

# THE RESURRECTION OF TPP AS “CPTPP”

When the United States decided to withdraw from the Trans-Pacific Partnership (TPP) in early 2017, many thought that the TPP was dead. However, it appears that the TPP has been resurrected by the remaining 11-member nations and renamed as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) at the request of Canada. In this article Duc Tran together with Quynh Lien Nguyen of ZICO Law Vietnam (a member of ZICO Law) share their insights into the resurrection of TPP as CPTPP and its highlighted impact on ASEAN and the Asia Pacific.

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## THE RESURRECTION OF TPP AS "CPTPP"

When the United States ("U.S") decided to withdraw from the TPP in early 2017, the remaining 11-member countries convened a meeting on 21 May 2017 to reaffirm the economic and strategic importance of TPP, particularly as a vehicle for regional economic integration. In November 2017, an agreement was reached in

Da Nang, Vietnam, whereby the TPP was resurrected and renamed as the CPTPP at the request of Canada. The CPTPP is meant to keep the original TPP's high standards, overall balance and integrity whilst ensuring the commercial and other interests of all participants and preserving their inherent right to regulate.

## RETAINED AND SUSPENDED PROVISIONS

Although the core elements of the CPTPP have not been published, it appears that, on the endeavour basis of the remaining 11-member countries, the major provisions of the TPP have survived which include:

- comprehensive market access as the agreement eliminates or reduces tariff and non-tariff barriers across trade in goods and services;
- regional approach to commitments as it facilitates the development of production and supply chains;
- seamless trade;
- facilitating cross-border integration and opening domestic markets; and
- addressing new trade challenges by promoting innovation, productivity and competitiveness.

There are however, about 20 clauses from the TPP which have been suspended in the CPTPP in particular, provisions on intellectual property, arbitration, investment dispute resolution and express delivery services.

Significant changes were made on the chapter on intellectual property rights. This is primarily because the U.S had insisted on rules to be included in the original agreement that were unpopular amongst other countries.



## ENTRY INTO FORCE OF THE CPTPP

Subject to decision of the 11-member countries, the signing of the CPTPP will be conducted after all technical work and outstanding issues are finalised. The CPTPP will then be open for ratification and will come into force when 6 out of the 11 signatories have ratified it.






Currently, the target is late 2018. However, this may stretch to 2019 depending on the length of time it takes for the parties to resolve outstanding issues and complete their ratification procedures.

## IMPLICATIONS OF CPTPP ON ASEAN AND ASIA-PACIFIC

Despite the significantly smaller size of the CPTPP, it still represents a substantial share of the world's GDP. The CPTPP is intended to remove tariffs on an estimated high percentage of goods traded

among the CPTPP nations, representing significant further progress in ASEAN and the Asia Pacific trade liberalisation.

The table below illustrates the benefits of the CPTPP to the region:

Country	Benefits
 <b>Malaysia</b>	<p>The CPTPP will provide Malaysia with trade access to countries like Canada, Peru and Mexico which Malaysia did not have access to before.</p> <p>Institutional reforms to be made by Malaysia to comply with CPTPP standards will improve its business environment, strengthen its economy and attract more investments.</p>
 <b>Singapore</b>	<p>The CPTPP will provide Singapore with unprecedented access to Japan, Australia, New Zealand, Chile and Peru.</p>
 <b>Vietnam</b>	<p>Similar to Malaysia, Vietnam will have access to newer markets and expand its exports to Canada, Mexico and Peru. Lower tariff barriers from the CPTPP will give Vietnam greater access to large consumer markets in Japan and Australia too with an estimated boost to Vietnam’s exports by over 37% until 2025.</p> <p>The CPTPP will also lead to numerous institutional reforms pushing Vietnam in improving regulations and administrative reforms.</p>
 <b>Canada</b>	<p>The CPTPP will help Canada tackle the uncertainty about north-south trade under the Trump administration. Canada would also be able to significantly increase its trade in goods and services with CPTPP member countries, where Asia is home to many of the fastest growing economies in the world.</p>
 <b>Japan</b>	<p>The CPTPP would provide Japan with an opportunity to have the first high-level free trade multilateral agreement in Asia Pacific, which could boost Japan’s economy and establish more sophisticated trade rules than the bilateral agreements that Japan has entered into to date.</p>

The CPTPP countries will be preferred over non-CPTPP countries as a location for setting up subsidiaries, or branches for companies that are involved in regional or global value chains. Therefore, this could be beneficial as it leads to more businesses being set up in the ASEAN and Asia-Pacific region.

There are however, some disadvantages to the CPTPP too. The high standards of the CPTPP rules will require a lot of training for both

government officials and businesses to better implement and take advantage of the trade deal. Without a Secretariat, it is unclear who will lead and provide support for these trainings. Also, if some member countries cannot keep up with their implementation plans, it has not been made clear what will happen to them. Another detrimental impact may be that there is more competition for local businesses as more foreign suppliers of goods and services means potentially more competition for local business providers.

## WHAT NEXT?

There are many aspects of the CPTPP that foreign investors need to look for when the agreement does come into force. For the first time, under the CPTPP, investors may sue the Government for its violation of investment-related commitments under the Investor State Dispute Settlement (“ISDS”) provisions. Foreign investors would therefore need to proactively consider how to structure their investments to take advantage the protections given by the agreement. Investors must also be aware that the ISDS will no longer apply to foreign investment screening and private contracts between government and foreign companies.

The CPTPP also includes procedures for arbitration as means of settling disputes between investors and the host state. It covers new provisions compared with existing agreements, such as transparency in arbitral proceedings, disclosure of filings and arbitral awards, and participation of interested non-disputing parties to make amicus curiae submissions to a tribunal. Arbitral awards are final, binding and fully enforceable in CPTPP countries.

If you have any questions or require any additional information, you may contact us or the ZICO Law partner you usually deal with.

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