



SOME TPP CHAPTERS THAT CAN AFFECT HEALTH LAWS AND POLICIES

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GOVERNMENT PROCUREMENT (GP)

CHAPTER

- Art 15.2: applies to goods and services by entities listed
- Art 15.4:
 - National treatment of goods, services and suppliers
 - No offsets
- Art 15.3 exception for health is the same difficult to use exception as at the WTO
- Art 15.24.2: within 3 years of TPP entering into force, must start negotiations to open more GP including subnationally

ECOMMERCE CHAPTER

- Art 14.11: allow cross-border data flows
- Difficult to use exceptions to this:
 - Art 14.11.3:
 - Not arbitrary or unjustifiable discrimination or a disguised restriction on trade and
 - Necessity test
 - Art 14.2: can schedule non-conforming measures– if all other Parties agree to it
 - Art 29.3: necessity test etc and only for privacy laws that are consistent with the TPP

INITIAL PROVISIONS & GENERAL DEFINITIONS CHAPTER

- Existing FTAs coexist, Art 1.2
- General definitions, Art 1.3: some examples:
 - **Enterprise:** broad definition
 - **existing** means in effect on the date of entry into force of this Agreement;
 - **measure** includes any law, regulation, procedure, requirement or practice;
 - **state enterprise** means an enterprise that is owned, or controlled through ownership interests, by a Party;

STATE-STATE DISPUTE SETTLEMENT

CHAPTER (28)

- Art 28.3: Scope:
 - ‘Unless otherwise provided in this Agreement, the dispute settlement provisions of this Chapter shall apply:
 - (a) with respect to the avoidance or settlement of all disputes between the Parties regarding the interpretation or application of this Agreement;
 - (b) when a Party considers that an actual or proposed measure of another Party is or would be inconsistent with an obligation of this Agreement or that another Party has otherwise failed to carry out an obligation under this Agreement;’
 - (c) non-violation nullification and impairment complaints re goods, services and GP
- Art 28.3.3b): side letters can be enforceable if they say they are
- Art 28.12.3: The panel must:
 - consider the TPP in accordance with Articles 31 and 32 of the Vienna Convention on the Law of Treaties.
 - also consider relevant interpretations in WTO dispute settlement decisions when looking at any obligation of a WTO agreement that has been incorporated into the TPP.
- Winning country can raise the tariffs on the losing country’s exports until it changes its law to comply

SOURCES

- Legally scrubbed TPP text from <https://www.mfat.govt.nz/en/about-us/who-we-are/treaty-making-process/trans-pacific-partnership-tpp/text-of-the-trans-pacific-partnership>
- RCEP leaked IP chapter: <http://keionline.org/node/2472>
- RCEP leaked investment chapter: <http://keionline.org/node/2474>
- RCEP leaked services chapter: <http://bilaterals.org/?-south-south-ftas->

THANK YOU

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