

Information paper



TPP Agreement explained

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What is it?

Trans-Pacific Partnership (TPP) Agreement is a free trade agreement (FTA) seeking to establish new trade and investment opportunities for 12 countries on the Pacific Rim: Australia, the US, Japan, Malaysia, Vietnam, Singapore, Brunei, New Zealand, Canada, Mexico, Chile and Peru.

For Australia, the TPP is intended to break precedents of existing free trade agreements in terms of scope and new market access opportunities for exporters and investors. The TPP sets timelines to cut tariffs and financial levies on goods, and includes a range of agreements to make cross-border investing easier and more frequent.

The Australian Department of Foreign Affairs and Trade (DFAT) states that TPP aims to “address contemporary trade challenges in ways that have not previously been addressed in Australian FTAs, such as commitments on state-owned enterprises” in order for Australian exporters to compete on a level playing field internationally.

While the TPP is planned to come into force with 12 countries, the agreement allows for additional countries to join the agreement in the future. A significant criticism of the TPP is that it is more a security instrument to guard against the perceived economic strength and influence of China, rather than a genuine economic blueprint for trade reform.





Free trade agreements and Australia

An FTA is an international treaty that facilitates strong commercial ties between two or more countries through the removal of barriers to trade. Many countries throughout the globe have networks of FTAs. It is claimed that an effective FTA can provide numerous benefits to the countries participating, such as increasing a country's gross domestic profit (GDP); growing and strengthening businesses by increasing their export revenue; and providing citizens with access to cheaper imports and new technologies.

Australia currently has 10 FTAs in force, which constitute 67 per cent of Australia's total trade. The countries within these agreements span: New Zealand, Singapore, Thailand, US, Chile, the Association of South East Asian Nations (ASEAN) (with New Zealand), Malaysia, Korea, Japan and China.

Criticism of Australian FTAs have included the secrecy in which these agreements are negotiated and questions as to whether manufacturers are losing their competitiveness in the Australian market through importing cheaper goods – with opponents to FTAs questioning whether they are better dubbed “import agreements”. Specific clauses within FTAs can also cause concern among citizens due to the power they grant corporations.

FTAs are explicitly allowed for under World Trade Organization (WTO) rules.

Support and criticisms of the TPP Agreement

Pros

- **Benefits to exporters:** The TPP will enhance the competitiveness of Australian exports in partner markets. The TPP will eliminate more than 98 per cent of tariffs in the TPP region. Tariffs on US\$9 billion of Australia's dutiable exports to TPP countries will be eliminated.
- **Greater domestic capital for Australia:** As a large country with a relatively small population, Australia relies on foreign investment to supplement domestic capital. DFAT argues the agreement will increase the attractiveness of Australia as an investment destination. This will be achieved through liberalising the screening threshold that private foreign investments in non-sensitive sectors are considered by the Foreign Investment Review Board, increasing it from \$252 million to \$1094 million for all TPP Parties.



- **Benefits to citizens:** The trade agreement is intended to reduce the import costs of items, giving consumers a cheaper end product. Even though Australia has relatively low tariffs, products created via an international supply chain are taxed at the borders they pass over before they get to Australian 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.
- **Jobs growth:** Due to the growth in Australia's export market from the TPP, there is a predicted flow-on effect of more jobs and a higher employment rate for Australia.
- **Benefits to Australian investors:** The TPP will promote further growth and diversification of Australian outward investment by liberalising investment regimes 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 investors will also benefit from preferential investment screening thresholds.

Cons

- **Dispute settlement:** One of the most controversial aspects of the TPP continues to be the Investor-State Dispute Settlement (ISDS) provisions. These provisions would allow for foreign investors to sue the Australian government if Australian laws or policies are negatively affecting foreign investor profits. Australia's chief TPP negotiator former Australian Minister for Trade and Investment the Hon. Andrew Robb claims the TPP will include safeguards that will protect new environmental and health policies and regulations from ISDS lawsuits. However, numerous academic experts have questioned whether these safeguards are adequate.
- **Economic impact:** There has been criticism over the Coalition Government's reluctance to accept the Productivity Commission's offer to perform an economic analysis of the TPP's effects. A report released by the World Bank in January 2016 analysing the effects of the TPP said that other members of the TPP stood to gain a lot more than Australia, stating: "Vietnam's economy would be 10 per cent bigger by 2030, Malaysia's eight per cent bigger, New Zealand's three per cent bigger, and Singapore's three per cent bigger." Australia's economy was forecast to grow a mere 0.7 per cent by the year 2030.



