

**The Standing Senate Committee on Foreign Affairs and International Trade
February 7, 2018**

The Chair of AEFA requested a list/table of the 22 suspensions contained in the CPTPP. The Minister of International Trade committed to providing a table and further information that has been made available online regarding the CPTPP.

RESPONSE

The CPTPP is a new treaty that incorporates by reference the provisions of the original TPP agreement. However, the application of 22 provisions of the original TPP will be suspended upon entry into force of the CPTPP.

Table of CPTPP Suspensions

Suspension	Explanation
<p>1. Article 5.7 (Express Shipments) – paragraph 1 – subparagraph (f): second sentence</p>	<p>Chapter 5: Customs Administration and Trade Facilitation</p> <p>The suspension regarding Express Shipments (Article 5.7.1(f)) removes the obligation for Parties to periodically review minimum thresholds for application of customs duties on express shipments, and has no impact on Canada’s current policies. All Parties will retain policy flexibility to regulate and review customs duties for express shipments.</p>
<p>2. (a) Article 9.1 (Definitions): a. (i) definition of investment agreement including footnotes 5 through 9; b. (ii) definition of investment authorisation including footnotes 10 and 11;</p>	<p>Chapter 9: Investment</p> <p>The suspensions¹ in the Investment chapter reduce the scope of investor-state dispute settlement (ISDS) in the CPTPP. The suspensions will prevent foreign investors from using ISDS to enforce their contracts with the Government, and will also prevent them from suing the Government for its withdrawal of approval of a foreign investment under the Investment Canada Act.</p>

¹ Article 9.1 definitions on “investment agreement” and “investment authorisation”; Article 9.19.1, subparagraphs (a)(i)(B), (a)(i)(C), (b)(i)(B), (b)(i)(C), and *chausette*; Article 9.22.5 (Selection of Arbitrators); Article 9.25.2 (Governing Law); and all of Annex 9-L (Investment Agreements).

<p>3. Article 18.8 (National Treatment): the last two sentences of footnote 4</p>	<p>Chapter 18: Intellectual Property</p> <p>The CPTPP suspends a TPP provision on national treatment, dealing with payment in respect of copyright, performances, and sound recordings. As with certain other suspensions in the IP chapter, this suspension brings the CPTPP obligation in line with obligations under the WTO TRIPS Agreement, allowing Parties the flexibility to recognize and remunerate rights in a manner consistent with existing multilateral standards.</p>
<p>4. (c) Article 18.46 (Patent Term Adjustment for Unreasonable Granting Authority Delays): all of this Article including footnotes 36 through 39</p>	<p>Chapter 18: Intellectual Property</p> <p>The CPTPP suspends the TPP obligation on patent term adjustment, which would have required Parties to provide the means to adjust the term of patent protection in respect of “unreasonable delays” in the processing of patent applications. Canada does not provide for patent term adjustment in its domestic regime. This suspension means that no changes to current Canadian law in this area are required under the CPTPP.</p>
<p>5. (g) Article 18.63 (Term of Protection for Copyright and Related Rights): all of this Article including footnotes 74 through 77</p>	<p>Chapter 18: Intellectual Property</p> <p>With respect to <u>copyright</u>, the TPP required Parties to provide a term of protection for works of authorship (such as books, film, and music) for a period of the life of the author plus 70 years, and to provide a term of protection of 70 years for performances and sound recordings. These obligations have been suspended under the CPTPP. Canada already provides a term of protection for performances and sound recordings of 70 years from the date of publication, but would have been required to extend its term of protection for works of authorship by 20 years (from “life plus 50” to “life plus 70”) under the TPP. Under the CPTPP, Canada will continue to have the flexibility to provide a term of “life plus 50”, consistent with multilateral standards and Canada’s longstanding policy.</p>

