

**National Interest Analysis [2018] ATNIA 1  
With attachments**

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

**Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand,  
Peru, Singapore and Vietnam**

**and associated side letters**

(Santiago, 8 March 2018)

**[2018] ATNIF 1**

Attachments:

<b>Attachment I</b>	<b>Analysis of Regulatory Impact on Australia</b>
<b>Attachment II</b>	<b>Outcomes at a glance</b>
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# **NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY**

## **SUMMARY PAGE**

### **Comprehensive and Progressive Agreement for Trans-Pacific Partnership between the Government of Australia and the Governments of:**

**Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand,  
Peru, Singapore and Vietnam**

**and associated side letters**

(Santiago, 8 March 2018)

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#### **Nature and timing of the proposed treaty action**

1. The proposed treaty action is to notify the Depositary (New Zealand) in writing of the completion of Australia's legal procedures necessary to implement the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (the TPP-11 Agreement), between the Government of Australia and the Governments of Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam signed on 8 March 2018 in Santiago.
2. Article 3 (Entry into Force) of the TPP-11 Agreement provides that the TPP-11 Agreement will enter into force 60 days after the date on which a simple majority of signatories to the TPP-11 Agreement have notified the Depositary in writing of the completion of their applicable legal procedures. Article 3.2 provides that in the event a signatory to the TPP-11 Agreement has not completed its applicable legal procedures upon entry into force, the Agreement will enter into force for that signatory 60 days after it has notified the Depositary in writing of the completion of its applicable legal procedures.
3. It is proposed that Australia provide such notification as soon as practicable following consideration by the Joint Standing Committee on Treaties (JSCOT), the passing of legislative amendments and the enactment of any necessary regulations.
4. The Government of Australia and the Governments of Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam are working towards entry into force of the TPP-11 Agreement as soon as their respective domestic legal procedures will allow, in order to maximise the economic advantages to all Parties of the Agreement.

5. Ministers agreed that the side letters agreed by the Parties under the original Trans-Pacific Partnership (TPP) Agreement should be maintained in principle. As such the TPP-11 Agreement's entry into force will terminate or alter a number of Australia's existing treaties or treaty obligations as provided in a suite of new side letters to the TPP-11 Agreement. These side letters are detailed below at paragraph 57.

6. Australia will also lodge a notification, as expressly permitted under Article 29.5 of the TPP, electing to prevent any and all Investor-State Dispute Settlement (ISDS) challenges to Australia's tobacco control measures under the TPP-11 Agreement.

### **Background – from TPP to TPP-11**

7. The Government tabled the TPP in the Parliament on 9 February 2016. Following its inquiry, JSCOT recommended Australia take binding treaty action (Report 165 of 30 November 2016). The Government tabled its response to JSCOT's report on 6 July 2017.<sup>1</sup>

8. On 30 January 2017, the then acting United States Trade Representative (USTR) wrote to the representatives of other TPP signatories advising that the United States did not intend to become a Party to the TPP.<sup>2</sup> The provisions of the TPP preclude that Agreement entering into force without ratification by the United States<sup>3</sup> as the Gross Domestic Product threshold set for entry into force cannot in practice be met without the participation of the United States.

9. On 21 May 2017, ministers from the remaining 11 TPP signatory countries issued a joint statement<sup>4</sup> reaffirming the strategic and economic significance of the TPP as a way to promote regional economic integration and economic growth. The ministers agreed to launch a process of consultations among senior officials to assess options to bring the TPP into force expeditiously.

10. This process culminated in agreement by TPP-11 ministers to the core elements of the TPP-11 Agreement, which were announced on 11 November 2017 in Da Nang, Vietnam.<sup>5</sup> A subsequent meeting of senior officials on 22-23 January 2018 settled the outstanding issues and reached agreement on a final deal.

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<sup>1</sup>Australian Government response to the Joint Standing Committee on Treaties report 165: Inquiry into the Trans-Pacific Partnership Agreement available at <http://dfat.gov.au/about-us/publications/Pages/australian-government-response-to-the-jscot-report-165-inquiry-into-the-tpp.aspx>

<sup>2</sup> Copy of letter available at <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2017/january/US-Withdraws-From-TPP>

<sup>3</sup>Article 30.5.3 (Entry into Force) of the TPP provides that should not all original TPP signatories have ratified the TPP within two years of the date of signature of the TPP, the Agreement "shall enter into force 60 days after the date on which at least six of the original signatories, which together account for at least 85 per cent of the combined gross domestic product of the original signatories in 2013, have notified the Depositary in writing of the completion of their applicable legal procedures".

<sup>4</sup>Trans-Pacific Partnership Ministerial Statement of 21 May 2017, Hanoi, available at: <http://dfat.gov.au/trade/agreements/tpp/news/Pages/news.aspx#tpp-news-20170521>

<sup>5</sup>Trans-Pacific Partnership Ministerial Statement of 11 November 2017, Da Nang, available at: <http://dfat.gov.au/trade/agreements/tpp/news/Pages/trans-pacific-partnership-ministerial-statement.aspx>

## **Key differences between the TPP-11 Agreement and original TPP Agreement**

11. The TPP-11 Agreement is a separate legal instrument from the TPP.<sup>6</sup> It incorporates all of the provisions of the TPP, with the exception of certain mechanical provisions, specifically those relating to accession, entry into force, withdrawal and authentic texts. Specific provisions addressing these aspects have been agreed and incorporated in the TPP-11 Agreement. In addition, a number of provisions of the TPP have been suspended in the TPP-11 reflecting the changed metrics of the deal following the withdrawal of the United States (see paragraphs 16-19).

12. Incorporating the substantive provisions of the TPP in the TPP-11 reflects the objective of the TPP-11 countries to maintain the high standards, overall balance and integrity of the original TPP. It is significant that the TPP-11 countries have agreed to maintain and honour their market access commitments from the original deal, among themselves (excluding the United States), covering goods, services and investment.

13. Australia and the other TPP-11 countries are working towards entry into force of the Agreement as soon as practicable in order to realise its economic benefits. To that end, it is proposed that, in line with Article 3 of the Agreement, Australia notify the Depositary following consideration by JSCOT, the passage of legislative amendments and the enactment of necessary regulations.

14. Ministers agreed that the side letters that were concluded by the Parties under the TPP should be maintained in principle. As such, the TPP-11 Agreement's entry into force will terminate or alter a number of Australia's existing treaties or treaty obligations.

15. Australia will also lodge a notification, expressly permitted under Article 29.5 of the TPP, electing to prevent any and all Investor-State Dispute Settlement (ISDS) challenges to Australia's tobacco control measures under the Agreement. Parties' inherent right to regulate, including setting legislative and regulatory priorities, will be preserved in the TPP-11.

## **TPP provisions suspended in the TPP-11 Agreement**

16. TPP-11 Parties have agreed by consensus to suspend the application of a small number (totalling 22) of TPP provisions incorporated in the TPP-11 Agreement (Article 2). These provisions will, therefore, have no effect as a matter of international law until the Parties agree to end the suspension, which would also be by consensus. The limited number of suspensions reflect a shared desire by TPP-11 countries to strike a balance between maintaining the overall high standards of the deal, while ensuring that only Parties to the TPP-11 Agreement benefit. Australia's position throughout the TPP-11 process was to preserve the deal's market access package, which represents major economic opportunities for Australia.

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<sup>6</sup>Text of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership available at: <http://dfat.gov.au/trade/agreements/tpp/official-documents/Documents/tpp-11-treaty-text.pdf>

17. The suspensions cover a range of issues, and are listed in the Annex to the TPP-11 Agreement. Information on the suspensions are outlined in **Attachment III**. Many suspensions are related to intellectual property including:

- certain pharmaceutical provisions [(e.g. protections afforded to test or other data for pharmaceutical products (Article 18.50), protections afforded to biologic pharmaceutical products (Article 18.51), provisions governing pharmaceutical patent term adjustments in relation to the pharmaceutical product marketing approval process (Article 18.48)];
- certain copyright provisions [e.g. the term of protection for copyright (Article 18.63), technological protection measures (Article 18.68), Rights Management Information (Article 18.69)];
- provisions governing patent term adjustments in relation to granting authority delays (Article 18.46);
- provisions governing the protection of satellite and cable signals (Article 18.79); and
- provisions relating to internet service provider liability (Article 18.82).

18. None of the suspended intellectual property provisions would have required changes to Australia's intellectual property legislation. Provisions governing the protection of satellite and cable signals (Article 18.79) would have required minor regulatory amendments.

19. A number of other non-intellectual property articles have also been suspended, including a commitment to commence further negotiations on government procurement. Another suspension narrows the scope of claims that can be made under the ISDS mechanism, specifically precluding ISDS claims for a breach of a private investment contract or for a violation of an investment authorisation granted by the government. In addition, foreign investors in financial institutions can no longer bring an ISDS claim for a breach of the minimum standard of treatment related to those investments.

### **Overview and national interest summary**

20. Even without the United States, the TPP-11 Agreement will be one of the most ambitious global trade deals concluded since 1994. Ratification of this Agreement will signal Australia's commitment to ambitious trade liberalisation and reform, and create a high standard hub that will shape future regional economic integration in a direction that promotes trade, investment and growth.

21. The TPP-11 Agreement is a highly significant outcome in advancing Australia's long-term objective of achieving a single, high standard, rules-based trading system spanning the Indo-Pacific region, which was articulated in the Foreign Policy White Paper 2017. Strong outcomes from the ongoing negotiations for a Regional Comprehensive Economic Partnership (RCEP) and in Australia's free trade agreement (FTA) negotiations with the Pacific Alliance would represent further progress toward this goal.

22. JSCOT's report on the TPP recognised that the TPP will address some of the 'noodle bowl' inefficiencies often associated with multiple bilateral FTAs.<sup>7</sup>

23. The TPP-11 Agreement will significantly enhance Australia's economic relationships in the region: supporting more seamless preferential supply chains; opening new market access opportunities in those countries with which Australia already has FTAs; and establishing new, high quality FTAs with Mexico and Canada. These gains exceed anything that could be generated from other current multilateral or plurilateral negotiations.

### **Reasons for Australia to take the proposed treaty action**

24. The TPP-11 Agreement supports the Government's economic plan to ensure Australia continues to successfully transition from the mining investment boom to a stronger and more diversified economy. It will promote capital accumulation, higher productivity and improve resource utilisation levels.

25. In 2016-17, Australia's total goods and services exports to TPP-11 Parties were worth nearly \$88 billion<sup>8</sup> – or around 23.7 per cent of Australia's total goods and services exports. The Agreement will eliminate 98 per cent of tariffs in the TPP-11 region. Coupled with the market access openings in services and investment, the TPP-11 will open substantial new trade and investment opportunities for Australian business.

26. The TPP-11 Agreement will further integrate the Australian economy into supply chains in a dynamic, changing and strategically important region which accounts for around 13.5 per cent of the world economy and includes four of the world's top 20 economies (Japan [3<sup>rd</sup>], Canada [10<sup>th</sup>], Australia [14<sup>th</sup>] and Mexico [15<sup>th</sup>]<sup>9</sup>) and six of Australia's top 20 goods and services export destinations in 2016-17 (Japan [2<sup>nd</sup>], New Zealand [7<sup>th</sup>], Singapore [9<sup>th</sup>], Malaysia [11<sup>th</sup>], Vietnam [13<sup>th</sup>] and Canada [19<sup>th</sup>]).

27. The TPP-11 Agreement market access outcomes build on, and supplement, the existing access conditions Australia has negotiated with its FTA partners, Japan, Chile, New Zealand, Malaysia, Singapore, Peru, Brunei and Vietnam. The Agreement also creates valuable new market access opportunities in the two TPP-11 markets where Australia does not have a FTA, namely Canada and Mexico.

28. By setting common international trade and investment standards between member countries, the TPP-11 Agreement will make doing business across the region easier, reduce red tape and business costs. Many of the rules incorporated in the TPP-11 address contemporary realities in the international business environment and improve transparency and predictability in the regulatory climate which will assist Australian businesses reduce costs and manage risks.

29. Modelling by the Peterson Institute for International Economics (PIIE) (2017) found that the TPP-11 would increase Australia's income by 0.5 per cent by 2030

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<sup>7</sup> Joint Standing Committee on Treaties: *Report 165: Trans-Pacific Partnership Agreement*. Page 99.

<sup>8</sup> All figures in Australian dollars unless otherwise specified.

<sup>9</sup> Based on World Bank GDP 2016 rankings

(compared to 0.6 per cent under the original TPP).<sup>10</sup> The Canada West Foundation modelling (2017) found that Australia's exports to other TPP-11 Parties would grow by 0.12 per cent under the TPP-11, compared with a reduction of 0.14 per cent in Australian exports to other TPP Parties under the TPP<sup>11</sup>, likely due to increased competition with the United States in Japan and other Asian markets under the original TPP.

30. The economic benefits to Australia can be expected to increase in the event that other significant economies join the TPP-11. The PIIE's modelling showed that in a TPP-16 scenario (TPP-11 plus Indonesia, the Republic of Korea, Philippines, Taiwan and Thailand), Australia's income would increase by 0.7 per cent by 2030.<sup>12</sup> Some of these economies, such as Indonesia, the Republic of Korea and the Philippines, have publicly shown interest in the TPP in the past.

31. The key outcomes and impacts are set out in detail in **Attachment I** (Analysis of Regulatory Impact on Australia) and **Attachment II** (Fact Sheet) to this National Interest Analysis (NIA). Sectoral outcomes are summarised below.

### ***Agriculture***

32. Australia exported around \$12 billion worth of agricultural goods, covering cover agriculture, forestry and fishing, to TPP-11 countries in 2016, representing close to 23 per cent of Australia's total exports of these products. Australia enjoys a reputation as a reliable high quality producer of agricultural commodities and processed foods in the region. The Agreement will eliminate tariffs on more than US\$2.5 billion of Australia's dutiable exports of agricultural goods to TPP-11 countries upon entry into force of the Agreement. A further US\$2 billion of Australia's dutiable exports will receive significant preferential access through new quotas and tariff reductions. Specific outcomes include:

- (a) **beef:** significant reductions and elimination of tariffs on beef and beef products into Japan (building on the Japan-Australia Economic Partnership Agreement (JAEPA) outcomes); and elimination of tariffs on beef and beef products into Mexico over 10 years and Canada over 5 years<sup>13</sup>;
- (b) **sugar:** tariff elimination and levy reduction for high polarity sugar into Japan adding further to the competitive advantage of JAEPA; elimination of the tariff on refined sugar into Canada within five years of entry into force;
- (c) **rice:** for the first time in over 20 years, quota expansion for Australian rice into Japan and agreement to new administrative arrangements to facilitate trade. Mexico will eliminate its rice tariffs over 10 years;

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<sup>10</sup> Peterson Institute for International Economics Working Paper, *Going It Alone in the Asia-Pacific: Regional Trade Agreements Without the United States* – October 2017 – available at: <https://piie.com/system/files/documents/wp17-10.pdf>

<sup>11</sup> Canada West Foundation, *The Art of the Trade Deal: Quantifying the Benefits of a TPP without the United States* – June 2017 – available at: [http://cwfc.ca/wp-content/uploads/2017/06/TIC\\_ArtTradeDeal\\_TPP11\\_Report\\_JUNE2017.pdf](http://cwfc.ca/wp-content/uploads/2017/06/TIC_ArtTradeDeal_TPP11_Report_JUNE2017.pdf)

<sup>12</sup> Peterson Institute for International Economics Working Paper, *Going It Alone in the Asia-Pacific: Regional Trade Agreements Without the United States* – October 2017

<sup>13</sup> Under bilateral side-letters exchanged between Australia and Canada on 8 March 2018, Canada has agreed to accelerate the tariff phase-out period of 10 years for Australian beef under the original TPP to five years under the TPP-11.

