

Expanding the TPP?

Options, prospects and implications for the Indo-Pacific

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Executive Summary

- In March 2018, the 'Comprehensive and Progressive Agreement for the TPP' (CPTPP) was signed by the remaining eleven members of the Trans-Pacific Partnership (TPP-11). This bridging agreement has salvaged the TPP following US withdrawal in 2017.
- Importantly, the CPTPP contains provisions for accession by new member states. Several Asian economies have already begun considering accession options. In a dramatic turnaround, the Trump Administration has recently expressed interest in exploring options to re-join the TPP.
- Expanding the membership would significantly augment the strength and systemic impact of the TPP. US membership would be especially impactful, as it would more than double the size of the bloc, greatly expand its reach, and encourage further expansion by drawing in additional members.
- However, US membership will pose major challenges. Members would need to renegotiate several intellectual property provisions that are suspended in the CPTPP, and likely offer a 'better deal' for the Trump Administration. The TPP-11 have initially expressed reluctance to make such concessions.
- Prospects for the TPP to become the new template for economic integration in the Indo-Pacific depend on whether its membership can expand. While there is a viable path for new Asian members, it remains to be seen whether common ground between the US and the TPP-11 members can be found.

From the TPP to the CPTPP

The Trans-Pacific Partnership (TPP) was a ground-breaking free trade agreement. Concluded in 2015 after five years of negotiations between twelve countries (Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, US and Vietnam), the TPP was the first major multilateral free trade agreement in over 20 years¹. It was significant due to its status as the largest regional trade agreement ever negotiated (**Table 1**), as well as its advanced rule-making and regulatory content. Known as “WTO-Plus” provisions, the TPP included chapters on e-commerce, labour, the environment, telecommunications and transparency matters; in addition to conventional tariff, customs and investment provisions. From a strategic standpoint, the US-led initiative was part of the Obama Administration’s ‘Pivot to Asia’ policy,² to upgrade US economic and strategic engagement in the Asia-Pacific region.

However, the initial TPP agreement collapsed due to changes in US trade policy. The 2016 US Presidential election campaign focused intensely on perceived economic costs associated with trade. Hillary Clinton criticised the TPP during the campaign, while Donald Trump promised to withdraw the US entirely on winning office. The TPP also faced headwinds in the US Congress, which was required to legislate the deal before ratification. Following the election, Trump’s first executive order as President was to formally withdraw from the TPP in January 2017³. The TPP entry-into-force provisions required at least six signatories, together accounting for at least 85 percent of the bloc’s GDP, to ratify the agreement⁴. The withdrawal of the US – which accounted for 60 percent of its GDP – rendered this numerically impossible.

In the wake of the TPP’s collapse, the remaining members began exploring ‘salvage’ options. US exit represented a significant loss of market size. However, the remaining “TPP-11” group sought to preserve the agreement, to secure its advanced rule-making initiatives and contribution to regional integration trade and investment integration. Before the US withdrawal was even formalised, Japanese Prime Minister Shinzo Abe visited Australian Prime Minister Malcolm Turnbull in Sydney where both governments agreed to salvage the deal⁵. After continued negotiations in 2017, the TPP-11 finalised an agreement March 2018 for a revised “Comprehensive and Progressive agreement for TPP” (CPTPP)⁶.

The TPP-11 Ministerial Statement affirms the importance of the rule-making functions provided by the TPP:

“...the Agreement will strengthen the mutually-beneficial linkages among our economies, boost trade, investment and economic growth in the Asia-Pacific region, and create new opportunities for businesses, consumers, families, farmers and workers. The Agreement demonstrates our collective commitment to an effective, rules-based and transparent trading system which is open to all economies willing to accept these principles.”⁷

Table 1. Major regional trade agreements, 2018

Regional trade bloc	Year established	Member states	Share world GDP	Share world trade
Trans-Pacific Partnership	Suspended	12	38.4%	26.5%
Comprehensive and Progressive Agreement for the TPP	2018	11	13.6%	14.9%
Regional Comprehensive Economic Partnership	Under negotiation	16	31.6%	17.0%
Association of Southeast Asian Nations Free Trade Area	1992	10	3.4%	6.9%
Commonwealth of Independent States Free Trade Area	2011	8	2.2%	2.3%
EEC/EU Customs Union	1958/1994	28	21.8%	33.0%
Common Market of the South (Mercosur/Mercosul)	1991	5	3.6%	1.6%
North American Free Trade Agreement	1994	3	28.2%	16.4%

Source: WTO Regional Trade Agreements Database (<https://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>) and UNCTADStat Database (<http://unctadstat.unctad.org/EN/>)

The CPTPP does not replace the TPP.

