

# USTR NEWS

## UNITED STATES TRADE REPRESENTATIVE

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### **SUMMARY OF THE TRANS-PACIFIC PARTNERSHIP AGREEMENT**

On October 5, 2015, Ministers of the 12 Trans-Pacific Partnership (TPP) countries – Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States, and Vietnam – announced conclusion of their negotiations. The result is a high-standard, ambitious, comprehensive, and balanced agreement that will promote economic growth; support the creation and retention of jobs; enhance innovation, productivity and competitiveness; raise living standards; reduce poverty in our countries; and promote transparency, good governance, and enhanced labor and environmental protections. We envision conclusion of this agreement, with its new and high standards for trade and investment in the Asia Pacific, as an important step toward our ultimate goal of open trade and regional integration across the region.

#### **KEY FEATURES**

Five defining features make the Trans-Pacific Partnership a landmark 21<sup>st</sup>-century agreement, setting a new standard for global trade while taking up next-generation issues. These features include:

- Comprehensive market access. The TPP eliminates or reduces tariff and non-tariff barriers across substantially all trade in goods and services and covers the full spectrum of trade, including goods and services trade and investment, so as to create new opportunities and benefits for our businesses, workers, and consumers.
- Regional approach to commitments. The TPP facilitates the development of production and supply chains, and seamless trade, enhancing efficiency and supporting our goal of creating and supporting jobs, raising living standards, enhancing conservation efforts, and facilitating cross-border integration, as well as opening domestic markets.

- Addressing new trade challenges. The TPP promotes innovation, productivity, and competitiveness by addressing new issues, including the development of the digital economy, and the role of state-owned enterprises in the global economy.
- Inclusive trade. The TPP includes new elements that seek to ensure that economies at all levels of development and businesses of all sizes can benefit from trade. It includes commitments to help small- and medium-sized businesses understand the Agreement, take advantage of its opportunities, and bring their unique challenges to the attention of the TPP governments. It also includes specific commitments on development and trade capacity building, to ensure that all Parties are able to meet the commitments in the Agreement and take full advantage of its benefits.
- Platform for regional integration. The TPP is intended as a platform for regional economic integration and designed to include additional economies across the Asia-Pacific region.

## **SCOPE**

- The TPP includes 30 chapters covering trade and trade-related issues, beginning with trade in goods and continuing through customs and trade facilitation; sanitary and phytosanitary measures; technical barriers to trade; trade remedies; investment; services; electronic commerce; government procurement; intellectual property; labour; environment; ‘horizontal’ chapters meant to ensure that TPP fulfils its potential for development, competitiveness, and inclusiveness; dispute settlement, exceptions, and institutional provisions.
- In addition to updating traditional approaches to issues covered by previous free trade agreements (FTAs), the TPP incorporates new and emerging trade issues and cross-cutting issues. These include issues related to the Internet and the digital economy, the participation of state-owned enterprises in international trade and investment, the ability of small businesses to take advantage of trade agreements, and other topics.
- TPP unites a diverse group of countries – diverse by geography, language and history, size, and levels of development. All TPP countries recognize that diversity is a unique asset, but also one which requires close cooperation, capacity-building for the lesser-developed TPP countries, and in some cases special transitional periods and mechanisms which offer some TPP partners additional time, where warranted, to develop capacity to implement new obligations.

## **SETTING REGIONAL TRADE RULES**

Below is a summary of the TPP’s 30 chapters. Schedules and annexes are attached to the chapters of the Agreement related to goods and services trade, investment, government procurement, and temporary entry of business persons. In addition, the State-Owned Enterprises chapter includes country-specific exceptions in annexes.

### **1. Initial Provisions and General Definitions**

Many TPP Parties have existing agreements with one another. The Initial Provisions and General Definitions Chapter recognizes that the TPP can coexist with other international trade agreements between the Parties, including the WTO Agreement, bilateral, and regional agreements. It also provides definitions of terms used in more than one chapter of the Agreement.

## **2. Trade in Goods**

TPP Parties agree to eliminate and reduce tariffs and non-tariff barriers on industrial goods, and to eliminate or reduce tariffs and other restrictive policies on agricultural goods. The preferential access provided through the TPP will increase trade between the TPP countries in this market of 800 million people and will support high-quality jobs in all 12 Parties. Most tariff elimination in industrial goods will be implemented immediately, although tariffs on some products will be eliminated over longer timeframes as agreed by the TPP Parties. The specific tariff cuts agreed by the TPP Parties are included in schedules covering all goods. The TPP Parties will publish all tariffs and other information related to goods trade to ensure that small- and medium-sized businesses as well as large companies can take advantage of the TPP. They also agree not to use performance requirements, which are conditions such as local production requirements that some countries impose on companies in order for them to obtain tariff benefits. In addition, they agree not to impose WTO-inconsistent import and export restrictions and duties, including on remanufactured goods – which will promote recycling of parts into new products. If TPP Parties maintain import or export license requirements, they will notify each other about the procedures so as to increase transparency and facilitate trade flows.