- (d) **dairy**: elimination of tariffs on a range of cheeses covering over \$100 million in existing trade with Japan, new preferential access for a further estimated \$100 million of trade, building substantially on JAEPA and new quota arrangements for Australia on butter and skim milk powder. New preferential access into Mexico and the highly-protected Canadian market;
- (e) **cereals**: elimination of tariffs on wheat and barley into Mexico (within 10 years) and Canada (upon entry into force). Reduction of the mark-ups applied to wheat and barley in Japan and the creation of new quota arrangements above and beyond JAEPA;
- (f) **wine**: elimination of tariffs into Mexico (between 3 to 10 years) and Canada (upon entry into force), and, for the first time, Malaysia (within 15 years) and Vietnam (within 11 years); and
- (g) **seafood**: elimination of all tariffs into Canada and Vietnam on entry into force, and Mexico and Japan within 15 years.

33. Risk-based quarantine measures in the Sanitary and Phytosanitary Chapter [herein after, references to “Chapters” are references to chapters of the TPP rather than the Agreement] are not subject to the TPP’s Dispute Settlement mechanism. The TPP-11 Agreement will not affect Australia’s risk-based quarantine measures.

#### ***Resources, Energy and Manufactured Goods***

34. Australian exports of resources, energy, and manufactured products generally face far lower tariff barriers than agricultural goods. Nonetheless, the TPP-11 Agreement will eliminate all remaining tariffs on Australian exports of non-agricultural products to TPP-11 countries and create new opportunities for Australian exports.

35. Australia’s exports of resources and energy products to TPP-11 countries were worth over \$43 billion in 2016-17, representing around 62 per cent of Australia’s total goods exports to these countries. This includes around \$35 billion of resources and energy exports to Japan.

36. While the majority of Australia’s major exports, such as coal, iron ore and liquefied natural gas already enter TPP-11 countries duty-free, the TPP-11 Agreement has secured additional market access, including:

- (a) elimination of tariffs on **butanes, propane and liquefied natural gas** to Vietnam over 7 years; and
- (b) elimination of Vietnam’s 20 per cent tariffs on refined petroleum over 10 years – Australian exports were valued at \$9.5 million in 2016-17.

37. Australia’s exports of **manufactured goods** to TPP-11 countries were worth an estimated \$14 billion in 2016-17. New market access outcomes include:

- (a) immediate elimination of tariffs on **iron and steel products** into Canada and into Vietnam within 10 years;
- (b) elimination of **ship tariffs** into Canada over 5 to 10 years;
- (c) elimination of tariffs on **pharmaceuticals, machinery, mechanical and electrical appliances, and automotive parts** to Mexico within 10 years;



- (d) elimination of tariffs on **automotive parts** to Vietnam over 10 years;
- (e) a requirement for Malaysia to cease providing excise tax credits for locally produced **automotive parts**, which had favoured the use of Malaysian components over parts imported from Australia; and
- (f) Australian businesses will now be able to bid for tenders to supply goods (such as **pharmaceutical products, electronic components and supplies**) used for government purposes in Brunei Darussalam, Canada, Malaysia, Mexico and Vietnam.

### *Services*

38. In 2016, TPP-11 countries accounted for 11 per cent of the world's trade in services, with Australian services exports to TPP-11 countries worth over \$18 billion in 2016-17 (over 22 per cent of total Australian services exports).

39. The TPP-11 Agreement will contribute to a significant expansion and diversification of Australian services exports to Asia-Pacific countries by liberalising key barriers, providing more transparent and predictable operating conditions in TPP-11 countries, and capturing future services sector reforms. Examples include:

- (a) **mining equipment, technologies and services (METS) and oilfield service providers:** major new commercial opportunities for our world class service providers, including through:
  - i. Mexico's historic liberalisation of its energy sector;
  - ii. Vietnam opening its mining investment regime;
  - iii. Brunei Darussalam and Vietnam locking in future reforms to local content regimes or otherwise committing to a level playing field between Australian and foreign suppliers providing goods and services in the mining, oil and gas sectors; and
  - iv. new rules on large state-owned enterprises such as PEMEX in Mexico, VINACOMIN and PETROVIETNAM in Vietnam, which will help ensure that Australian goods and service providers can compete fairly for contracts;
- (b) **professional services:** Malaysia has locked in recent reforms to the legal, architectural, engineering and surveying services sectors, removing a number of restrictions that have long been of concern to Australian businesses;
- (c) **financial services:** new opportunities for Australian exporters to TPP-11 countries, with guaranteed ability to provide the following cross-border services:
  - i. investment advice and portfolio management services to a collective investment scheme; and
  - ii. insurance of risks relating to maritime shipping and international commercial aviation and freight, and related brokerage;
- (d) **temporary entry of business persons:** preferential temporary entry arrangements for Australian business people and their spouses into key TPP-11 markets, including the waiving of work permits and provision of work rights for spouses in Brunei Darussalam, Canada and Mexico. Reciprocal TPP-11 commitments on temporary entry of skilled business persons will support greater trade and investment opportunities in the Asia-Pacific region. The ability of business persons to move across borders is an integral feature of

modern business and a crucial contributor to growth in Australia's commercial relations;

- (e) **education services:** Australian universities and vocational education providers will benefit from guaranteed access to a number of existing and growth markets in Brunei Darussalam, Japan, Malaysia, Mexico and Vietnam. Australian providers will also be well placed to supply online education services across the region;
- (f) **transport services:** Australian freight and logistics companies stand to benefit from enhanced commitments that support integrated logistics supply chains. Australian providers of transport and logistics services in Malaysia and Vietnam will gain strong trade and investment protections for the first time. The Agreement will capture future liberalisation of investment regulations in aviation in Vietnam and freight trucking in Malaysia and Vietnam, which are key markets for our airlines and logistics providers;
- (g) **telecommunications services:** Australian companies stand to benefit from the phasing out of foreign equity limits in Vietnam's telecommunications sector five years after the entry into force of the TPP-11 Agreement and the ability to apply to wholly-own telecommunications ventures in Malaysia;
- (h) **health services:** Australian providers of private health and allied services will benefit from greater certainty regarding access and operating conditions in Malaysia, Mexico and Vietnam; and
- (i) **hospitality and tourism services:** Australian suppliers of travel agency and tour operator services will benefit from guaranteed access in Brunei Darussalam, Canada, Chile, Japan and Mexico and greater certainty regarding access and operating conditions in Malaysia and Vietnam. Increased trade and investment among TPP-11 countries will also increase demand for domestic tourism services and support the development of Australia's tourism sector, particularly in regional Australia.

### ***Government procurement***

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

- (a) accounting, auditing and taxation services in Brunei Darussalam, Canada, Malaysia, Mexico and Vietnam;
- (b) management consulting services in Brunei Darussalam, Malaysia and Mexico;
- (c) computer and related services offers by all TPP-11 Parties, along with maintenance of office machinery in Brunei Darussalam, Canada, Malaysia, Mexico and Vietnam;
- (d) architectural engineering and other technical services in Brunei Darussalam, Canada, Malaysia and Mexico;
- (e) land and water transport services in Brunei Darussalam, and Malaysia;
- (f) telecommunication and related services in Brunei Darussalam, Canada and Malaysia;
- (g) environmental protection services in Brunei Darussalam, Canada, Malaysia, Mexico and Vietnam;
- (h) education services in Brunei Darussalam, Canada, Japan, Malaysia and Mexico; and
- (i) health and social services in Brunei Darussalam and Malaysia.

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

### *Investment*

42. The TPP-11 Agreement will create new investment opportunities and provide a more predictable and transparent regulatory environment for investment. In 2016, the total stock of Australian foreign investment in TPP-11 countries was valued at \$339 billion, representing an increase of nearly 7 per cent from 2015, and doubling since 2006. Australian investment in TPP-11 countries represents 15.6 per cent of Australia's total outward investment. Investment in Australia from TPP-11 countries tripled in the last decade to reach \$424 billion in 2016, an increase of 6 per cent over the previous year. Investment from TPP-11 countries represents 13.3 per cent of all foreign investment in Australia.

43. The TPP-11 Agreement will promote further growth and diversification of Australian outward investment by liberalising investment regimes in key sectors for which the TPP-11 region accounts for an important share of global investment, such as mining and energy, telecommunications and financial services. Mining and energy exploration efforts are centred on the Asia-Pacific region: the four TPP-11 Parties from the Americas (Canada, Chile, Mexico and Peru) accounted for an estimated 32 per cent of worldwide exploration budgets in 2016 and Australia, a further 13 per cent. Under the Agreement, Canada will allow Australian investors to apply for an exemption from the 49 per cent foreign equity limit on foreign ownership of uranium mines, without first seeking a Canadian partner. Australian investors will also benefit from preferential investment screening thresholds. Australian investments into Canada below CA\$1.5 billion and into Mexico below USD\$1 billion will not be screened. Australian investors will also benefit from commitments offered by Japan, Vietnam and Brunei Darussalam to only impose conditions on foreign investment on the initial sale of interests or assets owned by the government.

44. The TPP-11 Agreement will also promote further growth and diversification of foreign investment in Australia by liberalising the screening threshold at which private foreign investments in non-sensitive sectors are considered by the Foreign Investment Review Board (FIRB), increasing the threshold from \$261 million to \$1,134 million (indexed) for all TPP-11 countries.

45. Under the TPP-11 Agreement, Australia has retained the ability to screen investments in sensitive sectors to ensure they do not raise issues contrary to the national interest. All investments by foreign governments will continue to be examined by FIRB and lower screening thresholds will apply to investments in agricultural land and agribusiness.

46. The Agreement's investment obligations include high quality, modern rules governing the treatment of investors and their investments, balanced with robust safeguards to preserve the right of the Government to continue regulating in the

public interest. Investment obligations can be enforced directly by Australian and other TPP-11 investors through an ISDS mechanism.

47. A number of important safeguards are built into the rules guiding ISDS, making this one of the most protective treaties in existence in terms of its protections for legitimate regulation. Procedural safeguards in the Agreement provide enhanced levels of transparency in the management of ISDS claims. In addition, specific Australian policy areas are carved-out from certain ISDS claims including: social services established or maintained for a public purpose, such as social welfare, public education, health and public utilities; measures with respect to creative arts, Indigenous traditional cultural expressions and other cultural heritage; and Australia's foreign investment policy, including decisions of the FIRB. Australia's tobacco control measures as defined under the Agreement will not be able to be challenged. **Attachment IV** (Investment FAQs) provides further detail on the TPP-11's ISDS mechanism.

48. Australia has existing FTAs and bilateral investment treaties (BITs) that contain ISDS mechanism with all TPP-11 countries, except Canada.<sup>14</sup> Australia has agreed to bilateral agreements with Mexico, Peru and Vietnam to terminate current BITs with those countries once the TPP-11 enters into force (see paragraph 57 below).

### ***Lowering the Cost of Doing Business***

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

- (a) more transparent and efficient **customs procedures** making it easier for Australian companies to export and do business in the region. For example, TPP-11 Parties will be required to provide an advance ruling on the tariff classification of a good, how it should be valued, whether a good is originating and how to claim preference;
- (b) regional **rules of origin** and a single set of documentary procedures for products traded under the Agreement. These arrangements will support the development of regional supply chains by encouraging 'cumulation', which permits inputs used in the production of a good from one TPP-11 Party to be treated as the same as inputs from any other TPP-11 Party when making a good. The arrangements will also allow businesses to save on administrative costs by allowing them to trade under the one set of rules, rather than under existing multiple bilateral FTAs;
- (c) **duty-free temporary admission of pallets and containers**. This TPP-11 commitment will provide significant cost and administrative savings for Australian businesses engaged in providing transport logistics services in the Asia-Pacific;

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<sup>14</sup> The applicable FTAs and BITs are: *Agreement between Australia and the Socialist Republic of Vietnam on the Reciprocal Promotion and Protection of Investments 1991*; *Agreement between Australia and the Republic of Peru on the Promotion and Protection of Investments, and Protocol 1997*; *Singapore–Australia Free Trade Agreement 2003, as amended, including in 2017*; *Agreement with the Government of the United Mexican States on the Promotion and Reciprocal Protection of Investments, and Protocol 2007*; *Australia–Chile Free Trade Agreement 2009*; and *ASEAN–Australia–New Zealand Free Trade Agreement 2010*.

- (d) mechanisms to address **non-tariff barriers** (NTBs) impeding trade, which will give Australia an important avenue to address NTBs affecting our exports in the region. The Agreement will enhance transparency, cooperation and promote good practice with regard to establishment and maintenance of technical regulations. A better understanding of each Party's regulatory systems will improve public safety and benefit Australian consumers; and
- (e) simplified rules and **technical requirements** for several products, including wine and spirits. For example, the Australian wine industry will be able to use the same label on bottles of wine for export to all TPP-11 countries, saving money on marketing and distribution costs.

50. As a regional FTA, the Agreement will create additional and longer term benefits for consumers and businesses that are not possible to achieve under a bilateral FTA. Even though Australia has relatively low tariffs, products created via an international supply chain are taxed at the borders over which they pass before they get to our shores. Under the Agreement, producers will be able to use inputs from any of the 11 participating countries and trade the good under the TPP-11 preferential trading arrangements. This means lower tariff rates on inputs as well as the final product.

#### ***Addressing contemporary trade challenges***

51. The TPP-11 Agreement tackles new trade challenges by promoting innovation, productivity, and competitiveness by addressing issues which are emerging and changing the way business is conducted. These include:

- (a) commitments ensuring **State-Owned Enterprises and government designated monopolies** engaged in commercial activities make purchasing and sales decisions on a commercial basis and do not discriminate against Australian suppliers of goods and services. These rules will promote competition, trade and investment in TPP-11 Parties and ensure Australian exporters will be able to compete on a level playing field;
- (b) high quality standards for **government procurement** that are robust, transparent and allow suppliers to participate fairly in procurement processes. The rules will ensure that governments do not discriminate against foreign suppliers when assessing tenders and awarding contracts. Governments must follow world-class procurement processes that provide increased levels of transparency and greater certainty for businesses, big and small, across TPP-11 Parties. All Parties will be required to establish a review mechanism so that suppliers (both foreign and domestic) can challenge government procurements that do not follow proper processes;
- (c) state of the art **e-commerce** provisions driving the information economy and facilitating trade among TPP-11 Parties. For the first time, certainty for business about their ability to move information across borders and make investment decisions about data storage facilities. Australia's regulatory framework, including the *Privacy Act 1988*, will not be affected;
- (d) **enhancing the online environment for consumers in TPP-11 markets**, including commitments to personal information protection, enforceable consumer rights and addressing 'spam'. Under the Agreement, Australia will have a forum to exchange views with other TPP-11 countries about the

- experiences of Australian consumers when accessing products and services offered online;
- (e) for the first time, a provision seeking to address the high costs of **international mobile roaming**. Parties will work cooperatively to promote transparent and reasonable rates for international mobile roaming services. The Agreement also ensures TPP-11 countries are able to enter into arrangements to regulate rates and conditions for wholesale international mobile roaming services, should they wish to do so;
  - (f) assisting **Small and Medium-Sized Enterprises** (SMEs) to reap the benefits of the Agreement, with an emphasis on moving to paperless trading, making customs and export delivery more effective and efficient, user-friendly websites targeted at SMEs to provide easily accessible information about the Agreement as well as only requiring one certificate of origin for exports to all TPP-11 markets which can be self-certified;
  - (g) promoting high levels of **environmental protection**, including by liberalising trade in environmental goods and services, and ensuring TPP-11 Parties effectively enforce their domestic environmental laws. TPP-11 Parties must also take measures in relation to a number of important environmental challenges, such as protecting the ozone layer, protecting the marine environment from ship pollution, combatting illegal wildlife trade and combatting overfishing and illegal fishing. Subsidies for fishing that negatively affect overfished stocks and subsidies for vessels engaged in illegal fishing will be prohibited;
  - (h) recognition and emphasis by TPP-11 parties on the importance of internationally-recognised **labour rights**. Each Party is required to adopt and maintain in its legislation and practices the rights contained in the International Labour Organization Declaration, such as elimination of forced labour, abolition of child labour, freedom of association and the right to collective bargaining. The Agreement will also enhance cooperation and consultation on labour issues, and effective enforcement of labour laws in the Parties; and
  - (i) encouraging Parties to address **corruption** through the promotion of integrity, honesty and responsibility among its public officials and to adopt a range of related measures, including: training of individuals in public positions considered especially vulnerable to corruption; promoting transparency amongst officials in the exercise of their public functions; identifying and managing actual or potential conflicts of interests; requiring senior and other public officials to make public declarations on relevant matters including their outside investments, assets or gifts received; and facilitating reporting by public officials of corruption to appropriate authorities.

