

# **COMPREHENSIVE AND PROGRESSIVE AGREEMENT**

## **FOR**

### **TRANS-PACIFIC PARTNERSHIP**

#### **PREAMBLE**

The Parties to this Agreement, resolving to :

**REAFFIRM** the matters embodied in the preamble to the Trans-Pacific Partnership Agreement, done at Auckland on 4 February 2016 (hereinafter referred to as “the TPP”);

**REALISE** expeditiously the benefits of the TPP through this Agreement and their strategic and economic significance;

**CONTRIBUTE** to maintaining open markets, increasing world trade, and creating new economic opportunities for people of all incomes and economic backgrounds;

**PROMOTE** further regional economic integration and cooperation between them;

**ENHANCE** opportunities for the acceleration of regional trade liberalisation and investment;

**REAFFIRM** the importance of promoting corporate social responsibility, cultural identity and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development and traditional knowledge, as well as the importance of preserving their right to regulate in the public interest; and

**WELCOME** the accession of other States or separate customs territories to this Agreement,

**HAVE AGREED** as follows :

### **Article 1 : Incorporation of the Trans-Pacific Partnership Agreement**

1. The Parties hereby agree that, under the terms of this Agreement, the provisions of the Trans-Pacific Partnership Agreement, done at Auckland on 4 February 2016 (“the TPP”) are incorporated, by reference, into and made part of this Agreement *mutatis mutandis*, except for Article 30.4 (Accession), Article 30.5 (Entry into Force), Article 30.6 (Withdrawal) and Article 30.8 (Authentic Texts).<sup>1</sup>

2. For the purposes of this Agreement, references to the date of signature in the TPP shall mean the date of signature of this Agreement.

3. In the event of any inconsistency between this Agreement and the TPP, when the latter is in force, this Agreement shall prevail to the extent of the inconsistency.

### **Article 2 : Suspension of the Application of Certain Provisions**

Upon the date of entry into force of this Agreement, the Parties shall suspend the application of the provisions set out in the Annex to this Agreement, until the Parties agree to end suspension of one or more of these provisions.<sup>2</sup>

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<sup>1</sup> For greater certainty, nothing in this Agreement shall provide any rights to any non-Party to this Agreement.

<sup>2</sup> For greater certainty, any agreement by the Parties to end a suspension shall only apply to a Party upon the completion of that Party’s applicable legal procedures.

### **Article 3 : Entry into Force**

1. This Agreement shall enter into force 60 days after the date on which at least six or at least 50 per cent of the number of signatories to this Agreement, whichever is smaller, have notified the Depositary in writing of the completion of their applicable legal procedures.
2. For any signatory to this Agreement for which this Agreement has not entered into force under paragraph 1, this Agreement shall enter into force 60 days after the date on which that signatory has notified the Depositary in writing of the completion of its applicable legal procedures.

### **Article 4 : Withdrawal**

1. Any Party may withdraw from this Agreement by providing written notice of withdrawal to the Depositary. A withdrawing Party shall simultaneously notify the other Parties of its withdrawal through the overall contact points designated under Article 27.5 (Contact Points) of the TPP.
2. A withdrawal shall take effect six months after a Party provides written notice to the Depositary under paragraph 1, unless the Parties agree on a different period. If a Party withdraws, this Agreement shall remain in force for the remaining Parties.

### **Article 5 : Accession**

After the date of entry into force of this Agreement, any State or separate customs territory may accede to this Agreement, subject to such terms and conditions as may be agreed between the Parties and that State or separate customs territory.

## **Article 6 : Review of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership**

Further to Article 27.2 (Functions of the Commission) of the TPP, if the entry into force of the TPP is imminent or if the TPP is unlikely to enter into force, the Parties shall, on request of a Party, review the operation of this Agreement so as to consider any amendment to this Agreement and any related matters.

## **Article 7 : Authentic Texts**

The English, Spanish and French texts of this Agreement are equally authentic. In the event of any divergence between those texts, the English text shall prevail.

In witness whereof the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE at Santiago the eighth day of March, two thousand and eighteen, in the English, French and Spanish languages.

## ANNEX<sup>3</sup>

1. Chapter 5 (Customs Administration and Trade Facilitation)

Article 5.7 (Express Shipments) – paragraph 1 – subparagraph (f): second sentence

2. Chapter 9 (Investment)

(a) Article 9.1 (Definitions):

- (i) definition of **investment agreement** including footnotes 5 through 9;
- (ii) definition of **investment authorisation** including footnotes 10 and 11;

(b) Article 9.19 (Submission of a Claim to Arbitration)

- (i) paragraph 1:
  - (A) subparagraph (a)(i)(B) including footnote 31;
  - (B) subparagraph (a)(i)(C);
  - (C) subparagraph (b)(i)(B);
  - (D) subparagraph (b)(i)(C);

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<sup>3</sup> To assist with the understanding of this Annex, the Parties have used a colon to indicate the specific portion(s) of a provision that has been suspended.