- **Global trading position:** The TPP has faced criticism as an attempt by the US to leverage itself into a position of superior economic trading strength, and consequent security dominance, which may lead to the US's domination of economies in the Pacific Rim region. In 2015 President Barack Obama stated, "We have to make sure America writes the rules of the global economy. And we should do it today, while our economy is in the position of global strength."

Corporations using ISDS to sue Australia

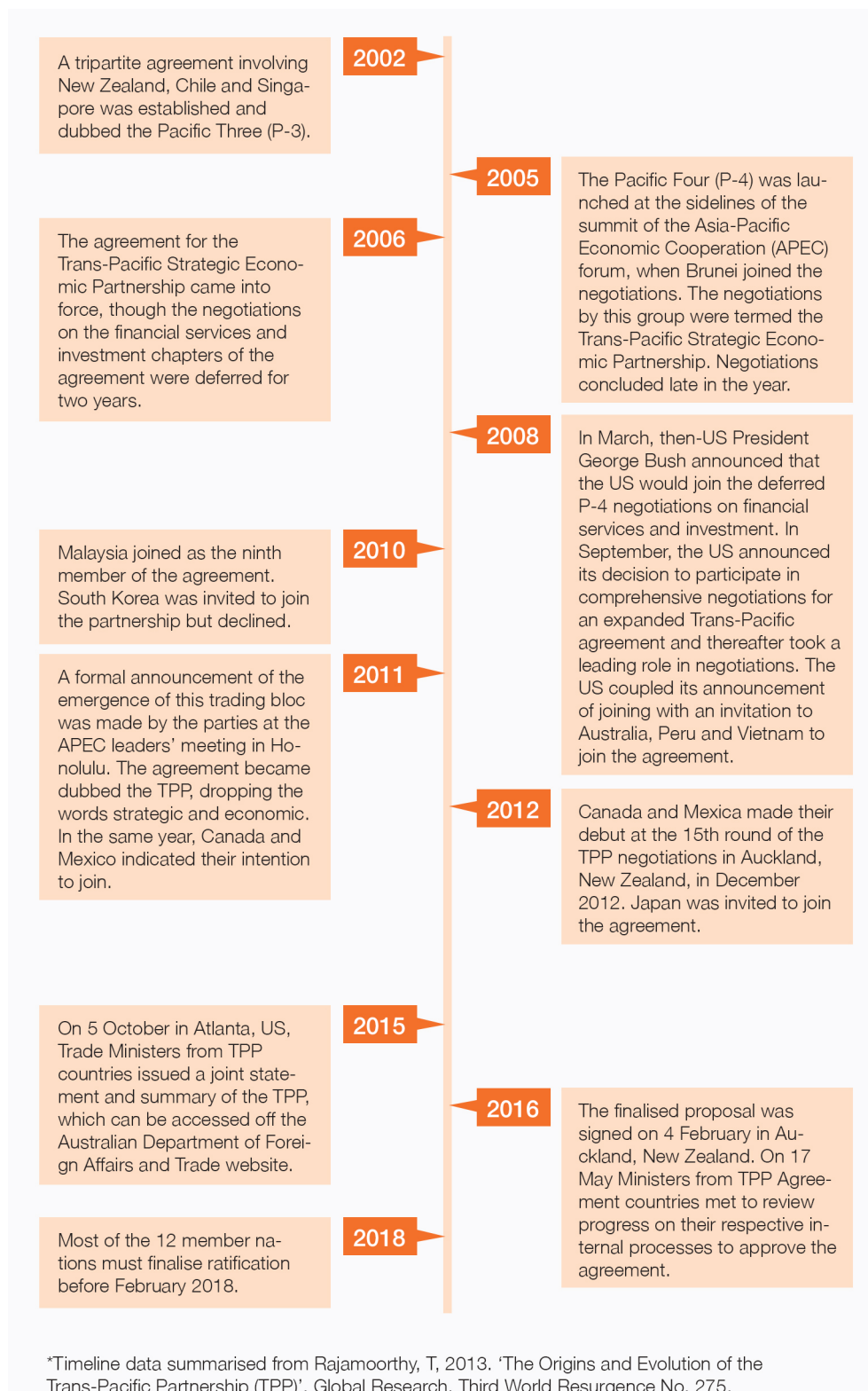
On 1 December 2011, the Tobacco Plain Packaging Act 2011 became law in Australia. Philip Morris Asia challenged the tobacco plain packaging legislation under the 1993 Agreement between the Government of Australia and the Government of Hong Kong for the Promotion and Protection of Investments. This was the first investor-state dispute brought against Australia. The arbitration was conducted under the United Nations Commission on International Trade Law Arbitration Rules 2010, and the tribunal was composed of three arbitrators.