### ***Intellectual Property***

52. The Agreement establishes a common set of rules amongst the Agreement's Parties on intellectual property protection and enforcement which aims to encourage investment in new ideas, support creative and innovative industries, address and prevent piracy and counterfeiting, and promote the dissemination of information, knowledge and technology. These rules will help streamline intellectual property transactions, increase transparency and lower the costs of doing business, and support Australia's creative and innovative industries by promoting certainty and

opportunities for trade and investment in the region. Australian businesses and consumers will also benefit from increased access to legitimate products and services.

53. The intellectual property provisions of the Agreement affirm and build on the WTO *Agreement on Trade-Related Aspects of Intellectual Property Rights* (TRIPS Agreement), covering: copyright, trade marks, geographical indications, patents, industrial designs, confidential information, plant variety protection, and civil, border and criminal enforcement. The Agreement also covers 21st century issues such as cybersquatting of domain names and trade secrets theft. The Agreement retains a limited number of pharmaceutical intellectual property provisions from the TPP. As with the TPP, the TPP-11's Intellectual Property Chapter is consistent with Australia's existing intellectual property regime and will not require any changes to Australia's legislation. **Attachment V** (Intellectual Property FAQs) provides further detail.

54. The Agreement does not require an increase in the term of **copyright protection** in Australia, nor any other changes to Australia's copyright regime. The TPP-11 outcome will not require any changes to Australia's **patent system**, including the term of protection. The Agreement will not have any impact on Australia's Pharmaceutical Benefits Scheme or timely access to affordable medicines – this was also the case under the original TPP.

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

### **Key Australian Commitments**

56. Under the TPP-11, Australia has agreed to honour its original TPP market access commitments to the other TPP-11 Parties. Likewise, TPP-11 Parties will honour their original TPP market access commitments for Australia under the TPP-11. This means that:

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

\$12,000 specific tariff is maintained. These tariffs represent only 0.1 per cent of Australia's total tariff lines.

- (c) Australia will increase FIRB screening thresholds for private investors from TPP countries from 261 million to \$1,134 million (indexed) for investments in non-sensitive sectors. Australia has retained the ability to screen investments in sensitive sectors, including media, telecommunications and defence-related industries at lower levels and reserved policy space to screen proposals for foreign investment in urban land, agricultural land (at \$15 million or above [indexed]) and in agribusiness (at \$55 million or above [indexed]).
- (d) Australia offered commitments to allow the temporary entry of certain categories of business persons from those TPP-11 countries that will provide acceptable levels of access for Australia, namely Brunei, Canada, Malaysia, Mexico, Peru and Vietnam. Australia's TPP-11 commitments are consistent with Australia's existing immigration framework and the approach taken in other FTAs. None of Australia's commitments in this area will affect Australia's qualifications recognition, licensing and related requirements for visa eligibility.

### **TPP-11 Bilateral Side Letters**

57. Alongside the original TPP, Australia negotiated a number of bilateral side letters with original TPP Parties. In line with the ministerial statement of 11 November 2017, TPP-11 countries decided to maintain in principle all the side letters signed under the original TPP, unless decided otherwise. Australia will be maintaining all its original side letters with TPP-11 countries. The following seven side letters either maintain the original TPP side letters or re-sign them in full, and are of treaty-level status:

- (a) Agreement between Australia and Chile to maintain the original TPP bilateral agreements;
- (b) Agreement between Australia and Japan regarding Rice (which is the same in substance as bilateral side letters exchanged in the context of the original TPP);
- (c) Agreement between Australia and Mexico regarding Distinctive Products (which is the same in substance as bilateral side letters exchanged in the context of the original TPP);
- (d) Agreement between Australia and Mexico regarding Termination of Investment Promotion and Protection Agreement (which is the same in substance as bilateral side letters exchanged in the context of the original TPP);
- (e) Agreement between Australia and New Zealand regarding Investor State Dispute Settlement, Trade Remedies and Transport Services (which is the same in substance as bilateral side letters exchanged in the context of the original TPP);
- (f) Agreement between Australia and Peru to maintain the original TPP bilateral agreements; and
- (g) Agreement between Australia and Viet Nam to maintain the original TPP bilateral agreements.



A further four side letters maintain original TPP side letters and are of less-than-treaty status:

- (a) Memorandum of Understanding between Australia and Canada to maintain the original TPP bilateral understandings;
- (b) Memorandum of Understanding between Australia and Malaysia to maintain the original TPP bilateral understandings;
- (c) Memorandum of Understanding between Australia and Peru to maintain the original TPP bilateral understandings; and
- (d) Memorandum of Understanding between Australia and Viet Nam to maintain the original TPP bilateral understandings.

A number of new side letters have been agreed by TPP-11 Parties in the course of assessing options for bringing the original TPP into effect between them. Of the ten new side letters, the following six are of treaty-level status and are legally binding between the parties:

- (a) Agreement between Australia and Canada regarding the Canadian Cultural Industries Sector (which is the same in substance as Canada's bilateral agreements on this matter with all the other TPP-11 countries);
- (b) Agreement between Australia and Canada regarding customs duties on Australian beef;
- (c) Agreement between Australia and Canada regarding automotive rules of origin;
- (d) Agreement between Australia and Viet Nam regarding the Cyber Security Law of Viet Nam (which is the same in substance as Viet Nam's bilateral agreements on this matter with all the other TPP-11 countries);
- (e) Agreement between Australia and Viet Nam regarding disputes related to the Labour Chapter of the TPP (which is the same in substance as Viet Nam's bilateral agreements on this matter with all the other TPP-11 countries); and
- (f) Agreement between Australia and Viet Nam regarding Electronic Payment Services (which is the same in substance as Viet Nam's bilateral agreements on this matter with all the other TPP-11 countries).

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

- (a) Memorandum of Understanding between Australia and Chile regarding Electronic Payment Services (which is the same in substance as Chile's bilateral understandings on this matter with all the other TPP-11 countries);
- (b) Memorandum of Understanding between Australia and Chile regarding Article 18.47 (which is the same in substance as Chile's bilateral understandings on this matter with all the other TPP-11 countries);
- (c) Memorandum of Understanding between Australia and Viet Nam regarding Article 18.47 (which is the same in substance as Viet Nam's bilateral understandings on this matter with all the other TPP-11 countries); and
- (d) Memorandum of Understanding between Australia and Viet Nam regarding Article 18.53 (which is the same in substance as Viet Nam's bilateral understandings on this matter with all the other TPP-11 countries).

Each of these bilateral side letters will enter into force or take effect, as appropriate, on the date that the TPP-11 Agreement enters into force for both Australia and the Party with which it has negotiated the side letter.

## **Obligations**

58. The Agreement incorporates the obligations contained in the original TPP by reference. The key obligations of the original TPP were outlined in the National Interest Analysis associated with that treaty.<sup>15</sup> An overview of the suspended provisions under the Agreement is provided at **Attachment III** to this NIA. A brief overview of key obligations contained within the Agreement is below.

59. Article 1 (Incorporation of the Trans-Pacific Partnership Agreement) provides that the Agreement incorporates all of the provisions of the original TPP, with the exception of certain mechanical provisions, specifically those relating to accession, entry into force, withdrawal and authentic texts. The provisions addressing these matters have been agreed specifically for the TPP-11 Agreement. The effect of this article is that the substantive provisions of the original TPP have become a part of the TPP-11 Agreement. These provisions will be binding under international law for Australia once Australia has ratified the Agreement and it has entered into force.

60. Under Article 2 (Suspension of the Application of Certain Provisions), TPP-11 countries have agreed to suspend the application of a small number of the original TPP provisions incorporated into the Agreement. The suspended provisions are set out in the Agreement's Annex. These provisions remain part of the TPP-11, but by agreement of the Parties have no application under international law until the Parties agree to end the suspension by consensus.

61. The effect of Article 3 (Entry into Force) is outlined at paragraph 2 above. This article differs to the entry into force provision of the original TPP which effectively required the United States, Japan and four other original TPP signatories to have ratified the original TPP for it to enter into force.

62. Articles 4 (Withdrawal), 5 (Accession) and 7 (Authentic Texts) are addressed in paragraphs 74, 72 and 75 below.

63. Article 6 (Review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership) provides for any Party to trigger a review process for the Parties to consider proposals to modify the Agreement. A review provision is a standard feature in trade agreements, including the original TPP (Chapter 27). A modification of the TPP-11 is a treaty amendment that would be subject to Article 30.2 of the TPP (see paragraph 71).

## **Implementation**

64. Following consideration by JSCOT and prior to treaty action being taken, Australia will need to pass a number of legislative amendments in order to implement

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<sup>15</sup> TPP National Interest Analysis available at: [https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Treaties/9\\_February\\_2016/Treaty\\_under\\_consideration#nia](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/9_February_2016/Treaty_under_consideration#nia)

the obligations in the Agreement. The *Customs Act 1901*, the *Customs Tariff Act 1995* and relevant customs regulations will need to be amended to incorporate the preferential tariff rates that will apply to goods imported from TPP-11 countries under the Agreement. In addition, new customs regulations will need to be enacted for the rules of origin set out in Annexes 3-D and 4-A of Chapters 3 and 4 respectively.

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

66. The Government Procurement (Judicial Review) Bill 2017 was introduced in May 2017 to enable implementation of the domestic review obligations in the TPP Government Procurement Chapter. This legislation establishes a mechanism for suppliers to raise complaints about the conduct of procurements in which they have an interest. The Government identified the Federal Circuit Court (FCC) as the preferred entity to implement the domestic review obligation, and the legislation vests the necessary jurisdiction in the FCC.

67. A legislative instrument under the *Public Governance Performance and Accountability Act 2013* will need to be made to replace the Commonwealth Procurement Rules (January 2018) to make the changes required to meet the Agreement's obligations.

68. A Ministerial determination will need to be made under section 140GBA of the *Migration Act 1958* to exempt from labour market testing the intra-corporate transferees, independent executives and/or contractual service suppliers of those TPP-11 Parties to which Australia extended temporary entry commitments.

## **Costs**

69. The estimated loss of tariff revenue for Australia from the TPP is approximately \$30 million in 2018-19 and \$220 million over the forward estimates period (2018-19 to 2021-22). This estimate assumes the TPP will enter into force in early 2019. These cost estimates, however, do not take into account the potential domestic economic growth that the Agreement is expected to generate and any additional taxation revenue resulting from such growth. Overall, given the scale of Australia's trade and investment relationships with the 10 other TPP-11 Parties, the tariff reductions and increased market access Australia will gain under the Agreement and the strong support for the Agreement from the business community, it is assessed that the Agreement represents a net gain to the Australian economy.

## **Regulation Impact Statement**

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

## **Future Treaty Action**

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

## **Accession by other States**

72. Article 5 (Accession) provides that after the TPP-11 Agreement's entry into force, any State or separate customs territory may accede to the Agreement, subject to such terms and conditions as may be agreed between the Parties and that State or separate customs territory. Unlike the original TPP, the TPP-11's accession provision does not have a specific reference to APEC members. It was determined by the TPP-11 Parties unnecessary to refer to APEC economies because the original TPP allowed for accession by non-APEC economies essentially on the same basis as APEC economies, namely such an accession would be subject to such terms and conditions as may be agreed between the Parties and the new member applicant, for example, by consensus that the new member meets the TPP's standards.

73. The TPP Commission established under Chapter 27 (Administrative and Institutional Provisions) can agree to establish a working group to negotiate the terms and conditions for the accession. Membership of the working group shall be open to all interested Parties. The process for considering and negotiating an acceding country's accession is analogous to the process used in the WTO. Agreement among the Parties to an accession would require treaty action and be subject to domestic legal processes which, once complete, would need to be notified to the Depository in writing. Australia's obligations contained within the TPP-11 Agreement, subject to Australia's schedules and reservations would then extend to the new Parties.

## **Withdrawal or denunciation**

74. Article 4 (Withdrawal) allows any Party to withdraw from the TPP-11 Agreement by providing written notice of withdrawal to the Depository. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through established contact points in each TPP-11 Party. A withdrawal shall take effect six months after a Party provides written notice to the Depository, unless the Parties agree on a different period. If a Party withdraws, the Agreement remains in force for the remaining Parties.

## **Authentic texts**

75. Article 7 (Authentic Texts) of the TPP-11 Agreement provides that the English, Spanish and French texts are equally authentic. In the event of inconsistency, the English text shall prevail.

## **Contact details**

Office of Trade Negotiations  
Department of Foreign Affairs and Trade

## **ATTACHMENT ON CONSULTATION**

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

**Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand,  
Peru, Singapore and Vietnam**

**and associated side letters**

(Santiago, 8 March 2018)

**[2018] ATNIA 1**

**[2018] ATNIF 1**

## **CONSULTATION**

The process for engaging stakeholders in relation to the Agreement was an extension of the Government's efforts to bring the original TPP into force. Stakeholders' views were actively encouraged and considered during consultations undertaken in relation to the original TPP, which commenced in 2008. This consultation process culminated in two parliamentary enquiries. The Government continued to consult stakeholders, State and Territory Governments, interested members of the public throughout the TPP-11 negotiation process from February 2017.

**COMPREHENSIVE AND PROGRESSIVE AGREEMENT FOR  
TRANS-PACIFIC PARTNERSHIP (TPP-11)**

**ANALYSIS OF REGULATORY IMPACT ON AUSTRALIA**

**21 March 2018**

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## **PART 1: INTRODUCTION**

1. This Analysis of Regulatory Impact on Australia (ARIA) relates to the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11), which was signed by Australia on 8 March 2018 in Santiago, Chile. The TPP-11 is a regional free trade agreement (FTA) negotiated between 11 economies in the Asia-Pacific: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, and Vietnam. The TPP-11 incorporates the provisions of the Trans-Pacific Partnership (TPP) Agreement by reference, with the exception of a limited set of provisions which are suspended.
2. The Australian Government is now seeking to implement and ratify the TPP-11 in accordance with Australia's domestic treaty making processes. An interim Regulatory Impact Statement (RIS) was completed prior to concluding negotiations and signing the TPP-11. This ARIA will be tabled in Parliament with the TPP-11 treaty. It builds on and updates the interim RIS as well as the ARIA submitted on 27 November 2015 in respect of the original TPP, which has not entered into force. The analysis and conclusions in the original TPP's ARIA remain highly relevant for current purposes.