(E) the chaussette “provided that a claimant may submit pursuant to subparagraph (a)(i)(C) or (b)(i)(C) a claim for breach of an investment agreement only if the subject matter of the claim and the claimed damages directly relate to the covered investment that was established or acquired, or sought to be established or acquired, in reliance on the relevant investment agreement.”;

(ii) paragraph 2: all of this paragraph including footnote 32;

(iii) paragraph 3 – subparagraph (b): the phrase “investment authorisation or investment agreement”;

(c) Article 9.22 (Selection of Arbitrators): paragraph 5;

(d) Article 9.25 (Governing Law): paragraph 2 including footnote 35;

(e) Annex 9-L (Investment Agreements): all of this Annex

### 3. Chapter 10 (Cross-Border Trade in Services)

Annex 10-B (Express Delivery Services):

(a) paragraph 5 including footnote 13;

(b) paragraph 6 including footnote 14

### 4. Chapter 11 (Financial Services)

(a) Article 11.2 (Scope) – paragraph 2 – subparagraph (b): the phrase “Article 9.6 (Minimum Standard of Treatment)” including footnote 3;

(b) Annex 11-E: all of this Annex

5. Chapter 13 (Telecommunications)

Article 13.21 (Resolution of Telecommunications Disputes) – paragraph 1: subparagraph (d) including the heading “*Reconsideration*” and footnote 22

6. Chapter 15 (Government Procurement)

(a) Article 15.8 (Conditions for Participation): paragraph 5 including footnote 1;

(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”<sup>4</sup>

7. Chapter 18 (Intellectual Property)

(a) Article 18.8 (National Treatment): the last two sentences of footnote 4;

(b) Article 18.37 (Patentable Subject Matter)

(i) paragraph 2: all of this paragraph;

(ii) paragraph 4: the last sentence;

(c) Article 18.46 (Patent Term Adjustment for Unreasonable Granting Authority Delays): all of this Article including footnotes 36 through 39;

(d) Article 18.48 (Patent Term Adjustment for Unreasonable Curtailment): all of this Article including footnotes 45 through 48;

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<sup>4</sup> The Parties agree that negotiations referred to in paragraph 2 of Article 15.24 (Further Negotiations) shall commence no earlier than five years after entry into force of this Agreement, unless the Parties agree otherwise. Such negotiations shall commence at the request of a Party.

- (e) Article 18.50 (Protection of Undisclosed Test or Other Data): all of this Article including footnotes 50 through 57;
- (f) Article 18.51 (Biologics): all of this Article including footnotes 58 through 60;
- (g) Article 18.63 (Term of Protection for Copyright and Related Rights): all of this Article including footnotes 74 through 77;
- (h) Article 18.68 (Technological Protection Measures (TPMs)): all of this Article including footnotes 82 through 95;
- (i) Article 18.69 (Rights Management Information (RMI)): all of this Article including footnotes 96 through 99;
- (j) Article 18.79 (Protection of Encrypted Program-Carrying Satellite and Cable Signals): all of this Article including footnotes 139 through 146;
- (k) Article 18.82 (Legal Remedies and Safe Harbours): all of this Article including footnotes 149 through 159;
- (l) Annex 18-E (Annex to Section J): all of this Annex;
- (m) Annex 18-F (Annex to Section J): all of this Annex

8. Chapter 20 (Environment)

Article 20.17 (Conservation and Trade) – paragraph 5: the phrase “or another applicable law” including footnote 26

9. Chapter 26 (Transparency and Anti-Corruption)



Annex 26-A (Transparency and Procedural Fairness for Pharmaceutical Products and Medical Devices): Article 3 (Procedural Fairness) including footnotes 11 through 16

10. Annex II

Schedule of Brunei Darussalam – 14 – paragraph 3: the phrase “after the signature of this Agreement”<sup>5</sup>

11. Annex IV

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”<sup>6</sup>

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<sup>5</sup> As a result of the suspension, the Parties agree that the phrase “after the signature of this Agreement” shall refer to after the entry into force of this Agreement for Brunei Darussalam. Therefore, the Parties understand that the reference to “Any non-conforming measure adopted or maintained” in this paragraph shall mean any non-conforming measure adopted or maintained after the date of entry into force of this Agreement for Brunei Darussalam.

<sup>6</sup> As a result of the suspension, the Parties agree that the phrase “after signature of this Agreement” shall refer to after the entry into force of this Agreement for Malaysia. Therefore, the Parties understand that the references in the Scope to:

- (a) “the first year” shall be the first one year period;
  - (b) “the second and third years” shall be the second and third one year periods;
  - (c) “the fourth year” shall be the fourth one year period;
  - (d) “the fifth year” shall be the fifth one year period; and
  - (e) “the sixth year” shall be the sixth one year period,
- counted from the date of entry into force of this Agreement for Malaysia.