<p>6. (h) Article 18.68 (Technological Protection Measures (TPMs)): all of this Article including footnotes 82 through 95</p>	<p>Chapter 18: Intellectual Property</p> <p>The CPTPP suspends copyright obligations dealing with “digital rights management” (e.g. technologies used to enforce predefined limitations on the use and transfer of copyrighted digital content), such as technological protection measures (TPMs, or “digital locks”) and rights management information (RMI, or “digital watermarks”). Canada already provides protection in respect of TPMs and RMI consistent with its obligations under the World Intellectual Property Organization (WIPO) “Internet treaties”. The CPTPP suspensions allow Parties the flexibility to continue to provide protection in these areas consistent with the multilateral standards under WIPO.</p>
<p>7. (i) Article 18.69 (Rights Management Information (RMI)): all of this Article including footnotes 96 through 99</p>	<p>Chapter 18: Intellectual Property</p> <p>The CPTPP suspends copyright obligations dealing with “digital rights management” (e.g. technologies used to enforce predefined limitations on the use and transfer of copyrighted digital content), such as technological protection measures (TPMs, or “digital locks”) and rights management information (RMI, or “digital watermarks”). Canada already provides protection in respect of TPMs and RMI consistent with its obligations under the World Intellectual Property Organization (WIPO) “Internet treaties”. The CPTPP suspensions allow Parties the flexibility to continue to provide protection in these areas consistent with the multilateral standards under WIPO.</p>
<p>8. (j) Article 18.79 (Protection of Encrypted Program-Carrying Satellite and Cable Signals): all of this Article including footnotes 139 through 146</p>	<p>Chapter 18: Intellectual Property</p> <p>On <u>IP rights enforcement</u>, CPTPP Parties agreed to suspend obligations to provide civil and criminal remedies in respect of encrypted program-carrying satellite and cable signals (e.g. remedies for the decryption and unauthorized distribution of satellite and cable signals). Canada already</p>

	provides remedies in these areas. The CPTPP suspension will allow Canada to continue to address this issue consistent with its longstanding approach and policy priorities in these areas.
<p>9. (k) Article 18.82 (Legal Remedies and Safe Harbours): all of this Article including footnotes 149 through 159</p>	<p>Chapter 18: Intellectual Property</p> <p>CPTPP Parties have also agreed to suspend provisions dealing with legal remedies and safe harbours for Internet service providers (ISPs) (e.g. the obligations and liability of ISPs in respect of suspected copyright-infringing content online). Canada already maintains an ISP liability regime under the <i>Copyright Act</i>, which was reflected in the TPP. The suspension of this obligation under the CPTPP allows Canada the flexibility to continue to address the issue of ISP liability in respect of its longstanding domestic policy priorities.</p>
<p>10. Annex 10-B (Express Delivery Services):</p> <p>a. (a) paragraph 5 including footnote 13;</p> <p>b. (b) paragraph 6 including footnote 14</p>	<p>Chapter 10: Cross- Border Trade in Services</p> <p>The suspension regarding express delivery services removes commitments on postal monopolies, allowing them to continue to operate within CPTPP markets.</p>
<p>11. (a) Article 11.2 (Scope) – paragraph 2 – subparagraph (b): the phrase “Article 9.6 (Minimum Standard of Treatment)” including footnote 3</p>	<p>Chapter 11: Financial Services</p> <p>The suspension in the Financial Services Chapter limits the scope of ISDS from applying to the “minimum standard of treatment” obligation, decreasing the risk of the Government being sued under ISDS.</p>
<p>12. Article 13.21 (Resolution of Telecommunications Disputes) – paragraph 1: subparagraph (d) including the heading “Reconsideration” and footnote 22</p>	<p>Chapter 13: Telecommunications</p> <p>The suspension in this Chapter removes a minor obligation on regulatory review procedures, and has no impact on Canada’s current policies.</p>
<p>13. Government Procurement (a) Article 15.8 (Conditions for Participation): paragraph 5 including footnote 1</p>	<p>Chapter 15: Government Procurement</p> <p>The first suspension in the Government Procurement Chapter removes a small clarification that procuring entities have the</p>

	<p>ability to promote compliance with international labour rights as part of their processes. This suspension does not limit Canada’s flexibility to ensure compliance with international labour obligations.</p>
<p>14. (b) Article 15.24 (Further Negotiations) – paragraph 2: the phrase “No later than three years after the date of entry into force of this Agreement”</p>	<p>Chapter 15: Government Procurement</p> <p>The second suspension in Government Procurement delays future negotiations on expanding the coverage of the Government Procurement Chapter from 3 years after the entry into force of the CPTPP to at least 5 years.</p>
<p>15. (e) Article 18.50 (Protection of Undisclosed Test or Other Data): all of this Article including footnotes 50 through 57</p>	<p>Chapter 18: Intellectual Property</p> <p>On <u>patents</u>, Parties have agreed to suspend certain provisions dealing with patentable subject matter. These obligations deal with the types of inventions for which Parties are required to make patents available under the Agreement. The CPTPP suspensions bring the CPTPP obligations on patentable subject matter in line with Parties’ existing international obligations under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). As Canada’s IP regime is already consistent with its obligations under TRIPS, the CPTPP obligation will not require any changes to Canada’s domestic regime in this area.</p>
<p>16. (e) Article 18.50 (Protection of Undisclosed Test or Other Data): all of this Article including footnotes 50 through 57</p>	<p>Chapter 18: Intellectual Property</p> <p>On data protection for pharmaceutical products, CPTPP Parties have agreed to suspend the original TPP obligations requiring a period of protection for safety and efficacy data in respect of small-molecule (or chemical) and biologic drugs. Canada already met the TPP obligation to provide eight years of data protection overall for both small-molecule and biologic drugs, and can continue to maintain its existing regime under the CPTPP.</p>

