

Article Information

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Service: Corporate & Commercial

The Trans-Pacific Partnership: What does it mean for Professionals and Services?

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Negotiations for the Trans-Pacific Partnership (TPP) concluded on 6th October 2015 after the 12 country partners reached agreement on the final draft of the TPP. The 12 country partners – Australia, New Zealand, Vietnam, Singapore, Japan, Malaysia, Brunei Darussalam, Chile, Mexico, Peru, Canada and the US – make up 40% of the world's economy and the agreement is expected to have a wide impact on trade and cross-border business.

The TPP is still subject to domestic ratification by each of the partners however the TPP's outcomes are likely to be advantageous beyond the obvious trade sectors such as agriculture and goods exports. Domestic regulations across different countries complicate the ability of professionals to offer their services internationally. The TPP offers a liberalisation of restrictions on cross-border interactions and creates new opportunities which will provide significant openings for Australian sectors to prosper including, significantly, the legal and financial sectors.

Partners, Gordon Grieve and David Cornwell explore some of the likely outcomes of the TPP as well as opportunities the TPP will provide in services.

Services: Opportunities and Barriers

Under the Agreement, restrictions on services operating in TPP partner jurisdictions will be relaxed for many professional, technical and other business services. This relaxation on red-tape will likely cover a broad range of professional services including legal, accounting, engineering, architecture, surveying and urban planning, and research and development services.

The TPP cross-border service obligations will operate on a 'negative-list' approach meaning a partner country will have to specifically exclude a particular service if it does not wish a particular aspect of the TPP to apply. New and emerging service industries are therefore likely to benefit by being automatically covered by the TPP instead of a service area being outrightly excluded by an exhaustive list of services. This is expected to greatly benefit emerging e-commerce and digital disruption markets including crowdfunding and fintech.

Specifically, commitments have been made, for example, to allow access for Australian lawyers providing advice on contracts on a fly-in, fly-out basis with several TPP partners including Malaysia and several US States. Further, access to the Malaysian legal sector has been broadly opened to allow Australian lawyers to more easily practice aspects of Malaysian law subject to certain conditions.

Financial Services

The TPP negotiations have resulted in a specialised focus on financial services aside from other key professional service sectors. Amy Auster, Executive Director of the Australian Centre for Financial Studies, states the financial services sector as being "Australia's largest services export, equivalent to about AU\$55 billion in 2013, or 17% of all exports" which is larger than tourism and education. Major outcomes for financial services include:

- The TPP will guarantee that a number of financial services can operate on a cross-border basis including insurance of risks relating to maritime shipping, international commercial aviation and freight, and investment advice and portfolio management services to collective investment schemes.

- Suppliers from one TPP partner country will not be required to establish operations in another TPP partner country before being able to sell their respective services in that jurisdiction (subject to any required registration or authorisation).
- It is likely that financial services, except for those on a country specific negative-list, will be able to provide a financial service in another TPP market if domestic providers are allowed to do so (i.e. it is regulated in the intended market).
- The TPP will help facilitate the recognition of Australian financial service license holders operating in TPP countries. This will help to minimise the burden for Australian businesses meeting duplicate licensing requirements and remove red tape on cross-border operations.

Further, Australia is set to benefit from specific outcomes such as the removal of all foreign equity caps by Malaysia which will be replaced by a screening process. Australian insurance providers will also be able to offer product liability and directors' and officers' liability insurance to Malaysians.

Government Procurement in TPP Countries

Australian businesses will be able to bid for government procurement services contracts of other TPP partner countries. Each country will likely provide a 'positive-list' of government entities that may accept TPP Partner bids and activity areas in which bids may be placed. For example, Australian businesses will be able to bid on computer and related services government contracts in all TPP countries and Australian law firms will be able to bid for government procurement contracts for legal services in Canada, Peru and Brunei.

It is likely that the TPP will implement safeguards for the government procurement process such as requirements to treat tenders fairly and impartially, award contracts based solely on the specified evaluation criteria and maintain confidentiality of tenders.

Investment and Dispute Settlement

Foreign investment restrictions by Australian investors will be loosened and allow for example, Australian investments into Canada below CA\$1.5 billion to not be screened. Likewise, foreign investments in Australia will be subject to a more relaxed screening threshold for private foreign investments in non-sensitive sectors by the Foreign Investment Review Board (FIRB). The FIRB screening threshold will increase from \$252 million to \$1,094 million for all TPP parties.

Investment obligations under the TPP can be enforced through the Investor-Statement Dispute Settlement (ISDS) mechanism. The ISDS provides for an independent arbitral tribunal which investors can access in order to resolve dispute for breaches of the TPP rules relating to investment.

What is the likely result?

It is anticipated that many of the current barriers to growth of the increasingly global and digital economy will come down as a result of the TPP, or at least improve significantly. For example, opportunities for lawyers will now extend to being able to assist clients in foreign government procurement bids, bid for contracts themselves, and advice on complex cross-border transactions subject to the TPP and the dispute resolution processes.

Other measures include ensuring safe data transmission, the ability to more easily and affordably offer services in foreign jurisdictions and workable dispute resolution processes when things go wrong across borders.

Until the specific text of the TPP is released, it is currently difficult to assess the exact level of impact the TPP will have on the abovementioned services and industries. We will continue to monitor the progress of the TPP towards ratification and implementation and provide updates on any significant developments.