## **PART 2: PROBLEM IDENTIFICATION**

### ***Entry into Force of the TPP without the United States***

3. The original TPP, signed by Australia on 4 February 2016, was the world's most significant trade and investment agreement finalised in more than two decades, with member countries accounting for around 40 per cent of global GDP. On 30 November 2016, the Joint Standing Committee on Treaties issued a report recommending that Australia take binding treaty action to ratify the TPP.
4. On 30 January 2017, the Acting United States Trade Representative sent a letter to the Depository of the TPP and all TPP signatories notifying them that the United States did not intend to become a Party to the TPP. A direction to issue this notification was formalised in a Presidential Memorandum issued on 23 January 2017. The TPP as originally negotiated cannot enter into force without the United States. If the TPP does not enter into force, Australia would miss out on new and improved market access to the remaining TPP countries (Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, and Vietnam).
5. To explore options to bring the TPP into force expeditiously, ministers from the remaining TPP signatories met in Hanoi on 21 May 2017. This process culminated in the signing of the TPP-11 on 8 March 2018 in Santiago, Chile.
6. If Australia does not implement the TPP-11, it would lose the gains made under the TPP, which the TPP-11 incorporates. These gains are further detailed below.

### ***Background to the TPP***

7. The TPP negotiations emerged amidst uncertainty about the future of the Doha Development Agenda Round, which was launched in 2001. Since the conclusion of the Uruguay Round in 1994, members of the World Trade Organization (WTO) have failed to agree on further liberalisation of global trade. Furthermore, the mandate for the Doha Development Round did not cover a range of areas of

relevance to trade and business, such as competition policy, investment, environment, labour and government procurement.

8. International production, trade and investments are increasingly organised within global value chains (GVCs) where the different stages of the production process are located across different countries. There have also been significant technological advancements allowing for a rapid take up of e-commerce by businesses and consumers from a diverse range of economies. There is a need for a framework that better supports global trade in the 21<sup>st</sup> century.
9. As multilateral negotiations have stalled, major trading economies have entered into bilateral and regional FTAs. Australia has negotiated 11 bilateral and regional FTAs since 2001.<sup>1</sup>
10. In the past two decades, the Asia-Pacific has become the fastest growing economic region in the world and will continue to be the world's fastest growing region in the 21<sup>st</sup> century. With close to half of all global trade and around 70 per cent of Australia's trade flowing through this region, expanding and deepening Australia's trade and investment relationships is critical to our future economic growth and prosperity.
11. For Australia, the Asia-Pacific is the logical region to define the new rules for global trade that covers all barriers and all sectors. Being a participant in TPP and TPP-11 negotiations since the beginning has enabled Australia to seize a strategic opportunity to shape the rules that will govern trade in the region and beyond.
12. In light of the region's growing importance in the world trading system and the opportunities offered by its growing economies, the absence of a FTA integrating the Asia-Pacific economies is constraining Australia's ability to realise its full trading potential within the region.
13. Conclusion of both the TPP and TPP-11 negotiations is the first concrete step towards realising the long-term vision of a Free Trade Area of the Asia-Pacific (FTAAP). TPP-11 membership is open to other economies and Australia is committed to expanding TPP-11 membership over time.
14. More specifically, Australia's existing FTAs with TPP-11 parties have not fully addressed the barriers and restrictions in those markets, which limit the extent to which our goods and services exports can expand. In addition, Australia does not have FTAs with Canada and Mexico, and our exporters are disadvantaged due to existing FTAs between these countries and our competitors. Canada and Mexico<sup>2</sup>, in particular, provide significant new opportunities because Australia has underdeveloped economic relationships with both of these G20 economies. The TPP-11 presents an opportunity to address both these issues.

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<sup>1</sup> Australia has concluded FTAs with: ASEAN and New Zealand (2009), Chile (2008), China (2015), Japan (2014), Peru (2018), Republic of Korea (2014), Malaysia (2012), New Zealand and eight Pacific island countries (2017), Singapore (2002), Thailand (2004), and the United States (2004).

<sup>2</sup> In 2016-17, Australia's two-way merchandise trade with Canada and Mexico was \$3.8 billion and \$2.8 billion respectively. Services trade was worth approximately \$3 billion with Canada and \$287 million with Mexico. Two-way investment with Canada in 2016 totalled more than \$85 billion. Australian investment in Mexico was more than \$5 billion over the same period. (Source: DFAT country-specific trade and economic fact sheets.)



### ***Tariff barriers still faced by Australian exporters***

15. With Japan, Australia has secured increased access for many products under the Japan-Australia Economic Partnership Agreement (JAEPA), but will continue to face high tariffs and quota-limited access on Japan's sensitive products. In dairy, products face *ad valorem* tariffs ranging up to 40 per cent and specific tariffs up to ¥1,199/kg (\$12.62/kg). Beef tariffs, while significantly reduced under JAEPA, would still be as high as 23.5 per cent after 15 years. Wheat and barley face tariffs of up to ¥50/kg (\$0.58/kg) and ¥39/kg (\$0.45/kg) respectively, rice is subject to a ¥341/ kg tariff (\$3.93/kg) and sugar is subject to a levy on high polarity sugar of 103.10 yen/kg (\$1.19/kg). A range of tariffs also remain on other Australian interests in horticulture and seafood.
16. Australia has two existing FTAs with Malaysia, the ASEAN-Australia-New Zealand Free Trade Agreement (AANZFTA), and the Malaysia-Australia Free Trade Agreement. Nonetheless, Australia still faces tariffs and quota-limited access into Malaysia on: beer, with a tariff of RM5 per litre; wine, where the tariffs are between RM7 and RM23 per litre; and other alcoholic beverages, tariffs on which can be up to RM108.5 per litre. Pork faces a tariff of 25 per cent for in-quota imports and 50 per cent for out-of-quota imports, while liquid milk has tariffs of 20 per cent for in-quota imports, and 50 per cent for out-of-quota imports.
17. Australia has an existing FTA with Vietnam under AANZFTA, however that agreement did not eliminate Vietnamese tariffs on range of products of interest to Australia. These products include refined petroleum, which faces a tariff of 20 per cent, and iron and steel products, on which tariffs are as high as 40 per cent. Beer faces a 47 per cent tariff, wine a 56 to 59 per cent tariff and spirits a tariff rate of 55 per cent.
18. With regards to Australia's new FTA partners, Canada and Mexico, Australia faces a wide range of tariff barriers.
19. Access into the Canadian dairy market is currently significantly limited by existing quota and high tariff arrangements. Canada's quota access for dairy products is incredibly small – for example, 332 tonnes for yoghurt, 394 tonnes for cream and 3,274 tonne for butter (2,000 tonnes of which are allocated to New Zealand). While out-of-quota tariffs range up to 369 per cent. Outside of dairy, Canada also imposes tariffs of up to 94 per cent for barley products, and imposes tariffs of 1.87 c/litre for wine, and up to around 20 per cent on industrial products, which it has eliminated for its other FTA partners.
20. Mexico has tariffs of up to 67 per cent on wheat, 115.2 per cent on barley, 125 per cent on dairy, 25 per cent on beef, and 20 per cent on wine. On industrial products, Mexico's tariffs can range from 15 to 30 per cent for automotive parts or mining equipment.

***Barriers to Australian services exporters and investors in TPP-11 countries***

21. Table 1 summarises key barriers faced by Australian services exporters and investors in TPP-11 countries.

**Table 1: Selected barriers to Australian service exporters in TPP-11 countries**

<b>Country</b>	<b>Barrier</b>
<b>Brunei</b>	Higher local content requirements for goods and services suppliers in the oil and gas industry.
	Tertiary education qualifications offered online not recognised.
<b>Canada</b>	Labour certification tests on the temporary entry of Australian professionals and technicians.
<b>Japan</b>	Restricted access for Australian suppliers of ground-handling services.
<b>Malaysia</b>	Ban on provision of legal services on a fly-in fly-out basis and inability to establish legal practices in Malaysia.
	Major restrictions on foreign suppliers providing engineering, quantity surveying, land surveying and architectural services.
	Foreign equity caps on banks and insurers.
	Tertiary education qualifications offered online not recognised.
<b>Mexico</b>	Inability to supply services to Mexico's energy sector.
<b>Singapore</b>	Ban on provision of brokerage services, on a cross-border basis, for insurance of aviation, maritime and transport-related risks.
<b>Vietnam</b>	Tertiary education qualifications offered online not recognised.
	Foreign providers able to offer only limited education courses.
	Foreign equity caps on telecommunications providers.
	Contractual service suppliers permitted only short stays in limited sectors.

**PART 3: OBJECTIVES OF GOVERNMENT ACTION**

22. Consistent with Government policy, the primary objective throughout the TPP-11 process has been to maintain the high standards of the original TPP. In this context, the objective was to maintain the following outcomes:

- . improved goods market access through the elimination of tariffs across the board and setting a regional approach to commitments to facilitate GVCs, in particular:
  - securing new market access gains for our exporters with Mexico and Canada,
  - improving upon the market access outcomes from JAEPA;
- . strong investment protections that would provide greater certainty to Australian investors in TPP-11 countries, whilst retaining the ability to regulate legitimately on social, environmental or other similar public policy matters;
- . mutual recognition of professional qualifications (such as for architects and engineers) and best practice regulations for foreign lawyers;
- . new opportunities and a level playing field for Australian providers of, and investors in, minerals and energy and related services, education, engineering, financial and legal services and logistics, particularly in Malaysia and Vietnam;
- . new commitments addressing the importance of the internet to international trade, providing certainty for Australian businesses of all sizes to move and store data across TPP-11 economies;
- . a permanent moratorium on the imposition of customs duties on electronic transactions;
- . commitments to address, for the first time, the high cost of International Mobile Roaming;
- . enhanced opportunities for Australian business persons seeking to enter and temporarily stay in other TPP-11 countries through expeditious processing of immigration documents, minimised fees and transparency on entry requirements;
- . commitments to enable short-term business visitors, intra-corporate transferees, certain independent executives, and contractual service suppliers to enter and stay temporarily in TPP-11 countries;
- . improved access for Australian suppliers to the government procurement markets in other TPP-11 countries;
- . commitments to ensure rights of Australian intellectual property (IP) holders are protected effectively and enforced by other TPP-11 countries' IP regimes;
- . new disciplines that address the role of State-Owned Enterprises (SOEs) in global trade whilst upholding Australia's right to use SOEs for public interest purposes;
- . commitments to ensure that the benefits of the TPP-11 are not undermined by anti-competitive practices;

- a new benchmark that will benefit workers across the region by promoting compliance with internationally-recognised labour rights and the effective enforcement of labour laws;
- commitments in areas where trade disciplines can help to address environmental challenges, including through liberalising trade in environmental goods and services and disciplines on fisheries subsidies that contribute to over-fishing;
- promotion of international efforts to combat corruption and bribery of officials and effective enforcement of anti-corruption laws; and
- a framework for settling disputes under the TPP-11.

23. In negotiating the TPP-11, the following additional outcomes were sought:

- a commitment by all 11 countries to maintain their market access commitments under the original TPP; and
- a minimisation of the number of articles from the original TPP that would be suspended under the TPP-11.

#### **PART 4: ALTERNATIVE MEANS BY WHICH TO ACHIEVE THESE OBJECTIVES**

24. The 11 countries that negotiated the TPP-11 represent around 13.5 per cent of the global economy worth nearly \$13.7 trillion. Australia's exports of goods and services to these countries were worth \$87.9 billion in 2016-17. The 11 countries also make up 6.8 per cent of the world's population, providing Australia with a market of 495 million people. In 2016, Australian investment in TPP-11 countries represented 15.6 per cent of all outward investment.

25. The 11 countries that negotiated the TPP-11 demonstrated a willingness to bring the TPP into force, an ambitious and comprehensive agreement that will mark an important step toward our ultimate goal of open trade and regional integration across the region in the 21<sup>st</sup> century. In particular, these countries were committed to agreeing to:

- **comprehensive market access** by eliminating or reducing tariff and non-tariff barriers across substantially all trade in goods and services; covering 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;
- a **regional approach to commitments** that would facilitate 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** by promoting 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;

- . commitments to promote **inclusive trade** by ensuring 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-11 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; and
- . a **platform for regional integration** that would welcome additional economies across the Asia-Pacific region that can meet the Agreement's high standards.

26. The TPP-11 unites a diverse group of countries – diverse by geography, language and history, size, and levels of development. All TPP-11 countries recognise that diversity is a unique asset, but also one which requires close cooperation, capacity-building for the less developed TPP-11 countries, and in some cases special transitional periods and mechanisms which offer some TPP-11 partners additional time, where warranted, to develop capacity to implement new obligations.

27. The most timely option available to the Government to achieve these objectives is the negotiation of a regional trade agreement with the TPP-11 countries. The following discusses alternative means to achieve these objectives available to the Government.

### ***Renegotiate the TPP with the United States***

28. When President Trump withdrew the United States from the TPP on 30 January 2017, he expressed a clear preference for bilateral over regional deals. The TPP-11 countries moved forward to bring the TPP into force without the United States. This is because the TPP's high standards and comprehensiveness provide a strong level of confidence that the deal will bring huge benefits to all its signatories, including the United States.

29. A key objective of the TPP-11 process was to encourage the United States to reconsider its approach to this Agreement. There has indeed been significant interest in the TPP-11 from US agriculture and business in the benefits of the Agreement.

30. On 26 January 2018, following the conclusion of the TPP-11 deal, US President Trump said in Davos, Switzerland, that the United States would re-engage with the TPP if it was in the US' interest, but that the United States would need to reach a 'much better deal' than the original TPP for it to return. While having the United States return to the TPP in the future would represent a net positive for Australia and for the region's trade and investment growth prospects, ratifying the TPP-11 remains the best option to lock in the gains made under the TPP in the interim.

### ***Multilateral trade negotiations***

31. As outlined in the 'Problem Identification' section of this ARIA, there has not been a significant multilateral trade agreement since 1994. The WTO Doha Round has stalled. A wide divergence of views between WTO members makes

conclusion of the Doha Round unlikely in the short term, nor is it likely that any concluded Doha Round would fulfil all of its Ministerial Declaration mandate<sup>3</sup>. Moreover, given the Doha Round Mandate, concluding the Doha Round would not address Australia's priority trade and investment interests as extensively, or in as timely a way, as is possible under the TPP-11. Tariff cuts in agriculture, for example, may not have gone further than existing applied tariffs in many markets, which would mean no new commercially meaningful access.

### ***Regional Comprehensive Economic Partnership (RCEP)***

32. Australia and six other TPP-11 countries are also participating in another regional trade agreement negotiation, the Regional Comprehensive Economic Partnership (RCEP). RCEP is an ASEAN initiative that seeks to build on ASEAN's FTAs with Australia, China, India, Japan, Korea and New Zealand. Australia is working closely with all RCEP countries to conclude a comprehensive and quality outcome.
33. RCEP does not provide an alternative option for delivering the same outcomes. First, the TPP-11, a landmark trade and integration agreement for our region, is more ambitious than RCEP, which has a large range of diverse participating countries. Second, although there is some overlap in membership, there are important differences that make the two regional FTAs complementary. In particular, the TPP-11 brings in Canada and Mexico from North America, and gives Australia access to supply chains in that region that would not be addressed by RCEP. RCEP can complement the TPP-11 by its inclusion of all ASEAN countries, as well as China and India.
34. Together with a concluded RCEP, the TPP-11 is a pathway to further economic integration across the Indo-Pacific region.

### ***Bilateral FTAs***

35. Australia could enter into separate bilateral FTA negotiations with the TPP-11 negotiating countries with which Australia does not have existing FTAs,<sup>4</sup> and seek to amend and enhance the existing eight FTAs. Nonetheless, it is not certain whether Australia alone could have been able to persuade these countries to lower their longstanding trade barriers in sensitive sectors such as agriculture. Moreover, bilateral agreements cannot deliver the supply chain benefits that the TPP-11, as a preferential regional deal, can deliver.