It is a 'bridging' agreement that enables the TPP to enter into force without the US. The CPTPP is a separate treaty that enables the implementation of the TPP, subject to a set of variations and suspensions. Its core feature is the removal of the 85 percent GDP rule, which enables the agreement to enter into force without US membership. It also retains the majority of the TPP provisions, including both its market access commitments (amongst the remaining members) and regulatory chapters. However, it 'suspends' a number of TPP provisions which were initially included at the behest of US negotiators, largely concentrated in the area of intellectual property. These suspensions will remain until the parties decide, by consensus, to reinstate them. As of May 2018, the CPTTP has been ratified by two governments (Singapore and Japan), and will enter into force sixty days after six members have completed ratification. This is expected in early 2019.

Significantly, the CPTPP provides a pathway for the US to re-join the TPP in future.

Article 1 and 5 of the CPTPP provide that accession to the agreement by new parties can occur subject to terms and agreements negotiated with the members. In a dramatic and largely unexpected volte face, President Trump expressed an interest in the US rejoining the agreement just days after CPTPP negotiations concluded. Speaking the World Economic Forum in January, Trump indicated the US would reconsider the TPP "if we were able to make a substantially better deal."⁸

In April, following a meeting on market access with US farm state lawmakers,⁹ President Trump tweeted:



'Would only join TPP if the deal were substantially better than the deal offered to Pres. Obama. We already have BILATERAL (sic) deals with six of the eleven nations in TPP, and are working to make a deal with the biggest of those nations, Japan, who has hit us hard on trade for years!'

Both the credibility of these statements of intent, and precisely what a 'better deal' might entail, remain to be seen. Were the US to seek membership, it would require a new round of negotiations on the suspended provisions, in addition to members' consideration of any further US requests. Moreover, the US would be negotiating with CPTPP parties as an applicant, rather than founding member.

The US is not the only country which has expressed an interest in joining the TPP. Given its open design features and advanced regulatory provisions, several other Asian economies are also potential membership candidates. The Korean, Indonesian and Thai governments are all presently considering accession¹⁰, while the Philippines and even China have previously 'expressed interest'¹¹. Korea is considered most likely to be the first 'Asian' accession, given its status as a developed economy with trade policy settings that would require a lower volume of reform to achieve compliance with TPP standards. But were any of these economies to join, they would significantly augment the TPP's claims to be a genuinely 'regional' trade agreement with comprehensive coverage of Asia.

The TPP-11 now need to carefully weigh their views and positions on new member accession:

- **Which potential members should be prioritised for new accessions?**
- **If the US was to seek membership, what issues will it likely request during any accession negotiations?**
- **How do the benefits of US membership measure up against the costs of renegotiation?**
- **And what would expanding membership mean for the regional trade system in the Indo-Pacific?**

The economic and strategic rationales for expanded membership

Expanding membership is an identified priority for the TPP-11 members once the accession process is complete. It is explicitly designed as a “living agreement”, functioning not as a one-time transaction but as an institutional platform for ongoing efforts to liberalise regional trade flows. This includes an agenda of both growing its membership (to draw in Asian economies which did not participate as founding members) as well as extending its regulatory provisions into new areas (to ‘future-proof’ the agreement). But while several small and medium Asian economies have expressed interest in accession, it is the prospect of the US rejoining the agreement that has attracted the most attention.

US membership of the TPP would significantly benefit the US economy. While principally a ‘rule-making’ FTA, the TPP reduces conventional trade barriers in a range of sectors important to the US economy. These are prominent in the agriculture (beef, sheepmeat, wool, pork, cereals, dairy, sugar, cotton, wine, horticulture and seafood) and services (education, finance, transport, health and professional services) industries¹². The TPP-11 is a critical market for US firms: it is currently the largest destination for US exports, accounting for 45 percent of all merchandise exports in 2016 (**Figure 1**). These exports include \$69 billion of agriculture, \$184 billion of services and \$186 billion of high-technology manufactures¹³. As major competitors will enjoy preferential market access to TPP markets, US exporters stand to lose market share in key TPP-11 markets. Membership of the TPP would enable US firms to compete on an evening footing in existing and new TPP-11 markets.