On 18 December 2015 the tribunal issued a unanimous decision agreeing with Australia's position that the tribunal has no jurisdiction to hear Philip Morris Asia's claim. However, the decision hinged on the fact the tribunal found that Philip Morris Asia's claim was an abuse of process because Philip Morris Asia acquired an Australian subsidiary, Philip Morris (Australia) Limited, in early 2011 in full knowledge of the government's decision in 2010 to introduce plain packaging.

The full plain packaging arbitration can be accessed on the [Attorney-General's Department website](#).



History of the TPP





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Outcomes for Australia: the winners and losers

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On 5 October 2015, then-Australian Trade Minister the Hon. Andrew Robb issued a summary document that highlighted the industries intended to benefit from the TPP. Below is a summary of the industries and outcomes, the full summary can be accessed [here](#).

Sectors forecasted to benefit:

Agriculture	The TPP will eliminate tariffs on more than \$4.3 billion of Australia’s dutiable exports of agricultural goods. A further \$2.1 billion of Australia’s dutiable exports will receive significant preferential access through new quotas and tariff reductions. The industries listed include: beef, sugar, rice, dairy, cereals, wine and seafood.
Resources and energy products	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. These include certain tariff eliminations in Vietnam and Peru.
Manufactured goods	Products that stand to benefit from the elimination of tariffs or duties include: iron and steel products, pharmaceuticals, machinery, mechanical and electrical appliances, automotive parts, paper and paperboard.
Business (general)	Australian businesses will now be able to bid for tenders to supply goods (such as pharmaceutical products and electronic components) used for government purposes in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam.
Professional services	The TPP will liberalise key barriers to providing more transparent and predictable operating conditions in TPP countries, and capturing future services sector reforms. Sectors that will benefit include: financial services, education services, transport services, telecommunications services, health services and hospitality and tourism services.



Sectors forecasted to face challenges:

Medicines and pharmaceuticals	The treaty gives global pharmaceutical companies the power to extend their patents in order to inhibit competition by shutting out cheaper generic manufacturers and prevent subsidy programs that keep drugs affordable in Australia. Medicines Australia has released a statement saying the outcome of the TPP is disappointing and, “a missed opportunity to stimulate and grow the Australian biopharmaceutical industry”.
Environmental protection	The ISDS provisions have also caused concern among environmental groups, stemming from high-profile international cases where coal and fracking companies have used the ISDS to overturn environmental restrictions.
Local job markets	Tariff elimination under the agreement may make it more appealing for corporations to outsource jobs to TPP countries where wages are lower.

Ratification

Now that negotiations have concluded, the next step is for the individual countries within the agreement to ratify it according to their national procedures before February 2018. The ratified documents will then be deposited with the Government of New Zealand. In Australia, the final ratification of the agreement will take place after the implementing legislation has been passed by both the House of Representatives and the Senate. The TPP is planned to come into force two months after all the original signatories complete their own domestic ratification procedures.

Negotiations for the TPP started under Labor and have been continued under the Coalition. The Coalition remains confident that the TPP will increase Australia’s economic growth, and provide jobs for Australians. Labor has also welcomed the finalised negotiations but has said it “opposes the inclusion of Investor State Dispute Settlement provisions in all trade agreements.” The Greens oppose the TPP largely on the basis of the ISDS. Independents, such as the Nick Xenophon Team and One Nation, also oppose the TPP, which could mean there will be resistance to ratifying the agreement in the new Senate.



Barriers to ratification

The TPP will come into effect if at least six of the 12 member countries ratify the agreement, and if the ratifying countries have between them at least 85 per cent of the total GDP of the original 12 member countries. Most countries in the agreement have two years to ratify.

