

Free Trade Deal Reached After 11 Countries Sign CPTPP

AUTHORS



John A. Terry



Teresa A. Reguly



Omar Wakil



Nic Wall

The 11 countries part of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) signed the deal on March 8 in Santiago, Chile. Canada's involvement in CPTPP, North American Free Trade Agreement (NAFTA), Comprehensive Economic and Trade Agreement (CETA) and its free trade agreement with South Korea, will make it the only G7 nation with free trade access to the Americas, Europe and the Asia-Pacific region. Once implemented, the CPTPP will significantly impact how Canadian companies do business domestically and abroad.

What You Need To Know

- The CPTPP reduces trade barriers between its parties and provides for common standards related to a wide range of areas including financial services, electronic commerce, intellectual property, labour, the environment and foreign investment.
- Investors from countries that are a party to the CPTPP will have a set of protections available to them through an investor-state dispute settlement (ISDS) mechanism when they invest in other countries party to the Agreement. This represents a significant reaffirmation of ISDS at a time when its status in other trade agreements, including the NAFTA, is uncertain.
- For patent applicants, a 12-month grace period will prevent public disclosures made by the applicant from being considered when assessing novelty and obviousness. This means other parties will match existing Canadian law.
- The CPTPP still needs to be ratified by at least six parties to come into force. Each party will now undertake its own domestic ratification process, which in Canada includes legislation to implement the Agreement.

Further Information Regarding the CPTPP

The final text of the CPTPP largely mirrors the text of the now-defunct Trans-Pacific Partnership (TPP). While certain provisions relating to investment that were part of the TPP have been suspended, the CPTPP is broad in scope and has the potential to redefine the commercial relationships amongst its parties. The parties to the CPTPP are Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

The CPTPP significantly reduces tariffs and other trade barriers between the parties. It also provides for rules that will govern Canadian businesses in a number of ways.

Investment

The Investment Chapter of the CPTPP contains many of the standard protections provided to investors under comparable agreements. To have these protections, the investor must be based in one country that is a party to the CPTPP, and be making an investment in a different country that is also a party (host state). The protections in the CPTPP require that, in the host state's jurisdiction, investors and investments,

- receive fair and equitable treatment;
- are provided with full protection and security, which provides for the physical protection of the investment;
- receive treatment by the host state in a manner no less favourable than the treatment the host party accords to its own investors and investments, or those of any other party or non-party to the Agreement; and
- cannot be expropriated except under certain circumstances, and not without timely and adequate compensation.

If the host state fails to provide these protections, an investor can submit an investment dispute for arbitration by an independent panel instead of the host state's domestic judicial system. In this way, the CPTPP mechanism for ISDS closely resembles traditional ISDS mechanisms such as those contained in the existing version of NAFTA, which is currently subject to renegotiation.

One significant difference between the TPP and CPTPP is the suspension of provisions that allow for the submission of an investment dispute where that dispute is based on the breach of an investment authorization or agreement made by the host state. Investment disputes can still be submitted on the basis of a breach of the protections discussed above. Investors should therefore consider making investments in a way that takes full advantage of the remaining protections.

The parties have also agreed, among other things, on the importance of encouraging entities operating within the party's jurisdiction to adopt corporate social responsibility (CSR) policies and standards. This provision has been included by Canada in several international agreements including previous free trade agreements with Peru, Colombia and Panama. Investors with robust CSR regimes may stand to benefit from state actions encouraging CSR adoption, depending on how such encouragement manifests. Notably, Canada recently announced new initiatives related to its CSR strategy for companies operating abroad including the creation of an independent Canadian Ombudsperson for Responsible Enterprise.

Intellectual Property and Privacy

Some of the more notable provisions of the Intellectual Property Chapter of the CPTPP are listed below:

- With respect to patent law, a 12-month grace period will prevent public disclosures made by the applicant from being considered when assessing novelty and obviousness. While Canadian law already provides for a 12-month grace period, many of the other party states do not have such rules in place.
- With respect to trademark law, the CPTPP includes a requirement that sound marks be registrable and that each member country make best efforts to register scent marks. Additionally, each party is required to adopt or maintain a trademark classification system that is consistent with the Nice Classification system. Bill C-31, which is expected to come into force next year, will amend the Canadian *Trade-marks Act* to make non-traditional trademarks, such as a sound or a scent, registrable, and to require classification according to the Nice Classification system.

A number of intellectual property provisions from the TPP are suspended in the CPTPP. These include provisions related to patent law, data protection, and copyright law. More detail is provided below:

- The suspended patent law provisions include those relating to patentable subject matter, and those providing patent term adjustments to compensate for unreasonable delays in patent issuance and unreasonable curtailment of the effective term of a pharmaceutical patent as a result of the marketing approval process. With the implementation of the CETA, as of September 21, 2017, Canadian law now provides for certificates of supplementary protection that extend the term of certain pharmaceutical patents for up to two years.

- The suspended data protection provisions relate to providing a data protection period for new pharmaceutical products, including biologics. Canada's current data protection regime already provides eight years of data protection for new drugs.
- Suspended provisions related to copyright include those extending the copyright term to 70 years after the author's death, providing criminal procedures and penalties related to circumvention of effective technological protection measures, and provisions requiring internet service providers to take down materials upon receiving a notice of alleged infringement.

The Electronic Commerce chapter retains a provision that prevents parties from blocking the transfer of personal information to other jurisdictions unless there is a legitimate policy objective to restrict such transfers. Certain Canadian provincial laws have been enacted to keep government-controlled personal information (such as health data) within the country; it remains to be seen how the requirement under the CPTPP to prevent blocking the transfer of personal information is reconciled with these provincial laws.

Foreign Investment Review

Once implemented, the CPTPP will also affect foreign investment reviews under the *Investment Canada Act*. Australia, Brunei, Japan, New Zealand, Malaysia, Singapore and Vietnam will qualify as trade agreement investors, meaning acquisitions by investors from those countries of Canadian businesses with enterprise values of less than \$1.5 billion will not be subject to net benefit reviews. The remaining CPTPP countries—Chile, Mexico and Peru—already qualify as trade agreement investors by virtue of their existing trade agreements with Canada.

Transparency and Anticorruption

Parties to the CPTPP are required to make the bribery of a foreign or domestic public official, in matters that affect international trade or investment, a criminal offence. Further, each party must not fail to enforce these laws through action or inaction.

To discuss these issues, please contact the author(s).

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.

For permission to republish this or any other publication, contact [Richard Coombs](#).

© 2026 by Torys LLP.

All rights reserved.