98,908	61,523
Vietnam	727	1,878
Total TPP-11 countries	423,662	339,052

NP = not published

## TPP-11 INVESTMENT CHAPTER

The TPP-11 investment rules:

- protect against discriminatory treatment;
- require payment of compensation in certain circumstances where an investment is expropriated;
- require that investment-related capital transfers can occur freely and without delay; and
- guarantee that investors and their investments will be accorded a minimum standard of treatment in accordance with the applicable customary international law standard, which includes an obligation to provide due process in court proceedings.

The TPP-11 Investment Chapter contains an ISDS mechanism. This provides investors with access to an independent arbitral tribunal to resolve disputes for breaches of these investment rules or certain investment-related rules in the Financial Services Chapter.

An ISDS claim concerning the TPP-11 may only be brought in relation to commitments in the Investment Chapter and a limited number of commitments in the Financial Services Chapter.

The ISDS mechanism contains explicit safeguards protecting the Australian Government's right to regulate in the public interest.

### What ISDS safeguards have been included?

The TPP-11 Investment Chapter contains a set of 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. As a result:

- there is explicit recognition that TPP-11 Parties have an inherent right to regulate to protect public welfare, including in the areas of health and the environment;
- Australia's tobacco control measures cannot be challenged;
- certain ISDS claims in specific policy areas in Australia cannot be challenged, 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;
- non-discriminatory regulatory actions to safeguard public welfare objectives, such as public health, safety or the environment, do not constitute indirect expropriation, except in rare circumstances;

- the fact that a subsidy or grant has not been issued or renewed, or has been reduced, does not breach the minimum standard of treatment obligation, even if it results in loss or damage to the investment. This includes subsidies issued under Australia's Pharmaceutical Benefits Scheme; and
- government action which may be inconsistent with an investor's expectations does not constitute a breach of the minimum standard of treatment obligation, even if it results in loss or damage to the investment.

The ISDS mechanism in the TPP-11 also includes procedural safeguards to enhance the arbitration process. These include:

- a requirement that hearings will be open to the public, and that documents filed in the arbitration, as well as the tribunal's decision, will be made public;
- a right for any TPP-11 Party that is not involved in an ISDS case to make oral and written submissions;
- the ability to permit submissions from interested individuals, including from civil society and non-governmental organisations;
- a requirement that the burden of proof rests with the claimant to establish its claim against a government, which also directs tribunals to decide cases in accordance with established interpretations of investment commitments;
- rules preventing a claimant pursuing a claim in parallel proceedings, such as before an Australian court;
- expedited review of claims that are baseless, or manifestly without legal merit;
- the ability of TPP-11 Parties to issue interpretations of the Agreement, which must be followed by ISDS tribunals;
- mechanisms to disincentivise unmeritorious claims, such as through the award of costs against a claimant and the ability for a respondent government to recoup costs;
- interim review and award challenges;
- time limits on bringing a claim; and
- a requirement for arbitrators to comply with rules on independence and impartiality, including on conflicts of interests.

For more information on ISDS, refer to the [ISDS FAQ](#).

## Intellectual Property

The TPP-11 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.

The intellectual property provisions of the TPP-11 affirm and build on the World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement), covering: copyright, trademarks, geographical indications, patents, industrial designs, confidential information, plant variety protection, and civil, border and criminal enforcement. The TPP-11 also includes provisions covering pharmaceutical products, cybersquatting of domain names and trade secrets theft.

As part of the TPP-11 outcome, a number of intellectual property provisions from the original TPP were suspended, including certain provisions relating to pharmaceutical products (including biologics), copyright and patents. None of these would have required Australia to make changes to its intellectual property laws or settings. For more information, see: [FAQs on Suspensions](#)

This document addresses a number of common questions regarding the intellectual property provisions in the TPP-11.

### **Will Australia have to change any of its intellectual property laws under the TPP-11?**

No. The TPP-11 Intellectual Property Chapter is consistent with Australia's existing intellectual property regime.

### **Will the Intellectual Property Chapter of the TPP-11 be subject to Investor-State Dispute Settlement (ISDS)?**

No. The Intellectual Property Chapter of the TPP-11 cannot be directly enforced via ISDS. An ISDS dispute under the TPP-11 could only be brought in relation to intellectual property where there has been an alleged violation of a commitment in the Investment Chapter. For more information, see Outcomes: Investment.

## Copyright

The TPP-11 will not require an increase in the term of copyright protection in Australia, nor the introduction of new civil remedies or criminal penalties for copyright infringement. The TPP-11 will not require internet service providers to monitor, report or penalise copyright infringement.

## **Patents and regulatory data protection**

The TPP-11 outcome will not require any changes to Australia's patent system or regulatory data protection arrangements, including patent term and the length of data protection for pharmaceutical products. The TPP-11 will not have any impact on Australia's Pharmaceutical Benefits Scheme or timely access to affordable medicines. For more information, see Outcomes: Health.

## **Parallel importation**

The Intellectual Property Chapter does not impose any new restrictions on Australia's ability to allow for parallel imports. The TPP-11 leaves the issue of 'international exhaustion' of intellectual property rights for each TPP-11 country to determine for itself.