

# the DIGITAL 2 DOZEN

The Trans-Pacific Partnership (TPP) includes cutting-edge obligations designed to promote the digital economy through a free and open Internet and commerce without borders.

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## PROMOTING A FREE & OPEN INTERNET

A free and open Internet enables the creation and growth of new, emerging, and game-changing Internet services that transform the social-networking, information, entertainment, e-commerce, and other services we have today. The Internet should remain free and open for all legitimate commercial purposes. TPP affirms that consumers will be able to access content and applications of their choice when online. (CH. 14, ART. 10)

## PROHIBITING DIGITAL CUSTOMS DUTIES

TPP includes a complete prohibition on customs duties for digital products. This will ensure that customs duties do not impede the flow of music, video, software, and games so our creators, artists, and entrepreneurs get a fair shake. (CH. 14, ART. 3)

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## SECURING BASIC NON-DISCRIMINATION PRINCIPLES

TPP provides that digital products originating from TPP countries cannot be put at a competitive disadvantage in any Party's market. Fundamental non-discrimination principles are at the core of the global trading system for goods and services, and TPP ensures that this principle applies to digital products as well. (CH. 14, ART. 4)

## ENABLING CROSS-BORDER DATA FLOWS

Companies and consumers must be able to move data as they see fit. Many countries have enacted rules that put a chokehold on the free flow of information, which stifles competition and disadvantages American entrepreneurs. TPP combats these discriminatory and protectionist barriers with specific provisions designed to protect the movement of data, subject to reasonable safeguards like the protection of consumer data when exported. (CH. 11, Annex 11-B, SEC. B) (CH. 14, ART. 11)

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## PREVENTING LOCALIZATION BARRIERS

Companies and digital entrepreneurs relying on cloud computing and delivering Internet-based products and services should not need to build physical infrastructure and expensive data centers in every country they seek to serve. However, many countries have tried to enforce such requirements which add unnecessary costs and burdens on providers and customers alike. TPP squarely confronts these localization barriers through specific provisions designed to promote access to networks and efficient data processing. (CH. 14, ART. 13)

## BARRING FORCED TECHNOLOGY TRANSFERS

Countries should not make market access contingent on forced transfers of technology. TPP includes rules prohibiting Parties from requiring companies to transfer their technology, production processes, or other proprietary information to persons in their respective territories. (CH. 9, ART. 9)

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## PROTECTING CRITICAL SOURCE CODE

U.S. innovators should not have to hand over their source code or proprietary algorithms to their competitors or a regulator that will then pass them along to a State-owned enterprise. TPP ensures that companies do not have to share source code, trade secrets, or substitute local technology into their products and services in order to access new markets, while preserving the Parties' ability to obtain access to source code in order to protect health, safety, or other legitimate regulatory goals.

(CH. 14, ART. 17) (CH. 8, Annex 8-B, SEC. A)

## ENSURING TECHNOLOGY CHOICE

Innovative companies should be able to utilize the technology that works best and suits their needs. For example, mobile phone companies should be able to choose among wireless transmission standards like WiFi and LTE. TPP includes technology choice provisions to ensure that companies are not required to purchase and utilize local technology, instead of technology of their own choosing. (CH. 9, ART. 9) (CH. 13, ART. 23)

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## ADVANCING INNOVATIVE AUTHENTICATION METHODS

The availability of diverse electronic signature and authentication methods protects users and their transactions through mechanisms such as secure online payment systems. TPP ensures that suppliers can use the methods that they think best for this purpose. (CH. 14, ART. 6)

## DELIVERING ENFORCEABLE CONSUMER PROTECTIONS

When consumers turn to the Internet for social or commercial purposes, they should be protected. We believe consumer protections, including with respect to privacy, should be embraced by our trading partners. TPP requires Parties to adopt and maintain enforceable protections within their markets so that baseline consumer trust is enhanced. (CH. 14, ARTS. 7, 8, and 14)

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## SAFEGUARDING NETWORK COMPETITION

TPP will enable our suppliers to build networks in the markets they serve—whether landing submarine cables or expanding data and voice networks—to better access consumers and businesses. (CH. 13, ARTS. 7, 8, 11, 12, 13, 14, and 15)

## FOSTERING INNOVATIVE ENCRYPTION PRODUCTS

Encryption is increasingly seen as an important tool to address protections of privacy and security in the digital ecosystem. TPP includes a provision that protects innovation in encryption products to meet consumer and business demand for product features that protect security and privacy while allowing law enforcement access to communications consistent with applicable law. (CH. 8, Annex 8-B, SEC. A)

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**13****BUILDING AN ADAPTABLE FRAMEWORK FOR DIGITAL TRADE**

New and innovative digital products and services are protected in TPP against future discrimination. By design, protections for services and investment continue to apply in TPP as markets change and innovative technologies emerge, unless a specific, negotiated exception applies. (CH. 9, ART. 11) (CH. 10, ART. 7) (CH. 11, ART. 10)