On agricultural products, the Parties will eliminate or reduce tariffs and other restrictive policies, which will increase agricultural trade in the region, and enhance food security. In addition to eliminating or reducing tariffs, TPP Parties agree to promote policy reforms, including by eliminating agricultural export subsidies, working together in the WTO to develop disciplines on export state trading enterprises, export credits, and limiting the timeframes allowed for restrictions on food exports so as to provide greater food security in the region. The TPP Parties have also agreed to increased transparency and cooperation on certain activities related to agricultural biotechnology.

## **3. Textiles and Apparel**

The TPP Parties agree to eliminate tariffs on textiles and apparel, industries which are important contributors to economic growth in several TPP Parties' markets. Most tariffs will be eliminated immediately, although tariffs on some sensitive products will be eliminated over longer timeframes as agreed by the TPP Parties. The chapter also includes specific rules of origin that require use of yarns and fabrics from the TPP region, which will promote regional supply chains and investment in this sector, with a "short supply list" mechanism that allows use of certain yarns and fabrics not widely available in the region. In addition, the chapter includes commitments on customs cooperation and enforcement to prevent duty evasion, smuggling and fraud, as well as a textile-specific special safeguard to respond to serious damage or the threat of serious damage to domestic industry in the event of a sudden surge in imports.

#### **4. Rules of Origin**

To provide simple rules of origin, promote regional supply chains, and help ensure the TPP countries rather than non-participants are the primary beneficiaries of the Agreement, the 12 Parties have agreed on a single set of rules of origin that define whether a particular good is “originating” and therefore eligible to receive TPP preferential tariff benefits. The product-specific rules of origin are attached to the text of the Agreement. The TPP provides for “accumulation,” so that in general, inputs from one TPP Party are treated the same as materials from any other TPP Party, if used to produce a product in any TPP Party. The TPP Parties also have set rules that ensure businesses can easily operate across the TPP region, by creating a common TPP-wide system of showing and verifying that goods made in the TPP meet the rules of origin. Importers will be able to claim preferential tariff treatment as long as they have the documentation to support their claim. In addition, the chapter provides the competent authorities with the procedures to verify claims appropriately.

#### **5. Customs Administration and Trade Facilitation**

Complementing their WTO efforts to facilitate trade, the TPP Parties have agreed on rules to enhance the facilitation of trade, improve transparency in customs procedures, and ensure integrity in customs administration. These rules will help TPP businesses, including small- and medium-sized businesses, by encouraging smooth processing in customs and border procedures, and promote regional supply chains. TPP Parties have agreed to transparent rules, including publishing their customs laws and regulations, as well as providing for release of goods without unnecessary delay and on bond or ‘payment under protest’ where customs has not yet made a decision on the amount of duties or fees owed. They agree to advance rulings on customs valuation and other matters that will help businesses, both large and small, trade with predictability. They also agree to disciplines on customs penalties that will help ensure these penalties are administered in an impartial and transparent manner. Due to the importance of express shipping to business sectors including small- and medium-sized companies, the TPP countries have agreed to provide expedited customs procedures for express shipments. To help counter smuggling and duty evasion, the TPP Parties agree to provide information, when requested, to help each other enforce their respective customs laws.

#### **6. Sanitary and Phytosanitary (SPS) Measures**

In developing SPS rules, the TPP Parties have advanced their shared interest in ensuring transparent, non-discriminatory rules based on science, and reaffirmed their right to protect human, animal or plant life or health in their countries. The TPP builds on WTO SPS rules for identifying and managing risks in a manner that is no more trade restrictive than necessary. TPP Parties agree to allow the public to comment on proposed SPS measures to inform their decision-making, and to ensure traders understand the rules they will need to follow. They agree that import programmes are based on the risks associated with importations, and that import checks are carried out without undue delay. The Parties also agree that emergency measures necessary for the protection of human, animal, or plant life or health may be taken provided that the Party taking them notifies all other Parties. The Party adopting an emergency measure will review the scientific basis of that measure within six months and make available the results of these reviews

to any Party on request. In addition, TPP Parties commit to improve information exchange related to equivalency or regionalisation requests and to promote systems-based audits to assess the effectiveness of regulatory controls of the exporting Party. In an effort to rapidly resolve SPS matters that emerge between them, they have agreed to establish a mechanism for consultations between governments.