US membership would also offer a range of benefits for the TPP-11 members as well. Given its economic size, the US would add significant heft to the TPP, and greatly increase its importance for the regional and global economic architectures. Specifically, it would help build the TPP in three ways:

First, it would help institutionalise a set of advanced trade and investment rules.

The primary contribution of the TPP is its role as a rule-making agreement. Its provisions commit signatories to liberal and transparent policy regimes in range of ‘WTO-Plus’ areas, including: transparency, e-commerce, telecommunications, intellectual property, services, state-owned enterprises and environmental and labour standards. These provisions advance the interests of developed, service and technology-based economies. However, the prospects for the TPP to institutionalise these rules into the global economic architecture fundamentally depend upon the economic weight of its membership. US withdrawal has more than halved its size: from 38 to 14 percent of global GDP, and from 27 to 15 percent of global trade (Table 1). The TPP-11 group lacks the heft to get these rules embedded into either global or regional trade architectures.

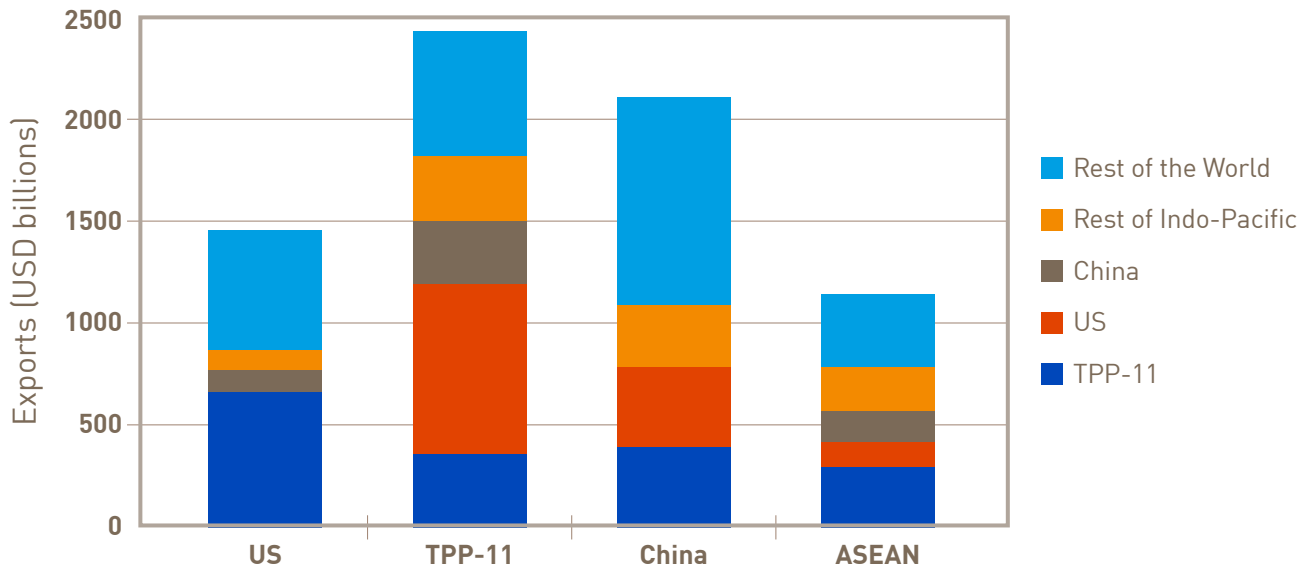
Second, it would accelerate efforts to grow the scope and agenda of the TPP.

The TPP is explicitly designed as a ‘living agreement’, which is intended to grow in both membership and regulatory scope following entry-into-force. This growth will be driven by the ‘size-pull’ effect of trade agreements: where the preferential advantages of membership encourage new states to join. By expanding the size of the TPP, US membership would make accession by further countries far more attractive. US involvement could also add leadership in terms of adding further regulatory provisions to the agreement.

Third, it would reduce the risk that lower-standard models for economic cooperation gain traction in the region. Since the US withdrawal from TPP, the prospect that the Regional Comprehensive Economic Partnership (RCEP) will become the new model for Asia's regional trade architecture has grown significantly. Strongly backed by China and ASEAN, RCEP offers a lower-ambition approach to trade liberalisation, lacking most

of the TPP's WTO-Plus provisions¹⁴. But with a membership accounting for 32 percent of global GDP, it is more than twice the size of the TPP-11. While RCEP negotiations are yet to conclude, at present its size-pull effect are significantly greater than that of the TPP. US membership would more than double the TPP's size, ensuring it remains an attractive and viable political-model for regional economic integration.