<p>17. (f) Article 18.51 (Biologics): all of this Article including footnotes 58 through 60</p>	<p>Chapter 18: Intellectual Property</p> <p>On biologics, CPTPP Parties have agreed to suspend the provision that would have required Parties to provide additional data protection for biologic drugs. Canada already met the TPP obligation to provide eight years of data protection overall for both small-molecule and biologic drugs, and can continue to maintain its existing regime under the CPTPP.</p>
<p>18. (d) Article 18.48 (Patent Term Adjustment for Unreasonable Curtailment): all of this Article including footnotes 45 through 48</p>	<p>Chapter 18: Intellectual Property</p> <p>The CPTPP also suspends the TPP obligation on patent term adjustment, which required Parties to provide the means to adjust the term of patent protection in respect of “unreasonable delays” in the processing of patent applications. Canada does not provide for patent term adjustment in its current domestic regime.</p>
<p>19. Article 20.17 (Conservation and Trade) – paragraph 5: the phrase “or another applicable law” including footnote 26</p>	<p>Chapter 20: Environment</p> <p>The CPTPP Environment Chapter represents Canada’s most comprehensive and ambitious set of environmental commitments in a bilateral or regional free trade agreement to date.</p> <p>The only suspension in the Environment Chapter involves suspending language that narrows the scope of law that would apply to determine whether flora or fauna has been taken or traded illegally.</p>
<p>20. Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices): Article 3 (Procedural Fairness) including footnotes 11 through 16</p>	<p>Chapter 26: Transparency and Anticorruption</p> <p>The CPTPP Transparency and Anticorruption Chapter contains an Annex entitled Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices. By suspending Article 3 of this Annex on Procedural Fairness, Canada has ensured that it maintains greater future policy flexibility in the area of public health.</p>
<p>21. Schedule of Brunei</p>	<p>Annex II (Cross Border Trade in Services</p>

<p>Darussalam – 14 – paragraph 3: the phrase “after the signature of this Agreement”</p>	<p>and Investment Non-Conforming Measures)</p> <p>In Annex II, each CPTPP country has reservations for sectors or activities where it wishes to retain complete policy flexibility, now and in the future. This allows Canada to maintain policy flexibility in sensitive areas such as Aboriginal and minority affairs, culture, social services (including health and public education), and certain transportation services. In other words, this allows Canada to introduce new measures in these areas in the future based on domestic priorities, irrespective of Canada’s commitments in the CPTPP.</p> <p>The suspension of Brunei’s reservation for its coal sector has the effect of giving Brunei until EIF of CPTPP to bring into effect any non-conforming measures that will be grandfathered into the CPTPP.</p>
<p>22. Schedule of Malaysia – 3 and 4 – Scope of Non-Conforming Activities (hereinafter referred to as the “Scope”): all references to the phrase “after signature of this Agreement”</p>	<p>Annex IV (State-Owned Enterprises and Designated Monopolies Non-Conforming Measures)</p> <p>One of the key benefits of the CPTPP is that it promotes a level playing field between SOEs and their private competitors. This means that Canadian businesses operating in CPTPP markets or seeking to expand in CPTPP markets will be able to fairly compete with Government-owned companies. At the same time, the CPTPP also preserves the Canadian Government’s ability to support domestic SOEs to provide public services (like Canada Post and the CBC).</p> <p>The suspension has the effect of giving Malaysia more time before PETRONAS, a wholly government owned enterprise responsible for the development of Malaysia’s oil and gas sector, needs to meet its obligation to not discriminate in favour of Malaysian businesses when purchasing certain goods and services in the upstream oil and gas sector.</p>

Below are the links to the Government of Canada's Comprehensive and Progressive Agreement for Trans-Pacific Partnership website where you can find background information on the CPTPP, the text of the Agreement, including the agreed list of suspensions, the Government's economic modeling on the estimated economic impact of the CPTPP for Canada, and key sectoral information.

English: https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/index.aspx?lang=eng&menu_id=95

French: <https://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/tpp-ptp/index.aspx?lang=fra>