## **7. Technical Barriers to Trade (TBT)**

In developing TBT rules, the TPP Parties have agreed on transparent, non-discriminatory rules for developing technical regulations, standards and conformity assessment procedures, while preserving TPP Parties' ability to fulfill legitimate objectives. They agree to cooperate to ensure that technical regulations and standards do not create unnecessary barriers to trade. To reduce costs for TPP businesses, especially small businesses, TPP Parties agree to rules that will facilitate the acceptance of the results of conformity assessment procedures from the conformity assessment bodies in the other TPP Parties, making it easier for companies to access TPP markets. Under the TPP, Parties are required to allow for the public to comment on proposed technical regulations, standards, and conformity assessment procedures to inform their regulatory processes and to ensure traders understand the rules they will need to follow. They also will ensure a reasonable interval between publication of technical regulations and conformity assessment procedures, and their entry into force, so that businesses have sufficient time to meet the new requirements. In addition, the TPP includes annexes related to regulation of specific sectors to promote common regulatory approaches across the TPP region. These sectors are cosmetics, medical devices, pharmaceuticals, information and communications technology products, wine and distilled spirits, proprietary formulas for prepackaged foods and food additives, and organic agricultural products.

## **8. Trade Remedies**

The Trade Remedies chapter promotes transparency and due process in trade remedy proceedings through recognition of best practices, but does not affect the TPP Parties' rights and obligations under the WTO. The chapter provides for a transitional safeguard mechanism, which allows a Party to apply a transitional safeguard measure during a certain period of time if import increases as a result of the tariff cuts implemented under the TPP cause serious injury to a domestic industry. These measures may be maintained for up to two years, with a one-year extension, but must be progressively liberalized if they last longer than a year. Parties imposing safeguard measures must follow notification and consultation requirements. The chapter also sets out rules requiring that a TPP Party applying a transitional safeguard measure provide mutually-agreed compensation. The Parties may not impose more than one of the safeguards allowed under TPP on the same product at the same time. The Parties may not impose a transitional safeguard measure on any product imported under a TPP tariff rate quota, and may exclude TPP products from a WTO safeguard measure if such imports are not a cause or threat of serious injury.

## **9. Investment**

In establishing investment rules, the TPP Parties set out rules requiring non-discriminatory investment policies and protections that assure basic rule of law protections, while protecting the ability of Parties' governments to achieve legitimate public policy objectives. TPP provides the basic investment protections found in other investment-related agreements, including national treatment; most-favored-nation treatment; "minimum standard of treatment" for investments in accordance with customary international law principles; prohibition of expropriation that is not for public purpose, without due process, or without compensation; prohibition on "performance requirements" such as local content or technology localization requirements; free transfer of funds related to an investment, subject to exceptions in the TPP to ensure that governments retain the flexibility to manage volatile capital flows, including through non-discriminatory temporary safeguard measures (such as capital controls) restricting investment-related transfers in the context of a balance of payments crisis or the threat thereof, and certain other economic crises or to protect the integrity and stability of the financial system; and freedom to appoint senior management positions of any nationality.

TPP Parties adopt a "negative-list" basis, meaning that their markets are fully open to foreign investors, except where they have taken an exception (non-conforming measure) in one of two country-specific annexes: (1) current measures on which a Party accepts an obligation not to make its measures more restrictive in the future and to bind any future liberalization, and (2) measures and policies on which a Party retains full discretion in the future.

The chapter also provides for neutral and transparent international arbitration of investment disputes, with strong safeguards to prevent abusive and frivolous claims and ensure the right of governments to regulate in the public interest, including on health, safety, and environmental protection. The procedural safeguards include: transparent arbitral proceedings, *amicus curiae* submissions, non-disputing Party submissions; expedited review of frivolous claims and possible award of attorneys' fees; review procedure for an interim award; binding joint interpretations by TPP Parties; time limits on bringing a claim; and rules to prevent a claimant pursuing the same claim in parallel proceedings.

## **10. Cross-Border Trade in Services**

Given the growing importance of services trade to TPP Parties, the 12 countries share an interest in liberalized trade in this area. TPP includes core obligations found in the WTO and other trade agreements: national treatment; most-favoured nation treatment; market access, which provides that no TPP country may impose quantitative restrictions on the supply of services (*e.g.*, a limit on the number of suppliers or number of transactions) or require a specific type of legal entity or joint venture; and local presence, which means that no country may require a supplier from another country to establish an office or affiliate, or to be resident, in its territory in order to supply a service. TPP Parties accept these obligations on a "negative-list basis," meaning that their markets are fully open to services suppliers from TPP countries, except where they have taken an exception (non-conforming measure) in one of two country-specific annexes attached to the Agreement: (1) current measures on which a Party accepts an obligation not to make its measures more restrictive in the future, and to bind any future liberalisation, and (2) sectors and policies on which a country retains full discretion in the future.

TPP Parties also agree to administer measures of general application in a reasonable, objective, and impartial manner; and to accept requirements for transparency in the development of new services regulations. Benefits of the chapter can be denied to shell companies and to a service supplier owned by non-Parties with which a TPP Party prohibits certain transactions. TPP Parties agree to permit free transfer of funds related to the cross-border supply of a service. In addition, the chapter includes a professional services annex encouraging cooperative work on licensing recognition and other regulatory issues, and an annex on express delivery services.