Figure 1. Major export markets of key Indo-Pacific economies, 2016



Source: Author's calculations, from UNCTADStat Database

Potential pathways for TPP accession

From an international-legal perspective, adding new members to the TPP remains a possibility. While the 'bridging' CPTPP agreement suspends the accession mechanism of the original TPP, it replaces it with a simplified accession mechanism of its own¹⁵. This allows any state to apply for membership, subject to terms negotiated with the other members, following entry-into-force. Assuming CPTPP ratification proceeds smoothly, any government could therefore approach the TPP-11 group to commence accession negotiations as early as late-2018.

Encouragingly, the CPTPP retains most of the regulatory provisions from the TPP. Following US withdrawal, the remaining eleven members agreed to suspend several regulatory provisions which had been included at the insistence of US negotiators. These suspensions are concentrated in the area of intellectual property (IP). They remove protection for biologics, technological protection mechanisms, digital rights management, the safe-harbour framework for internet service providers, and the 'life-plus-70-years' copyright standard¹⁶. However, the majority of the TPP's WTO-Plus rules, including several US-requested provisions for labour standards, state-owned enterprises and ISDS, remain. The minimalist nature of these suspensions lowers the negotiating bar for any US readmission.

However, the CPTPP accession provisions are less detailed than those of the original TPP, and do not specify procedures for how negotiations should be conducted. Accession negotiations will be doubly-complex: not only over the terms for new members, but also over the rules for the accession process itself. Negotiating procedural and substantive matters at the same time opens space for vetoes.

Additionally, a number of political factors will complicate prospective US membership:

1. **The CPTPP does not include the initially-rumoured 'snapback' provision**, under which all suspended content would be automatically reinstated upon US readmission¹⁷. Any decision to remove suspensions must be negotiated by consensus amongst the membership. With the US now an applicant rather than founding member, it is unlikely the remaining group will automatically return to originally-agreed positions. Additionally, a range of further carve-outs have been implemented through a set of bilateral side letters¹⁸. These side letters will prove complex to disentangle, and would not be formally subject to renegotiation during an accession process.
2. **While less than anticipated, the CPTPP suspensions still touch on core interests for the US.** Key amongst these are the suspended IP provisions. These are a core interest for US corporates; and were arguably the most important US negotiating point in the original agreement. It remains to be seen what landing space, if any, could be achieved on IP. A weak IP outcome will struggle to gain support through the US Congress; while a strong IP outcome will be difficult to achieve under circumstances of seeking readmission.

3. CPTPP members will need to weigh the benefits and costs of additional US demands. Trump's messaging has indicated a 'better deal' would have to be offered before the US could rejoin. It remains unclear what this better deal might entail; and the TPP-11 are unlikely to agree to the trade-balancing type measures currently favoured by the

Trump Administration. With the US currently applying coercive trade strategies against both rivals and allies in Asia, it is likely to demand significant additional concessions. These concessions will need to be weighed against the systemic benefits which US membership would offer.

Table 2. Key regulatory features of the Trans-Pacific Partnership

Investment	<i>Most-favoured-nation</i> and <i>national treatment</i> protections, enforced via <i>Investor-State Dispute Settlement</i> (ISDS) process
Transparency/ Anti-Corruption	Requirement for members to criminalise (and sanction) corruption, and to adopt appropriate accounting, auditing and financial disclosure standards
Environment	Requirements for effective enforcement of national environmental law; promotion of collaborative activities in range of areas (fisheries, CITES, biodiversity, renewable energy)
E-commerce	Privacy protections; equal treatment of digital content; protections for source code
Intellectual Property*	Protection of trademarks and geographical indicators; harmonisation of patent rules; life-plus-70-years standards for copyright; requirement for enforcement regimes
State-owned enterprises	Requirement for SOEs to act in accordance with 'commercial considerations'; transparency rules for SOEs and government monopolies
Telecommunications	Requirement for major suppliers to provide services to foreign firms on a non-discriminatory basis; transparency regulations
Financial services	<i>National treatment</i> , <i>most-favoured-nation</i> and <i>cross-border-supply</i> provisions
Services	<i>National treatment</i> , <i>most-favoured-nation</i> and <i>market access</i> provisions
Labour	Requirement to enforce labour standards; initiatives to discourage trade in goods made using forced or child labour

Source: Author's summary, from Department of Foreign Affairs and Trade, *Trans-Pacific Partnership Chapter Summaries* (<http://dfat.gov.au/trade/agreements/tpp/summaries/Pages/summaries.aspx>). *Several intellectual property provisions have been suspended in the CPTPP. See note 18 for a full list of suspensions.