### ***No action***

36. Not joining the TPP-11 risks Australia's competitiveness in the region. Taking no action would deny Australian exporters and investors the opportunity to take advantage of new market access and rules that will facilitate GVCs and would put them at a competitive disadvantage in relation to their competitors from TPP-11 countries.
37. The TPP-11 allows Australia to take an active role in encouraging competitive liberalisation and eventual consolidation of the various FTAs in the region in a manner that advances Australia's trade, economic and foreign policy objectives.

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<sup>3</sup> World Trade Organization Doha Ministerial Declaration 2001.

<sup>4</sup> Such countries are Canada and Mexico.

38. The TPP-11 sends a much-needed signal to the international community that diverse economies can agree historic reductions in trade barriers to grow and support cross-border trade and investment in the 21<sup>st</sup> century.

### ***TPP-11***

39. The WTO system allows for bilateral and regional FTAs as a way of reducing trade barriers among a subset of WTO Members so long as the FTA substantially liberalises trade between the FTA parties.
40. A WTO-consistent FTA with the 10 other TPP-11 countries achieves the Government's objective in a timely manner.

## **PART 5: IMPACT ANALYSIS**

### ***Benefits to the Australian economy***

41. The TPP-11 has delivered high quality outcomes that will open substantial new trade and investment opportunities for Australia. It will promote job-creating growth, further integrate our economy in the fast-growing Asia-Pacific region, and promote and facilitate regional supply chains. The TPP-11 forms part of the Government's microeconomic reform strategy to support diversification of our economy in the post-mining boom phase.
42. By setting common international trade and investment standards between member countries, the TPP-11 will make doing business across the region easier, reducing red tape and business costs.
43. Increased and more efficient trade and investment in the region will benefit the Australian economy. Improved market access for Australian goods and services exports and lower import prices will increase capital accumulation, raise productivities and improve utilisation of resources.

### ***Key goods market access outcomes***

44. Australia's goods exports to TPP-11 Parties were worth around \$69.6 billion in 2016-17 – or 23.9 per cent of Australia's total goods exports.
45. The TPP-11 will eliminate 98 per cent of tariffs in the TPP-11 region. The TPP-11 market access outcomes build on existing levels of market access Australia has with its FTA partners, namely Japan, Chile, New Zealand, Malaysia, Singapore, Peru, Brunei and Vietnam. The TPP-11 also opens up valuable new market access opportunities for Australian exporters in the two TPP-11 countries where Australia does not have a FTA, namely, Canada and Mexico.
46. As a regional FTA, the TPP-11 will create additional benefits. The combined effect of new market access and common rules will make it easier for Australian businesses, exporters and consumers to participate in, and benefit from, regional value chains (also known as global value chains).
47. Table 2 summarises the agreed tariff elimination schedules that will apply to Australia's goods exports to the other TPP-11 markets. Table 3 outlines the key market access outcomes for Australia for agriculture.

**Table 2: Tariff Elimination Schedules****Elimination schedule for Brunei Darussalam's tariffs on imports of Australian goods**

Staging category	Tariff lines			Brunei's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	6,258	75.4%	75.4%	49.3	94.1%	94.1%
A: 0% tariff on EIF	1,385	16.7%	92.0%	1.3	2.4%	96.4%
B: 1-5 year phasing	29	0.3%	92.4%	0.0	0.0%	96.5%
C: 6-10 year phasing	624	7.5%	99.9%	1.8	3.5%	100.0%
D: 11+ year phasing	8	0.1%	100.0%	0.0	0.0%	100.0%
Tariff reduction	-	-	100.0%	0.0	-	-
Quota	-	-	100.0%	0.0	-	-
Total	8,304	100.0%	100.0%	52.5	100.0%	0.0%

**Elimination schedule for Canada's tariffs on imports of Australian goods**

Staging category	Tariff lines			Canada's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	4,470	53.6%	53.6%	1,272.3	79.7%	79.7%
A: 0% tariff on EIF	3,433	41.2%	94.8%	312.2	19.5%	99.2%
B: 1-5 year phasing	124	1.5%	96.3%	4.0	0.3%	99.5%
C: 6-10 year phasing	74	0.9%	97.2%	5.4	0.3%	99.8%
D: 11+ year phasing	142	1.7%	98.9%	2.9	0.2%	100.0%
Tariff reduction	-	-	98.9%	0.0	-	100.0%
Quota	94	1.1%	100.0%	0.0	0.0%	100.0%
Total	8,337	100.0%	100.0%	1,596.8	100.0%	100.0%



**Elimination schedule for Chile's tariffs on imports of Australian goods**

Staging category	Tariff lines			Chile's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	36	0.5%	0.5%	4.5	1.8%	1.8%
A: 0% tariff on EIF	7,299	94.6%	95.1%	235.0	95.2%	97.0%
B: 1-5 year phasing	169	2.2%	97.3%	0.7	0.3%	97.3%
C: 6-10 year phasing	203	2.6%	99.9%	6.6	2.7%	100.0%
D: 11+ year phasing			99.9%			100.0%
Tariff reduction	8	0.0	100.0%	0.0	0.0	100.0%
Quota			100.0%			100.0%
Total	7,715	100.0 %	100.0%	1,538.4	100.0 %	100.0%

**Elimination schedule for Japan's tariffs on imports of Australian goods**

Staging category	Tariff lines			Japan's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	3,685	40.8%	40.8%	41,814.9	92.3%	92.3%
A: 0% tariff on EIF	3,914	43.4%	84.2%	520.6	1.1%	93.5%
B: 1-5 year phasing	9	0.1%	84.3%	0.6	0.0%	93.5%
C: 6-10 year phasing	321	3.6%	87.9%	194.3	0.4%	93.9%
D: 11+ year phasing	687	7.6%	95.5%	731.6	1.6%	95.5%
Tariff reduction	77	0.9%	96.3%	1,554.8	3.4%	98.9%
Quota	324	3.6%	99.9%	478.4	1.1%	100.0%
Undefined	8	0.1%	100.0%	0.0	0.0%	100.0%
Total	9,025	100.0%	100.0%	45,295.1	100.0%	100.0%

**Elimination schedule for Malaysia's tariffs on imports of Australian goods**

Staging category	Tariff lines			Malaysia's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	6,306	60.6%	60.6%	3,183.5	88.5%	88.5%
A: 0% tariff on EIF	2,503	24.1%	84.7%	238.0	6.6%	95.1%
B: 1-5 year phasing	889	8.5%	93.3%	74.0	2.1%	97.1%
C: 6-10 year phasing	607	5.8%	99.1%	69.0	1.9%	99.1%
D: 11+ year phasing	84	0.8%	99.9%	34.1	0.9%	100.0%
Tariff reduction	-	-	99.9%	0.0	-	100.0%
Quota	10	0.1%	100.0%	0.0	0.0%	100.0%
Total	10,399	100.0%	100.0%	3,598.6	100.0%	100.0%

**Elimination schedule for Mexico's tariffs on imports of Australian goods**

Staging category	Tariff lines			Mexico's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	6,800	56.2%	56.2%	693.0	87.4%	87.4%
A: 0% tariff on EIF	2,552	21.1%	77.2%	67.3	8.5%	95.9%
B: 1-5 year phasing	310	2.6%	79.8%	1.8	0.2%	96.1%
C: 6-10 year phasing	6	0.0%	79.9%	10.0	1.3%	97.4%
D: 11+ year phasing	2,370	19.6%	99.4%	19.2	2.4%	99.8%
Tariff reduction	27	0.2%	99.7%	0.0	0.0%	99.8%
Quota	42	0.3%	100.0%	1.7	0.2%	100.0%
Total	12,107	100.0%	100.0%	793.1	100.0%	100.0%

**Elimination schedule for New Zealand's tariffs on imports of Australian goods**

Staging category	Tariff lines			New Zealand's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	4,207	57.7%	57.7%	2,890.7	56.0%	56.0%
A: 0% tariff on EIF	2,688	36.9%	94.6%	1,569.3	30.4%	86.4%
B: 1-5 year phasing	133	1.8%	96.4%	439.0	8.5%	94.9%
C: 6-10 year phasing	260	3.6%	100.0%	262.9	5.1%	100.0%
D: 11+ year phasing	-	-	100.0%	0.0	-	100.0%
Tariff reduction	-	-	100.0%	0.0	-	100.0%
Quota	-	-	100.0%	0.0	-	100.0%
Total	7,288	100.0%	100.0%	5,161.9	100.0%	100.0%

**Elimination schedule for Peru's tariffs on imports of Australian goods**

Staging category	Tariff lines			Peru's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	3,925	53.3%	53.3%	68.9	81.2%	81.2%
A: 0% tariff on EIF	2,030	27.5%	80.8%	8.9	10.5%	91.7%
B: 1-5 year phasing	-	-	80.8%	0.0	-	91.7%
C: 6-10 year phasing	362	4.9%	85.7%	1.5	1.7%	93.4%
D: 11+ year phasing	1,012	13.7%	99.4%	1.3	1.6%	95.0%
Tariff reduction	41	0.6%	100.0%	4.3	5.0%	100.0%
Quota	-	-	100.0%	0.0	-	100.0%
Total	7,370	100.0%	100.0%	84.9	100.0%	100.0%

**Elimination schedule for Singapore's tariffs on imports of Australian goods**

Staging category	Tariff lines			Singapore's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	7,637	99.9%	99.9%	4,998.7	99.9%	99.9%
A: 0% tariff on EIF	6	0.1%	100.0%	3.8	0.1%	100.0%
B: 1-5 year phasing	-	-	100.0%	0.0	-	100.0%
C: 6-10 year phasing	-	-	100.0%	0.0	-	100.0%
D: 11+ year phasing	-	-	100.0%	0.0	-	100.0%
Tariff reduction	-	-	100.0%	0.0	-	100.0%
Quota	-	-	100.0%	0.0	-	100.0%
Total	7,643	100.0%	100.0%	5,002.5	100.0%	100.0%

**Elimination schedule for Vietnam's tariffs on imports of Australian goods**

Staging category	Tariff lines			Vietnam's imports from Australia		
	No.	% of total	Cumulative (%)	US \$m (2007-10)	% of total	Cumulative (%)
MFN 0%	3,030	33.1%	33.1%	774.4	50.3%	50.3%
A: 0% tariff on EIF	2,999	32.7%	65.8%	572.6	37.2%	87.6%
B: 1-5 year phasing	2,177	23.8%	95.3%	122.8	8.0%	99.6%
C: 6-10 year phasing	681	7.4%	96.4%	23.2	1.5%	99.6%
D: 11+ year phasing	241	2.1%	98.5%	45.2	2.9%	99.7%
Tariff reduction	-	-	98.5%	0.0	-	99.7%
Quota	31	0.3%	100.0%	0.3	0.0%	100.0%
Total	9,159	99.4%	100.0%	1,538.4	100.0%	100.0%

***Agriculture***

48. Australia exported around \$12 billion worth of agricultural goods to TPP-11 countries in 2016-17, representing close to 23 per cent of Australia's total exports of these products. The TPP-11 will eliminate tariffs on more than \$4.3 billion of Australia's dutiable exports of agricultural goods to TPP-11 countries. A further \$2.1 billion of Australia's dutiable exports will receive significant preferential

access through new quotas and tariff reductions.

**Table 3: Key agricultural market access outcomes for Australia**

<b>Sector</b>	<b>Summary Outcomes</b>
<b>Beef</b>	<p>Around 33 per cent of Australia's beef exports go to TPP-11 markets. Beef is Australia's largest single agricultural goods export, worth \$7.8 billion in 2016-17. TPP-11 market access outcomes for Australian beef producers and exporters include:</p> <ul style="list-style-type: none"> <li>. Japan's beef tariffs will be reduced to 9 per cent within 15 years of entry into force of the TPP-11. Australian fresh, chilled and frozen beef exports to Japan were valued at \$2.1 billion in 2016-17;</li> <li>. The majority of Japan's tariffs on offal will be eliminated over 10 to 15 years of entry into force of the TPP-11, and tariffs on cheek and head meat significantly reduced to 9 per cent within 15 years of entry into force of the TPP-11. Australian offal exports to Japan were valued at \$255 million in 2016-17;</li> <li>. Elimination of Japanese tariffs on processed meat products within 15 years of entry into force of the TPP-11. Australian exports of these products to Japan were valued at \$25 million in 2016-17;</li> <li>. Elimination of Canadian beef tariffs (currently 26.5 per cent) within five years of entry into force of the TPP-11. Australian beef exports to Canada were valued at more than \$101 million in 2016-17;</li> <li>. Elimination of all Mexican tariffs on beef carcasses and cuts (currently up to 25 per cent) within 10 years of entry into force of the TPP-11; and</li> <li>. Elimination of Mexico's tariff (currently 20 per cent) on "other offal" (used for taco meat) from entry into force of the TPP-11. Australian exports of this product were valued at around \$2.2 million in 2016-17.</li> </ul>
<b>Sheepmeat</b>	<p>Australia exports around \$425 million in lamb and mutton to TPP-11 markets, representing 16 per cent of all sheepmeat exports. Key TPP-11 market access outcomes include:</p> <ul style="list-style-type: none"> <li>. Tariffs on exports to Mexico will be eliminated within 8 years of entry into force of the TPP-11. Australia sheepmeat exports to Mexico were valued at \$13 million in 2016-17; and</li> <li>. Tariffs on sheepmeat exports to all other TPP-11 countries will be eliminated upon entry into force of the TPP-11.</li> </ul>

Sector	Summary Outcomes
<b>Wool</b>	<p>Total Australian exports of wool were valued at around \$3.2 billion in 2016-17, and wool exports to TPP-11 countries were valued at around \$35 million in that period.</p> <p>The TPP-11 will eliminate all remaining tariffs on Australian raw wool exports to TPP-11 countries from entry into force of the Agreement. Products produced using Australian wool in Malaysia, Vietnam or any other TPP-11 partner will receive preferential treatment throughout the TPP-11 region. The rules of origin for textiles will encourage greater demand for the Australian wool used to produce high quality yarns.</p>
<b>Pork</b>	<p>In 2016-17, 71 per cent of Australia's pork exports went to TPP-11 countries, valued at almost \$84 million. Key TPP-11 market access gains for Australian pork producers and exporters include:</p> <ul style="list-style-type: none"> <li>• Building on JAEPA, elimination of the <i>ad valorem</i> component of Japan's pork tariffs within 10 years of entry into force of the TPP-11;</li> <li>• Building on JAEPA, a 90 per cent reduction in Japan's specific tariff applied to pork cuts and carcasses within 10 years of entry into force of the TPP-11;</li> <li>• Building on the Malaysia-Australia Free Trade Agreement (MAFTA) and AANZFTA, elimination of all Malaysian pork tariffs within 15 years; and</li> <li>• Elimination of Mexico's 20 per cent pork tariff on entry into force of the TPP-11.</li> </ul>
<b>Cereals and grains</b>	<p>Total Australian exports of cereals and grains were valued at around \$8.5 billion in 2016-17, more than 19 per cent (or \$1.6 billion) of which was exported to TPP-11 countries. TPP-11 market access outcomes for Australian cereals and grains producers and exporters include:</p> <ul style="list-style-type: none"> <li>• Significant market access improvements in Japan for wheat, barley and malt, building on JAEPA, including: <ul style="list-style-type: none"> <li>– reduction of the mark up on wheat and barley by 45 per cent within 8 years of entry into force of the TPP-11;</li> <li>– the creation of new quota volumes for wheat and barley under the simultaneous buy-sell mechanism. Australia's exports of these products to Japan were worth \$568 million in 2016-17; and</li> <li>– new quota access for malt exports;</li> </ul> </li> <li>• Elimination of Mexican tariffs on wheat (currently 67 per cent) within 10 years of entry into force of the TPP-11;</li> <li>• Elimination of Mexican tariffs on barley (currently 115 per cent) within 5 years of entry into force of the TPP-11; and</li> <li>• Elimination of all Canadian tariffs on cereals and grains upon entry into force of the TPP-11.</li> </ul>