## **11. Financial Services**

The TPP Financial Services chapter will provide important cross-border and investment market access opportunities, while ensuring that Parties will retain the ability to regulate financial markets and institutions and to take emergency measures in the event of crisis. The chapter includes core obligations found in other trade agreements, including: national treatment; most-favored nation treatment; market access; and certain provisions under the Investment chapter, including the minimum standard of treatment. It provides for the sale of certain financial services across borders to a TPP Party from a supplier in another TPP Party rather than requiring suppliers to establish operations in the other country in order to sell their service – subject to registration or authorization of cross-border financial services suppliers of another TPP Party in order to help assure appropriate regulation and oversight. A supplier of a TPP Party may provide a new financial service in another TPP market if domestic companies in that market are allowed to do so. TPP Parties have country-specific exceptions to some of these rules in two annexes attached to the TPP: (1) current measures on which a Party accepts an obligation not to make its measures more restrictive in the future and to bind any future liberalization, and (2) measures and policies on which a country retains full discretion in the future.

TPP Parties also set out rules that formally recognize the importance of regulatory procedures to expedite the offering of insurance services by licensed suppliers and procedures to achieve this outcome. In addition, the TPP includes specific commitments on portfolio management, electronic payment card services, and transfer of information for data processing.

The Financial Services chapter provides for the resolution of disputes relating to certain provisions through neutral and transparent investment arbitration. It includes specific provisions on investment disputes related to the minimum standard of treatment, as well as provisions requiring arbitrators to have financial services expertise, and a special State-to-State mechanism to facilitate the application of the prudential exception and other exceptions in the chapter in the context of investment disputes. Finally, it includes exceptions to preserve broad discretion for TPP financial regulators to take measures to promote financial stability and the integrity of their financial system, including a prudential exception and exception of non-discriminatory measures in pursuit of monetary or certain other policies.

## **12. Temporary Entry for Business Persons**

The Temporary Entry for Business Persons chapter encourages authorities of TPP Parties to provide information on applications for temporary entry, to ensure that application fees are reasonable, and to make decisions on applications and inform applicants of decisions as quickly

as possible. TPP Parties agree to ensure that information on requirements for temporary entry are readily available to the public, including by publishing information promptly and online if possible, and providing explanatory materials. The Parties agree to ongoing cooperation on temporary entry issues such as visa processing. Almost all TPP Parties have made commitments on access for each other's business persons, which are in country-specific annexes.

### **13. Telecommunications**

TPP Parties share an interest in ensuring efficient and reliable telecommunications networks in their countries. These networks are critical to companies both large and small for providing services. TPP's pro-competitive network access rules cover mobile suppliers. TPP Parties commit to ensure that major telecommunications services suppliers in their territory provide interconnection, leased circuit services, co-location, and access to poles and other facilities under reasonable terms and conditions and in a timely manner. They also commit, where a license is required, to ensure transparency in regulatory processes and that regulations do not generally discriminate against specific technologies. And they commit to administer their procedures for the allocation and use of scarce telecommunications resources, including frequencies, numbers and rights-of-way, in an objective, timely, transparent and non-discriminatory manner. TPP Parties recognize the importance of relying on market forces and commercial negotiations in the telecommunications sector. They also agree that they may take steps to promote competition in international mobile roaming services and facilitate the use of alternatives to roaming. TPP Parties agree that, if a Party chooses to regulate rates for wholesale international mobile roaming services, that Party shall permit operators from the TPP countries that do not regulate such rates the opportunity to also benefit from the lower rates.

### **14. Electronic Commerce**

In the Electronic Commerce chapter, TPP Parties commit to ensuring free flow of the global information and data that drive the Internet and the digital economy, subject to legitimate public policy objectives such as personal information protection. The 12 Parties also agree not to require that TPP companies build data centers to store data as a condition for operating in a TPP market, and, in addition, that source code of software is not required to be transferred or accessed. The chapter prohibits the imposition of customs duties on electronic transmissions, and prevents TPP Parties from favoring national producers or suppliers of such products through discriminatory measures or outright blocking. To protect consumers, TPP Parties agree to adopt and maintain consumer protection laws related to fraudulent and deceptive commercial activities online and to ensure that privacy and other consumer protections can be enforced in TPP markets. Parties also are required to have measures to stop unsolicited commercial electronic messages. To facilitate electronic commerce, the chapter includes provisions encouraging TPP Parties to promote paperless trading between businesses and the government, such as electronic customs forms; and providing for electronic authentication and signatures for commercial transactions. A number of obligations in this chapter are subject to relevant non-conforming measures of individual TPP members. The 12 Parties agree to cooperate to help small- and medium-sized business take advantage of electronic commerce, and the chapter encourages cooperation on policies regarding personal information protection, online consumer protection, cybersecurity threats and cybersecurity capacity.