**PROMOTING COOPERATION ON CYBERSECURITY**

TPP Parties will work to share information on threats, as well as help to build cybersecurity capacity to prevent cyber-attacks and stop the diffusion of malware. (CH. 14, ART. 16)

**14****15****PRESERVING MARKET-DRIVEN STANDARDIZATION & GLOBAL INTEROPERABILITY**

Innovators should not have to design products differently for each market they seek to serve—that is why we have the global standards process, where industry leads and the best technologies win. TPP ensures that countries cannot arbitrarily demand that less competitive national standards be forced into innovative American products. (CH. 8) (CH. 13, ART. 23)

**ELIMINATING TARIFFS ON ALL MANUFACTURED PRODUCTS**

TPP Parties agree to eliminate tariffs on all TPP-manufactured product exports, including information and communication technology (ICT) products which represent some of the largest trade volumes among TPP countries. In addition, all TPP Parties have committed to work to join the WTO Information Technology Agreement (ITA), which will eliminate tariffs on a broad range of information technology products, including countries that have not previously joined the ITA. (CH. 2, ART. 20 and Annex 2-D)

**16****17****SECURING ROBUST MARKET ACCESS COMMITMENTS ON INVESTMENT & CROSS-BORDER SERVICES, INCLUDING THOSE DELIVERED DIGITALLY**

TPP contains strong investment and cross-border services commitments. In particular, U.S. digital service providers now will have the certainty of knowing that the services they provide—including both technology-related support services such as cloud computing and services like consulting, marketing, and advertising more generally—can be legally offered in other TPP countries. (CH. 9) (CH. 10)

**ENSURING FASTER, MORE TRANSPARENT CUSTOMS PROCEDURES**

TPP includes strong commitments on customs procedures and trade facilitation (including express shipments) to ensure that border processing will be quick, transparent, and predictable. These kind of administrative barriers can often be a bigger problem than tariffs for U.S. exporters of digital equipment. TPP also will facilitate paperless trading through the use of electronic customs forms. (CH. 5, ARTS. 3, 4, 7, 10, and 11) (CH. 14, ART. 9)

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## PROMOTING TRANSPARENCY & STAKEHOLDER PARTICIPATION IN THE DEVELOPMENT OF REGULATIONS & STANDARDS

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The development of new regulations and standards can pose a significant challenge to ICT suppliers, whose product cycles are short and whose regulatory environment is constantly evolving. TPP contains strong commitments on transparency, stakeholder participation, coordination, and impact assessment for new regulatory measures, standards, and conformity assessment procedures. TPP also contains the first chapter on regulatory coherence in any U.S. trade agreement. (CH. 8, ART. 7) (CH. 13, ART. 22) (CH. 25, ARTS. 4, 5, and 6) (CH. 26, ARTS. 2, 3, and 4)

## ENSURING FAIR COMPETITION WITH STATE-OWNED ENTERPRISES

TPP is the first trade agreement to contain robust commitments to ensure that State-owned enterprises competing with U.S. exporters, including in the ICT sector, compete on the basis of quality and price rather than on the basis of discriminatory regulation, subsidies, or favoritism. (CH. 17) (CH. 13, ART. 16)

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## PROMOTING STRONG & BALANCED COPYRIGHT PROTECTIONS & ENFORCEMENT

Copyright protections are essential to ensuring that the coders, designers and product managers behind a product have the freedom to create and are compensated for their creative works—just like musicians and authors. TPP reflects the strong copyright protection and enforcement provisions that we have in U.S. law and the TPP Parties' commitment to continuously seek to achieve an appropriate balance in their copyright systems, including through copyright exceptions and limitations. TPP also includes provisions on establishing copyright safe harbors for legitimate Internet Service Providers (ISPs) comparable to those in U.S. law. (CH. 18, SEC. H, ARTS. 65 and 66; SEC. J, ART. 82)

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## ADVANCING MODERN PATENT PROTECTION

TPP reinforces the global standard of transparent, strong, and balanced patent protections for cutting edge innovation, including appropriate limitations and exceptions drawn from international commitments. These provisions protect the jobs and innovative solutions generated by U.S. entrepreneurs in areas ranging from solar panels to smart manufacturing. (CH. 18, SEC. F, SUBSEC. A)

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## COMBATTING TRADE SECRET THEFT

TPP addresses the problem of corporate espionage, including trade secret theft conducted by State-owned enterprises. TPP—for the first time in a trade agreement—requires TPP Parties to establish criminal procedures and penalties for trade secret theft, including by means of cyber theft, while preserving domestic laws that protect whistleblowing. (CH. 18, SEC. I, ART. 78)

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## RECOGNIZING CONFORMITY ASSESSMENT PROCEDURES

Conformity assessment procedures verify that products, including ICT products, meet required standards and technical regulations, but overly burdensome conformity assessment procedures in foreign countries can hinder ICT exports. TPP requires Parties to provide “national treatment” to one another’s conformity assessment bodies, so testing and certification performed by a qualified conformity assessment body will be accepted as consistent with another Party’s requirements. (CH. 8, ART. 6)

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