Sector	Summary Outcomes
<b>Dairy</b>	<p>Total Australian dairy products exports were valued at more than \$2.1 billion in 2016-17, and 40.5 per cent (valued at \$878 million) was exported to TPP-11 countries. Key TPP-11 market access outcomes for Australian dairy producers and exporters include:</p> <ul style="list-style-type: none"> <li>• Significant market access improvements in Japan for Australian dairy. Australian dairy exports to Japan were worth \$406 million in 2016-17. Building on JAEPA, outcomes include: <ul style="list-style-type: none"> <li>– elimination of tariffs on certain cheese products, and tariff reductions and new quota allocations for remaining cheese products;</li> <li>– new quotas for butter and skim milk powder with the in-quota mark-up eliminated within 10 years of entry into force of the TPP-11; and</li> <li>– new quotas and tariff reductions for a range of dairy products including ice cream, whole milk powder, condensed milk, yoghurt and infant formula;</li> </ul> </li> <li>• Preferential access into the highly protected Canadian market with new quotas for dairy products including, cheese, milk powders and butter. Tariffs on milk protein concentrates will be eliminated on entry into force; and</li> <li>• Mexico will create new quota access, including for butter, cheese and milk powders, and will eliminate tariffs on yoghurt.</li> </ul>
<b>Rice</b>	<p>Total Australian rice exports were estimated to be valued at around \$416 million in 2015-16. Key TPP-11 market access outcomes include:</p> <ul style="list-style-type: none"> <li>• For the first time since 1995, new quota access for Australia into Japan with a new 6,000 tonne quota from entry into force of the TPP-11, growing to 8,400 tonnes after 12 years, for Australian rice and rice flour exports. Japan will also reduce tariffs on a number of rice preparation products; and</li> <li>• Improvements to Japan's tendering process for rice. Japan will now offer tenders 6 times a year, including an additional tender in May in line with Australia's growing season.</li> </ul>
<b>Sugar</b>	<p>Total Australian exports of sugar were estimated to be valued at \$2.4 billion in 2016-17, and around one third of these exports (valued at \$659 million) went to TPP-11 countries. TPP-11 market access gains for Australian sugar producers and exporters include:</p> <ul style="list-style-type: none"> <li>• Building on the JAEPA, elimination of Japan's tariff and reduction in the levy on high polarity sugar exports on entry into force of the TPP-11. In 2016-17, Australian sugar exports to Japan were estimated to be valued at \$439 million;</li> <li>• Elimination of Canada's tariffs on refined sugar (currently CA\$30.86/tonne) within 5 years of entry into force of the TPP-11. Australia already has duty free access for raw sugar</li> </ul>

Sector	Summary Outcomes
	<p>into Canada;</p> <ul style="list-style-type: none"> <li>• Mexico will also apportion Australia a guaranteed 7 per cent of any tariff rate quota for raw sugar in the years in which it is offered. Australia is only the sixth country Mexico has offered such an outcome;</li> <li>• Elimination of in-quota tariffs on Vietnam's WTO sugar quota on entry into force; and</li> <li>• Malaysia has committed to allow Australia to engage in the wholesale distribution of refined sugar in Malaysia for use in the food and beverage industry.</li> </ul>
<b>Cotton</b>	<p>Total Australian exports of cotton were valued at nearly \$1.8 billion in 2016-17, and 15 per cent of cotton exports (valued at \$274 million) were sent to TPP-11 countries.</p> <p>All tariffs on Australian cotton exports will be eliminated under the TPP-11, with most eliminated from entry into force. Australian cotton producers will also benefit from creation of new regional supply chains into the Japanese consumer market. For example, clothing produced in Vietnam from Australian cotton will benefit from the elimination of Japanese tariffs on cotton products over 10 to 15 years – encouraging greater demand for Australian cotton in the TPP-11 region.</p>
<b>Wine</b>	<p>Total Australian wine exports were valued at more than \$2.3 billion in 2016-17, and around 19 per cent of these exports (valued at \$442 million) went to TPP-11 countries. TPP-11 market access gains for Australian wine producers and exporters include:</p> <ul style="list-style-type: none"> <li>• Elimination of Canada's tariffs (currently 1.87 c/litre and 4.68 c/litre) upon entry into force of the TPP-11. Australian wine exports to Canada were valued at \$184 million in 2016-17;</li> <li>• Elimination of Malaysian tariffs within 15 years of entry into force of the TPP-11. Australian wine exports to Malaysia were valued at nearly \$51 million in 2016-17 and are currently subject to tariffs ranging from 7 to 23 Malaysian Ringgit per litre;</li> <li>• Elimination of Vietnamese tariffs within 11 years of entry into force of the TPP-11. Australian wine exports to Vietnam were valued at \$5.8 million in 2016-17 and are currently subject to tariffs of up to 59 per cent; and</li> <li>• Elimination of Mexican tariffs (currently 20 per cent) within 3 years of entry into force of the TPP-11 for higher quality wine and elimination of all tariffs within 10 years of entry into force of the TPP-11 for all wine.</li> </ul>



Sector	Summary Outcomes
<b>Horticulture</b>	<p>Total Australian horticulture exports were valued at \$5.2 billion in 2016-17, and 14 per cent of these exports (valued at \$729 million) went to TPP-11 countries. TPP-11 market access outcomes for Australian horticultural producers and exporters include:</p> <ul style="list-style-type: none"> <li>Building on JAEPA, Japan will extend the period by which oranges will face the lower “out of season” tariff (corresponding to the main growing season in Australia) to an 8 month period (from 1 April to 30 November), and will eliminate that tariff over 6 years. The higher “in season” tariff will be eliminated over 7 years. Australian orange exports to Japan were valued at \$46 million in 2016-17;</li> <li>Japan will also eliminate all tariffs on fruit juices within 10 years of entry into force of the TPP-11, building on the quota arrangements achieved under JAEPA. Australian fruit juice exports to Japan were valued at \$12 million in 2016-17;</li> <li>Elimination of all Canada’s horticulture tariffs upon entry into force of the TPP-11. Australian horticultural exports to Canada were valued at \$34 million in 2016-17; and</li> <li>Elimination of most of Mexico’s horticulture tariffs upon entry into force of the TPP-11 and elimination of all tariffs within 15 years of entry into force.</li> </ul>
<b>Seafood</b>	<p>Australia’s total seafood exports in 2016-17 were worth nearly \$1.3 billion, with exports to TPP-11 countries valued at \$816 million. TPP-11 market access outcomes for Australian seafood producers and exporters include:</p> <ul style="list-style-type: none"> <li>All Japanese seafood tariffs will be eliminated within 15 years of entry into force of the TPP-11;</li> <li>All Vietnamese seafood tariffs will be eliminated on entry into force of the TPP-11;</li> <li>Canada will eliminate all tariffs on entry into force of the TPP-11; and</li> <li>Mexico’s seafood tariffs will be eliminated within 15 years of entry into force of the TPP-11, with the majority eliminated on entry into force.</li> </ul>

### ***Resources, Energy and Manufactured Goods***

49. Australian exports of resources, energy, and manufactured products generally face far lower tariff barriers than those facing agricultural goods. Nonetheless, the TPP-11 will eliminate all remaining tariffs on Australian exports of non-agricultural products to TPP-11 countries and create new opportunities for Australian exports.

### *Resources and Energy*

50. Australia's exports of resources and energy products to TPP-11 countries are worth around \$42 billion, representing around 48 per cent of Australia's total goods exports to these countries.
51. TPP-11 market access outcomes for resources and energy products that are additional to Australia's existing FTAs include tariff elimination on:
- . butane, propane and liquified natural gas exports to Vietnam within 7 years of entry into force of the TPP-11; and
  - . refined petroleum exports to Vietnam within 10 years of entry into force of the TPP-11. Australia exported \$14 million worth of refined petroleum to Vietnam in 2016-17.

### *Manufactured and Other Goods*

52. Australia's exports of manufactured and other goods to TPP-11 countries are worth an estimated \$21 billion. TPP-11 market access outcomes for manufactured and other goods additional to Australia's existing FTAs include tariff elimination on:
- . iron and steel products and aluminium exported to Canada on entry into force of the TPP-11. Australian exports of these products were worth around \$11 million in 2016-17;
  - . leather and sack kraft paper exported to Mexico on entry into force of the TPP-11. In 2016-17, Australian exports to Mexico of leather were worth \$0.344 million and sack kraft paper were worth \$2 million;
  - . medicament exports to Mexico within 10 years of entry into force of the TPP-11. In 2016-17, Australian exports of medicaments to Mexico were worth \$3 million;
  - . other manufactured products exported to Mexico within 15 years of entry into force of the TPP-11. Australia exports of these products to Mexico were valued at \$115 million in 2016-17;
  - . iron and steel products exported to Vietnam within 10 years of entry into force of the TPP-11. Australian exports of these products to Vietnam were worth over \$146 million in 2016-17; and
  - . automotive parts to Vietnam within 10 years of entry into force of the TPP-11.
53. In the TPP-11, Malaysia has committed to provide guaranteed access for Australian providers to engage in the wholesale distribution of automotive parts and components. Malaysia has also committed to stop providing excise tax credits for locally produced automotive parts. This scheme had provided an incentive for Malaysian manufacturers to use local parts over imported Australian products.

### ***Key services sector outcomes***

54. Australia's services exports to TPP-11 countries were worth over \$18 billion in 2016-17 (22.5 per cent of total Australian services exports). The TPP-11 will ensure Australian service suppliers have improved transparency and predictability in the operating conditions in TPP-11 markets.
55. The TPP-11 will also capture future market reforms in services sectors, meaning that any liberalisation will flow through to Australian service providers.
56. TPP-11 investment and services outcomes include:
- . Mining Equipment, Technologies and Services (METS) and oilfield services providers: major new commercial opportunities for our world class service providers, including through:
    - Mexico's liberalisation of its energy sector;
    - Vietnam opening its mining investment regime;
    - Brunei Darussalam and Vietnam locking in future reforms to local content regimes or otherwise committing to a level playing field between Australian and foreign suppliers providing goods and services in the mining, oil and gas sectors;
    - New rules on large SOEs such as PEMEX, VINACOMIN and PETROVIETNAM, which will help ensure that Australian goods and services providers can compete fairly for contracts;
  - . professional services: Malaysia has locked in recent reforms to the legal, architectural, engineering and surveying services sectors, removing a number of restrictions that have long been of concern to Australian businesses;
  - . financial services: new opportunities for Australian exporters to TPP-11 countries, with guaranteed ability to provide the following cross-border services: (i) investment advice and portfolio management services to a collective investment scheme and (ii) insurance of risks relating to maritime shipping and international commercial aviation and freight, and related brokerage;
  - . temporary entry of business people: Australia has gained preferential temporary entry into fast-growing TPP-11 markets that increasingly demand Australia's services expertise, by reciprocating a matching level of temporary entry commitments to those countries. We entered into this arrangement in a deliberate, measured way, allowing the Government to maintain absolute control over Australia's labour market and ensure its stability;
  - . education services: Australian universities and vocational education providers will benefit from guaranteed access to a number of existing and growth markets in Brunei Darussalam, Japan, Malaysia, Mexico and Peru. Australia will also be well placed to supply online education services across the region;

- transport services: Australian freight and logistics companies stand to benefit from enhanced commitments that support integrated logistics supply chains. Australian providers of transport and logistics services in Malaysia and Vietnam will gain strong trade and investment protections for the first time. The TPP-11 will capture future liberalisation of investment regulations in aviation in Vietnam and freight trucking in Malaysia and Vietnam, key markets for our airlines and logistics providers;
- telecommunications services: Australian companies stand to benefit from the phasing out of foreign equity limits in Vietnam's telecommunications sector five years after the entry into force of the TPP-11 and the ability to apply to wholly-owned telecommunications ventures in Malaysia;
- health services: Australian providers of private health and allied services will benefit from greater certainty regarding access and operating conditions in Malaysia, Mexico and Vietnam; and
- hospitality and tourism services: Australian suppliers of travel agency and tour operator services will benefit from guaranteed access in Brunei Darussalam, Canada, Chile, Japan, Mexico and Peru; and greater certainty regarding access and operating conditions in Malaysia and Vietnam. Increased trade and investment among TPP-11 countries will also increase demand for domestic tourism services and support the development of Australia's tourism sector, particularly in regional Australia.

### ***Key investment outcomes***

57. The TPP-11 will create new investment opportunities and provide a more predictable and transparent regulatory environment for investment.
58. Australian investment in TPP-11 countries has been steadily increasing. 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.
59. The TPP-11 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. Australian investments into Canada below CA\$1.5 billion will not be screened. Australian investors will also benefit from commitments offered by Japan, Vietnam and Brunei to only impose conditions on foreign investment on the initial sale of interests or assets owned by the government.
60. The TPP-11 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 for all TPP-11 Parties.

61. Under the TPP-11, Australia has retained the ability to screen investments in sensitive sectors to ensure they do not raise issues contrary to the national interest. All investments by foreign governments will continue to be examined and lower screening thresholds will apply to investment in agricultural land and agribusiness.
62. The TPP-11's investment obligations can be enforced directly by Australian and other TPP-11 investors through an Investor-State Dispute Settlement (ISDS) mechanism. The ISDS mechanism includes a wide range of safeguards that protect the Government's ability to regulate in the public interest and pursue legitimate public welfare objectives, such as public health. Australia's tobacco control measures cannot be challenged.

***Key government procurement opportunities***

63. The TPP-11 will ensure that high government procurement standards exist in overseas markets, creating new market access opportunities for Australian businesses.
64. Australian suppliers will have new opportunities to bid for a comprehensive range of goods contracts, including drugs and pharmaceutical products, electronic components and supplies; which are used for government purposes in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam.
65. There are new opportunities for Australian businesses to bid for government procurement services contracts, such as:
- . accounting, auditing and taxation services in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam;
  - . management consulting services in Brunei Darussalam, Malaysia, Mexico and Peru;
  - . computer and related services offers by all TPP-11 Parties, along with maintenance of office machinery in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam;
  - . architectural engineering and other technical services in Brunei Darussalam, Canada, Malaysia, Mexico and Peru;
  - . land and water transport services in Brunei Darussalam, Malaysia and Peru;
  - . telecommunication and related services in Brunei Darussalam, Canada, Malaysia and Peru;
  - . environmental protection services in Brunei Darussalam, Canada, Malaysia, Mexico, Peru and Vietnam;
  - . education services in Brunei Darussalam, Canada, Japan, Malaysia, Mexico and Peru; and

- health and Social Services in Brunei Darussalam, Malaysia and Peru.
66. For the first time, Australian METS and oilfield service suppliers will also be eligible to bid for government procurement opportunities with Mexico for PEMEX.

***Key outcomes for consumers and businesses***

67. Consistent with Australia's other FTAs, remaining Australian tariffs on imports from TPP-11 countries will be eliminated, with consumers and businesses set to benefit from lower prices.
68. As a regional FTA, the TPP-11 will create additional and longer term benefits for consumers and businesses that are not possible to achieve under a bilateral FTA. Even though Australia has relatively low tariffs, products created via an international supply chain are taxed at the borders over which they pass before they get to our shores. Under the TPP-11, producers will be able to use inputs from any of the 11 participating countries and trade the good under the TPP-11 preferential trading arrangements. This means lower tariff rates on inputs as well as on the final product.