## **15. Government Procurement**

TPP Parties share an interest in accessing each other's large government procurement markets through transparent, predictable, and non-discriminatory rules. In the Government Procurement chapter, TPP Parties commit to core disciplines of national treatment and non-discrimination. They also agree to publish relevant information in a timely manner, to allow sufficient time for suppliers to obtain the tender documentation and submit a bid, to treat tenders fairly and impartially, and to maintain confidentiality of tenders. In addition, the Parties agree to use fair and objective technical specifications, to award contracts based solely on the evaluation criteria specified in the notices and tender documentation, and to establish due process procedures to question or review complaints about an award. Each Party agrees to a positive list of entities and activities that are covered by the chapter, which are listed in annexes.

## **16. Competition Policy**

TPP Parties share an interest in ensuring a framework of fair competition in the region through rules that require TPP Parties to maintain legal regimes that prohibit anticompetitive business conduct, as well as fraudulent and deceptive commercial activities that harm consumers.

TPP Parties agree to adopt or maintain national competition laws that proscribe anticompetitive business conduct and work to apply these laws to all commercial activities in their territories. To ensure that such laws are effectively implemented, TPP Parties agree to establish or maintain authorities responsible for the enforcement of national competition laws, and adopt or maintain laws or regulations that proscribe fraudulent and deceptive commercial activities that cause harm or potential harm to consumers. Parties also agree to cooperate, as appropriate, on matters of mutual interest related to competition activities. The 12 Parties agree to obligations on due process and procedural fairness, as well as private rights of action for injury caused by a violation of a Party's national competition law. In addition, TPP Parties agree to cooperate in the area of competition policy and competition law enforcement, including through notification, consultation and exchange of information. The chapter is not subject to the dispute settlement provisions of the TPP, but TPP Parties may consult on concerns related to the chapter.

## **17. State-Owned Enterprises (SOEs) and Designated Monopolies**

All TPP Parties have SOEs, which often play a role in providing public services and other activities, but TPP Parties recognize the benefit of agreeing on a framework of rules on SOEs. The SOE chapter covers large SOEs that are principally engaged in commercial activities. Parties agree to ensure that their SOEs make commercial purchases and sales on the basis of commercial considerations, except when doing so would be inconsistent with any mandate under which an SOE is operating that would require it to provide public services. They also agree to ensure that their SOEs or designated monopolies do not discriminate against the enterprises, goods, and services of other Parties. Parties agree to provide their courts with jurisdiction over commercial activities of foreign SOEs in their territory, and to ensure that administrative bodies regulating both SOEs and private companies do so in an impartial manner. TPP Parties agree to not cause adverse effects to the interests of other TPP Parties in providing non-commercial assistance to SOEs, or injury to another Party's domestic industry by providing non-commercial

assistance to an SOE that produces and sells goods in that other Party's territory. TPP Parties agree to share a list of their SOEs with the other TPP Parties and to provide, upon request, additional information about the extent of government ownership or control and the non-commercial assistance they provide to SOEs. There are some exceptions from the obligations in the chapter, for example, where there is a national or global economy emergency, as well as country-specific exceptions that are set out in annexes.

## **18. Intellectual Property**

TPP's Intellectual Property (IP) chapter covers patents, trademarks, copyrights, industrial designs, geographical indications, trade secrets, other forms of intellectual property, and enforcement of intellectual property rights, as well as areas in which Parties agree to cooperate. The IP chapter will make it easier for businesses to search, register, and protect IP rights in new markets, which is particularly important for small businesses.

The chapter establishes standards for patents, based on the WTO's TRIPS Agreement and international best practices. On trademarks, it provides protections of brand names and other signs that businesses and individuals use to distinguish their products in the marketplace. The chapter also requires certain transparency and due process safeguards with respect to the protection of new geographical indications, including for geographical indications recognized or protected through international agreements. These include confirmation of understandings on the relationship between trademarks and geographical indications, as well as safeguards regarding the use of commonly used terms.

In addition, the chapter contains pharmaceutical-related provisions that facilitate both the development of innovative, life-saving medicines and the availability of generic medicines, taking into account the time that various Parties may need to meet these standards. The chapter includes commitments relating to the protection of undisclosed test and other data submitted to obtain marketing approval of a new pharmaceutical or agricultural chemicals product. It also reaffirms Parties' commitment to the WTO's 2001 Declaration on the TRIPS Agreement and Public Health, and in particular confirms that Parties are not prevented from taking measures to protect public health, including in the case of epidemics such as HIV/AIDS.

In copyright, the IP chapter establishes commitments requiring protection for works, performances, and phonograms such as songs, movies, books, and software, and includes effective and balanced provisions on technological protection measures and rights management information. As a complement to these commitments, the chapter includes an obligation for Parties to continuously seek to achieve balance in copyright systems through among other things, exceptions and limitations for legitimate purposes, including in the digital environment. The chapter requires Parties to establish or maintain a framework of copyright safe harbors for Internet Service Providers (ISPs). These obligations do not permit Parties to make such safe harbors contingent on ISPs monitoring their systems for infringing activity.

Finally, TPP Parties agree to provide strong enforcement systems, including, for example, civil procedures, provisional measures, border measures, and criminal procedures and penalties for commercial-scale trademark counterfeiting and copyright or related rights piracy. In particular,

TPP Parties will provide the legal means to prevent the misappropriation of trade secrets, and establish criminal procedures and penalties for trade secret theft, including by means of cyber-theft, and for cam-cording.

