



TRANS-PACIFIC partnership **LEGAL AND INSTITUTIONAL**

FACT SHEET

➔ Overview

The Trans-Pacific Partnership (TPP) includes chapters that cover various legal and institutional issues.

Key features of these chapters include an exception that recognises the importance of the Treaty of Waitangi to New Zealand. Nothing in TPP will prevent the Crown from meeting its obligations to Māori.



TPP contains safeguards that ensure New Zealand can meet its obligations to Māori, including under the Treaty of Waitangi.

→ Legal and institutional elements

Exceptions

The obligations in TPP have been designed so as not to impair the ability of governments to make legitimate public policy and to take measures to implement that policy. However, in the unusual situation where such a measure would breach an obligation, this chapter provides a safety net of exceptions to ensure that the measure would still be allowed. If a country is shown to have violated an obligation, then that government may seek to prove that a relevant exception applies. The exceptions cover a range of areas including national security, health, environment, national treasures of artistic, historic or archaeological value, and situations involving serious balance of payments difficulties.

A specific exception recognises the importance of the Treaty of Waitangi to New Zealand, in addition to policy flexibility preserved across key areas in TPP. As a result, nothing in TPP will prevent the Crown from taking measures that it deems necessary to meet its obligations to Māori, including under the Treaty of Waitangi. Further, New Zealand's interpretation of the Treaty of Waitangi shall not be subject to the dispute settlement provisions of TPP. There is also an exception that sets out how the Agreement applies to taxation measures which provides exceptions and policy space for governments in this area. Many chapters in TPP also include further specific exceptions applicable to the areas covered in those chapters.

Dispute settlement

The Dispute settlement chapter establishes a consultation and dispute settlement mechanism to resolve disputes that result from the interpretation and application of the Agreement. This mechanism is the means by which the obligations in TPP are made legally enforceable. It allows New Zealand to enforce obligations against the other Parties. Conversely, New Zealand may be held to account if another Party considers that we have not fulfilled our obligations.

The Dispute settlement chapter requires Parties to make every attempt to resolve disputes through cooperation and consultations before resorting to a request for the establishment of a dispute settlement panel.

The Dispute settlement chapter may be invoked in respect of any aspect of TPP, except where the Agreement states otherwise (for example, the dispute settlement procedures cannot be invoked in respect of the Regulatory Coherence Chapter or the Medical Devices and Pharmaceuticals Annex).

Transparency and anti-corruption

The Transparency and anti-corruption chapter contains rights and obligations in relation to both transparency and anti-corruption. These obligations are all consistent with New Zealand's current policy and practice.

The chapter requires Parties to ensure that laws, regulations, procedures, and administrative rulings of general application with respect to any matter covered by TPP are promptly published or otherwise made available to interested persons and Parties.

Parties are required, to the extent possible, to publish these kinds of measures in advance of their adoption and to provide interested persons and other Parties with a reasonable opportunity to comment on them. The chapter details how advance publication and opportunity for comment on proposed regulations are to be provided.

The chapter also imposes procedural requirements with a view to ensuring that Parties administer measures in a consistent, impartial and reasonable manner. Parties must establish or maintain judicial, quasi-judicial, or administrative tribunals or procedures in order to review final administrative actions regarding matters covered by TPP.

The central focus of the anti-corruption obligations is a requirement that Parties make, or continue to make, various acts of bribery and corruption a criminal offence. These acts include giving bribes to public

officials (both domestic and foreign) and the solicitation or acceptance of bribes by public officials. These offences must be subject to sanctions that take into account the gravity of the offence, and Parties' laws must provide for the liability of both natural and legal persons.

There is also a provision which states that a Party must not fail to effectively enforce these anti-corruption laws or measures (where that failure is a sustained or recurring course of action or inaction to encourage trade and investment). There are also requirements for Parties to adopt or maintain offences regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards.

Commission

TPP includes agreement to form a Commission which will meet at Ministerial or senior official level. The Commission is required, among other things, to review the economic relationship and partnership among the Parties on a regular basis, and to supervise the work of committees and working groups established under the Agreement.

A decision on the interpretation of a provision, as with all other decisions of the Commission, must be made on the basis of consensus.



The drafting of TPP obligations, and the inclusion of exceptions, ensure that TPP will not impair the New Zealand Government's ability to regulate in the public interest.

Entry into force

There are various ways in which TPP may enter into force. The first option is that if, within two years of the date of signature, all countries that signed the Agreement (the “signatories”) have notified the Depositary that they have completed their applicable legal procedures (in other words, that they are “ready”) then the Agreement will enter into force 60 days after notification by all countries. However, if all signatories have not notified their readiness within two years, then the second option is that the Agreement will enter into force 26 months after signature if at least six of the signatories have notified the Depositary that they are ready, provided that those six signatories account for at least 85 percent of the combined GDP of the original signatories in 2013. The third option will apply if the Agreement has not entered into force under either the first or second options. In those circumstances, it will enter into force 60 days after the date on which at least six of the original signatories have notified the Depositary that they are ready. Again, these must be six signatories that together account for at least 85 percent of the combined GDP of the original signatories in 2013. The Agreement also includes a mechanism that allows signatories who did not notify their readiness under option 2 or 3 to become a party to the TPP when it is ready to do so.

Any Party may withdraw from TPP by providing six months notice of withdrawal.

Depositary

New Zealand is named as the Depositary of the Agreement. As Depositary, New Zealand is responsible for various tasks including receiving and circulating specified notifications and requests made under the Agreement.

Authentic language

The English, Spanish, and French texts of the Agreement are all authentic, but if there is a divergence between them, the English text will prevail.