***Lowering the cost of doing business***

69. The TPP-11 includes additional commitments which will **lower the costs of trade**. Highlights include:
- more transparent and efficient **customs procedures** making it easier for Australian companies to export and do business in the region. For example, TPP-11 Parties will be required to provide an advance ruling on the tariff classification of a good, how it should be valued, whether a good is originating and how to claim preference;
  - regional **rules of origin** and a single set of documentary procedures for products traded under the TPP-11. These arrangements will support the development of regional supply chains by encouraging 'cumulation', which permits inputs used in the production of a good from one TPP-11 Party to be treated as the same as inputs from any other TPP-11 Party when making a good. The arrangements will also allow businesses to save on administrative costs by allowing them to trade under the one set of rules, rather than under existing multiple bilateral FTAs.
  - **duty-free temporary admission of pallets and containers**. This TPP-11 commitment will provide significant cost and administrative savings for Australian businesses engaged in providing transport logistics services in the Asia-Pacific;
  - mechanisms to address **non-tariff barriers** (NTBs) impeding trade, which will give Australia an important avenue to address NTBs affecting our exports in the region. The TPP-11 will enhance transparency, cooperation and promote good practice with regard to establishment and maintenance of technical regulations. A better understanding of each Party's regulatory systems will improve public safety and benefit Australian consumers; and

- simplified rules and **technical requirements** for several products, including wine and spirits. For example, the Australian wine industry will be able to use the same label on bottles of wine for export to all TPP-11 countries, saving money on marketing and distribution costs.

### ***Addressing contemporary trade challenges***

70. The TPP-11 will also address contemporary trade challenges in ways that have not previously been addressed in Australian FTAs. Highlights include:

- commitments ensuring **SOEs and government designated monopolies** engaged in commercial activities make purchasing and sales decisions on a commercial basis do not discriminate against Australian suppliers of goods and services. These rules will promote competition, trade and investment in TPP-11 Parties and ensure Australian exporters will be able to compete on a level playing field;
- state of the art **e-commerce** provisions driving the information economy and facilitating trade among TPP-11 Parties. For the first time, certainty for business about their ability to move information across borders and make investment decisions about data storage facilities. Australia's regulatory framework, including the *Privacy Act 1988*, will not be affected;
- **enhancing the online environment for consumers in TPP-11 markets**, including commitments to personal information protection, enforceable consumer rights and addressing 'spam'. Under the TPP-11, Australia will have a forum to exchange views with other TPP-11 countries about the experiences of Australian consumers when accessing products and services offered online;
- for the first time, a provision addressing the high costs of **international mobile roaming**. Parties will work cooperatively to promote transparent and reasonable rates for international mobile roaming services. The agreement also ensures TPP-11 countries are able to enter into arrangements to regulate rates and conditions for wholesale international mobile roaming services, should they wish to do so;
- assisting **small and medium-sized enterprises** (SMEs) to reap the benefits of the TPP-11, with an emphasis on moving to paperless trading, making customs and export delivery more effective and efficient, and user-friendly websites targeted at SMEs to provide easily accessible information about the TPP-11;
- promoting high levels of **environmental protection**, including by liberalising trade in environmental goods and services, and ensuring TPP-11 Parties effectively enforce their domestic environmental laws. TPP-11 Parties must also take measures in relation to a number of important environmental challenges, such as protecting the ozone layer, protecting the marine environment from ship pollution, combatting illegal wildlife trade and combatting over-fishing and illegal fishing. In a breakthrough in the fight against overfishing, subsidies for fishing that negatively affect overfished stocks and subsidies for vessels engaged in illegal fishing will be prohibited;

- enhanced compliance by TPP-11 parties with internationally-recognised **labour rights**, such as elimination of forced labour, abolition of child labour, freedom of association and the right to collective bargaining. The TPP-11 will also enhance cooperation and consultation on labour issues, and effective enforcement of labour laws in TPP-11 Parties;
- robust and transparent **government procurement** rules that would allow suppliers from TPP-11 countries to participate fairly in government processes. The rules will ensure that governments from TPP-11 countries do not discriminate against suppliers from other TPP-11 countries when assessing tenders and awarding contracts. Each TPP-11 Party will also be required to establish a review mechanism so that suppliers (both foreign and domestic) can challenge government procurement decisions that do not follow proper processes; and
- robust provisions **combatting corruption** and bribery of public officials, and other acts of corruption adversely affecting international trade and investment. These anti-corruption provisions will provide greater transparency and certainty to Australian individuals and businesses seeking to trade with, and invest in, TPP-11 Parties.

### *Intellectual property*

63. The IP Chapter establishes a common set of rules for IP protection and enforcement in the TPP-11 region. These rules will help streamline IP transactions, increase transparency and lower the costs of doing business, and support Australia's creative and innovative industries by promoting certainty and opportunities for trade and investment in the region. Australian businesses and consumers will also benefit from increased access to legitimate products and services. The chapter builds on the key areas of IP protection in the WTO's Agreement on Trade-Related Aspects of Intellectual Property (TRIPS Agreement), and covers copyright, trade marks, geographical indications (GIs), patents, industrial designs, confidential information, plant variety protection, and civil, border and criminal enforcement. A number of IP provisions from the original TPP have been suspended in the TPP-11 (see below).
64. The Chapter seeks to promote business certainty for Australian patent applicants in the TPP-11 region. TPP-11 countries commit to provide adequate and effective protection of industrial designs. Trade mark provisions will help Australian traders promote and safeguard their brands in the TPP-11 region. The Chapter requires transparency and due process safeguards with respect to the protection of GIs, including for GIs protected through international agreements. TPP-11 countries have agreed to ratify the International Convention for the Protection of New Varieties of Plants (1991), which encourages effective protection of plant breeders' rights and the development of new plant varieties.
65. The Chapter also includes limited provisions in relation to pharmaceutical inventions and products, while also aiming to ensure TPP-11 countries can take



measures to protect public health and support timely and affordable access to medicines.

66. The Chapter requires TPP-11 countries to protect undisclosed data about the safety or efficacy of new agricultural chemical products for 10 years from the date of marketing approval. This will help attract investment and innovation in new agricultural chemical products in the TPP-11 region, and ensure stronger protections for Australian exporters.
67. The Chapter provides effective and balanced protection for Australian copyright and related rights in the TPP-11 region by protecting the exclusive rights of authors, performers and producers with respect to the reproduction, communication, distribution, and broadcasting of their works, performances and phonograms, while providing for appropriate limitations and exceptions.
68. The Chapter includes civil, criminal and border enforcement measures aimed at reducing trade in counterfeit trade mark and pirated copyright goods in the TPP-11 region. These measures will help protect the rights of Australian innovators and creators, support investment in innovation, promote trade in legitimate products and services, and reduce the availability of infringing products and services in Australia. TPP-11 countries agree to provide for civil and criminal measures in relation to the unauthorised access to and theft of trade secrets, including in computer systems. These measures will not affect countries' laws in relation to whistleblowing.

#### ***State and Territory Governments***

69. During both the original TPP negotiations and TPP-11 negotiations, State and Territory Governments raised issues of interest to industries residing in their respective states, their regulatory responsibilities and the administrative implications of the TPP and TPP-11. There are no additional impacts on State and Territory Governments beyond those discussed in other sections of this analysis.

#### ***Australian trade regulations***

70. The TPP-11 maintains the integrity of our system of trade remedies and is consistent with our WTO rights and obligations. The TPP-11 provides for a transitional safeguard mechanism, which allows a TPP-11 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-11 cause serious injury to a domestic industry.
71. The Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) chapters reaffirm the TPP-11 Parties' commitments to relevant WTO agreements and improve consultation arrangements.
72. The TPP-11 also includes TBT annexes related to regulation of specific sectors to promote common regulatory approaches across the TPP-11 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.

73. In addition, in an effort to rapidly resolve SPS matters that emerge between the TPP-11 parties, the TPP-11 establishes a mechanism for consultations between governments.
74. The TPP-11 does not require changes to Australia's biosecurity system. Import risk assessments are carved out of TPP-11's dispute settlement mechanism.

### ***Dispute Settlement***

75. The TPP-11 includes a binding State-to-State dispute settlement mechanism modelled on previous free trade agreements and the WTO system. Most of Australia's obligations in the TPP-11 will be subject to this mechanism, except those found in the chapters concerning Competition Policy, Cooperation and Capacity Building, Competitiveness and Business Facilitation, Development, Small and Medium-Sized Enterprises and Regulatory Coherence, and the Annex on Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices.

### ***Suspension of TPP provisions in TPP-11***

76. The TPP-11 is a treaty that incorporates provisions of the original TPP, except for a limited number which TPP-11 countries agreed by consensus to suspend. These provisions remain part of the TPP-11, but they will have no application under international law. The provisions will remain suspended until the TPP-11 countries decide otherwise by consensus.
77. The table below sets out the effects of the suspended provisions.

<b>Chapter (number)</b>	<b>Suspended Provision</b>	<b>Effect of the suspension</b>
<b>Customs Administration and Trade Facilitation (5)</b>	Article 5.7.1(f): Ex- press Shipments <i>Suspend second sentence</i>	Each TPP-11 Party has agreed not to assess cus- toms duties on ex- press shipments valued at or below a fixed amount as set under its do- mestic law. That amount is cur- rently set at \$1,000 under Aus- tralian law. There will no longer be an obligation for Parties to review the threshold

Chapter (number)	Suspended Provision	Effect of the suspension
		below which no duties on express shipments are charged.
<b>Investment (9)</b>	<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), chaussette, 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> <li>• 9.22.5 Selection of Arbitrators</li> <li>• 9.25.2 Governing Law</li> </ul> Annex 9-L Investment Agreements	<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. 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>
<b>Cross-Border Trade in Services (10)</b>	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

<b>Chapter (number)</b>	<b>Suspended Provision</b>	<b>Effect of the suspension</b>
		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.
<b>Financial Services (11)</b>	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.
<b>Telecommunications (13)</b>	Resolution of Telecommunications Disputes - Article 13.21.1(d)	This suspends a process for reconsideration of decisions made by telecommunications regulatory bodies.
<b>Government Procurement (15)</b>	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.
<b>Government Procurement (15)</b>	Further Negotiations - Article 15.24.2 <i>Suspend "No later than three years after the date of entry into force of this Agreement" 5</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

<sup>5</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.

<b>Chapter (number)</b>	<b>Suspended Provision</b>	<b>Effect of the suspension</b>
		the entry into force of the Agreement, the Parties will commence negotiations five years after entry into force.
<b>Intellectual Property (18)</b>	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.
<b>Intellectual Property (18)</b>	Article 18.37: Patent-able 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.
<b>Intellectual Property (18)</b>	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.
<b>Intellectual Property (18)</b>	Article 18.48: Patent Term Adjustment for	There will no longer be a requirement to adjust a pharmaceutical patent's term of protection to

<b>Chapter (number)</b>	<b>Suspended Provision</b>	<b>Effect of the suspension</b>
	Unreasonable Curtailment	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.
<b>Intellectual Property (18)</b>	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.
<b>Intellectual Property (18)</b>	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.
<b>Intellectual Property (18)</b>	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.

<b>Chapter (number)</b>	<b>Suspended Provision</b>	<b>Effect of the suspension</b>
<b>Intellectual Property (18)</b>	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.
<b>Intellectual Property (18)</b>	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.
<b>Intellectual Property (18)</b>	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.
<b>Intellectual Property (18)</b>	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.

<b>Chapter (number)</b>	<b>Suspended Provision</b>	<b>Effect of the suspension</b>
<b>Environment (20)</b>	Conservation and- Trade (measures ‘to combat’ trade) - Arti- cle 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.
<b>Transparency and Anti- corruption (26)</b>	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.
<b>Annex IV – State- Owned Enterprises and Designated Monopolies</b>	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.
<b>Annex II – Investment and Cross-Border Trade in Services</b>	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.



## **PART 6: TRADE IMPACT ASSESSMENT**

78. The TPP-11 will open up substantial new market opportunities for Australian exporters and investors in the region.

### ***Impact on goods exports***

79. Australia's exports to countries in the TPP-11 represented around \$69.6 billion in 2016-17 – or 23.9 per cent of total Australian merchandise exports. The TPP-11 Parties include some of Australia's major trading partners, for example Japan – where Australian exports were worth over \$42 billion in 2016-17.
80. The elimination of barriers to trade is expected to increase the volume and value of trade with all TPP-11 Parties. The elimination and reduction of tariffs and creation of new quota access into Japan will create opportunities in an export market currently worth over \$4.5 billion for Australian agricultural exports. Significant new tariff reductions and increased safeguard volumes on beef will allow for increased exports to the Japanese market. Japan's beef tariffs will be reduced to 9 per cent within 15 years of entry into force of the TPP-11. Australian fresh, chilled and frozen beef exports to Japan were valued at \$2.1 billion in 2016-17. The elimination of tariffs and creation of new quotas for dairy products will benefit Australian dairy exporters – Australian dairy exports to Japan were worth \$406 million in 2016-17. The elimination of tariffs on cheese products alone covers over \$100 million of existing Australian trade. Australia will also receive new quota access for wheat, barley, malt and rice and a reduction in the levy on high polarity sugar will mean that Australian high polarity sugar will now face lower duties than exporters of low polarity sugar.
81. The elimination of tariffs in our new FTA partners of Canada and Mexico will create new opportunities in export markets worth over \$2 billion in 2016-17 for Australia. Particular opportunities will be available for our exports to these markets of beef (over \$126 million in exports to these countries in 2017), sheepmeat (\$96 million in exports), wine (\$188 million), and pharmaceuticals (\$28 million) into these countries. For the first time, Australia will also be afforded genuine new access into to the Canadian dairy market, with Canada offering over 100,000 metric tonnes of access for dairy products per year to TPP-11 Parties.
82. The elimination of tariff barriers on some products beyond that achieved in our FTAs with Malaysia and Vietnam will also create new opportunities for Australia. Malaysia's elimination of tariffs on liquid milk and an interim quota of 3.3 million litres per year will provide substantial new opportunities for our burgeoning fresh milk industry which exported \$247 million in 2017. The elimination of tariffs on wine and alcoholic beverages into Malaysia and Vietnam will provide export opportunities for our highly competitive wine industry. Tariff elimination on iron and steel products into Vietnam will provide welcome new opportunities for that sector – Australia exported over \$224 million of iron and steel products to Vietnam in 2017.

83. The regional nature of the TPP-11 agreement will also provide new opportunities for Australian exporters to participate in regional supply chains. Under the rules of origin of the agreement, production in any one of the TPP-11 Parties will be counted towards a good's originating status, that is, the ability for an exporter or importer to claim a TPP-11 tariff preference for that good. As a result, demand for TPP-11 products will increase in the region. For example, there will be greater demand for Australian agricultural commodities in South-East Asia as new preferential access becomes available into Japan for food and beverage products. Australian manufacturers will also be able to export products under TPP-11 preferences which they have produced using content from other TPP-11 Parties. For example a mining equipment manufacturer could source inputs from Japan for transformation and exportation to Mexico or Peru.
84. Trade, both in terms of imports and exports is also expected to increase as a result of the administrative arrangements created by the TPP-11. Under the TPP-11 an exporter or importer will only need to refer to one rule of origin, and use the same, self-certified documentation when exporting to any of the TPP-11 parties under a tariff preference. This will significantly reduce the administrative arrangements an Australian trader needs to be aware of and comply with in order to access current tariff preferences. At present Australia has eight different FTAs with TPP-11 Parties, each with its own administrative arrangements.