## **19. Labour**

All TPP Parties are International Labour Organization (ILO) members and recognize the importance of promoting internationally recognized labour rights. TPP Parties agree to adopt and maintain in their laws and practices the fundamental labour rights as recognized in the ILO 1998 Declaration, namely freedom of association and the right to collective bargaining; elimination of forced labour; abolition of child labour and a prohibition on the worst forms of child labour; and elimination of discrimination in employment. They also agree to have laws governing minimum wages, hours of work, and occupational safety and health. These commitments also apply to export processing zones. The 12 Parties agree not to waive or derogate from laws implementing fundamental labour rights in order to attract trade or investment, and not to fail to effectively enforce their labour laws in a sustained or recurring pattern that would affect trade or investment between the TPP Parties. In addition to commitments by Parties to eliminate forced labour in their own countries, the Labour chapter includes commitments to discourage importation of goods that are produced by forced labour or child labour, or that contain inputs produced by forced labour, regardless of whether the source country is a TPP Party. Each of the 12 TPP Parties commits to ensure access to fair, equitable and transparent administrative and judicial proceedings and to provide effective remedies for violations of its labour laws. They also agree to public participation in implementation of the Labour chapter, including establishing mechanisms to obtain public input.

The commitments in the chapter are subject to the dispute settlement procedures laid out in the Dispute Settlement chapter. To promote the rapid resolution of labour issues between TPP Parties, the Labour chapter also establishes a labour dialogue that Parties may choose to use to try to resolve any labour issue between them that arises under the chapter. This dialogue allows for expeditious consideration of matters and for Parties to mutually agree to a course of action to address issues. The Labour chapter establishes a mechanism for cooperation on labour issues, including opportunities for stakeholder input in identifying areas of cooperation and participation, as appropriate and jointly agreed, in cooperative activities.

## **20. Environment**

As home to a significant portion of the world's people, wildlife, plants and marine species, TPP Parties share a strong commitment to protecting and conserving the environment, including by working together to address environmental challenges, such as pollution, illegal wildlife trafficking, illegal logging, illegal fishing, and protection of the marine environment. The 12 Parties agree to effectively enforce their environmental laws; and not to weaken environmental laws in order to encourage trade or investment. They also agree to fulfil their obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), and to take measures to combat and cooperate to prevent trade in wild fauna and flora that has been taken illegally. In addition, the Parties agree to promote sustainable forest management, and to protect and conserve wild fauna and flora that they have identified as being at risk in their

territories, including through measures to conserve the ecological integrity of specially protected natural areas, such as wetlands. In an effort to protect their shared oceans, TPP Parties agree to sustainable fisheries management, to promote conservation of important marine species, including sharks, to combat illegal fishing, and to prohibit some of the most harmful fisheries subsidies that negatively affect overfished fish stocks, and that support illegal, unreported, or unregulated fishing. They also agree to enhance transparency related to such subsidy programs, and to make best efforts to refrain from introducing new subsidies that contribute to overfishing or overcapacity.

TPP Parties also agree to protect the marine environment from ship pollution and to protect the ozone layer from ozone depleting substances. They reaffirm their commitment to implement the multilateral environmental agreements (MEAs) they have joined. The Parties commit to provide transparency in environmental decision-making, implementation and enforcement. In addition, the Parties agree to provide opportunities for public input in implementation of the Environment chapter, including through public submissions and public sessions of the Environment Committee established to oversee chapter implementation. The chapter is subject to the dispute settlement procedure laid out in the Dispute Settlement chapter. The Parties further agree to encourage voluntary environmental initiatives, such as corporate social responsibility programs. Finally, the Parties commit to cooperate to address matters of joint or common interest, including in the areas of conservation and sustainable use of biodiversity, and transition to low-emissions and resilient economies.

## **21. Cooperation and Capacity Building**

The economies of the 12 TPP Parties are diverse. All Parties recognise that the TPP lesser-developed Parties may face particular challenges in implementing the Agreement, and in taking full advantage of the opportunities it creates. To address these challenges, the Cooperation and Capacity Building chapter establishes a Committee on Cooperation and Capacity Building to identify and review areas for potential cooperative and capacity building efforts. Parties' activities are on a mutually agreed basis and subject to the availability of resources. This Committee will facilitate exchange of information to help with requests related to cooperation and capacity building.

