



CPTPP outcomes: 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 2017, around 13 per cent of the total stock of foreign investment in Australia (valued at approximately \$416 billion) was from CPTPP countries.

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

In 2014-15, 20 per cent of businesses in Australia with 200 or more employees were majority foreign owned (have greater than 50 per cent foreign ownership). By creating new businesses with connections in different markets, foreign investment opens up additional export opportunities.

The CPTPP promotes 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 CPTPP countries. Under the CPTPP, 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 apply to investment in agricultural land and agribusiness respectively.

Benefits for Australian investors

Australian investment in CPTPP countries has been steadily increasing. In 2017, around 16 per cent of the total stock of Australian investment abroad (valued at approximately \$354 billion) was in CPTPP countries.

The CPTPP promotes 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 also benefit from preferential investment screening thresholds in the CPTPP.

The CPTPP Investment Chapter contains rules that provide additional protections to Australian investors operating in CPTPP 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 provides 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 CPTPP countries and total Australian investment in CPTPP countries in 2017

	Total investment in Australia from CPTPP countries (\$m)	Total Australian investment in CPTPP countries (\$m)
Brunei Darussalam	82	53
Canada	47,335	46,888
Chile	NP*	3,006
Japan	219,236	125,122
Malaysia	21,331	9,597
Mexico	177	4,287
New Zealand	45,059	103,040
Peru	NP*	NP*
Singapore	82,038	59,418
Vietnam	735	2,335
Total CPTPP countries	415,993	353,746

*NP = not published

CPTPP investment chapter

The CPTPP 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 [CPTPP 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 CPTPP 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 CPTPP 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 CPTPP 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 CPTPP 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 CPTPP 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 CPTPP Parties to issue interpretations of the Agreement, which must be followed by ISDS tribunals;
- mechanisms to discourage frivolous and 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 [FaQ: ISDS](#).