The major hurdle that would cause the agreement to fall down is if either the US or Japan do not ratify the agreement. Together, the US and Japan have just under 80 per cent of the total GDP of the signatories.

The US

While President Barack Obama has been a strong force in supporting and progressing the agreement, the future of the US's support is unclear. Given it is an election year in the US, the TPP's fate could rest on whether it can be ratified before the US November 2016 elections. US Republican presidential candidate Donald Trump has been vocal in his plans to dismantle the TPP, saying the agreement would ship millions of US jobs overseas, undermine the US economy and undermine the US's independence.

Democratic presidential candidate Hillary Clinton's stance is less clear on the agreement. While she has previously supported the idea and said a global economy needs trade, the TPP in its current iteration has led her to state it does not meet her standards. The TPP has largely been left off the agenda of her 2016 campaign, so the US's future support of the TPP is followed by a question mark.

Japan

While there have been some sectors strongly opposing the TPP in Japan – notably farmers who fear the competing prices of US and Australian imports – the government's support of the deal is predominantly positive. In July 2016 a number of Japan's top business leaders urged the Japanese Prime Minister Shinzo Abe to seek ratification as early as possible, hoping it would spur the member countries to ratify if Japan ratifies first.



Looking ahead

The fate of the TPP most likely hinges on whether the US will ratify the agreement. So what is the likelihood the US will secure the necessary amount of votes to pass the agreement?

Lowy Institute for International Policy Research Fellow Aaron Connelly says “There is no higher priority for the Obama Administration during the lame duck session than TPP; they have been whipping votes for the agreement for the better part of a year, and they seem confident that it will pass if the leadership in both houses brings it to a vote.

“In the House, Speaker Paul Ryan is strongly pro-TPP, and will certainly bring it to a vote if he believes the votes are there to pass the agreement. In the Senate, the Republican leadership has been less supportive at times... but I think will ultimately be motivated to move the agreement, particularly if they lose their majority in November and thus see a closing window to use passage of the agreement as leverage on other issues.

“It will be difficult to garner Democrat votes for the agreement in either House, because the party has turned so hard against trade over the past decade, and indeed even more sharply over the past year. But a combination of White House pressure, conscience votes by moderate members who are retiring or have lost their seats, and increased information about the agreement — which is one of the most progressive and labor-friendly to come before either house — may attract more Democrat votes for TPP this year than TPA did last year.”

Will there be a TPP if the US doesn't ratify?

Mr Connelly says, “If TPP does not pass during the lame duck session in November, it is dead. There will be no renegotiation, as Australia and others have said this is not possible from their perspective, and the politics of the issue in the United States will probably not allow Secretary Clinton to agree to it should she become president. The chances of a Trump presidency remain extremely low despite irresponsible media reports to the contrary, but it would likely be dead in that event as well.”



What does this mean for Australia?

If the TPP is dropped, this would likely lead Australia to looking for other or similar free trade agreements. University of Sydney Law School Adjunct Professor and Herbert Smith Freehills Partner Donald Robertson says “The TPP has never been an end in itself, but always a step towards a larger goal of a Free Trade Area of the Asia Pacific. That larger goal will remain, regardless of the fate of the TPP.

“Australia is actively negotiating many bilateral investment agreements as well as the Regional Comprehensive Economic Partnership which will become, if the TPP is not in effect, the foundation document for other regional integration. That integration continues, with Australia an active participant in the process.

“Regional integration must continue if Australia is to have a role in the Asia Pacific value chain cluster, and of other global clusters. The technological and other economic forces that have been identified will not disappear – like all economic forces, if you hide from them they have a tendency to burst out elsewhere, with unexpected and uncontrollable consequences.

“Australians can remain sceptical about the benefits of such mega-regional deals, but they should not show paranoia about China or any other nation and must demonstrate a global or “cosmopolitan” frame of mind that eschews nationalism and acknowledges the importance to ourselves of the welfare and interest of other nations with whom we trade in the global value chains.”

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CEDA - the Committee for Economic Development of Australia - is a national, independent, member-based organisation providing thought leadership and policy perspectives on the economic and social issues affecting Australia.

CEDA is an independent not-for-profit organisation, founded in 1960 by leading Australian economist Sir Douglas Copland.

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