## **22. Competitiveness and Business Facilitation**

The Competitiveness and Business Facilitation chapter aims to help the TPP reach its potential to improve the competitiveness of the participating countries, and the Asia-Pacific region as a whole. The chapter creates formal mechanisms to review the impact of the TPP on competitiveness of the Parties, through dialogues among governments and between government, business, and civil society, with a particular focus on deepening regional supply chains, to assess progress, take advantage of new opportunities, and address any challenges that may emerge once the TPP is in force. Among these will be the Committee on Competitiveness and Business Facilitation, which will meet regularly to review the TPP's impact on regional and national competitiveness, and on regional economic integration. The Committee will consider advice and recommendations from stakeholders on ways the TPP can further enhance competitiveness, including enhancing the participation of micro, small- and medium-sized enterprises in regional

supply chains. The chapter also establishes a basic framework for Committee to assess supply chain performance under the Agreement, including ways to promote SME participation in supply chains; and review of stakeholder and expert input.

### **23. Development**

The TPP Parties seek to ensure that the TPP will be a high-standard model for trade and economic integration, and in particular to ensure that all TPP Parties can obtain the complete benefits of the TPP, are fully able to implement their commitments, and emerge as more prosperous societies with strong markets. The Development chapter includes three specific areas to be considered for collaborative work once TPP enters into force for each Party: (1) broad-based economic growth, including sustainable development, poverty reduction, and promotion of small businesses; (2) women and economic growth, including helping women build capacity and skill, enhancing women's access to markets, obtaining technology and financing, establishing women's leadership networks, and identifying best practices in workplace flexibility; and (3) education, science and technology, research, and innovation. The chapter establishes a TPP Development Committee, which will meet regularly to promote voluntary cooperative work in these areas and new opportunities as they arise.

### **24. Small- and Medium-Sized Enterprises**

TPP Parties have a shared interest in promoting the participation of small- and medium-sized enterprises in trade and to ensure that small- and medium-sized enterprises share in the benefits of the TPP. Complementing the commitments throughout other chapters of the TPP on market access, paperwork reduction, Internet access, trade facilitation, express delivery and others, the Small- and Medium-Sized Enterprise chapter includes commitments by each TPP Party to create a user-friendly websites targeted at small- and medium-sized enterprise users to provide easily accessible information on the TPP and ways small firms can take advantage of it, including description of the provisions of TPP relevant to small- and medium-sized enterprises; regulations and procedures concerning intellectual property rights; foreign investment regulations; business registration procedures; employment regulations; and taxation information. In addition, the chapter establishes a Small- and Medium-Sized Enterprises Committee that will meet regularly to review how well the TPP is serving small- and medium-sized enterprises, consider ways to further enhance its benefits, and oversee cooperation or capacity building activities to support small- and medium-sized enterprises through export counseling, assistance, and training programs for small- and medium-sized enterprises; information sharing; trade finance; and other activities.

### **25. Regulatory Coherence**

TPP's Regulatory Coherence chapter will help ensure an open, fair, and predictable regulatory environment for businesses operating in the TPP markets by encouraging transparency, impartiality, and coordination across each government to achieve a coherent regulatory approach. The chapter aims to facilitate regulatory coherence in each TPP country by promoting mechanisms for effective interagency consultation and coordination for agencies. It encourages widely-accepted good regulatory practices, such as impact assessments of proposed

regulatory measures, communication of the grounds for the selection of chosen regulatory alternatives and the nature of the regulation being introduced. The chapter also includes provisions to help ensure regulations are written clearly and concisely, that the public has access to information on new regulatory measures, if possible online, and that existing regulatory measures are periodically reviewed to determine if they remain the most effective means of achieving the desired objective. In addition, it encourages TPP Parties to provide an annual public notice of all regulatory measures it expects to take. Toward these ends, the chapter establishes a Committee which will give TPP countries, businesses, and civil society continuing opportunities to report on implementation, share experiences on best practices, and consider potential areas for cooperation. The chapter does not in any way affect the rights of TPP Parties to regulate for public health, safety, security, and other public interest reasons.

## **26. Transparency and Anti-Corruption**

The TPP's Transparency and Anti-Corruption chapter aims to promote the goal, shared by all TPP Parties, of strengthening good governance and addressing the corrosive effects bribery and corruption can have on their economies. Under the Transparency and Anti-Corruption chapter, TPP Parties need to ensure that their laws, regulations, and administrative rulings of general application with respect to any matter covered by the TPP are publicly available and that, to the extent possible, regulations that are likely to affect trade or investment between the Parties are subject to notice and comment. TPP Parties agree to ensure certain due process rights for TPP stakeholders in connection with administrative proceedings, including prompt review through impartial judicial or administrative tribunals or procedures. They also agree to adopt or maintain laws criminalising offering to, or solicitation of, undue advantages by a public official, as well as other acts of corruption affecting international trade or investment. Parties also commit to effectively enforce their anticorruption laws and regulations. In addition, they agree to endeavor to adopt or maintain codes or standards of conduct for their public officials, as well as measures to identify and manage conflicts of interest, to increase training of public officials, to take steps to discourage gifts, to facilitate reporting of acts of corruption, and to provide for disciplinary or other measures for public officials engaging in acts of corruption. In an Annex to this chapter, TPP Parties also agree to provisions that promote transparency and procedural fairness with respect to listing and reimbursement for pharmaceutical products or medical devices. Commitments in this annex are not subject to dispute settlement procedures.