Mixed views on US membership

CPTPP members have welcomed the prospect of the US re-joining the TPP. US accession would significantly increase the economic size and strategic clout of the regional trading bloc. As such, there is broad consensus amongst TPP-11 countries that US membership would in-principle be a good outcome. For developed countries like Australia, Japan and Singapore, its rule-making aspects would have significantly more regional influence with the economic heft that US involvement offers. The Australian Trade Minister recently stated “...we would love for the US to come back into the TPP-11... We think that there’s a lot of benefit for the US, and indeed for all of the countries, if the US is at the table”¹⁹. For developing economies such as Vietnam and Malaysia, access to large US consumer markets were one of the main motivations to enter the highly-demanding agreement in the first place²⁰. US readmission would offer major opportunities for exporting to, and attracting investment from, the world’s largest economy.

However, there is also a clear reluctance to renegotiate the contents of the agreement.

With the CPTPP still in the ratification phase, members have prioritised work to secure its entry-into-force, rather than engage in yet further negotiations with the US Administration. Japanese Cabinet Secretary Yoshihide Suga has argued: “[The CPTPP is] like delicate glasswork. To take out one part and renegotiate would be extremely difficult.”²¹ The Singaporean and Malaysian governments have expressed similar sentiments²².

Australian Trade Minister Steven Ciobo has gone further, stating:

“Let’s just see what the Americans do... Eleven countries have signed up and we’re firm on the deal. I can’t see all that being thrown open now to appease the United States, but we would welcome the US coming back to the table.”²³

Trump’s assertive trade strategies also cast a shadow over the TPP-11’s willingness to make concessions. President Trump has publicly criticised trade policies (and the supposedly resulting US trade deficits) of many governments in Asia. The global trading environment has also become tense, as the US has applied punitive steel and aluminium tariffs against many Asian trade partners, and is presently threatening a broader range of tariffs against China. It is also applying significant pressure to Japan to negotiate a ‘trade balancing’ bilateral agreement. To some extent, the CPTPP provides its members an alternative to trade engagement with the US: Japan’s Finance Minister has expressed a desire to “definitely avoid” the bilateral trade negotiations that have been pursued by the US in absence of the TPP²⁴. Others have linked US membership in the TPP to its broader trade policies, with Singaporean Ambassador-at-large Tommy Koh indicating regional governments are “very concerned” regarding the protectionist approach of the Trump Administration²⁵.

The CPTPP also provides regional economies a ‘lever’ to resist coercive trade practices by the Trump Administration. While significantly reduced in size, it is still the largest and most impactful trade bloc in the Asia-Pacific region. US absence also imposes costs on the US economy, particularly in terms of preferential disadvantages for the agriculture sector in accessing Asian markets. The prospect that the US may seek membership gives the TPP-11 states a bargaining chip in regional trade negotiations, by issue-linking accession to expectations that the US would adopt a more conciliatory approach in other bilateral and unilateral disputes. In this way, the CPTPP functions as a strategic hedge for regional governments to bargain with the US for better trade outcomes.

It is unclear how these considerations will play out in coming months. As the Trump Administration is yet to signal what a 'better deal' might entail, it is impossible to assess the extent of concessions required to secure US membership. How these concessions would weigh up against the benefits of US inclusion remains to be seen. Such calculations are further complicated by trade demands being made by

the Trump Administration against some CPTPP members (especially Japan, Canada and Mexico), who will have to balance their TPP objectives against their interests in bilateral trade with the US. What is clear, however, is that there is a significant gap between the expectations of the CPTPP members and the US.

Implications for the Indo-Pacific economic architecture

If the US was to negotiate a return to the TPP, it would transform the regional economic architecture of the Indo-Pacific. US membership would more than double the bloc's economic size, and strengthen the size-pull effect that might draw countries such as Korea, Indonesia and Thailand into the agreement. This would secure the high-standard TPP template as the model for regional economic integration in the Indo-Pacific. While other regional agreements such as RCEP could co-exist with it, the TPP would set a new standard for trade liberalisation by which the utility of all other initiatives would be measured. It would also engender an architectural shift in the regional trade system, by moving from a bilateral model – commonly known as the 'FTA noodle bowl' – to one based on multilateral trade liberalisation.