#### ***Impact on goods imports***

85. The TPP-11 will benefit consumers by increasing greater choice of goods at lower prices. Australia's final tariff offer to TPP-11 countries on goods market access was plurilateral – the same offer was made to all members of the TPP-11. Consistent with other Australian FTAs and our trade policy settings, Australia's tariff elimination schedule is ambitious, with 93 per cent of all tariff lines eliminated or bound at zero tariff rates upon entry into force of the Agreement.
86. Virtually all remaining tariffs – covering those sectors where tariffs still provide some level of protection against imports, are eliminated in either three or four years. This includes tariffs of mostly 5 per cent on plastics and rubber, textiles, clothing and footwear, iron and steel, motor vehicle components and some machinery and furniture tariffs. The phased elimination of these tariffs aligns with existing FTAs and will not undercut any existing tariff phasing arrangements for sensitive products with existing FTA partners. The only tariffs in Australia's offer that are not eliminated are those on used car imports. Although the 5 per cent *ad valorem* tariff is eliminated immediately, consistent with our FTAs with Korea and Japan, the larger \$12,000 specific tariff is maintained. These tariffs represent only 0.1 per cent of Australia's total tariff lines.
87. Though Australia had already eliminated tariffs for eight of the 10 partner countries in the TPP-11, elimination of tariffs for Canada and Mexico will likely encourage further trade with those countries, and lower the cost of

imports into Australia. In particular, some increased imports and price reductions can be expected as a result of increased imports of horticultural products from Mexico (imports of \$41 million in 2017) into Australia, automotive products from Mexico (\$554 million in 2017) and Canada (\$89 million in 2017), pharmaceutical products from Canada (\$162 million in 2017) and Mexico (\$30 million in 2017), telecommunications equipment from Mexico (\$378 million in 2017), and alcoholic beverages from Mexico (\$157 million in 2017).

#### **Elimination schedule for Australia's tariffs on imports from TPP-11 countries**

Staging category	Tariff lines		
	No.	% of total	Cumulative (%)
MFN 0%	2,775	46.2%	46.2%
A: 0% tariff on EIF	2,815	46.9%	93.0%
B: 3 year phasing	210	3.5%	96.5%
C: 4 year phasing	200	3.3%	99.9%
D: Used car tariff (ad valorem component eliminated, specific tariff remains)	8	0.1%	100.0%
Total	6,008	100.0%	100.0%

#### ***Impact on investment***

88. The TPP-11's rules to protect and promote foreign investment are contemporary and robust. In embracing these, Australia demonstrates that it understands and values the role of investment for our economy – in driving competition, productivity and innovation. The raising of FIRB general screening threshold to \$1,134 million for foreign investment from TPP-11 countries in non-sensitive sectors will further encourage investment into Australia from the TPP-11 region, particularly from financial hubs such as Singapore.

#### ***Impact on services exports***

89. The TPP-11 will contribute to the growth and diversification of Australian exports of services by liberalising barriers and providing more transparent and predictable operating conditions in TPP-11 countries. Australia's services exports to TPP-11 countries were worth over \$18 billion in 2016-17 (22.5 per cent of total Australian services exports). Australians involved in education, finance, ICT, health, transport and logistics, tourism, mining and professional services sectors all stand to benefit from this deal.

#### ***Impact on domestic services sectors***

90. The new services market access opportunities created by the TPP-11 will promote a greater export orientation in Australia's services sectors and increased foreign investment and employment in Australia's export-focused services industries. The TPP-11 will not impact on the provision of social

services. As in other FTAs, Australia has preserved policy space in the TPP-11 with respect to sensitive sectors, such as primary education and audiovisual services.

### ***Incentivising R&D***

91. The TPP-11 establishes a common set of rules on IP protection and enforcement for the TPP-11 region. Knowing that IP rights can be protected and enforced in TPP-11 markets provides an important incentive for Australia's businesses and investors to expand their activities in the region.

### ***A competitive environment***

92. The Australian business community will be able to benefit from TPP-11 rules ensuring SOEs and government-designated monopolies engaged in commercial activities make purchasing and sales decisions on the basis of commercial decisions and do not unjustifiably discriminate against suppliers of goods and services from other TPP-11 Parties. The TPP-11 will help to ensure Australian exporters are able to compete on a more level playing field.

## **PART 7: CONSULTATION**

93. Stakeholder views were actively encouraged and considered throughout negotiations on the original TPP, which spanned many years. This consultation process, detailed further below, culminated in two parliamentary enquiries, triggered by the tabling of the TPP text in the Australian Parliament on 9 February 2016.
94. The Joint Standing Committee on Treaties (JSCOT) invited submissions from State Premiers, Territory Chief Ministers and Presiding Officers of each Parliament, as well interested individuals and organisations. JSCOT held public hearings in Canberra, Sydney, Perth and Melbourne throughout 2016. The final JSCOT report on the TPP, tabled on 30 November 2016, records that over 260 submissions were considered by the Committee. The majority of the Committee recommended that 'binding treaty action be taken' in relation to the TPP.
95. On 15 September 2016, the Senate referred an inquiry into the TPP to the Foreign Affairs, Defence and Trade References Committee. The Committee advertised the inquiry on its website and wrote to individuals and organisations likely to have an interest in the inquiry and invited them to make written submissions. The Committee received over 100 submissions to the inquiry, but did not hold a public hearing due to the likelihood that the TPP would not enter into force following the withdrawal of the United States. It nevertheless completed the inquiry 'on-the-papers' and recommended that the Australian Government 'should defer undertaking binding treaty action until the future of the Trans-Pacific Partnership Agreement is clarified through further negotiations with Australia's major trading partners.'
96. Given that the TPP-11 incorporates the provisions of the original TPP, with a limited number of suspensions, the consultation processes and outcomes of the above parliamentary inquiries remain relevant.

### *Stakeholder consultation*

97. Stakeholder views were actively encouraged and considered throughout negotiations on the original TPP and the TPP-11.

### *TPP*

98. In November 2008, the Australian Government publicly announced that Australia would participate in the original TPP negotiations. Australia's decision to participate in the TPP negotiations followed extensive consultations involving a wide range of stakeholders and State and Territory Governments. Overall, there was widespread support for Australia's participation in the TPP.
99. The Department of Foreign Affairs and Trade (DFAT) engaged in over 1000 stakeholder briefings and consultations over the time period of the TPP negotiations with a wide range of domestic stakeholders, including representatives from peak industry bodies, individual companies, academics, unions, consumer groups, special interest groups and other organisations representing civil society. An attachment to the National International Analysis tabled in respect of the original TPP in 2016 records that 485 stakeholders were consulted and 83 written submissions were received. Many stakeholders were consulted on several occasions and provided more than one written submission.
100. Senior trade negotiators provided briefings and information on the progress of TPP negotiations to stakeholders on request during the course of the negotiations. Such consultations were open to businesses, civil society and interested members of the public, and were advertised on the DFAT website. DFAT provided updates on the TPP negotiations via its website, and consulted stakeholders and interested members of the public via group email address (**Email:** [TPP@dfat.gov.au](mailto:TPP@dfat.gov.au)).
101. Written stakeholder submissions were also actively encouraged throughout the original TPP negotiations by DFAT. The Government received more than 85 submissions, from a wide range of domestic stakeholders.
102. State and Territory Governments were consulted on a regular basis, including via correspondence, teleconferences, and at meetings of the Trade and Investment Ministers, Senior State and Territory Trade Officials Group (STOG) and Commonwealth-State-Territory Standing Committee on Treaties (SCOT). State and Territory departments were invited to make public submissions at the outset of negotiations and had the opportunity to make submissions throughout the negotiating period. Throughout the negotiations, the Trade Minister wrote to State and Territory leaders seeking endorsement of Australia's services and investment offers, prior to exchanging offers with other TPP-11 negotiating parties, reflecting the responsibilities State and Territory Governments have for regulation of services and investment activities. State and Territory Governments subsequently advised that they supported the initial offer subject to continuing consultations on TPP-11.
103. Commonwealth Government departments were consulted extensively throughout the negotiations and representatives from relevant departments

participated in negotiating sessions held in in Australia and other TPP countries.

#### *TPP-11*

104. DFAT continued to consult stakeholders, State and Territory Governments, interested members of the public, and other Commonwealth Government departments since the original TPP negotiations concluded on 5 October in Atlanta. This continued throughout the TPP-11 negotiation process from February 2017. DFAT continued to make information on the TPP-11 publicly available in a timely fashion on its website and respond appropriately to emails sent by stakeholders and interested members of the public to the DFAT TPP email address (**Email:** TPP@dfat.gov.au).
105. In relation to the TPP-11, it is estimated that there were 50 meetings, consultations and contacts undertaken over the period February 2017 - January 2018.
106. A large number of business stakeholders have made public comments welcoming the outcomes of the TPP-11 negotiations. Some civil society groups have expressed concern with the ISDS-related and temporary entry outcomes.
107. Once the TPP-11 enters into force, it is intended that DFAT and Austrade will implement an outreach strategy to ensure all Australians are able to take advantage of the Agreement. This will include information sessions held throughout Australia.

#### **PART 8: CONCLUSION**

108. It is in Australia's interests to enter into a regional FTA with Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, Peru, New Zealand, Singapore, and Vietnam, given the TPP-11 is expected to:
  - . deliver commercially meaningful market access gains that will benefit Australian agriculture, resources, energy and manufacturing exporters, service providers, consumers and investors;
  - . secure Australian exporters' competitive position in the Asia-Pacific;
  - . deliver faster and deeper market access gains than are possible through multilateral WTO negotiations;
  - . be consistent with WTO requirements for FTAs; and
  - . complement Australia's efforts to seek additional trade liberalisation from other TPP-11 parties through the WTO and regional mechanisms.
109. It should be noted that:
  - . the removal of tariffs on merchandise imports from Canada and Mexico will lead to reductions in tariff revenue, and thereby affect the Government's fiscal position, although this would be offset over time by the second-round effects of

increased economic activity. The tariff reduction will also result in lower costs to Australian consumers; and

- . Australia will eliminate tariffs on virtually all products within four years following the TPP-11's entry into force. Australia will gradually phase out tariffs on a small number of products, mostly plastics and rubber, and textiles, clothing and footwear, iron and steel, motor vehicle components and some machinery and furniture. The only tariffs in Australia's offer that are not eliminated are those on used car imports. These tariffs represent only 0.1 per cent of Australia's total tariff lines.

## **PART 9: IMPLEMENTATION AND REVIEW**

110. Implementation of the TPP-11 will require changes to: the *Customs Act 1901*; the *Customs Tariff Act 1995* and associated regulations; and the *Foreign Acquisitions and Takeovers Regulations 1989*.
111. The Government Procurement (Judicial Review) Bill 2017 was introduced in May 2017 to enable implementation of the domestic review obligations in the TPP Government Procurement Chapter. This legislation establishes a mechanism for suppliers to raise complaints about the conduct of procurements in which they have an interest. The Government identified the Federal Circuit Court (FCC) as the preferred entity to implement the domestic review obligation, and the legislation vests the necessary jurisdiction in the FCC.
112. The TPP-11 will enter into force 60 days after the date on which at least six or at least 50 per cent of the number of signatories to the Agreement, whichever is smaller, have notified the Depository in writing of the completion of their applicable legal procedures (i.e. ratified the Agreement).
113. A TPP-11 Commission established under the Agreement will be responsible for the operation of the TPP-11. The Commission will review the operation of the TPP-11 three years after entry into force of the Agreement and at least every five years thereafter. If the entry into force of the original TPP is imminent or if the original TPP is unlikely to enter into force, the Parties have agreed to, on the request of a Party, review the operation of the TPP-11 so as to consider any amendment to the Agreement and any related matters.
114. After the entry into force of the TPP-11, any state or separate customs territory may accede to the TPP-11 if it is prepared to comply with the provisions of the Agreement, other terms and conditions specified, and if all TPP-11 Parties agree to the accession.
115. Any Party may withdraw from the TPP-11 by providing written notice to the Depository and other Parties. A withdrawal shall take effect six months after a Party provides written notification, unless the Parties agree on a different period.

## **ATTACHMENT: REGULATORY BURDEN AND COST OFFSET ESTIMATE**

1. The entry into force of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (TPP-11) is expected to result in a small reduction in ongoing business compliance costs for Australian exporters to TPP-11 Parties. The reduction arises from two sources. First, the ability of exporters to use one set of documentary procedures to export to 10 other markets instead of under eight separate FTAs plus two non-FTA partners. Second, the possibility that some businesses that previously sought and obtained non-preferential certificates of origin (COOs) may now be able to self-certify the origin of their goods for exports to Brunei Darussalam, Canada, New Zealand, Mexico, and Vietnam. Existing agreements allow businesses to self-certify the origin of their goods for exports to Chile, Japan, Malaysia, Peru and Singapore.

2. There is a significant level of uncertainty regarding the number and composition of COOs issued in respect of Australian exports into TPP-11 Parties. Accordingly, the estimates of the compliance costs under the status quo – as well as the likely incremental changes – are largely assumption driven and should be interpreted as such. However, based on the available data, it is possible to gain an appreciation of the order of magnitude of these changes.

### ***Certificates of Origin***

3. COOs are issued by industry groups such as the Australian Chamber of Commerce and Industry and the Australian Industry Group. Preferential certificates account for around 10 per cent of all certificates issued. Preferential certificates are generally issued in respect of countries with whom Australia has a free trade agreement, but which do not allow for self-declaration.

4. TPP-11 Parties represent 23.9 per cent of Australia's total goods exports.

### ***Direct Costs***

5. Where businesses seek third-party certification from industry groups, the cost of each certificate varies from between \$20-70 at an average of \$33. The cost of a certificate depends on a range of factors, such as whether an applicant is a member of the issuing body and the level of complexity.

### ***Administrative costs***

6. The ongoing administrative costs incurred by a business in preparing the documentation to obtain a COO are likely to be relatively low. The bulk of Australian exports to TPP-11 Parties are 'wholly obtained' goods. Further, while new businesses may expend considerable time applying for certification for their initial consignment, as a matter of practice this information is re-submitted for subsequent certifications. In addition, much of the information required would be collected for other purposes. The administrative time burden for each application is therefore estimated to be modest.

7. Similarly, the records related to a COO are required to be kept for five years by most foreign customs agencies. However, businesses are required under Australian Tax Law to retain these records for seven years. The incremental compliance burden associated with record keeping for COOs is therefore assessed as nil.



***Incremental reduction in number of certificates under the TPP-11***

8. COOs are required for Australian exports to TPP-11 Parties for a range of purposes in addition to tariff compliance. For example, overseas customs agencies may require COOs for the purpose of calculating import quotas. Alternatively, foreign banks may require COOs in order to provide letters of credit.

9. Therefore, it is possible that of the total number of Australian COOs currently issued in respect of TPP-11 Parties, some of these will no longer be required as a result of the TPP-11. However, each business will have to consider for themselves, as a commercial decision, whether the benefits of obtaining a COO are outweighed by the costs (administrative or otherwise).

10. It is therefore assumed that there will be a modest reduction in the number of COOs issued in respect of Australian exports to TPP-11 Parties as a result of the Agreement. To the extent that this reduction occurs, those businesses will save the direct costs of certification by industry bodies; together with the administrative costs.

**Regulatory Burden and Cost Offset (RBCO) Estimate Table**

<b>Average Annual Compliance Costs (from business as usual)</b>				
<b>Costs (\$m)</b>	<b>Business</b>	<b>Community Organisations</b>	<b>Individuals</b>	<b>Total Cost</b>
<b>Total by Sector</b>	(\$143 995.21)	\$	\$	(\$143 995.21)
<b>Cost offset (\$m)</b>	<b>Business</b>	<b>Community Organisations</b>	<b>Individuals</b>	<b>Total by Source</b>
<b>Agency</b>	\$	\$	\$	\$
<b>Within portfolio</b>	\$	\$	\$	\$
<b>Outside portfolio</b>	\$	\$	\$	\$
<b>Total by Sector</b>	\$	\$	\$	\$
<b>Proposal is cost neutral?    <input checked="" type="checkbox"/> yes   <input type="checkbox"/> no</b>				
<b>Proposal is deregulatory    <input checked="" type="checkbox"/> yes   <input type="checkbox"/> no</b>				
<b>Balance of cost offsets        \$143 995.21</b>				