## **27. Administrative and Institutional Provisions**

The Administrative and Institutional Provisions Chapter sets out the institutional framework by which the Parties will assess and guide implementation or operation of the TPP, in particular by establishing the Trans-Pacific Partnership Commission, composed of Ministers or senior level officials, to oversee the implementation or operation of the Agreement and guide its future evolution. This Commission will review the economic relationship and partnership among the Parties on a periodic basis to ensure that the Agreement remains relevant to the trade and investment challenges confronting the Parties. The chapter also requires each Party to designate an overall contact point to facilitate communications between the Parties, and creates a mechanism through which a Party that has a specific transition period for an obligation must

report on its plans for, and progress toward, implementing that obligation. This ensures greater transparency with respect to the implementation of Parties' obligations.

## **28. Dispute Settlement**

The Dispute Settlement chapter is intended to allow Parties to expeditiously address disputes between them over implementation of the TPP. TPP Parties will make every attempt to resolve disputes through cooperation and consultation and encourage the use of alternative dispute resolution mechanisms when appropriate. When this is not possible, TPP Parties aim to have these disputes resolved through impartial, unbiased panels. The dispute settlement mechanism created in this chapter applies across the TPP, with few specific exceptions. The public in each TPP Party will be able to follow proceedings, since submissions made in disputes will be made available to the public, hearings will be open to the public unless the disputing Parties otherwise agree, and the final report presented by panels will also be made available to the public. Panels will consider requests from non-governmental entities located in the territory of any disputing Party to provide written views regarding the dispute to panels during dispute settlement proceedings.

Should consultations fail to resolve an issue, Parties may request establishment of a panel, which would be established within 60 days after the date of receipt of a request for consultations or 30 days after the date of receipt of a request related to perishable goods. Panels will be composed of three international trade and subject matter experts independent of the disputing Parties, with procedures available to ensure that a panel can be composed even if a Party fails to appoint a panelist within a set period of time. These panelists will be subject to a code of conduct to ensure the integrity of the dispute settlement mechanism. They will present an initial report to the disputing Parties within 150 days after the last panelist is appointed or 120 days in cases of urgency, such as cases related to perishable goods. The initial report will be confidential, to enable Parties to offer comments. The final report must be presented no later than 30 days after the presentation of the initial report and must be made public within 15 days, subject to the protection of any confidential information in the report.

To maximize compliance, the Dispute Settlement chapter allows for the use of trade retaliation (*e.g.*, suspension of benefits), if a Party found not to have complied with its obligations fails to bring itself into compliance with its obligations. Before use of trade retaliation, a Party found in violation can negotiate or arbitrate a reasonable period of time in which to remedy the breach.

## **29. Exceptions**

The Exceptions Chapter ensures that flexibilities are available to all TPP Parties that guarantee full rights to regulate in the public interest, including for a Party's essential security interest and other public welfare reasons. This chapter incorporates the general exceptions provided for in Article XX of the General Agreement on Tariffs and Trade 1994 to the goods trade-related provisions, specifying that nothing in the TPP shall be construed to prevent the adoption or enforcement by a Party of measures necessary to, among other things, protect public morals, protect human, animal or plant life or health, protect intellectual property, enforce measures

relating to products of prison labour, and measures relating to conservation of exhaustible natural resources.

The chapter also contains the similar general exceptions provided for in Article XIV of the General Agreement on Trade in Services with respect to the services trade-related provisions.

The chapter includes a self-judging exception, applicable to the entire TPP, which makes clear that a Party may take any measure it considers necessary for the protection of its essential security interests. It also defines the circumstances and conditions under which a Party may impose temporary safeguard measures (such as capital controls) restricting transfers – such as contributions to capital, transfers of profits and dividends, payments of interest or royalties, and payments under a contract – related to covered investments, to ensure that governments retain the flexibility to manage volatile capital flows, in the contexts of balance of payments or other economic crises, or threats thereof. In addition, it specifies that no Party is obligated to furnish information under the TPP if it would be contrary to its law or public interest, or would prejudice the legitimate commercial interests of particular enterprises. A Party may elect to deny the benefits of Investor-State dispute settlement with respect to a claim challenging a tobacco control measure of the Party.

### **30. Final Provisions**

The Final Provisions chapter defines the way the TPP will enter into force, the way in which it can be amended, the rules that establish the process for other States or separate customs territories to join the TPP in the future, the means by which Parties can withdraw, and the authentic languages of the TPP. It also designates a Depositary for the Agreement responsible for receiving and disseminating documents.

The chapter ensures that the TPP can be amended, with the agreement of all Parties and after each Party completes its applicable legal procedures and notifies the Depositary in writing. It specifies that the TPP is open to accession by members of the Asia-Pacific Economic Cooperation Forum and other States or separate customs territories as agreed by the Parties, again after completing applicable legal procedures in each Party. The Final Provisions chapter also specifies the procedures under which a Party can withdraw from the TPP.