The addition of new Asian members would also augment the TPP, but with less-pronounced systemic impacts. As the world's largest economy and a major trade player, US membership would transform the TPP into one of the most significant regional trade blocs. By comparison, the addition of small and medium Asian economies would have a much more modest impact on its size. As a result, the systemic impact of the TPP largely depends on the prospects for US inclusion. Nonetheless, the membership of Asian economies does offer several advantages, such as setting a precedent for how the accession process will work, and signalling a broader commitment in the region to multilateral trade cooperation.

If the gap between US and CPTPP members cannot be bridged, it is likely that alternate trade models will proliferate in its place. Despite its rule-making qualities, the CPTPP is presently too small to qualify as a genuinely 'region-wide' trade agreement. At present, only the ASEAN/China-backed RCEP agreement can reasonably claim to be fully-inclusive of all Asian economies. If RCEP negotiations conclude in coming months, its more-inclusive but lower-ambition approach will become the dominant model for the regional trade system. There is also likely to be further proliferation of bilateral FTAs, as governments with TPP-style ambitions look to bilateral deals to advance their trade interests. A lower standard and more fractured regional trade system is the likely outcome.

The future of the Indo-Pacific economic architecture therefore depends on US trade strategy policy towards the region. During his first year and a half in office, President Trump has prosecuted an adversarial trade agenda that has targeted both allies and rivals alike. If this approach continues, it is very unlikely the gap between the US and the CPTPP members can be bridged. However, if US trade policy were to evolve to take a more strategic and long-term – though not necessarily less adversarial – form, a space for compromise could emerge. The TPP-11 need to carefully weigh the costs and benefits of US membership when devising new regional trade strategies.

Endnotes

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- ⁴ See Joint Standing Committee on Treaties of the Parliament of the Commonwealth of Australia (2016), Report 165 “Trans-Pacific Partnership Agreement”, http://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024012/toc_pdf/Report165.pdf;fileType=application%2Fpdf.
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- ⁶ See Comprehensive and Progressive Agreement For Trans-Pacific Partnership, Preamble and Treaty Text, <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/official-documents/Documents/tpp-11-treaty-text.pdf>.
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- ¹² See Department of Foreign Affairs and Trade (2018), ‘TPP-11 Outcomes: Goods market access’, <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/outcomes-documents/Pages/tpp-11-outcomes-goods-market-access.aspx> and ‘TPP-11 Outcomes: Services’, <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/outcomes-documents/Pages/tpp-11-outcomes-services.aspx>.
- ¹³ Author’s calculation, from UNCTADStat Database.
- ¹⁴ Mireya Solís and Jeffrey D. Wilson (2017), ‘From APEC to Mega-Regionals: The Evolution of the Asia-Pacific Trade Architecture’, *The Pacific Review*, 30(6): 923–937.
- ¹⁵ As per Article 5 of the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership*, <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/official-documents/Documents/tpp-11-treaty-text.pdf>
- ¹⁶ See Department of Foreign Affairs and Trade (2018), ‘TPP-11 suspensions explained’, <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/outcomes-documents/Pages/tpp-11-faqs-suspensions-explained.aspx>
- ¹⁷ Jeffrey Wilson (2017), *Beyond TPP: Maintaining US Engagement in Asia’s Emerging Trade Architecture*, Sydney: United States Studies Centre.
- ¹⁸ Each CPTPP member state publishes its own list of side letters, and there is no central repository. The Australian list of ten side letter is available at <http://dfat.gov.au/trade/agreements/not-yet-in-force/tpp-11/official-documents/Pages/official-documents.aspx>; and the Canadian list of thirty-nine at <http://www.international.gc.ca/trade-commerce/trade-agreements-accords-commerciaux/agr-acc/cptpp-ptpgp/text-texte/letters-lettres.aspx?lang=eng>
- ¹⁹ Hon Steven Ciobo MP Minister for Trade, Tourism and Investment, Transcript, “CNBC Interview”, 27 April 2018, http://trademinister.gov.au/transcripts/Pages/2018/sc_tr_180427.aspx
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- ²³ *Supra* note 21.
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About the Perth USAsia Centre

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